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The truth about the Frank case

Christopher Powell Connolly

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THE TRUTH ABOUT THE FRANK CASE

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LEO M. FRANK

THE TRUTH
ABOUT
THE FRANK CASE,
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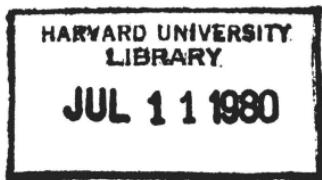
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FOREWORD

The following brief story of the Frank case, taken from the testimony and records of the trial, supplemented by a reference to newspaper files and by personal interviews with witnesses, ought to do some good in holding the mirror up to an ancient phase of human nature. Krupp has not yet made a gun powerful enough to pierce prejudice; and of all prejudice, religious and racial are the most obstinate and senseless. Here in America I think we have approximated tolerance in this regard more than anywhere on the globe, though I speak out of a patriotic faith more than from a personal knowledge.

All humans are much alike, under whatever skies they dwell, or according to whatsoever creed they profess. The heart of the Russian peasant is much like the heart of the Illinois farmer. It is only the things we have been taught, and among them creed hate, that makes us different, one from the other. Who that has read of the persecution of the Jews in Russia and in Spain is not ready to cry out in condemnation of all racial and religious prejudice?

I found Leo M. Frank one of that class of intellectual young men which is the hope of America. A finer type, judging from an observation running over three weeks, I do not know. I am certain that morally he is just as clean of conscience and of conduct. This is, I believe,

FOREWORD

the opinion of everyone that has come in personal contact with him. He is a remarkable young man. And the wrongs that have been done this young man in the name of Law and Justice — they are impossible of detail!

The scenes and incidents here portrayed occurred in the South. There will doubtless be those who, desirous of drawing sectional lines in this case, will say that because I have treated my subject with the pen-point of truth and without apology, the vision is peculiarly that of a Northerner. I can only say that there is no one who has realized with warmer sympathy the peculiar conditions in the South which occasionally bring their tense situations, and which the people of the South have borne with such splendid patience. I have been for years a firm believer in the great future of the South, to me the finest section of our country. Its best citizenship is unsurpassed anywhere; on the other hand, it has no monopoly of incompetent public servants.

I have seen racial and religious prejudice everywhere. I have seen it fanned into bloodshed in the West. I have seen it in the North. There is but one reason, aside from the peculiarly atrocious murder of Mary Phagan, which made possible the injustice done Frank. Atlanta is still practically untouched by the flow of immigration from Europe which has made our Northern cities so tolerant in matters of race and religion. It is ridiculous to protest that there has been no prejudice against "the Jew" in this Frank case. The whole atmosphere of the case reeks with it. You cannot make the Jew have any respect for these protests. He knows

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the storm when he sees it. Centuries of oppression have made him weather-wise.

C. P. CONNOLLY.

East Orange, N. J., Dec. 22, 1914.

AN OUTLINE OF THE CASE

SATURDAY, April 26, 1913, a holiday, Mary Phagan went from her home in Atlanta to the National Pencil factory at which she worked, to get some pay still owing her. She did not return to her home. A search was instituted, without success. At 3:30 o'clock the following morning her dead body was accidentally discovered in the basement of the pencil factory by the night watchman, whose duty it was to make the rounds of the building. Two men were immediately arrested. One was Leo M. Frank, the superintendent of the factory, who stated that he had paid the girl her wages in his office at noon on Saturday. The other was Newt Lee, the night watchman, who had discovered the body. Alongside Mary Phagan's body were found two illiterate notes in pencil, purporting to have been written by the victim, and stating that the deed had been done by "a long, tall, slim, black negro." The notes were manifestly a clumsy invention of the murderer to divert suspicion. It soon became apparent that the night watchman was not the guilty person. Suspicion fastened on Frank and rapidly intensified. During the next three or four days the police, the newspapers, and practically the entire population of Atlanta came to the conclusion that Frank was the guilty person. Then a third man, a negro named Jim Conley, who also worked in the factory, but who was not known to have

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been in the factory at the time of the murder, was accidentally discovered washing a stained shirt. He was arrested and held as a suspect, but suspicion was not seriously directed toward him. The stained shirt was returned to him by the police, and his name was practically eliminated until three weeks later, when it was discovered that he could write. He had previously denied that he could write.

Still later it was discovered and admitted by Conley that he had been in the factory at the time of the murder. When the fact that he could write was pressed upon him he told in succession four different formal stories, each of which was taken down by the police. On the trial he told a fifth different story.

His first story was that he had not been at the factory at all. His second story, in which he still maintained that he was not at the factory on the day of the murder, admitted that he had written one of the notes, but claimed that he had written it the day before the murder at Frank's dictation, and that Frank had written the other note. Both notes were in the same handwriting.

His third story admitted that he was at the factory on the day of the murder, but knew nothing of the murder, and in this story Conley said that he had written one of the notes at Frank's dictation on that day, instead of on Friday, and that Frank had written the other note. He said he had no idea at the time what use Frank was to make of the note except that Frank had told him he was going to send the note to his (Frank's) mother in Brooklyn and recommend Conley to her as a good negro. He did not admit having written both

notes until two months afterward when he was sworn as a witness on the stand. He finally claimed that he had helped Frank carry the body from the second story of the factory, where Frank had murdered the girl, to the cellar. He gave as his reason for not telling this story at first that Frank had promised to protect him or to pay him a large sum of money, and he was waiting for Frank to make his promise good. The fastening of the authorship of the notes on Frank, however, as told in one of Conley's first stories, fixed the crime on Frank, on the theory entertained by the police that whoever was the author of the notes was the author of the crime. Frank was the first one to furnish the information to the police that Conley could write, as soon as he learned that Conley had denied this fact. After the trial of Frank, Conley was indicted and convicted as accessory after the fact and sentenced to one year. Frank was convicted by the jury, the trial judge afterward saying that he was not convinced that Frank was guilty, but overruling Frank's motion for a new trial and stating that not he but the jury were the ones to be convinced — which action of the trial court was sustained by the Supreme Court. By a constitutional amendment, adopted in 1906, the Supreme Court of Georgia cannot reverse a case on other than errors of law. An extraordinary motion for a new trial, based on newly discovered evidence, was subsequently made, in which were incorporated the affidavits of many witnesses who repudiated their former testimony on collateral facts. This extraordinary motion was overruled by the trial court (presided over this time by another judge), and this action was again sustained by

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the Supreme Court. Subsequently Frank's counsel moved the trial court to set aside the verdict on the ground that Frank was not present when the verdict was rendered, due to the fact that the trial judge feared for Frank's life at the hands of a threatening mob surrounding the courthouse, in the event of his acquittal by the jury. This motion was also rejected by the trial court, and this action again was sustained by the Supreme Court on the ground that the motion should have been incorporated in the original motion for a new trial. Two judges of the Supreme Court of the United States and later the full court have refused Frank's petition for Federal intervention. So the case stands at the present writing.

THE TRUTH ABOUT THE FRANK CASE

I

LEO M. FRANK is in a cell under sentence of death at Atlanta, Ga., convicted by a jury of the murder of Mary Phagan, a fourteen-year-old child. The Supreme Court of Georgia has twice refused Frank a new trial. It is believed in Georgia, at the time this is written, that neither the Governor nor the Pardoning Board of Georgia is likely to interfere; that the same fatality that has attended Frank from the beginning will, in all human probability, bear company with him to the end.

On the last day I was in Atlanta I went to the office of one of Frank's lawyers to say good-by. The telephone rang. "If they don't hang that Jew, we'll hang *you*," came the message. The lawyer tried to learn the name of his unknown menacer, but without success. After Frank had been convicted, and even before his trial, scores of such anonymous messages came by letter and telephone to his lawyers.

Frank is the victim of the police fastening the crime on him as the result of a public opinion which demanded conviction. This same public opinion now terrorizes officials and citizens who believe Frank innocent — and there are many such citizens in Atlanta to-day. They

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are afraid to proclaim their convictions — afraid of a business boycott, afraid of being marked for social persecution, or mayhap afraid of violence.

In certain parts of the South, as indeed in certain other sections of our country, there are those who still harbor the medieval picture of the fire-breathing, murderous Jew portrayed by Marlowe. Undoubtedly the man who murdered Mary Phagan was "not so much an example of human nature in its depravity and in its paroxysms of crime as an infernal being, a fiend in the ordinary display and development of his character." Leo M. Frank is a young man of whose intellectual attainments any community might well be proud. Atlanta has been combed to find something against his moral character, and a like comb has been applied to Brooklyn, N. Y., the city of Frank's youth, and to Ithaca, N. Y., where he attended Cornell, but without success. Though he was convicted largely on the theory that he was a degenerate, William J. Burns, after his conviction, offered a reward of \$5,000 to anyone who would produce evidence of a single immoral act of Frank's whole life, without producing a claimant; and then the police of Atlanta made the astounding statement that they had never claimed that Frank was a degenerate. Solicitor General Dorsey, who prosecuted Frank, still insists that the charge is true, though the \$5,000 reward is outstanding and unclaimed.

No defendant in a criminal case in Georgia may give testimony under oath in his own behalf, nor is his wife allowed to testify either for or against him; but he may make a statement not under oath to the jury. His own lawyers are not allowed to ask him any questions, and

the prosecutor never asks any, for he fears the answers of a witness not subject to the penalties of perjury.

When Frank had concluded his four-hour statement to the jury, the crowd in the courtroom, though mostly antagonistic to him, was deeply moved. It was one of those moments so rarely experienced of an audience absolutely spellbound. Moisture was in the eyes of some of the jurors. "The statement," said one newspaper which all along has been antagonistic to Frank, "carried the ring of truth in every sentence, and scores in the room whose minds hadn't been made up left the court room convinced of the man's innocence."

FRANK'S REMARKABLE STATEMENT

During one of the days of intense excitement in vogue throughout the trial, as Frank was being taken from the courthouse to the jail, the crowd wedged threateningly about the automobile. Sheriff Wheeler Mangum, an outspoken believer in Frank's innocence, hurriedly told Frank to get under cover behind him. "I am an old man," said this brave Confederate veteran, "and you are young. If they 'get' you, it will be over my dead body."

Frank has been twice sentenced, the last time to die on his birthday. When on that last occasion he was asked if he had anything to say, he made a remarkable statement. As showing its effect even in cold print, United States Senator William E. Borah of Idaho told me, before I went to Atlanta, that it so gripped him at the time that he was half inclined to take a train and go to Atlanta for the purpose of learning more about the case. Speaker Champ Clark gummed it in his infre-

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quent scrapbook as a rare gem. He declared it one of the most remarkable and convincing statements he had ever read. When Frank had concluded this statement there was hardly a dry eye in the court room, according to many witnesses, and Solicitor General Dorsey, who relentlessly prosecuted Frank, was moved to say that Frank was a consummate actor. I have no doubt that Atlanta sided with the Solicitor General, for one of the stories most religiously circulated by certain well-meaning and highly respected citizens of Atlanta after Frank's arrest was that the tenets of the Jewish faith forbade the violation of a Jewess but condoned that of a Christian woman. Another grotesque story that was told about Atlanta after Frank's conviction, and believed, was that Nathan Straus, who was passing through Atlanta at the time on his way to California, had brought \$40,000 in cash to Atlanta to buy up the Supreme Court of Georgia to overturn the verdict.

Some may say that thousands of men in Europe are being sacrificed in a senseless war, and that, after all, the fate of Frank is no worse than that of others who must suffer in this world of injustice and mistakes. Indeed, the Macon (Ga.) "Daily Telegraph" of March 26 last, speaking of the Frank case, said editorially:

"If a mistake is made involving a single human life, it would be deplorable; but it is better that such a mistake should be made than that our legal system should be brought into disrepute."

These are remarkable sentiments; but they are not uncommon in this case; and yet they are regrettable.

Frank is as cool and collected *in extremis* as any human being could be expected to be. He looks through

his prison bars with the eyes of the stoic who goes to meet his fate with calmness, confident that Atlanta will some day know the truth, but certain that he will be finally judged by One who, though He notes the fall of the sparrow, is unmoved by the clamor of the mob.

When Mary Phagan was killed the newspapers accounted for the public interest by saying that every mother in Atlanta felt as if Mary Phagan had been her own daughter. I think it is time that every parent took the same interest in Frank's case. The lessons of this case may come home to any of us at any time. Death is bad enough; attainted death is another thing; but the infamy of such a death in the case of an innocent man is an unspeakable thing. If Frank is absolutely innocent—if the hand of the law reached out for him without warning, with no mark of murder upon him, and has hounded him to his death, then his fate is surely as tragic as was that of Mary Phagan. The wrong committed by a whole people is far more tragic in its consequences than any wrong committed by a single individual.

When he was about to render his decision on the motion for a new trial, the Judge who presided at Frank's trial was in ill health; while the motion was pending he had received over seventy threatening letters; and—he put the case up to the Supreme Court of Georgia. He said:

"I have given this question long consideration. It has given me more concern than any other case I was ever in, and I want to say right here that, although I heard the evidence and arguments during those thirty days, I do not know this morning whether Leo Frank is innocent or guilty. But

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I was not the one to be convinced. The jury was convinced, and I feel it my duty to overrule the motion."

A Georgia jury, dominated by one of its members, once returned a verdict that shocked the moral sense. Chief Justice Thomas J. Simmons of Georgia, in the court over which he then presided as a trial judge, immediately ordered the verdict set aside with the remark that "it takes at least thirteen men in Georgia to deprive a man of his property." And yet here is a man about to be deprived of his *life* on the verdict of twelve jurors, without the consent of the conscience of the judge who heard the testimony.

