

**"MOST SENSATIONAL TRIAL" —TIME**

**LEO FRANK:** *Texas born, raised in Brooklyn, Cornell graduate, superintendent of Atlanta pencil factory. Shy, meticulous, a family man.*

Was this the true portrait of the man, or was it the front of a criminal guilty as charged of rape and murder?

Did he force himself on Mary Phagan, hold immoral parties in his factory, make calls to a notorious Atlanta madam . . . or did this prosecution testimony result from police pressure, did it explode out of a wave of public feeling—anti-Semitic, anti-Northern?

Was a Negro sweeper—an early suspect—truthful in his damaging testimony against Frank, or did he lie to save himself?

Like millions of others, readers of this book will find it impossible not to take sides. And they will have far more evidence available than did the jury which sat in that emotion-charged Atlanta courtroom . . .

by **CHARLES and LOUISE SAMUELS**

**A Dell First Edition**

NIGHT

FELL

ON

GEORGIA

**DEDICATION**

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**for**  
**RICHARD HANSER**



**I. DEATH OF  
MARY PHAGAN**



Afterward, everybody said that little Mary Phagan was the sweetest-tempered, happiest young girl they could remember. They also recalled how pretty she was—pretty enough to have been chosen to play the Sleeping Beauty in the Baptist church's Christmas play. Her mother, Mrs. J. N. Coleman, cried a lot later on each time she was reminded of how like an angel Mary had seemed in that play, with her eyes closed and her face on the pillow, innocent and serene.

Mrs. Coleman said it made her think of the very last time she had seen her thirteen-year-old child asleep. That was on that April 26 when a terrible fate overwhelmed Mary and transformed her almost overnight from a cotton-mill worker's daughter into a symbol, a legend, and a battle cry around which millions of men and women rallied. In fact, as one editor said not long ago, Mary's death grew into an issue that "arraigned South against North" as they had not been divided since the War between the States.

April 26 is an important holiday in much of the South, being the Confederate Memorial Day, and Mrs. Coleman had allowed Mary to sleep late that morning. Usually she woke her up early so Mary wouldn't be late getting to her job at the National Pencil Company's factory in downtown Atlanta.

Going into her daughter's room, Mrs. Coleman looked down at Mary, her favorite and the baby of her six young ones, and repeated the prayer she often said for her children. The prayer asked only that they should be as contented and pleased with

life when they grew up as they were when they were small.

Not that Mrs. Coleman had delusions about what the future might hold for them. Their father had died the year before and soon afterward she had married J. W. Coleman, another "linthead," as Georgia's cottonmill workers were called then, in 1913.

Mr. Coleman couldn't have been nicer to her kids if they had been his own. But they had moved from Marietta, Mary's birthplace, which is about twenty miles from Atlanta, to Bellwood, a workingman's suburb of that city, hoping that the husband and all the children would find it easier to get jobs if they lived nearer the city.

While her mother was looking down at her that morning Mary opened her eyes. She jumped out of bed and scampered to the window. But on seeing what a gray and dreary day it was, she sighed. Yet a gray day could not spoil the 1913 Memorial Day parade, which the papers had been predicting would be the greatest ever, with six thousand marchers in line, including all the gallant Confederate veterans who could come, policemen, firemen, city and state officials, fraternal organizations, and hundreds of little schoolgirls carrying arms full of flowers.

Mary gaily chattered away to her mother about the forthcoming parade as she dressed, ate her breakfast—cabbage and bread left over from last night's supper—and started to help with the housecleaning. But after a few minutes her mother took the broom out of her hands and told the child to change into her Sunday best. "You may have to wait at the factory for some time to get your pay," said Mrs. Coleman, "and you wouldn't want to miss any of the parade."

In no time at all Mary had on the pretty lavender dress and the large straw hat decorated with ribbons and flowers. From the door of her unpainted, shabby cottage Mrs. Coleman watched her walk down to the corner. There Mary turned to wave good-by with her parasol of many colors. The last sight Mrs. Coleman had of her was just as she disappeared around the corner. Then Mary looked down, smiling with pride, at the silver mesh bag which was her greatest treasure.

If it did not occur to Mrs. Coleman that day or any day that her children might deserve a better chance in life than they

were getting, it may have been because all the children she had ever known had always had to help out at home by taking such jobs—when they could get them—after only a year or two of schooling.

In 1913 child labor, of course, was common everywhere in the United States. Georgia's labor laws, though, were among the worst in the country. These permitted children of ten to work and, under a "dependent father" clause, children of eight. Actually, tots of five and six were to be found at the loom in many cotton mills.

Some of these young children worked and lived in the most unwholesome circumstances imaginable. At best, sanitary conditions in the mills and factories were primitive. In thousands of mill families four to six persons slept in a room, and as a consequence, incest was not uncommon. But there is no question that Mary Phagan was a good child and that her mother and stepfather guarded her from evil as best they could:

On that overcast April morning Mary got on the English Avenue trolley car which carried her downtown at 11:45. But the precise time she got off the car, along with the exact moment she arrived at the National Pencil Company, was to become a matter of long and furious wrangling.