Under a constitutional amendment adopted in 1906 the Supreme Court of Georgia is not allowed to reverse any capital case where no error of law has been committed in the trial, no matter how weak the evidence may be, and cannot investigate or pass upon the question of guilt or innocence. Two of the Supreme Court judges were for reversing the case on alleged errors of law, but four voted to sustain the conviction.

In a published statement, after the Supreme Court of Georgia had for the third time refused to interfere, Frank said:

"Can it be that the law, and our system of its administration, is so inexorable that truth and innocence may never be heard after once the die is cast? Is the door forever closed and the way barred? Is the technical finesse of the law to forever preclude a hearing of facts, and human right to be trampled beneath the judicial feet? If this is so, and I cannot as yet believe it, then our twentieth century civilization is but a myth, and the divine spark in each human breast a fairy tale.

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The upper photograph is the note Conley at first claimed was in Leo M. Frank's handwriting. Two unprintable words are not shown. The lower note, identified by the whiter paper and clearer surface, is the one Conley at first claimed he wrote at Frank's dictation. He finally claimed to have written both notes at Frank's dictation.

Then, in truth, we hark back hundreds of years in human progress to when the arena and ‘thumbs down’ was the last word of the law. It just cannot be that way! The revolving years of twenty-odd centuries must have brought a juster heritage than a condition barbaric in its essential details.”

I am not concerned so much for the fate of Frank, though that appeals strongly to me, as I am for the fate of a legal system which in cold blood decrees the death of an innocent man, and thereby indicts our entire civilization; for the truth will ultimately prevail. I am concerned for three or four pillars of our civilization which in the Frank case have completely collapsed. One single act of injustice may suffice for a whole nation to be stricken with moral atrophy.

While Frank’s trial was pending and just before the jury retired for deliberation, Judge L. S. Roan, who presided, held a consultation on the bench, and in the presence of the jury, with the Chief of Police of Atlanta, and with the Colonel of the Fifth Georgia Regiment, to decide on the best means of protecting Frank in case of his acquittal by the jury. The Fifth Regiment was kept under arms throughout the night. Before delivering his charge to the jury, Judge Roan also called the lawyers into another room and advised that neither Frank nor his counsel be present when the verdict of the jury was rendered, for fear that if Frank were acquitted the mob would hang both him and his lawyers. While the prosecuting attorney was making his concluding argument in the case, the newspaper editors of Atlanta joined in a petition to the presiding judge to adjourn the case over for a day, “because,” as

the Atlanta "Journal" said: "*It was known that a verdict of acquittal would cause a riot such as would shock the country and cause Atlanta's streets to run with innocent blood.*" It was common street talk that if the jury discharged Frank, or dared to disagree, Judge Lynch would take a hand before Frank could reach his home or the jail. "Innocent or guilty, we'll 'get' the d— Jew!" was a remark frequently heard in the crowd around the courthouse on the day of the verdict. The mob was breathing vengeance in the very face of the judge and jury.

JUNGLE FURY OF THE MOB

Neither Frank nor his lawyers were present in court at the moment which, according to Anglo-Saxon justice, is considered the supreme moment of his trial, when the twelve jurors look the defendant in the face and condemn him to death or set him free. All were cringing before the mob. When the jury brought in their verdict and as the judge was polling them in a room from which the audience had been excluded, the cheers from the crowd surrounding the court-house were so deafening that the judge, ten feet away, heard with difficulty the responses of the jurors. These things are not the hearsay of irresponsibles. They are the admitted facts as set forth in the appellate records over the sign manual of the trial judge. As they caught the word "guilty" the crowd, stretching away on all sides, sent up a roar that, without exaggeration, resembled the bellow of the jungles. On the previous trial day, as these terrifying bays swept over the crowd in repeating waves outside,

Frank's wife, in the court room, shrank each time in terror behind her escort, her face white as death.

A ROMAN HOLIDAY

Frank's lawyers failed to raise the question of his absence at the time of the rendition of the verdict. They did this at Frank's request. That question favorably decided would have released him to liberty without further parley or proceedings. Frank wanted a new trial and vindication. He thought as much of his honor as of his life. Besides, his lawyers — and they were able ones — assured him this constitutional question could be raised at any time. They based this opinion on the decisions of their courts for fifty years. But, alas for Frank, the Supreme Court of Georgia decided differently in his case.

When the verdict was rendered, street-car employees quit their street cars to join the crowds that cheered; women in fashionable groups in Atlanta's stores and at semisocial functions clapped their hands. It was a Roman holiday in Atlanta. The news of the verdict was chalked up on the score board at a baseball game, and a wild demonstration of approval ensued in the grand stand and on the bleachers. Hundreds "cake-walked" for an hour in front of the pencil factory of which Frank had been the superintendent and where the girl had been murdered. Telephone bells rang incessantly. "It looked as if every man, woman, and child in Atlanta wanted to use the telephone as soon as the verdict was rendered," said an official of the Southern Bell Telephone Company. More than three times the number of telephone connections were called for on that Monday afternoon than on

any previous day in the history of the company in Atlanta. A week after the trial a barbecue was given in honor of the prosecuting attorney and the jury.

Let me quote from the Atlanta "Constitution" a pen picture of the scene around the courthouse when the verdict was rendered:

"A veritable honeycomb of humanity spread over the section from Whitehall to Central Avenue, on Hunter Street, and from Alabama to Mitchell on Pryor. Men and women clung to the walls of buildings and stood in doorways. Windows were crowded with women and girls and children. It was as though a street audience had gathered to watch an eventful procession. The shrill orders of the mounted policemen rose over the hum of the crowd. As the reporters at the telephone shouted the verdict to their offices, the word came through the windows. It was received with a shout. The cry of 'guilty' took flight from lip to lip. It traveled like the rattle of musketry. Then came a combined shout that rose to the sky. Pandemonium reigned. Hats went into the air. Women wept and shouted by turns. As Solicitor General Dorsey appeared in the doorway of the courthouse, while the crowd yelled its reception of the Frank verdict, there came a mighty roar. The Solicitor reached no farther than the sidewalk. While mounted men rode like Cossacks through the swarm, three muscular men swung Mr. Dorsey (the prosecuting attorney) on their shoulders and passed him over the heads of the crowd across the street to his office. With hat raised and tears coursing down his cheeks, the victor in Georgia's most noted criminal battle was tumbled over a shrieking throng that wildly proclaimed its admiration. Few will live to see another such demonstration."

The trial took place on the first floor of the old city hall, which was used as a courthouse during the construction of Atlanta's new county building. It was during the hottest days of summer. The windows were

open; the heads of men standing in the street were practically on a level with the sills of these open windows. In an alley on one side of the court crowds of men sat perched on the low roof of a shed ten feet behind the judge and the witness chair, and looked directly into the court room. Spectators inside the court room sat immediately behind the jurors. The jurors themselves could feel every pulsation of the crowd.

Time and again the crowd in the court room clapped their hands and stamped their feet in approval of some act of the prosecutor and laughed aloud at the objections of Frank's lawyers. Frank's lawyers protested, but the only relief the court gave was to direct the sheriff *to find out who was making the noise.* When Frank's lawyers in the early stages of the trial called the names of several Jewish ladies as character witnesses for Frank, the crowd jeered and laughed. When, toward the end of the thirty days' trial, they moved the court for a mistrial on the ground of these various demonstrations of applause and hisses — the clapping of hands, the stamping of feet, and the boisterous, sarcastic laughter in the presence of the jury — the crowd jeered more uproariously than before. The judge repeatedly but timidly threatened, but the sheriff informed him in open court that the only way order could be maintained was to clear the room. I know how difficult it is to believe these things — I doubted them myself at first — but they are there in the printed record; and, however incredible it may seem to the reader, I am understating rather than overstating them.

When Solicitor General Hugh M. Dorsey, the prosecuting attorney, was in the middle of his impassioned

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argument, pointing out how this "fiendish degenerate" took Mary Phagan's life, he held up the bloody clothes before the jury and, dramatically pointing to them, said: "I ask you to look at them—I ask you to look at them." In the tense stillness Mary Phagan's mother uttered a terrifying shriek. The crowd in the court room rose as a man to their feet. The hands of numbers of these men went to their pockets. Every bailiff in the room instantly called out in excited tones: "Order! Order!" It was a critical moment. This gives only an idea of the scene. As the prosecutor concluded his fiery address to the jury, which, instead of being a calm analysis of the testimony, was an appeal to passion and prejudice, and tended to increase rather than to allay the frenzy of the crowd, he dramatically repeated the words "guilty, guilty, guilty." With each "guilty" the bell in a neighboring church simultaneously tolled, and the superstitious crowd regarded it as Providential approval of the words.

There is not a note in all the gamut of human passion that has not been sounded in the Frank case. There is not a fabric of civilization which it does not touch somewhere—the press, the courts, the police system, labor and capital, racial prejudice, politics, the hue and cry of the impassioned pack hungering for the blood of their fellow. But for brevity, the heart of the Frank case may be summed up in three words—politics, prejudice, and perjury.

Frank's most ordinary movements, such as catching a street car on this corner or on that, the lowering of his head, the fashion of his hair, the rubbing of his hands,

the tone of his voice, the contour of his lips, were magnified and lifted into glaring light, while every move of his was under green and gullible suspicion. All the riff-raff who love the garish light came forward with the most unbelievable tales, which were given unquestioned credence, and no one of any prominence dared to raise his voice in behalf of common sense for fear of the same white light of publicity, from which they shrank in such a reeking mess. No one gave Frank credit for any innocent purpose or unguilty motive. From the first, suspicion of guilt fastened on him; and three weeks later, when the real murderer was discovered, the community was greedy for the sacrifice of Frank.

THE DAY OF TRAGEDY

Saturday, April 26, 1913, was Confederate Memorial Day, when the veterans of Lee have their annual parade. It was a dark, gloomy, overcast day. On the following Sunday morning, at about half past three o'clock, the body of Mary Phagan was discovered by Newt Lee, a negro night watchman, in the cellar of the factory of the National Pencil Company, at 37-39 South Forsyth Street, in the heart of Atlanta. This factory employed over a hundred girls. "When we looked at the body," swore one of the officers, "'Why,' said I, 'for Heaven's sake, this is nothing but a child!'" The street lights were just being turned out and day-light was breaking as the officers left the building after their haunting inquest.

Mary Phagan lived in a suburb of Atlanta called Bellwood. She was considered the most beautiful girl in her neighborhood, and was a general favorite. She

had impersonated the "Sleeping Beauty" at a church entertainment on the Christmas Eve before her death. She was employed at the pencil factory, and worked in the metal room on the second floor, but had not been at work for several days, owing to a shortage of the metal with which the pencils are tipped. She had taken a street car near her home at 11:50 on the morning of the day of the murder. She was dressed in holiday fashion, and must have been rarely attractive. She was on her way to the factory to draw the small sum of \$1.20 due her for the work she had done during the previous fiscal week up to the time that the metal tips had run out. The employees were usually paid off on Saturdays at noon; but this Saturday being a holiday, notices had been posted in the factory that the help would be paid off on Friday evening. Not having been at the factory, Mary had not seen this notice, and reported at the usual hour on Saturday.

INTO THE SHADOWS

Leo Frank was the superintendent of the factory. He was twenty-nine years old, and had been married to an Atlanta girl of his own (Jewish) faith about two years. He was born in Texas, but his parents removed to Brooklyn, N. Y., when Frank was but a few months old. He is a graduate of Cornell. His father had been a traveling salesman. Frank was a small stockholder in the pencil concern. It had been his habit to go to the factory on holidays to catch up with his office work. So far as he knew, if we accept his story, he was alone in the factory at the time of Mary Phagan's arrival, except for two workmen who were doing some repair work on

the fourth floor and who were never connected with the crime. Frank's office was located on the second floor with an entrance from the street by means of a stairway. Frank swore that Mary Phagan arrived at his office, he thought, between ten and fifteen minutes after twelve noon. The State insisted that she was murdered between twelve and five minutes after twelve noon. In any event, Mary Phagan is not known to have left the factory alive after entering it, though numerous persons who said they knew her came forward immediately after her death with story after story that they had seen her on the street that night. One man who was raised with her swore that he saw her near the pencil factory at twelve o'clock that Saturday night in company with a young man whom he also identified; that he called her by her Christian name and that she answered in kind; another positively swore that he saw Mary in company with "a young Jew" in front of the pencil factory at four o'clock that Saturday afternoon; but these were undoubtedly of that class which the limelight of every tragedy reflects. Her stepfather made the rounds of the moving-picture shows, but failed to find Mary, and neither he nor his wife slept that night. The next morning a rap at the door startled them, and the mother instinctively sensed the truth. It was a chum of Mary's, who told them Mary had been murdered.

When Mary Phagan entered Frank's office she asked for her pay. Frank asked for her number, without asking her name, and, receiving it, went to the cash box, identified the envelope by the number, according to the company's system, and handed the envelope to the little girl. As Mary got to the door leading to the outer office

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she turned and asked if the metal had arrived. Frank told her "No." He heard the sound of her footsteps dying in the distance as Mary went downstairs. A moment later he had an impression that he heard a female voice, but could not determine which direction it came from, and paid no further attention.

When the officers, led by Newt Lee, found the body, they were unable to tell, because of the cinders and sawdust which covered the face and hands, whether it was a white girl or a colored girl. Her face was pitted and seamed with indentations and scratches from the cinders, a bank of which stretched along the side of the cellar for a hundred feet or more. There had evidently been a struggle. Her hat, one slipper, and her handkerchief lay in widely different parts of the cellar. Her silver mesh bag, containing her little money, was never found; neither were the flowers or the ribbons that had been stripped from her hat. The murderer apparently had escaped from a sliding door in the rear of the basement, forty feet from where the body was found. This door led to an unfrequented alley. The inside hasp had been pried off with an iron bar which lay by, and in the haste of flight the door had been left open—wide enough for a human exit. On the inside of this door were the marks of bloody finger prints made in pushing the sliding door back.

EARLY BELIEF IN FRANK'S GUILT

Frank and Newt Lee were both arrested and held as suspects, together with several others, though the police, the newspapers, and the people of Atlanta came to sharp

and instant conclusion as to Frank's guilt. This can be accounted for only on the theory that Frank was, according to his own statement, the last one to see the girl alive (if he had been guilty, as he pointed out afterward, this would have been the last admission he would have made) ; that he had asked the night watchman to report at four o'clock in the afternoon of that holiday, and that when the night watchman reported, he had told him he might go out again and return at six ; that on that same evening, after going home, he had called the night watchman at seven o'clock on the telephone and asked if everything was all right at the factory. These things are still convincing circumstances of Frank's guilt in the opinion of many Atlantans who early formed their opinions and have not changed.

The public seemed to leap instantly to a conviction of Frank's guilt upon the first announcement of the crime and of the fact that Frank had been in the building and that he had telephoned Newt Lee, "a thing he had never done before."

But these facts were not the only things that made against Frank. That he was an employer of cheap labor aroused a strong feeling in certain quarters. The South has taken grudgingly to the employment of its white women in factories. The fact that Frank was a Jew was another indictment against him; there was sold on Atlanta's streets a bit of doggerel verse in which the murder of Mary Phagan was attributed to either "a lustful Jew or a brutal negro," and it sold like hot cakes. The same stories, grisly and repulsive, that have been bandied from tongue to tongue in the undercurrents of

masculine gossip about every historic degenerate were told of Frank — and they traveled like wildfire, and were believed, perhaps because they were new to Atlanta.

Again there were stories, facts, and suspicions that found their way into the newspapers in floods. George Epps, a youth of fifteen, who claimed to have been a chum of Mary Phagan, swore at the coroner's inquest, a few days after the tragedy, that he had ridden to town from Bellwood with Mary Phagan on the street car on her way to the factory that Saturday. He said that on that trip Mary told him of attempts Leo Frank had made to flirt with her, and of apparent advances in which he was daily growing bolder. "She said she was getting afraid. She wanted me to go to the factory every afternoon in the future and escort her home. She didn't like the way Mr. Frank was acting toward her."

FALSE TALES

These alleged remarks of Mary Phagan were not competent evidence under well-known legal rules; but the public accepted the story in perfect good faith at the time, until months later, when at the trial young Epps swore that he could tell time by the sun (although that Memorial day was dark and cloudy) and that he knew that Mary Phagan had got off the street car at seven minutes past twelve *by the sun*. Thereafter when any one in Atlanta wanted to describe a young liar, they said "he's a little Epps." The motorman and conductor of the car contradicted Epps as to his presence on the car that morning with Mary; they knew her well and said she was alone; some of Epps' young friends have de-

clared that they saw him that morning riding to town on an ice wagon. An Atlanta "Georgian" reporter who interviewed young Epps and his sister on the day the body of Mary Phagan was discovered, swore that young Epps then said that he occasionally rode to town with Mary Phagan on the car, but said nothing about being on the car with her that Saturday. Young Epps had an overweening fondness for putting himself in the lime-light even in his own neighborhood. He is now in the Georgia Reformatory.

The police gave to the newspapers mysterious hints of telephone operatives who were prepared to swear to certain damaging conversations over the pencil factory line on the night of the tragedy, and of Mary Phagan having been called over the telephone to come to the factory; but these witnesses never materialized at the trial. A woman of the underworld, whose connection with the police of Atlanta is beyond dispute, came forward with the most circumstantial story of how Frank had repeatedly telephoned her that Saturday night between 6.30 and 10 o'clock, begging for a room; that he wanted a room at her place because he implicitly trusted her; that it was a case of life and death—and this over the telephone. She declared that Frank had been a frequent visitor at her house, and that since his arrest she had had a secret conference with him in the jail. She also swore that she had been offered large sums of money to leave the city. As a matter of fact, there was a card party at Frank's house that night, and there were a dozen guests in the room where the telephone was located. Also, Frank's telephone was on a different system from this

woman's telephone. But the public did not know these facts, Frank, by the advice of his counsel, remaining silent during all these developments.

Stories of Frank's alleged philandering, utterly inconsistent with the conduct of his whole life, filled the air, every one of which was later—but too late—proved to have not the slightest foundation in fact. Frank was practically a stranger in Atlanta, unknown except to a small circle. He is of a rather shy, nervous, and intellectual temperament. He and his wife lived with Mrs. Frank's parents. On account of real or fancied racial prejudice, the Jewish people of Atlanta move altogether in their own religious-social set. Frank was president of the local B'nai Brith, a charitable and fraternal organization. He had lived in the city less than five years. The public from the beginning seemed ready to believe anything about this young Jewish stranger from the North. One slander was multiplied into a hundred, and all were accepted without question in the state of public fanaticism.

THE "MURDER NOTES"

Among the suspects was a colored man named "Jim" Conley, who had been arrested on the Thursday succeeding the murder because of the fact that he was seen washing a shirt in the factory. He was a floor sweeper employed on the fourth floor. Conley lay in jail for three weeks, almost forgotten, while the whirlwind of calumny had been swirling about Frank's head. Then it was discovered that Conley could write. The significance of this discovery is explained by the fact that near the body of Mary Phagan were found a pencil and two

pieces of paper, on which were written a note or notes, addressed to Mary Phagan's mother, which the murdered girl was "supposed" to have written, and in which she told her mother how she was murdered, giving a physical description of the person who, according to the notes, murdered her. This description was exactly the reverse of "Jim" Conley's physical characteristics. The notes described the murderer as a "long, tall, slem, black negro." Conley is short and stout, with a "ginger-cake" complexion. These notes are here reproduced with several unprintable words elided.

One note read (in pencil): "Mam that negro hire (d) down here did this i went to . . . and he push (ed) me down that hole a long tall negro black that hoo it wase long slem tall negro . . ."

This note was crowded toward the extreme bottom edge of the page, and was therefore evidently the first note, and the writer did not have room on this page to finish; either that, or he was possessed by a desire to emphasize still more strongly the physical characteristics of the "murderer." The other, or second note (in pencil read: ". . . but that long tall black negro did buy his slef."

One of the first efforts of the police was to locate the author of these notes. In pursuance of this purpose, each of six suspects, among them Frank and Newt Lee, were required to write portions of the notes for comparison of handwriting. All of the suspects gave specimens of their handwriting without hesitation except Conley, who claimed that he could not write. The proof that he could write was finally furnished after three weeks by Frank, who did not know that Conley's handwriting had

not been compared with the handwriting of the "murder notes," or that Conley had denied that he could write — the police had kept these facts to themselves — but the credit of the discovery was denied to Frank at the time and claimed by the police with sensational flourish, in a full-page newspaper story, as a clever piece of clairvoyant detective work. There is no doubt that Conley was a keenly surprised negro when he discovered from the newspapers (for he could read, although he denied that too) that the police were looking, not for the "long, tall, steam, black negro" described in the notes, but for the one who wrote the notes.

ADmits WRITING "MURDER NOTES"

A bank teller supposed to be an expert declared that these notes were in the handwriting of Newt Lee, the negro night watchman; another bank official in Atlanta declared they were in the disguised handwriting of Leo Frank. One expert declared that the notes were written by the murderer, "a shrewd man, with intent to reflect guilt upon an illiterate negro." Thus again was public suspicion directed against Frank. This was before the discovery that Conley could write. These notes were, as a matter of fact, in the handwriting of "Jim" Conley, as he afterward confessed, though up to the time of the trial he insisted that one of the notes was written by Frank and the other by himself. But the notes were so obviously in the handwriting of the same person that the police made him change his story before the trial, as they admitted they had made him change it in many other respects.

Conley's presence in the factory was unknown and unsuspected by everyone connected with the unravelment of the mystery until May 28, ten days after it was discovered he could write. During all that time he denied having been at the factory that day — in strong contrast to Frank, who promptly stated he had seen the little girl at the factory and had paid her off. Frank was indicted after the police and the prosecutor knew that Conley had admitted the authorship of the "murder notes," but the Grand Jury was not advised of this fact. The police had already given the public to understand that they had overwhelming evidence of Frank's guilt.

"Jim" Conley, obliged to acknowledge authorship of the "murder notes" by the knowledge of the police that he could write, and by a comparison of the "murder notes" with his handwriting, finally admitted that he was at the factory on Saturday. This admission was made after the visit to the jail of a woman witness who saw a negro in the factory entrance that day. During this visit Conley was noticeably nervous. One of the officers testified that he "chewed his lips and twirled a cigarette in his fingers; he didn't seem to know how to hold onto it; he could not keep his feet still." Conley had no mission at the factory that day, unless his story was true, that he was there at Frank's direction, fortified with a bottle of cheap whisky, to see that nobody entered the factory during Frank's "flirtations." Frank was to give a certain signal from the second floor by stamping with his feet, when the front door downstairs was to be locked until such time as he whistled "all right," when the door was to be unlocked.

A DRUNKEN NEGRO IN THE SHADOWS

If Mary Phagan went down the stairway that noon, as Frank declared, then she was in plain view, with her silver mesh bag in her hand, of this intoxicated, lustful, improvident, and impecunious negro, who lay concealed all that morning in the shadow of a pile of packing boxes stacked at the foot of the stairway. This entrance was always dark even with a burning gas jet, but on that Saturday it was darker than usual because of the lowering day without and because, being a holiday, the gas was extinguished. At the foot of the stairway was an elevator shaft which led to the still darker cellar or basement, and alongside of this elevator shaft was also a trap door leading to the basement by means of a ladder — the "hole" referred to in one of the "murder notes," if my theory of this crime is correct; for the negro made the notes in part tell truth, just as he made his main story in part tell truth.

On the Saturday of the murder, notwithstanding it was a holiday, Frank, who was all attention to business, had gone to the factory to catch up with his work. Several people were in and out of the office during the morning. From three o'clock in the afternoon, when Frank returned from his lunch, until six (the State contended that Mary Phagan was murdered on the second floor between twelve o'clock noon and five minutes after twelve) he was alone in the office working on a financial sheet which it was his custom to mail each Saturday to the stockholders of the concern. This sheet, according to the computation of experts, necessarily occupied him at

least three hours. It was in Frank's handwriting, without a trace of nervousness, and with but one slight error in the entire calculation. Both sides practically admitted that it would have been physically impossible to have prepared this sheet in his own handwriting that afternoon if Frank had murdered the girl at noon. Frank was nervous after the discovery of the body next morning — as indeed was everybody else. The factory had to be closed down on Monday because of hysteria among the women employees. He could therefore hardly have been the abnormal creature to have performed this piece of intricate calculation and pencraft without trace of nervousness or confusion. The State, therefore, ineffectually endeavored to show that this work was done in the morning. There was, however, the testimony of too many witnesses who had been in and out of the office that day before Frank left for lunch to have left this matter in any doubt. After completing this statement, Frank wrote a letter in his own handwriting to his uncle, the president of the pencil company, who had just gone North and was stopping at the Hotel McAlpin in New York, on his way to Europe. That letter is here set out because Solicitor General Dorsey, in his argument to the jury, insisted that certain sentences in it were strong indications of guilt:

“ATLANTA, GA., April 26, 1913.

“DEAR UNCLE—I trust that this finds you and dear Tante (Aunt) well after arriving safely in New York. I hope that you found all the dear ones well in Brooklyn and I await a letter from you telling me how you find things there. Lucile and I are well.

“It is too short a time since you left for anything startling

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to have developed down here. The opera has Atlanta in its grip, but that ends to-day. I've heard a rumor that opera will not be given again in a hurry here.

"To-day was 'yontiff' (holiday) here, and the thin gray line of veterans, smaller each year, braved the rather chilly weather to do honor to their fallen comrades.

"Inclosed you will find last week's report. The shipments still keep up well, though the result is not what one would wish. There is nothing new in the factory, etc., to report. Inclosed please find the price list you desired.

"The next letter from me you should get on board ship. After that I will write to the address you gave me in Frankfort.

"With much love to you both, in which Lucile joins me, I am,

"Your affectionate nephew,

"LEO M. FRANK."

Perhaps I can best give the reader an idea of the kind of "evidence" produced against Frank, and of the absolutely unfounded and ridiculous suspicions against him by quoting here from the printed argument of Solicitor General Dorsey to the jury:

"Now here is a sentence that is pregnant with significance, which bears the earmarks of the guilty conscience; tremulous as he wrote it? No, he could shut his eyes and write and make up a financial sheet — he's capable and smart, wonderfully endowed intellectually, but here's a sentence that, if I know human nature and know the conduct of the guilty conscience, and whatever you may say about whether or not he prepared the financial sheet on Saturday morning, here's a document I'll concede was written when he knew that the body of little Mary Phagan, who died for virtue's sake, lay in the dark recesses of that basement. 'It is too short a time,' he says, 'since

you left for anything startling to have developed down here.' Too short! Too short! Startling! But 'too short a time,' and that itself shows that the dastardly deed was done in an incredibly short time. And do you tell me, honest men, fair men, courageous men, true Georgians seeking to do your duty, that that phrase, penned by that man to his uncle on Saturday afternoon, didn't come from a conscience that was its own accuser? 'It is too short a time since you left for anything startling to have developed down here.' What do you think of that? . . . And do you tell me that this old gentleman, expecting to sail for Europe, the man who wanted the price list and financial sheet, cared anything for those old heroes in gray? And isn't this sentence itself significant? 'To-day was yontiff (holiday) here, and the thin gray line of veterans here braved the rather chilly weather to do honor to their fallen comrades'; and this from Leo M. Frank, the statistician, to the old man, the millionaire, or nearly so, who cared so little about the thin gray line of veterans, but who cared all for how much money had been gotten in by the pencil factory. . . . I tell you that that letter shows on its face that something startling had happened, and that there was something new in the factory, and I tell you that that rich uncle, then supposed to be with his kindred in Brooklyn, didn't care a flip of his finger about the thin gray line of veterans."