As usual, Mary entered the building through the Forsyth Street entrance. It was a four-story brick-and-frame structure employing more than a hundred persons. Most of them were teen-age girls like Mary who were paid the same wretched wages for working at machines that she earned. The machine she operated was located in the second-floor metal room. Its function was to press the rubber erasers into the pencils' metal caps.

Like many industrial plants of its era, the building was almost incredibly filthy, with debris scattered everywhere, the floors oily and greasy, and windows so dusty you could scarcely see through them. In the seven years the company had occupied the premises the place had not once been thoroughly cleaned. For several days now the plant had been quiet, shortage of metal on Tuesday having temporarily stopped production. But Mary Phagan had already put in twelve hours' work by then.

And this was what she was stopping at the factory for, to collect the \$1.20 due her.

It was never proved that Mary encountered anyone as she walked up the stairs to the office on the second floor. Herbert G. Schiff, the young assistant superintendent who usually paid off the help, was not in the office. Only one man was there. This was Leo M. Frank, the superintendent, the big boss of the whole place, a fussy little executive of twenty-nine whose eyes were so weak that he had to wear spectacles with extraordinarily thick lenses. These gave him the appearance of a startled stork.

Getting up from his desk, he peered at Mary. She told him her name and her employee number. Frank looked in the payroll book, got out a little envelope, put \$1.20 in it, two half-dollars and two dimes, which was the correct amount for her twelve hours' work.

Mary started to leave. But at the door of the outer office, according to Frank, she turned and asked if the metal had come yet. He told her it had not; that was, he always swore afterward, the last he saw of the little girl. He was much less certain that it was the last he heard of her. A moment after she disappeared downstairs he heard a noise from another part of the building which puzzled him, but not enough to call for an investigation.

To this day no one has ever been found who saw Mary Phagan alive after she went into Leo Frank's office.

It was the management's policy to have its mechanics lubricate and make any necessary repairs of the equipment on Saturdays when there was no production in the factory. Though this particular Saturday was a holiday, two such workmen—their names were Denham and White—were replacing some planks in the floor of the fourth story.

This may have been the reason that Leo Frank, on hearing the mysterious noise from another part of the factory, did not investigate. He later told the police that he had started to do so, but hearing nothing further, returned to his desk. About an hour later he went home for midday dinner with his wife Lucille and her parents, Mr. and Mrs. Emil Selig, with whom the young couple lived.

The Metropolitan Opera Company of New York was paying Atlanta its annual visit. Mrs. Frank and her mother had bought tickets for the matinee in which Frieda Hempel was appearing in *Lucia*. In the evening Enrico Caruso was scheduled to appear in *Tosca*.

About three o'clock Frank returned to the factory. The day before he had made a date with Charles Ursenbach, his brother-in-law, to go to the baseball game that afternoon. But because it was a blustery, gray day he had called the date off.

Frank worked until six at the factory. Then, after giving instructions to Newt Lee, the Negro night watchman, he returned home for dinner. That evening friends came in to play cards. Instead of playing, Frank read a magazine for a while, then went upstairs to sleep in the room he and his wife shared.

Frank slept none too soundly that night. Several times in the early morning hours he thought he heard the telephone ringing in the dining-room downstairs, but not being sure that it actually had rung he had gone back to sleep each time. At seven o'clock next morning it rang again. More awake at that hour, he went downstairs and picked up the receiver.

"I want you to come down to the factory at once," said a strange male voice.

Frank wanted to know what the trouble was. "Has there been a fire?" he asked.

"No," he was told, "a tragedy has occurred." Then he was told a car would be sent for him.

A few minutes later the man who had telephoned arrived at the door. He was Detective J. S. Starnes of the Atlanta Police Department. With him were Detective John Black and County Policeman W. W. ("Boots") Rogers, who had driven them there in his car.

The officers were admitted by Mrs. Frank, who was in a dressing-gown. Frank himself joined them almost immediately. He had not quite finished dressing and asked them to wait until he had a cup of coffee, saying that if he went out without it he would be very nervous. But the detectives insisted that he leave at once.

From the first the detectives were deeply impressed by his nervousness. They also observed that his agitation increased

when they got him in the car, particularly after they asked him whether he knew Mary Phagan. Frank (who always insisted that this conversation took place in the house before Mrs. Frank) told them he did not. Then he was asked whether, the day before, he had paid off a little girl with hair down her back. Frank replied that he had.

The detectives then took him to the mortuary in Bloomfield's Undertaking Establishment where the child now lay dead, to see if he could identify her. They watched Frank intently as he was shown the pitiful little body. The cord used to strangle Mary Phagan was still around her neck; the killer had drawn it so tight that it was deeply imbedded in the flesh of her throat. Her face looked as though it had been raked and scraped in cinders. There was a hole, surrounded by bloody, matted hair, in the back of her head. One of the embalmers, William P. Ghesling, turned the head so that Frank could see her face better. The young superintendent, white and trembling almost uncontrollably, quickly turned away, telling the detectives that he believed this was a girl he had paid off the day before, he said he could not be sure she was Mary Phagan until he looked at the factory's payroll book.