If there is any evidence of guilt in this letter, then one might be convicted on circumstantial evidence for reciting the Lord's prayer. The truth is that Frank's uncle was himself a Confederate soldier, although, of course, neither Solicitor-General Dorsey nor the jury knew this.

Frank explained that the reason he had asked Newt

Lee to report at four o'clock on Saturday was that he was to have gone to the ball game; but that on account of the raw day and the accumulation of work he didn't go. There was therefore no occasion for the services of the watchman, and when he came, the day being a holiday, he had told Lee he might go out and return at six.

On leaving the factory that night at six, Frank had found at the street entrance, in conversation with the watchman, a man named Gantt, a former timekeeper and chief clerk at the factory, who had been discharged by Frank some days before because of a cash shortage which Gantt had refused to make good. The night watchman himself testified that Frank had told him that he had discharged Gantt, that he didn't want him around the factory, and for Lee to watch him if he saw him around.

Gantt was a large man, "six feet two inches," who had just come across the street from a saloon and was apparently intoxicated. He wished to get into the factory to get an old pair of shoes which he said he left there. Lee swore that he thought Frank looked startled when he ran into Gantt at the door, but explained that he thought Frank feared that Gantt "might do him dirt." After some hesitation, Frank told Lee to go into the factory with Gantt, to see that he got his shoes, to see him out, and then to lock up.

CALLING THE NIGHT WATCHMAN

Frank explained that immediately on his arrival home, and at half-past six, he had called Lee on the telephone, but was unable to get him; that he again called him at seven o'clock when Lee, who was supposed to punch the register at that hour, would be sure to be in the neighbor-

hood of the telephone; that he had asked if Gantt was gone and if everything was all right at the factory, and that Lee had answered both questions in the affirmative.

Frank further explained that Lee had been in the employ of the factory less than three weeks at the time, and that in addition to the unwelcome presence of Gantt in the factory that night, it was not unusual for him to call up the watchman, as former watchmen well knew; that the factory had no regular nocturnograph, with stations in different parts of the factory where the night watchman would be compelled to punch; and that having only the regular register, it had been his custom to call the watchman on various pretexts, even as late as eleven o'clock at night, for the purpose of assuring himself that the watchman was in the factory, awake and alert; and that other officials of the factory as well as himself had been in the habit of doing this. Lee, in fact, admitted that Mrs. Frank, as well as the bookkeeper, had rung him up in the three weeks he had been there. Negro help is not the most reliable in the world, and there was in the factory, in addition to the danger from fire, valuable secret machinery which it was necessary to safeguard. That Frank's anxiety was not wholly unjustified was proved by the fact that Gantt hung around the factory some time and went into the office and used the telephone while he was there.

Dismissing for the moment the psychology of the "murder notes" and the story of Conley's doings on that Saturday, let us turn to the developments which moved the police to place Conley's apparent guilt on Frank, and to make Conley the crooked, unstable, crumbling, broken rod of Justice.

II

WITH the finding of the body of Mary Phagan that Sunday morning there began in Atlanta a public delirium, which has hardly yet, after a year and a half, subsided. There had been some sixteen or eighteen women murdered in Atlanta in the previous two or three years, most of them colored women. None of the murderers had been caught. Two white women, charged with the murders of their husbands, had recently been acquitted by Atlanta juries. Back in 1906 there had been a riot, growing out of assaults and murders of white women, in which some fifty negroes had been shot or beaten to death on the streets of Atlanta.

Immediately after the Phagan murder the Mayor of the city called a special meeting of the City Council to consider the murder, and the Council offered a reward of \$1,000. The rewards offered aggregated \$4,300.00 The Mayor urged the chief of police to caution his men to keep the crowds moving on the streets and to quickly disperse gatherings where the Phagan tragedy was the topic of discussion.

The newspapers had editorials calling on the police officials to find the murderer or murderers of Mary Phagan, or suffer the political consequences. The Atlanta *Constitution* said editorially two days after the discovery of Mary Phagan's body:

“The detective force and the entire police authorities of Atlanta are on probation in the detection and arrest

of this criminal with proof. To justify the confidence that is placed in them and the relation they are assumed to hold toward law and order, they must locate this arch-murderer. . . . If ever the men who ferret crime and uphold the law in Atlanta are to justify their function, it must be in apprehending the assailant and murderer of Mary Phagan."

Another newspaper expressed the same thought in a cartoon in which the spirit of the community was pictured in a figure pointing dramatically and underneath the words: "Solve it." This newspaper hysteria was but one element in the storm cloud of passion and politics which surrounded the case.

The police, panic-stricken by their own sense of official incompetency, as shown by full-page newspaper accounts of Atlanta murders now recalled that had never been traced, and goaded by public clamor and the ridicule by the newspapers of their former failures, sought to appease public wrath by the immediate arrest of two men, the one who had seen Mary Phagan last alive, and the one who had discovered the body. That at first they believed Newt Lee guilty is proved by the fact that they got access to Newt Lee's house, and that on the next day a "bloody" shirt belonging to Lee was found by them in a trash barrel in Lee's house. A scientific examination of this shirt disclosed that it had been clumsily smeared.

The police, finally convinced of Lee's innocence, now centered their attention on Frank, and the fact that Frank was a Jew added fuel to the popular indignation, and culminated in a blaze of racial prejudice which charred all footprints of the crime.

"No Jew in modern times," said Colonel Pendleton H. Brewster, a law partner of Solicitor General Dorsey, who prosecuted Frank, "has been persecuted as this Jew has been."

"Tom" Watson's magazine, the *Jeffersonian*, which is published near Atlanta, said:

"Our little girl—*ours* by the eternal God! has been pursued to a hideous death and bloody grave by *this filthy perverted Jew of New York.*"

When William J. Burns, by the dexterous ruse of his Southern manager, Dan Lehon, escaped from the mob about to hang him at Marietta, the former home of Mary Phagan, the leader of the gathering crowd approached Burns, shouting: "Is that you, Burns? Is that William J. Burns, the man who sold out to the Jews?" and the *Jeffersonian*, justifying the action of the mob, said that Burns "came boastingly confident, and virtually saying *that the rich Jews of Atlanta, New York, and Chicago would not allow Frank to be hanged.*" (All above italics are Watson's, not mine.)

The Solicitor General, though adroitly paying a tribute to the Jewish race in his argument to the jury, pointed out that "when Becker wished to put to death his bitter enemy, it was men of Frank's race he selected." He referred to Abe Hummel, "the lawyer who went to the penitentiary in New York," and Abe Ruef, "who went to the penitentiary in San Francisco."

POLICE METHODS

We have seen how there came forth the stories of "witnesses" from the brothels and dives. A little girl was sent to a reformatory in Cincinnati. The story was

circulated that Frank was responsible for her downfall. The police approached another girl who had fallen and endeavored to get her to swear that Frank was responsible for her disgrace. A former forewoman of the pencil factory made affidavit after Frank's conviction that three of the detectives prominent in gathering evidence against Frank sought to have her give certain scandalous testimony against Frank.

Another young woman made affidavit that one of these same detectives tried to get her to tell the same story her married sister afterward did tell at the coroner's inquest regarding Frank. Many people in Atlanta believe that on the walls of Frank's office was an art gallery of lewd pictures. The only foundation for this story was a business calendar illuminated with a pretty face. These stories convicted Frank in the public mind.

During the time these lies were being published Dr. Marx, the Jewish rabbi, went to the editor of one of Atlanta's newspapers and protested against their publication. At the conclusion of the interview the editor said: "Anyhow, if we don't publish these things the other papers will, and we can't afford to be scooped." The police were diligently at work overlooking no opportunity to fasten guilt on Frank, when an incident occurred which made it impossible for them to retrace their steps.

Frank had employed the Pinkerton Detective Agency to ferret out the murderer the Monday following the crime. His motive in doing this, as he stated, was that the public feeling was running so high in Atlanta that the public would naturally expect the pencil company to do everything in its power to help solve the mystery, and that this

feeling was in accord with his own sentiments. But in this he was fated to misconstruction. Solicitor General Dorsey, on the trial and in his argument before the Supreme Court of Georgia, insisted that Frank had employed the Pinkertons as a blind to cover up his own guilt, and that his employment of the Pinkertons was one of the strongest links in the chain of evidence against him. Like many other innocent moves of Frank and his counsel, made in the cloud of suspicion that surrounded them, the employment of the Pinkertons was unfortunate for Frank.

CHANGING FRANK'S STORY

An ordinance of the city of Atlanta makes city detectives of all private detective operatives and subjects them to police supervision and control. No private detective agency can operate in the city of Atlanta without the consent of the Board of Police Commissioners. The detective agency, therefore, that runs counter to the Police Department of Atlanta forfeits, at the pleasure of the police, its right to do business in that city. This ordinance was one of the factors in the conviction of Frank. L. P. Whitfield, a Pinkerton operative at the time of the investigation into the murder of Mary Phagan, has stated under oath that Harry Scott, the assistant superintendent of the Pinkertons in Atlanta, told him that "unless the Jew is convicted the Pinkerton Detective Agency would have to get out of Atlanta."

When, after the trial, William J. Burns undertook a personal investigation of the Frank case at the earnest solicitation of Frank's friends, the police of Atlanta revoked the license of the Burns detectives to do business

in Atlanta, and drove that agency out of the State. On the trial of Frank, Harry Scott swore that it was the policy of his agency in criminal cases to work with the police of the various cities. "We never clash over views," said Scott.

It will be remembered that when Mary Phagan left Frank's office, she inquired if the metal for the metal tips had come. Frank had replied "No." The girl would, ordinarily, therefore, have gone on her way. But it was necessary to the theory of the State that Frank and the girl should, for some reason, have gone back to the metal room in the rear of the second floor. How to get the two there was the dilemma. Detective Harry Scott of the Pinkertons swore on the stand at the trial that when Frank interviewed him about Scott's employment in the case, he had told Scott that he had replied to the girl "I don't know," although Frank had always declared that he had replied "No" and others heard him. Scott, in his written reports of this conversation both to the attorneys and to the police at the time, as well as in his testimony at the coroner's inquest, stated that Frank said that he had replied "No," but on the trial Scott explained that his "No" *meant* "I don't know." He said it was a "grammatical" error—and this was the man Frank had employed to ferret out the murder. The whole case just drips with such perversions of the truth.

Frank having replied "I don't know," the State argued that he had gone back to the metal room with Mary Phagan to see if the metal had arrived, and there the incidents leading to the murder and the murder itself had occurred.

The Mayor of the city was at loggerheads with the police officials. Just before Mary Phagan was murdered there had been much talk and rumors of graft on the part of the Atlanta police, and a public investigation had been threatened. Atlanta had grown from a population of 87,000 in 1900 to a population of 200,000 in 1913. The heads of the police force were the crude product of a small city suddenly burgeoned into metropolitan greatness.

Associated in a way with the Mayor in his fight against alleged police graft was Colonel Thomas B. Felder, the man who is generally credited with having procured the release of Charles W. Morse from the Federal prison at Atlanta. Felder is a lawyer of prominence and represents very large interests throughout the country. He had worked in conjunction with William J. Burns in exposing the dispensary frauds in South Carolina. He claimed to have been employed in the Frank case by certain neighbors of Mary Phagan's parents. Felder brought to Atlanta a Burns representative in the person of C. W. Tobie of Chicago, an expert investigator in criminal matters. Also he sought to secure from Mary Phagan's step-father written authority for his own employment in order to secure professional entrance into the case.

There was in Atlanta about this time a certain adventurer of national note named Arthur S. Colyar, the son of one of Tennessee's best citizens. He was one of the strangest and most mysterious figures that appeared in all the Frank case, and his exit was as mysterious as his entrance into the case. His rascalities cover the whole country, and some of his exploits are as remark-

able as the man is mysterious. He was lawyer, detective and newspaper man. He had served time in prison, and had later studied for the ministry. He had figured crookedly in the Molineaux murder case in New York. This man, who was working with the police on the Frank case, is the putative author of the degenerate theory, which aroused so much feeling in the beginning against Frank. An Atlanta woman swore that Colyar offered her a large sum of money if she would swear to certain acts of shocking indecency toward her on the part of Frank.

Colyar inveigled Felder into a room in the Williams House No. 2 in Atlanta, where they met the secretary of Chief Lanford of the Atlanta detective bureau. In this room, it was alleged, there was a dictagraph, and the alleged dictagraph report was given to the newspapers. According to this report, Felder had tried to bribe the secretary of Chief Lanford of the Detective Bureau to procure for him a certain affidavit obtained by the police from J. W. Coleman, the step-father of Mary Phagan, in which Coleman declared that he had not employed Felder to represent him; that Felder had sought to inject himself into the case, and had offered to work without fee from Coleman, claiming that others, whom he did not name, had promised to pay his fee.

The only plausible purpose of this alleged dictagraph exposure was to ridicule Felder in the public mind and to destroy any possible usefulness he might have in the Frank case—and it did that most effectively. Why Felder should have offered to pay \$1,000, as the police claimed, for an affidavit which the police could have im-

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mediately duplicated, does not clearly appear. It has always been a riddle.

Felder, gored into frenzied reply to the dictagraph revelations, gave out a public statement in which he said that the publication of the story was "but the symptom or manifestation of one of the most diabolical conspiracies ever hatched by a venal and corrupt 'system' to protect crime in a civilized community." He alleged that this conspiracy was formed immediately after the arrest of Newt Lee and Leo Frank; that the whole police system of Atlanta was as dangerous to society as the "bloody and deadly society of the Mafia." He charged that he had seen a list of "blind tigers" and immoral resorts which in consideration of monthly bribes, were receiving police protection.

"I would have the good people of this community know," said Col. Felder, "that from the day and hour of the arrest of Lee and Frank, charged with the murder of little Mary Phagan, Newport Lanford and his co-conspirators have left 'no stone unturned' in their efforts to shield and protect these suspects, and I shall demonstrate later the truth of this statement with so much clearness that 'he who runs may read.'" This pledge was never made good; for with this fulmination, Col. Felder subsided, and retired from the scene. Felder declared that Colyar had told him "that the city detective force was engaged in suppressing evidence in the Phagan case; that they were in a conspiracy with the Pinkertons, who had been employed by Frank to investigate the case, and that they had entered into a conspiracy to thwart the efforts of the Burns Agency and myself in the investigation in progress. . . . That Lan-

ford had arrested a negro by the name of Conley, and had held him at the police station for two or three weeks, and had extorted from the negro a confession to the effect that he himself had killed Mary Phagan, and that Newt Lee and Frank were neither participants in the murder nor had knowledge thereof."

Even Allan Pinkerton, the head of the Pinkerton Detective Agency, felt called upon to enter a denial of Felder's charges that the Pinkertons were protecting Frank. Harry Scott, the local Pinkerton man, assured the public that he had all along proceeded on the theory of Frank's guilt; that he had conclusive evidence against Frank not yet made public, which would be forthcoming at the trial. The police also hastened to assure the public that not only had they been working vigorously to convict Frank, which was literally true, but that they had the absolute evidence of his guilt. If they could convict Frank and confute Felder, they would restore themselves to the good graces of the public and avoid the impending graft investigation, which was the thing they most feared. And to cap the climax of this accidental conspiracy of which Frank was the victim, and to which the entire community was now unwittingly committed, the Burns representative packed his trunk and left town declaring that he also was a firm believer in the guilt of Frank. The plot was thickening about Frank with as deadly certainty as if irresistibly drawn by a lodestone, and with a harmony of climax that would have done credit to the genius of a Belasco. Of this side issue, so unfortunate for Frank, and for which he was in no way responsible, the Atlanta *Constitution* said:

“One thing is certain — it means one of the bitterest

fights for control of the city government that Atlanta has ever known. A singular fact it is that this war of factions should have grown out of the murder of an innocent child."

About a week before the Colyar-Felder-Lanford scandal broke, the police discovered that Conley could write, and must have known from a comparison of his handwriting that he was the author of the "murder notes"; but they kept this information to themselves. Five days before Felder's explosion, they did, however, give out a statement, after Conley had been under arrest for three weeks, that Conley was under suspicion; that he had made the statement at the time of his arrest that he had stayed at the home of his mother on the night of the murder, but that his mother had contradicted this. This statement put the public on knowledge that the police, despite their declarations, were not altogether satisfied with the evidence against Frank, and had others under suspicion.

It is not at all unlikely that they had already secured a confession from Conley, as intimated by Felder. They had, however, already given the public to understand that Frank was unquestionably guilty, and they had absolutely convinced the public that Frank was a degenerate, when this happened; and now Felder had accused them of trying to protect Frank. Would the public temper tolerate another confession of bungling incompetence on their part? Could they drop the case against Frank and be certain of the conviction of Conley? After all, Conley was only a friendless negro, and to convict a mere negro of this crime, after the carnival of sensation and the mystery that had surrounded it, would make them the

butt of the community and hasten the graft investigation and the consequent political overthrow which above everything else they feared. Besides, thanks to their campaign of slander, the community was now in full cry after the "lustful Jew." It was impossible for them to turn back. It would be easy to convince the public that Frank had procured Conley to write the "murder notes" because the public was already convinced of Frank's guilt. They determined that the sacrifice of Frank was necessary to save themselves.

They secured an order of court, and took Conley from the cell where he was confined in the county jail, locally known as "The Tower," in the custody of the Sheriff, and placed him under their own watchful scrutiny at police headquarters, where, day after day and week after week, they put him through his facings. They tinkered with Conley's story, soldering it here and filing it there, until it was shaped into a semblance of truth. That it was a hard task, no one who reads the testimony and the variations of the negro's story as given out from day to day by the police will deny. After one of these numerous statements had been given out to the public, Conley said: "It is the truth, the whole truth, and I hope to God that He strikes me dead this very instant if it ain't"—and the next day he had changed his story. The remarkable thing is that Solicitor-General Dorsey actually told me that the oftener the negro changed his story, the more reliable it was likely to be; that it was a constitutional habit of a negro to keep on lying until he finally lit on the truth.

Meanwhile, the Formby woman, the keeper of the questionable house who had made affidavit that Frank

had repeatedly telephoned her on the night of the murder between 6:30 and 10 o'clock asking for a room and saying it was a case of life and death, mysteriously disappeared from Atlanta, and her whereabouts is unknown. The police announced that they would produce her at the trial, but they did not. Her story would not fit in with Conley's. Solicitor-General Dorsey accepted the theory that Frank was at home that night, and argued to the jury that he had deliberately repeated to the company, as testified to by some of the witnesses, a humorous story he had just read in a magazine, in order to hide the nervousness he must have felt in the knowledge that Mary Phagan then lay dead at his hands in the factory basement.

Let us turn now to Frank, who all this time, by the advice of his lawyers, was sitting mute in his cell — "The Silent Man in the Tower," as the newspapers called him.

On the morning of the discovery of the body, the police called up Frank's house, but were unable to get any response. The telephone was on the first floor in the dining-room, and the family slept on the second floor. Frank said that some time during the night he had a dreamy, indistinct impression that he had heard the telephone ring. It was not until seven o'clock in the morning that he answered the call. The family slept later than usual on Sunday morning. Frank was then told that he was wanted at the pencil factory "right away." He replied that he hadn't had any breakfast, and asked where the night-watchman was. He was told in short manner that it was very necessary for him to come at once, and that an automobile would be at once sent for

him. The officer who telephoned swore that Frank did not ask what had happened. Frank swore that he asked: "What's the trouble? Has there been a fire?" and that the officer replied, "No, a tragedy."

When the officers arrived at Frank's house, Mrs. Frank came to the door in a bathrobe, and a second later Frank stepped to the door "from behind a curtain." "His voice was hoarse and trembling, and he was nervous and excited; he looked to me like he was pale," swore one of the officers. The police officials were even then suspicious of Frank, though they did not at that time know that Frank had seen the girl at noon of the previous day, and had paid her off. I asked Solicitor-General Dorsey why the officers were so prematurely suspicious of Frank. "Well," he said, "when the officers got to the house on Sunday morning, both Mr. and Mrs. Frank came to the door; that was a suspicious circumstance. Then Frank was apparently nervous; he ran his hands through his hair; he was hoarse — and you know," continued the Solicitor, "that according to the accepted works on criminology, those are strong circumstances of guilt."

In Solicitor-General Dorsey's brief in the Supreme Court of Georgia occurs this almost incredible language:

"Isn't it *significant* that the wife and husband both answered the door-bell? Is it not *significant* that the wife, undressed, came to the door first, and was followed by the husband 'dressed for the street'?"

After Frank got into the automobile, he was told that Mary Phagan had been found dead in the pencil factory (she had meanwhile been identified by one of the other girls who worked at the factory) and was asked if he knew the girl. He said he didn't know any girl by the

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name of Mary Phagan; that he knew very few of the employees by name outside of the office force. It was then suggested that they drive to the undertaker's. As they left the undertaker's, Frank told the officers that he thought he recognized the girl as one that he had paid off at the factory on the day before, and that he could tell her name by a reference to his cash book. They went to the factory, and, referring to the number of her pay-envelope, Frank looked at his book and found that her name was Mary Phagan.

Much was made of Frank's nervousness on the morning of the tragedy. He is of a highly nervous temperament. He was condemned afterwards during his trial for his lack of nervousness. He could not be blamed for becoming calloused under the injustices that were heaped on him from the beginning to the end of this tragedy. Every time that Frank was said by one of the witnesses to have rubbed his hands (a nervous habit of his) or stroked the back of his head, Solicitor-General Dorsey in his brief in the Supreme Court of Georgia underscored these words. Evidently they were to his supersuspicious mind most incriminating circumstances of guilt. "How did he breathe?" asked Dorsey of one witness. "Very heavily." "How did he swallow?" "Very deep swallows." What convincing evidence!

Even at the very inception of the case, these exaggerated suspicions were directed against this defenseless Jew. The inquest was in fact not an inquest into the death of Mary Phagan, but an inquest on every innocent movement of Frank's on the day of the murder, for it apparently had already been decided to fasten guilt on him. Every one that attempted to tell the truth in his favor was brow-

beaten. His stenographer was subjected to rigid cross-examination and repeatedly told to be careful about what she swore to. On the Sunday morning that the officers went to Frank's house, and refused to tell him what had happened until after they had left the house, Frank asked if he might take time to get a cup of coffee. His wife was the first to suggest it to the officers. The officers refused to let him have his coffee. Again at the factory Frank asked if he might not get some coffee. "Out of all the men that morning at the factory," said Solicitor-General Dorsey, in his type-written brief in the Supreme Court, which he himself handed me to read, "Out of all the men at the factory, Frank was the only one who called for coffee." Think of a man being convicted on that kind of evidence, and on appeal having a prosecutor make it a part of his written argument and brief!

On the trial Solicitor-General Dorsey was allowed to prove that Newt Lee was not nervous at the time of the discovery of the body and afterwards, and he did prove it. This was for the purpose of showing that Frank was guilty *because he was nervous and Newt Lee wasn't*. And yet at the coroner's inquest one of the officers swore that Newt Lee, when he was taken to the station house with Frank, was so nervous that his hands shook violently.

On the Monday morning following the officers were again at Frank's house. He was again wanted at the police station. When Frank arrived at police headquarters he found the attorney for the pencil factory there representing him. In the mental warp of the community, and in the volcanic and ridiculous argument of the prose-

cutor on the trial, this was another strong link in the chain of evidence of Frank's guilt. "I tell you, gentlemen of the jury, that because he sent for Mr. Rosser, big of reputation and big of brain, the reason he wanted him at the Police Headquarters, and the reason he wanted Haas, was because his conscience needed somebody to sustain him."

As a matter of fact, Frank had nothing to do with the employment of counsel. Solicitor-General Dorsey knew that fact when he made his argument. It had been testified to on the trial. Sigmund Montag, one of the principal stockholders in the pencil factory, was told by a newspaper reporter that Frank was under suspicion and was about to be arrested. Mr. Montag notified Herbert Haas, the attorney for the pencil company, over the telephone, and told him, as Haas knew, that Frank was a perfect stranger to police headquarters and that Haas ought to be present. And subsequent events proved the wisdom of the precaution. The chief of police refused to let Haas see Frank; they proposed to put him through one of their disgraceful third degrees. Haas telephoned for Luther Rosser. Rosser forced his way into the room where they had Frank. Frank made a full and complete statement, which was taken down in short-hand. He made another statement at the coroner's inquest, and another on the trial; and no one ever caught him in a lie.

The State contended that Frank murdered the girl on the second floor of the pencil factory; that he struck her a blow over the eye — where there was a wound or contusion — in anger because of her refusal of a shameless proposal; that she fell against the sharp point of a machine, receiving the injury behind her ear; and that

Frank, in a panic, then strangled her with the cord, *for fear of exposure*. But there was found not a drop of blood on the second floor of the factory, and the girl was brutally abused, and bled freely. Solicitor-General Dorsey claimed that Frank *might have wiped up the blood*. Nor was there an ounce of cinders on the second floor, though the girl's face had been rubbed back and forth in these sharp grains, evidently in the attempt to smother her or her cries.

There were some strands of loose hair, of a color resembling Mary Phagan's hair, found on a machine on the second floor of the factory. They were not found on the machine by the officers after a thorough search of the factory on Sunday. Also, there was a dark stain on the second floor, covered with a white substance used in the factory and known as "haskoline"; but this stain, like the hair, was not discovered on Sunday by the officers, but on Monday by a man named Barrett who worked in the factory, and who after the conviction of Frank, preferred a claim to the city council for the reward offered for Frank's conviction. It would have been impossible for the officers not to have seen this substance on the floor if it had been there Sunday morning. The chemist who analyzed these "blood" stains for the State testified that it was coloring matter and dirt, which, however, did contain four or five corpuscles of blood, whether human or not he did not know. But this testimony loses all significance when one considers that there are as many as 80,000 corpuscles in a single drop of human blood. Besides, these stains were not found where the girl lay when first found, if she ever was found on the second floor, but where Conley

said, after the stains were pointed out to him, he had dropped the body because it was too heavy. Accidents frequently happened in the factory, and often fingers were cut and mashed and bled freely in this same metal room.

The expert who microscopically examined the strands of hair found on the machine, and compared them with Mary Phagan's hair, informed the prosecutor, before the trial, that the hair was not that of Mary Phagan; but this information was withheld from the defense, who knew nothing of the microscopical examination, and was not brought out by the prosecutor on the trial. The prosecutor proved by other non-expert witnesses that the hair "resembled" Mary Phagan's, and argued to the jury that the finding of the hair was the most convincing evidence that Frank had murdered the girl on the second floor of the factory, and that she had not been killed by some prowler in the basement, although he knew at the time, on the word of his own expert, that the hair was not that of Mary Phagan. He admitted this in subsequent proceedings, when confronted with the proof, but insisted that the testimony of the expert was not *important* and that he had proved by other non-expert witnesses that the hair *resembled* Mary Phagan's. The strands of hair were missing at the trial, the prosecutor claiming they were lost; and they have never been found since.

There was a colored maid employed at Frank's house named Minola McKnight. This maid's husband, Albert McKnight, it was alleged, *told* a fellow employee of McKnight, a white man, that his, McKnight's wife, had *told* him that on Sunday morning Mrs. Frank had *told*

her mother, in *Minola McKnight's presence*, that Leo had *told* her the night before that he could not sleep; that Leo was drunk and that he asked his wife to get his pistol and let him kill himself; that he didn't know the reason why he would murder; and that Mrs. Frank had been compelled to sleep on the floor because Frank was drunk. I doubt if Frank was ever drunk in his life. The evidence showed that whenever he took a drink it was at a soda-fountain; and no drunken man ordinarily stops in a candy store on his way home and buys a box of candy for his wife as Frank did that night. I doubt also if any woman in her senses ever told her mother *in the presence of her colored maid* that her husband had confessed murder.

The police, without authority, arrested Minola McKnight. They took her to the prosecuting attorney's office. There she denied, in her husband's presence, that she had ever said anything of the kind. She "wept and cried and stuck to" this story. The police clapped her in the dismal, dungeonlike police station. Minola became hysterical. After several hours of confinement, and at twelve o'clock at night in the jail, she signed an affidavit prepared for her, practically as told above. She was then released. As soon as she was released she denied the story, and said she had made the affidavit because the police told her if she did not they would keep her in jail.

When this affidavit appeared in the newspapers Mrs. Frank, for the first time, gave out an interview. She said that the public prosecutor and the detectives "know that I cannot go on the witness stand under the law of Georgia, and deny the affidavit which they have wrung

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from my cook in the torture chamber of the third degree."

Albert McKnight, in his eagerness to get his share of the reward which his coaches were looking for, went too far, and was proven a perjurer in other matters. He took the stand as a witness and said he was at Leo Frank's house that Saturday noon when Frank came home for lunch; that he was in the kitchen; there was a swinging door between the kitchen and the dining room; that he could see Frank from where he sat in the kitchen by means of a mirror in the dining room, and that Frank came home not later than 1:30 and stayed only ten minutes and that he ate no lunch. (This was for the purpose of showing that Frank was too nervous to eat.) Frank, his wife, his wife's parents, and Minola McKnight all testified that Frank had eaten lunch. It was proved conclusively on the trial, by diagram and witnesses, that it was impossible for McKnight to have seen the mirror from the kitchen.

But McKnight went further. He said he left the house about the same time Frank did and saw Frank take a certain car. But it was proven beyond any doubt that Frank had taken another car on a line that intersected the street on which his house was. As Frank came out of his house he saw some friends standing in front of their residence on a cross street, and recognized among them a visitor from a neighboring city, and went over to greet them. This took him out of the way of his regular car. A friend sat with him in the car, on the way downtown; also there was a blockade; an automobile got jammed against the side of the car, and the two men sitting in it were within two feet of Frank.

The circumstance was thus fixed in their minds. McKnight did not know of the incident which had taken Frank out of his way and which was testified to by half a dozen people, and so McKnight swore he saw him take the car which Frank usually took.

McKnight, after Frank's conviction and the refusal of the Supreme Court to interfere, repudiated his testimony, as did many other witnesses. Shortly thereafter he was beaten into insensibility as he was going along a lonely street at night, and lay in the hospital in a precarious condition for many weeks. The police announced that he had voluntarily gone to jail and surrendered himself and recanted his former repudiation of his testimony. Subsequently Minola McKnight was also assaulted and knife-slashed in her lonely little shack. But she, too, survived.

There is on the statute books of Georgia a law which provides that the person who swears falsely against a defendant on trial for his life may be prosecuted and punished with death. The logic of this is that the person who swears away the life of another is himself, constructively, guilty of murder. These various witnesses who repudiated their testimony did not know of this law. When they were arrested after repudiating their testimony on the trial they were doubtless confronted with this statute. The result naturally was consternation, and a desire to save their own lives. It has been charged that some of these witnesses repudiated their testimony for a monetary consideration. If we assume that this is true, what does it prove? Why, that Frank was convicted with the aid of testimony on collateral circumstances intended to prop Conley's story, testified

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to by witnesses who are not only admitted perjurers but alleged bribe takers. If we believe they did not receive money, at least they swore falsely at some stage of the proceedings. Whatever their motives in swearing against Frank on the trial, their motives in repudiating their subsequent affidavits were the stronger, for they were thereby *saving their own lives.*

III

JIM CONLEY was twenty-seven years old. He had gone to the public schools of Atlanta for two years. He had served a term in jail. He had been fined six times for disorderly conduct. He had worked for the pencil factory for two years, and was a floor sweeper. One of the witnesses employed at the factory testified that Conley "always seemed to be kind of nervous or half drunk." More than once he had been found lying drunk in the factory. He was a low, squat negro with a "ginger-cake" complexion. He lived in a little shack with a woman who was not his wife, and her two children, in that part of the city given over to the colored population. He was a frequenter of low negro dives and pool rooms. He was arrested in the factory on the Thursday morning following the murder while engaged in attempting to wash some stains from a shirt. After the finding of the body of Mary Phagan, Conley had been seen reading with avidity the "extra" newspapers dealing with the crime. One of the women employed at the factory testified that she said to Conley a day or two after the murder: "Jim, whenever they find the murderer of Mary Phagan, it is going to be that negro who was sitting near the elevator when Mrs. White went upstairs Saturday." Conley dropped his broom in a panic and left the room.

There cannot be much doubt in the mind of any ordinarily intelligent person who studies the case that

Conley was on an early holiday debauch on that Memorial Day; that not being allowed to loaf around saloons in an intoxicated condition in Atlanta, where all strong drink is prohibited by law, he went to the factory as the nearest and most friendly place to sleep off his cups; he had been arrested several times for being drunk on the streets; that while thus clandestinely ensconced in that dark hallway, with his savage instincts afire, he struck Mary Phagan over the eye the blow which Frank was alleged to have struck, as she came down the stairs with her purse and pay envelope and paused a moment for some purpose which is hinted at in one of the murder notes. Conley himself swore that he noticed the kind of shoes one of the young ladies had on who went up the stairs. His eyes were even then seeking prey.

Conley was impeached in every way known to the law. A score of people testified to his general bad character and to his lack of credibility even under oath. Members of his own race, people that had known him all his life, with one accord testified that he was unworthy of belief. The State, with all its power, the police with their intricate associations, were unable to find one who would say a word for Conley's credibility. The prejudice against Frank was intense; the State was using every expedient to bring about his ruin; the police department was in full cry upon his track; and yet the combined efforts of the two could not in the whole State of Georgia find one man to vouch for Conley. His "wife" was never subpoenaed (and not being his lawful wife she could have testified) to corroborate his story as to his whereabouts on that Saturday night, whether he was home, as he said, or not. Conley knew from the beginning that the police were not

after him, but after Frank. He was the "pet" of the police, the prosecutor, and the crowd in the court room, who, discrediting the testimony of negroes as a class, preferred his story, not two consecutive lines of which were the same, to the story of the young Jew from the North, whose story never materially varied.

It is common knowledge in the South that negroes are adepts in making up falsehoods when caught in the commission of crime, and can fabricate detailed and circumstantial tales. That was a habit of slavery times. Whenever the beaten pathway of the story planned by Conley and his coachers was left, he would answer either that he did not know, or that he had lied before. He could tell the story of the disposal of Mary Phagan's body either backward or forward, but his invariable answer to all other questions was: "I don't know," or "I don't remember." If Conley had been a white man he would have collapsed on the witness stand from sheer shame of his own admitted perjuries.

Frank was convicted on Conley's testimony. Without it there was no case. With it there was worse than no case. Not one person ever came forward on the trial that saw Frank and Conley together the day of the murder, although Conley swore they walked the streets of Atlanta for blocks. On the extraordinary motion for a new trial one woman swore she recognized Conley on the street with a "Jew." She knew it was a Jew, because "he had his face so close to the negro's."

Conley swore that on Friday afternoon before the murderer Frank had asked him to come to the pencil factory on the next day, Saturday; that he had some work for him to do on the second floor. He got to the pencil

factory about 8:30 A. M. on Saturday. He met Frank at the entrance. Frank then told Conley, according to his story, that he wanted him to watch inside the street entrance, "like I had watched before" while Frank would be "chatting" with a young lady, to prevent anyone going upstairs. "When the lady comes," said Frank, "I will stomp like I did before. That will be the lady, and you go and shut the door. When I whistle you can then unlock the door and you come upstairs to my office then like you were going to borrow some money, and that will give the young lady time to get out."

Conley testified that he saw six persons going up the stairs at the entrance that morning before Mary Phagan arrived. There were eighteen or twenty persons who went up. The stairway was back quite a distance from the entrance, and there was a large vestibule between the entrance and the stairway, so dark even on ordinary days as to require a light. On this day there was no light burning, it being a holiday.

After Mary Phagan went up the stairs, Conley swore he heard her footsteps going toward Frank's office. Later he heard two people walking out of the office "and going like they were coming down the steps," but they went back toward the metal department. Then he heard a scream. Next he saw Monteen Stover, a young girl of Mary Phagan's age, enter the building. She had on a pair of tennis shoes and a raincoat. After Monteen Stover came back in about five minutes, Conley heard someone from the metal department "come running back there upstairs on their tiptoes," and later he heard someone tiptoeing back toward the metal department. "After that I kind of dozed off and went to sleep. Next

thing I knew Mr. Frank was up over my head stomping, and then I went and locked the door, and sat on the box a little while, and the next thing I heard was Mr. Frank whistling."

CONLEY'S STORY OF CRIME

When Conley heard Frank whistle he unlocked the door, as prearranged by Frank, and went up the steps. Frank was standing at the top of the steps on the second floor — there were double doors leading to the second floor halfway up the stairway — "shivering and trembling and rubbing his hands. He had a little rope in his hands — a long, wide piece of rope. He looked funny out of his eyes. His face was red."

When Conley got to the top of the stairway Frank asked him, "Did you see that little girl who passed here a while ago?" and Conley replied that he had seen one pass upstairs, and that she had come back down the stairs; but he had seen another girl go up the stairs who hadn't come back.

Frank thereupon told Conley that the little girl that hadn't returned wanted to know something about her work, and he had gone back to the metal department with the girl to see if the metal had come. Frank told Conley that he had spoken disrespectfully to the little girl, she had resented it, "and I struck her, and I guess I struck her too hard and she fell and hit her head against something, and I don't know how bad she got hurt. He asked me if I wouldn't go back there and bring her up, so that he could put her somewhere, and he said to hurry, that there would be money in it for me. When I went back to the metal

room I found the lady lying flat on her back with a rope around her neck. She was dead, and I came back and told Mr. Frank the girl was dead, and he said 'Sh—sh!' I noticed the clock, and it was *four* minutes to one. He said to go and get a piece of cloth to put around her, and I went and got a piece of cloth. I saw her hat and a piece of ribbon and her slippers lying there, and I took them and put them in the cloth with the body. The cloth was tied just like a person that was going to give out clothes on Monday."

Conley then went on to say that he tried to carry the body of the girl, but that she was too heavy, and he let her fall, and that Frank then helped to carry her to the elevator, where they lowered her into the cellar. Conley alone carried her in the cellar to the place where she was found, "after pitching" the hat, the ribbon, and slippers "over in front of the boiler." Frank and he then went back to Frank's office on the second floor on the elevator.

"Frank commenced rubbing his hands and rubbing back his hair, and all at once he happened to look out of the door and there was somebody coming, and he said: 'My God, here is Emma Clarke and Corinthia Hall! Come over here, Jim; I have got to put you in this wardrobe,' and he put me in the wardrobe, and I stayed there a good while, and they come in there and I heard them go out, and Mr. Frank come and said: 'You are in a tight place,' and I said: 'Yes?' and he said: 'You done very well.'"

Frank then gave Conley a box of cigarettes and told him he could keep them. He asked Conley if Conley

could write, and Conley said: "Yes, sir, a little bit," and then Frank dictated the "murder notes." At first they didn't suit, and he had to write several. "Then Frank pulled out a nice little roll of greenbacks and said: 'Here is two hundred dollars,' and I took the money and he said: 'You go down there in the basement and you take a lot of trash and burn that package that's in front of the furnace,' and I told him I was afraid to go down there by myself. He looked at me then kind of frightened and he said: 'Let me see that money,' and he took the money and put it back in his pocket, and I said: 'Is this the way you do things?' and he said: 'You keep your mouth shut. That's all right,' and Mr. Frank folded his hands and looked up and said: 'Why should I hang? I have wealthy people in Brooklyn,' and he said: 'Don't you worry about this thing; you just come back to work Monday like you don't know anything, and keep your mouth shut; if you get caught I will get you out on bond and send you away'; and he said: 'Can you come back this evening and do it?' and I said: 'Yes, that I was coming to get my money.' 'Well, if you are not coming back,' he said, 'let me know, and I will take those things [meaning the notes that Conley had written at Frank's dictation] and put them down with the body'; and I said: 'All right, I will be back in about forty minutes.' "

Conley went over to a beer saloon across the street and took the cigarettes out of the box, and found there were two paper dollar bills and two silver quarters in the cigarette box, "and I looked at the clock and it said twenty minutes to two." When he got home he sent

for some sausage and cooked it and laid down and went to sleep, and didn't leave the house but for a moment until Monday morning.

Having given the substance of Conley's story in his own words, let us turn back for a brief analysis of his previous stories. Mention of these various stories in the form of affidavits was made to the newspapers at the time, as each affidavit was signed by Conley, so that the police could not consistently deny them, and they were compelled to produce them at the trial.

On the 18th of May, over three weeks after the murder, Conley was confronted with the evidence that he could write. Previously he had been asked by the detectives: "Can you write?" "Naw, sir, I never could." "Will you swear it?" "I shore will. I ain't goin' to swear to no lie, either." After they showed him his handwriting, "White folks, I'm a liar," he said. He now admitted that he could write, but denied being the author of the notes; gave a circumstantial account of his doings on the day of the murder, saying he had spent the morning on Peters Street, in a section of Atlanta devoted to negro trade. He said he had bought a half pint of whisky from a negro walking along Peters Street at eleven o'clock that morning. He insisted that he was not at the pencil factory on Saturday.

The police were not satisfied with this story. They nagged Conley through a course of third degrees. They resorted to all the tricks of the trade. They bullied and cajoled. They told him that his handwriting was the same as that of the "murder notes." "You accuse yourself. We believe you did it. Everybody else will believe it. There ain't but one way to do—'kick in'—

tell all about it." They told him that Frank and his friends were proclaiming that he was the murderer, and they showed him glaring newspaper headlines to this effect.

Six days after his first statement and after the grilling work of the detectives, Conley declared that on the Friday afternoon before the murder he had written one of the notes and that Frank had written the other. He also said that Frank had given him the box of cigarettes, with the money in it, as told by him on the trial; that Frank had at the time asked him if he knew the night watchman, and if he ever saw him in the basement, and that Frank had said he would see that *Conley got some money a little bit later*. Frank had then said, looking up at the ceiling: "Why should I hang? I have wealthy people in Brooklyn."

This affidavit shows that on Friday afternoon prior to the murder Frank got Conley to write one of the notes; he inquired about the basement, and asked if Conley knew the watchman, and mysteriously intimated that there was some reason for Frank's belief that he might hang, but he didn't think so because he had "wealthy people in Brooklyn." Frank, therefore, as Conley intended in his imaginative negro way to imply, meant to murder Mary Phagan on the following day; that he probably intended to put the crime on the night watchman by means of the notes, and at least that he contemplated escape from punishment for some crime the punishment for which was death by hanging; and further that Conley was going to get some money in some mysterious way. The police pointed out to him, as they admitted afterward, that this would not do — it showed premeditation,

and it was impossible that Frank could have premeditated the murder.

Conley still denied at this time that he was at the factory on Saturday, or that he knew anything about the murder.

Four days later Conley made another affidavit. He said this was to be his last statement, and had made up his mind to tell the "whole truth"; that the reason he said before that he had seen Frank at the factory on Friday and had written one of the notes for him was that he "*might not be accused of knowing anything of this murderer, for I thought that if I put myself there on Saturday they might accuse me of having a hand in it.*" This time Frank had whistled, and when Conley went up the stairs Frank grabbed him by the arm and rushed him into the office, and then Emma Clarke and Corinthia Hall had come and he had hidden in the wardrobe, and then the notes had been written. After Conley had written his one note Frank had slapped him on the back and said: "That's *all right*, old boy, *write* it again," and Conley wrote it three times. Then Frank said: "Why should I hang?" This time when Frank asked him about the night watchman and Conley had replied he didn't know anything about him, Frank had "stuck one finger in his mouth and said: 'S-s-sh! that's all right!'"

This "s-s-sh" is the same "s-s-sh" that Conley left out in this part of his story on the witness stand and inserted at the time he came back from the metal room and told Frank Mary Phagan was dead. Frank had then said "S-s-sh." But ten minutes later Frank had turned on the electric motor which operated the elevator, the noise of which machinery could be heard all over the silent

factory, with two workmen on the fourth floor, and with the front doors of the factory open, as Frank had given him the signal to open them. In effect, Frank had given the signal: "I have just murdered a girl; open everything up wide."

The police still were not satisfied with Conley's story. I am quoting from the testimony of the detectives themselves now. They pointed out things in Conley's story that were improbable, and told him he must do better; they would look over the story he had last dictated and tell him anything that was out of place in it, anything that wouldn't do, and they thus finally led him up to his last affidavit before the trial, which on the trial he said was in many particulars untrue. Conley said in one of these affidavits that he met Frank accidentally on the street on Saturday and that Frank got him to go to the factory with him. On the trial he swore that Frank had made the appointment for him on the afternoon before. In his second affidavit or statement, made on May 24, he said that Frank had come to him on Friday afternoon at *four minutes to one* to write one of the murder notes. This was the hour that Frank had called him on Saturday to the top of the stairs to take care of the body. In his next statement four days later he said this was a mistake. In the affidavit of May 28, he first introduces the story of being hid in the wardrobe. He has now transferred his story from Friday to Saturday. He said he stayed in the wardrobe a pretty good while, "for the whiskey and beer I had drank got me to sweating"—one of the probably truthful descriptions of his condition on that day. This wardrobe incident was undoubtedly interpolated to give the impression that while Frank was

aware some secrecy was necessary, Conley did not at the time know what it all meant. As a matter of truth, Frank could not have recognized the two women until it would be too late to hide Conley. The arrangement of the stairway and the office was such that it was impossible; yet Frank had told him, "here comes Emma Clarke and Corinthia Hall."

It must be remembered that up to this time Conley did not know that there had been any murder. He had not seen Mary Phagan alive or dead. He only knew that Frank had got him to write one of the "murder notes" which Frank said he was going to send off to his people in Brooklyn — perhaps to show them how well Conley could write; otherwise he didn't know what the note was to be used for. He did not know anything about Monteen Stover. He had never seen her. He had denied all along that he had ever heard a scream that day in the factory, and denied it, so far as his affidavits show, up to the time of the trial.

But in the next and final affidavit made before the trial Conley casts away all former stories so far as they conflict and tells, as he told on the trial, that Frank had called him upstairs and told him he had killed a girl who lay back in the metal room. This was at four minutes to one. The girl had been murdered fifty minutes before, according to the theory of the State. Frank had first signalled him by stamping to lock the front door, long after he had murdered Mary Phagan, and a few minutes later he signalled him to unlock it and come upstairs. No one had entered meanwhile. The two workmen were upstairs on the fourth floor, with free access to the second floor by means of the stairways. In this

affidavit he told about disposing of the body in the basement, though in details the story differed from what he told on the stand. He said nothing about hearing Mary Phagan scream; he did not see her go upstairs; he had not yet heard any tip-toeing back and forward to the metal room; he did not say anything about Frank having a rope in his hands, nor about his eyes being "funny," or his face red, nor about Frank asking him if he had seen the two girls go upstairs, nor about any rope around the girl's neck, nor about burning the body — and this he said was his last and final statement, and he had determined to tell the whole truth, just as he had said of his other affidavits. Frank, in this affidavit, had taken back the two hundred dollars after giving it to him without giving any reason, because there was no mention of burning the body.

Conley said the reason he had withheld all this knowledge was that Frank had promised to come to his aid and that he and his friends were to put up a large sum of money for him. But he told enough in his first affidavits to place a mountain of damaging evidence on Frank.

The police were now satisfied. They had been satisfied with each of Conley's former affidavits as they were made, and heralded their triumphs in the newspapers until some wiser head had called their attention to their impossible discrepancies. But Conley had now found the body. The conviction of Frank was assured, and the police announced that they would not take a fortune for their evidence against Frank.

Conley's final affidavit before he took the witness stand represented Frank as taking this trifling, irrespon-

sible negro into his confidence without the slightest motive. Conley hadn't seen Mary Phagan go upstairs, and yet Frank, in order simply to have Conley's help in taking the body *down on the elevator*, shares his secret with Conley. Conley therefore testified at the trial that when Frank "whistled" him upstairs, he asked him if he had seen two girls come upstairs, and Conley volunteers: "Yes, and I saw only one come down." Conley therefore knew there was one of the girls missing, and Frank, of necessity, had to take him into his confidence. The other important addition Conley added on the trial was that he had acted as a "lookout" for Frank on former occasions.

Conley illustrated the truth of his story of former watching, which he never had mentioned in any of his affidavits before the trial, by saying that he had watched on the previous Thanksgiving Day (the coldest and snowiest day for that time of year that Atlanta has ever known) when a young lady in a *white dress and white shoes and stockings* had called at the factory to meet Frank. Frank was in the office all that Thanksgiving morning working with others. He left for the day in company with one of the young men at 12 o'clock noon, carrying some bundles for a Jewish charitable entertainment which had taken place that Thanksgiving night.

This story of "watching" on former occasions, or for that matter on that Saturday, is the most fishy, unbelievable tale out of school. It was adroitly conceived, whoever was the author. It was the explanation of how Conley happened to be there at the factory on that holiday. His previous "watching" was never referred to

in any of Conley's numerous affidavits made before the trial.

Conley must have been a pretty astute student of the law, for he could not otherwise have known that this story of "watching" for Frank would give him the excuse for telling on the witness stand of disgusting, poisonous, prejudicial "facts" similar to the gossip of the streets, the clubs, and the cafés.

IV

ANALYSIS OF CONLEY'S STORY

It would take an entire book to detail Conley's admitted lies on the stand.

I shall undertake to show very briefly: First, the absurdity of Conley's story; second, the admitted facts which controvert it; third, the convincing evidence against Conley inherent in the "murder notes."

Mary Phagan left her home at about fifteen minutes to twelve on that Saturday. She caught a car at 11:50 noon, which was due to arrive, and which according to the conductor and motorman did arrive at the point where she is said to have left it at 12:07½. There was some dispute as to whether she left the car at this point, or continued on to another point, but this would make no difference in the time at which she arrived at the factory; it would, if anything, make her later at the factory; the streets were congested on that holiday, and the street cars moved with difficulty. She could not have arrived at the pencil factory by any possibility before 12:12. Various witnesses swore that it took them five minutes to walk the distance between the point where she was said to have alighted from the car and the factory. This time agrees with the time Frank swore she arrived.

Monteen Stover, whom Conley said followed Mary Phagan up the stairs, testified that she got to the

office at exactly five minutes after twelve and left at ten minutes after twelve. She, too, had come for her pay. She did not see Conley at the foot of the stairway, though he saw her and noticed that the *heels of her shoes* "weren't much good." Conley said he was hiding, "so Mr. Darley (an assistant superintendent) wouldn't see him," because Frank had told him not to let Darley see him. That "explained" why Conley was in *hiding* and why nobody had seen him that day.

Monteen Stover's testimony contradicted Frank, who swore he had not been out of his office between 12 and 12.30 noon. Frank said it was possible that he had stepped out of his office for a moment in the performance of some routine that would not ordinarily have impressed itself on his mind. Monteen Stover testified she was in the office but a moment and waited the remainder of her visit outside in the hallway. Frank might have been in the inner office and not heard the approach of a little girl wearing tennis shoes.

Conley, in one of his characteristic contradictions, swore, in one place in his direct examination, that Monteen Stover went upstairs *before* Mary Phagan. This was undoubtedly the truth, and that is one reason why Conley, perhaps unintentionally, told it. He never mentioned Monteen Stover's visit at all in his affidavits sworn to before the trial. If Mary Phagan went upstairs before Monteen Stover and screamed, why did Conley let Monteen Stover follow? He was there for the purpose of just such "watching," and had been cautioned by Frank "to keep his eyes open."

Frank's stenographer had left the office at two minutes after twelve. She really left as the whistles were blow-

ing, but returned for her umbrella, which she had forgotten.

If Conley's story is true, then Mary Phagan arrived between two minutes after twelve and five minutes after twelve, gave her number to Frank, received her pay envelope from the cash box, went back to the metal room with Frank, and screamed out before Monteen Stover arrived — all in the space of three minutes. While Monteen Stover was there Frank was strangling her back in the metal room, 150 feet away, and was back in his office before twenty minutes after twelve, because he was then seen sitting in his office at work at his desk by Lemmie Quinn, a foreman in the factory. Quinn stayed five minutes, and Frank showed no slightest trace of nervousness. Five minutes after Quinn left, Mrs. White, the wife of one of the men at work on the fourth floor, also saw Frank in the outer office as she went upstairs.

MIX-UPS IN CONLEY'S STORY

As she went upstairs, Mrs. White had spoken to Frank. At about ten minutes to one this lady and her husband and another man saw Frank on the fourth floor, who told them that he was going to lunch and would have to lock up the factory. The two men told Frank they would not be through with their work before he got back from lunch, and then Frank told Mrs. White that if she wanted to go before he got back from lunch she would have to go then, or he would be compelled to lock her in the factory; that he was all ready to go except to put on his hat and coat. Mrs. White left, and was at a furniture store four blocks from the factory at one o'clock. She had followed after Frank down the stair-

way, and saw him on the second floor writing at a desk in the outer office as she passed out.

These witnesses are not disputed. So that when Conley returned from the metal room at four minutes to one o'clock and told Frank that Mary Phagan was dead, he must have been talking to Frank's double or his ghost, because Frank, according to himself and three other white witnesses, was upstairs on the fourth floor getting ready to leave the factory for lunch. He did leave at one o'clock, and was home at twenty minutes past one. A dozen witnesses saw him on his way home, at his home, and on his way back to the office. Conley said when he left the factory at about half past one he left Frank there.

He was contradicted by Albert McKnight, a state's witness, and a colored man, who swore that Frank was home at 1.30, though according to McKnight he didn't eat any lunch. A perfectly disinterested witness, watching for her son, saw Frank get off the car near his home at 1.20. The evidence that he was home and had lunch at half past one is conclusive, and indeed has never been seriously contested. All such discrepancies were lightly passed over by the prosecutor in his argument to the jury. The point I wish to make is that here is McKnight's, a colored man's, testimony directly contradictory of Conley's story, if the overwhelming evidence of white witnesses in this whole case is to be disbelieved, and this colored man *was a state's witness*. It demonstrates the utter disregard of the prosecutor for facts, in that he has even his own witnesses involve his case in irreconcilable entanglement. In connection with this time element, it might be well here to note another of Conley's

apparent discrepancies. When he reported to Frank at *four minutes to one* that Mary Phagan was dead in the metal room, it must have been a piece of remarkable news to the man who was supposed to have strangled her to death an hour before, or at five minutes after twelve.

Perhaps Frank was not sure that she was dead, because Conley swore he had another rope in his hands, ready perhaps to use in case the rope around the girl's neck should fail; although how a man bent on completing such desperate, cold-blooded work should be nervously "shivering and trembling and rubbing his hands" (with a rope in one hand), is not just clear to anyone of average intelligence. The State insisted that Mary Phagan was attacked before Monteen Stover came to the factory at 12.05. But Mary Phagan, according to three witnesses, one of them a state's witness, was on the street car several blocks away as late as seven minutes after twelve.

At about twenty minutes after one, according to Conley's story, Frank had said to Conley: "My God, here comes Emma Clarke and Corinthia Hall!" These two women were in Frank's office that day, but they were there, not at twenty minutes after one, but at *twenty-five minutes to twelve*. Six white witnesses swore to this time — and Frank was at his desk, not dictating "murder notes" to Conley, or paying him \$200 to burn the body of Mary Phagan, but attending to his legitimate business. Conley knew from the newspaper reports of the coroner's inquest that these two women had called, but his inferior brain was not able to grasp the time element.

A REMARKABLE VIS-A-VIS

One of the farcical pieces of testimony given by Conley was to the effect that after the body of Mary Phagan had been wrapped in a "crocus" sack and deposited in the basement of the factory, Frank and Conley repaired to Frank's office on the second floor. After the hiding of Conley in the wardrobe, the "murder notes" were written; and then the drunken, ignorant negro and the Cornell graduate and factory head sat down to a quiet, friendly smoke. After a few mutual congratulations on the success of the murder, Frank having recovered from his "shivering and trembling," and Conley having, as he said, sweated the whisky and beer out of his system in the wardrobe sufficiently to be able to write, Frank gave Conley \$200 in bills to go down to the basement and burn the body with some "trash." Upon Conley's saying he would not go down unless Frank went with him, Frank took back the \$200. Conley finally agreed to come back in forty minutes and burn the body and get the money, but he went home and went to sleep, and forgot all about the \$200, although his "wife" that very morning had importuned him for the rent for their little shack. This alleged action of Frank is contrary to all human nature. It was not the time to anger Conley. There was no money in the office. The help had just been paid off, and Frank's bank book showed a balance the day before of \$16.

Conley, in one of his affidavits before the trial, said that Frank had asked him to give him back the money, and that he would "make it all right" with him on Monday morning. He said nothing at that time about

Frank getting angry because he refused to burn the body. The burning of the body was an afterthought. And so I might go on showing up this lying, unbelievable negro. But is there any use? Anyone who will believe him now will continue to believe him to the end. Conley's testimony was but an artificial compliance with the law, which required at least one witness to swear away a human life, and the negro's testimony was good enough to swear away the life of a Jew. One of the strongest objections to racial and religious prejudice is that it saps the very foundations of justice, for no man can have justice where this prejudice, always stronger in the average mind than the promptings of justice, sways the judgment of court, jury or populace.

THE "MURDER NOTES"

With Mary Phagan's body were found two notes. There was found also a pencil and a pad back containing half a dozen unused pages, from which one of the notes had been torn.

The first note reads as follows:

"mam that negro hire (d) down here did this i went to . . . and he push(ed) me down that hole a long tall negro black that hoo it wase long sleam tall negro i wright while . . ."

The second note reads:

"he said . . . play like the night witch did it but that long tall black negro did buy his slef."

The first note starts off: "Mam, that negro hire (d) *down here* did this." This refers to one person — that is, "that one negro hired *down here* did this." There were several men "hired" on the second floor, and any

number of girls. So that "that negro hired *down here*" could not have referred to any one hired on the second floor. Of course, Conley swears that Frank got him to write the notes in his (Frank's) office on the second floor; but every earmark of these notes shows that they were not the work of deliberation but of haste. Up to the time of the trial Conley insisted Frank wrote the longer note, beginning "Mam." This was patently a lie. So he claimed on the trial that Frank got him to write both notes. If it was only one note, as it was evidently intended to be, it could have been written on one sheet. The second note shows an afterthought. In the first note, he writes "long, tall negro," and then he adds "black"—so that the police will be sure to know it is not a yellow or "gingercake" negro.

SCRATCH PAD CONTRADICTS CONLEY

Conley claims Frank had the pad on which these notes were written on his desk. Frank would not be likely to have on his desk for current use, unless for scratch purposes, an old pad four years old. But if he had this old pad for scratch purposes, would it be likely to be a pad composed entirely of sheets filled with carbon impressions? For it now turns out that the sheet on which the first or "Mam" note was written was a carbon impression of an order for supplies directed to the Cotton States Belting and Supply Company, and signed by a man named Becker, now a resident of New Jersey, who was at the time master mechanic at the pencil factory. The number of the order is shown on the note—"1018," and the supplies ordered can be distinctly seen through the microscope. The original of this order, as well as sev-

eral of the immediately preceding and succeeding orders, is in existence and in the possession of Frank's lawyers. The original order was dated in September, 1909. It was the custom to send the original orders out and to retain the carbon impressions. These pads filled with carbon impressions were carried into the cellar as refuse when, as Becker swears, his office was cleaned up; that is to say, when he left the factory on the last Saturday of December, 1912, a few months before the murder. Since January 1, 1911, all pads used for orders were printed with the date "191—" and the "190—" headline shown in this first note discarded.

THE NOTES AND THE "NIGHT WITCH"

It was too dark in the cellar, with the dim light, for Conley to see the carbon impression of the first note which he at first said Frank himself wrote, but it would have been impossible for Frank in his well-lighted office on the second floor, in the middle of the day, not to have seen it. If the notes had been written in the office on the second floor, why was the pad back on which the second note had been written found with the notes and the pencil and the body in the cellar? Here were *all* the materials used in the making of the notes *found in the cellar*. Where then were the notes written? In the cellar and in the cellar only, by the light of the gas jet kept burning there. Every one who knew Conley at all intimately says he had a mania for writing notes. His own "wife" told one of the detectives that Conley used to bring home these pencil pads from the factory and practice writing on them.

If the body was to be burned, why write the notes at

all? Why should Frank let Conley know that he was going to place Conley's incriminating handwriting beside the body?

The prosecutor and the police contended that Conley's story that Frank had dictated the notes to Conley was true on the face of the notes themselves, because no negro would write "*did* this"—he would have said "*done* this"—and no negro would write the word "negro"—he would have written "nigger." The old-time, uneducated, ante-bellum negro was often given to saying "I done it," and among the first inaccuracies of speech to be corrected by teachers in the South is this use of "done." The same is true of "negro." The negro doesn't like the word "nigger." But we don't have to rely on theories. Conley in his testimony on the trial used the word "did" in the same sense nearly a hundred times. For instance, "I did as he said." "They would keep at me until I did." "He walked faster than I did, and when I *saw* [not seen] he was walking faster than I did, then I walked faster too." But a clearer proof is at hand in the several "love" letters Conley wrote to his colored sweetheart with whom he became acquainted while both were in jail. In these letters the words "did" and "negro" occur frequently, and these letters are frightfully obscene.

There is another strong piece of evidence inherent in the notes themselves. Conley makes Mary Phagan say that the "long, tall, steam, black negro" would "play"—that is, make it appear—"like the night witch did it," but that he "did it buy his slef." Again, turn to Conley's expressions on the witness stand: "It seemed *like* he was too far back." "You just come back to work

nose and mouth, drawn in in the act of breathing, and under her finger nails. Her face had been rubbed before death in these cinders, evidently in the attempt to smother her cries. Yet Conley swore she was dead when he and Frank carried the body in a "crocus" sack into the cellar and left it there. This "crocus" sack, by the way, was never found. The girl's clothes were all soiled in the cinders. There was not an ounce of cinders on the second floor, where Conley said he found her dead. The upper floors were swept clean every day.

Frank was convicted largely on the theory that he was a degenerate. Detective Wm. J. Burns said publicly in Atlanta that Frank was convicted on whispers. Nobody has ever come forward to claim the reward of \$5000 offered by Burns for evidence of any immorality on the part of Frank. The police, after ruining Frank's character and destroying his life with vile stories which aroused the gorge of the entire community and were reflected in the verdict of the jury, now weakly protest that they never did claim that Frank was a degenerate. What restitution! But the charge that Conley is a degenerate of the most debased type is now capable of proof, not in the wings of rumor or in the slanders of foes, but in his own handwriting. I challenge any fair-minded man to read these lustful letters written by Conley to his colored "sweetheart" in the jail, and not rise from their perusal in the *absolute conviction*, taken in connection with his own story on the witness stand, that he is the murderer of Mary Phagan. The "murder notes" were the key to the murder. The police so far ignored them that they handed them over to a newspaper reporter.

"If they had found Conley's knife by the body, as they

found his hand writing," said Frank, "would the police have said I committed the murder? If they had found Conley's pistol, would they have said I did it? If they had found a piece of his clothing gripped in her fingers, would they have said I did it?"

The death of Mary Phagan and Frank's subsequent trouble has all come about because of a bottle of cheap whisky purchased by one worthless negro from another negro in a Southern city which prohibits the sale of whisky. Conley, of course, did not buy this whisky from a negro on the street, as he swore he did. He bought it from a bar-tender in a low dive; but to have admitted that would have been proof that his friends the police were not enforcing the law; so he swore he purchased it on the street. The verdict of the jury was the echo of the clamor of the crowd.

To convince a certain element in any community of a man's guilt, it is only necessary for the police to arrest him. We are apt to forget that Conley was testifying to save his own life.

In telling this story, I have stripped it to the bone. If I have been compelled for lack of space to leave out many incidents, they are not those that upon investigation will be found to militate against Frank — on the contrary, the light is what the Frank case most needs — and what I seek for it.

Frank's statement before Judge Ben H. Hill, when he was sentenced the second time and asked if he had anything to say:

"May it please Your Honor, I trust Your Honor will

understand that I speak impersonally, addressing my words more to the bench as representing the majesty of the law of Georgia than to the gentleman now on the bench. I well know that Your Honor has naught to do with the various vicissitudes of my case.

"In Your Honor's presence, representing human law, and in the presence of the Supreme Judge who at this very moment is casting the light of His omnipotent and omnipresent eye upon me from His throne on high, I assert I am innocent of little Mary Phagan's death, and have no knowledge of how it occurred.

"Law, as we know it, Your Honor, is but the expression of man's legal experience. It is but relative. It tries to approximate justice, but being man-made, is fallible. In the name of the law many grievous errors have been committed — errors that were colossal and irretrievable. I declare to Your Honor now that the State of Georgia is about to make such an error.

"The law says that when one has lost his life through violence of another, the perpetrator of the deed must answer with his own. That may be just. But the law does not say that where one is killed a blood-sacrifice shall be made of the next convenient individual. If this latter obtains, then the taking of such life is not justice. It is but murder legalized. Oh, what a terrible thing this is to contemplate!

"Your Honor is about to pronounce words that will thrust me over the abyss that separates our earthly existence from the higher life, the life eternal. I may shortly stand before the tribunal of the higher Judge, of whom human minds have but the slightest conception. Before this Tribunal I will be judged as I now am in-

nocent, and will receive the reward of those who suffer wrongfully on this earth.

"Your Honor, an astounding and outrageous state of affairs obtained previous to and during my trial. On the streets rumor and gossip carried vile, vicious and damning stories concerning me and my life. These stories were absolutely false, and did me great harm, as they beclouded and obsessed the public mind and outraged it against me. From a public in this state of mind the jury that tried me was chosen. Not alone were these stories circulated on the street, but to the shame of our community, be it said, these vile insinuations crept into my very trial in the court-room, creeping in insidiously, like a thief in the night. The virus of these damning insinuations entered the minds of the twelve men and stole away their judicial frame of mind and their moral courage. The issues at bar were lost. The poison of unspeakable things took their place.

"Your Honor, in this presence and before God, I earnestly ask that God in His mercy may deal lightly with those who unwittingly, I trust, have erred against me, and will deal with them according to His divine judgment. If the State and the law wills that my life be taken as a blood-atonement for the poor little child who was ruthlessly killed by another, then it remains for me only to die with whatever fortitude my manhood may allow. But I am innocent of this crime, and the future will prove it. I am now ready for Your Honor's sentence."

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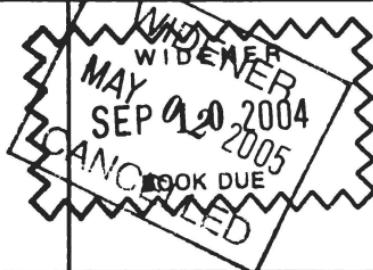


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