They took him to the plant, where they found N. V. Darley, the superintendent in charge of machinery, talking with another man at the door. As they went upstairs Frank nodded to Darley to come along. Inside, the whole factory seemed crowded with detectives and other police officials.

On reaching the office on the second floor, Frank glanced at the payroll book for a moment, then told the investigators that the dead girl was indeed the employee named Mary Phagan. The detectives looked at one another, then asked Frank to examine the time clock. Newt Lee had insisted that all night long, until he found the body, he had punched the clock at the exact time he was supposed to. Frank opened the clock and took out the tape on which the night watchman's punches had been made. After carefully examining the tape he confirmed Lee's statement.

(This, of course, was important. If the tape showed that Lee had failed to punch the clock even once at the usual time, it opened up the possibility that he had been occupied with some-

thing besides his duties, and had lied to the detectives.)

From the office the detectives took Frank to the basement to show him the exact spot where the corpse had been found. They got into the elevator but Frank had such difficulty in getting it started—due to his extreme nervousness—that Darley had to help him.

When they finally reached the cellar the detective told Leo Frank what they knew so far about the murder. The first news came, they said, when Lee phoned headquarters that he had just come across a woman's body in the basement. He thought she was dead but couldn't tell them whether she was white or Negro.

Boots Rogers, the county policeman, had driven Starnes and other officers to the scene. They took along with them Britt Craig, an Atlanta *Constitution* reporter, who got a scoop on the story because at the moment he happened to be sleeping off a jag in the police car.

The detectives found the terrified Lee waiting for them at the factory door. He led them straight to the crumpled little body. Newt had been almost hysterical on the phone but now he quieted down enough to explain that at first he thought some mischievous boys had played a trick on him by throwing a bundle on the floor. But on coming a little closer he realized it was a body and had streaked upstairs to telephone the police. After that, he had telephoned Mr. Frank's home, but there was no response.

The body lay on a cinder pile that ran for about a hundred feet along the basement wall. One look was enough to convince the detectives that the child must have put up a terrific struggle against her attacker. Her face was so dirty, so bloodied and scratched, so seamed and pitted by cinder fragments that it was almost impossible to tell whether she was white or black. Around her neck was the cord with which she had been strangled, as well as a rag torn from her clothes. Her underclothing had been ripped and was smeared with blood, urine, and some other substance. Her nostrils and mouth were choked with cinders as though the killer had dragged her by the feet, with her head down, along the basement floor, grinding her face into the cinders, perhaps to still her cries. There was also the

hole in her head, as yet unexplained. Because her tongue was protruding and her face a dark purple, their theory was that she had been strangled rather than killed by a blow on the head.

They also showed Frank where one of the girl's shoes had been found—at quite a distance from the corpse—and in another far part of the cellar, her hat. It had been stripped of the flowers and ribbons that had so gaily adorned it. But no trace of these flowers and ribbons, or the silver mesh bag, or the \$1.20 in-silver coins Frank said he had paid her was found, then or afterward.

A staple had been pulled loose from the basement door, which was still open and smeared with bloody fingerprints.

Since the condition of the body indicated it had been dragged so considerable a distance the detectives did not take it for granted that Mary Phagan had been strangled in the basement. If she had been killed elsewhere in the building the murderer could have moved her body downstairs in the elevator, or carried it down the stairs, or shoved it down a chute ordinarily used to drop boxes into the basement.

Closer to the body than either the shoe or the stripped hat were two scraps of paper (apparently ripped from an order pad) on which notes had been scrawled in pencil. Although these were discovered during the first hours of the investigation, some weeks passed before the Atlanta detectives were to consider them important. The notes were obscene. One, as far as it can be printed here, read: •

mam that negro hire down here did this i went to make water and he push he down that hole a long tale negro black that hoo it wase long sleam tall negro . . . write while . . .

The other, also in part, read: •

he sad he would ...play light nigth witch did it but that long tall black negro did it buy hisself.

After inspecting the cellar Frank and Darley took the detectives on a tour of the four floors of the building. Though the party, headed by Chief of Detectives Newport Lanford, went

over the premises carefully, they found nothing to indicate that Mary had been killed upstairs by a murderer who moved the body to the basement to conceal it.

Later during that Sunday morning Leo Frank called on Sig Montag, an official of the National Pencil Company. He then met his wife and went with her to her sister's house; they returned home for noonday dinner.

After that he made another trip to the factory, where detectives questioned him closely about his movements on the day before. Later Frank admitted that even during the morning he had been upset by the idea that the detectives suspected that he had at least some knowledge of the crime. Now his fears were growing into a certainty, even though Newt Lee had been taken into custody immediately and was still being grilled.

The following morning, before Frank left for work, detectives called at his house and brought him straight to headquarters, where they said Chief of Detectives Lanford was eager to talk with him. When he pressed them for the reason they told him quietly, "Newt Lee has been saying things."

A great hullabaloo was later raised because, while Frank was waiting to see Chief Lanford, two of the best lawyers in Atlanta arrived at headquarters to represent him. One of them was Herbert Haas, one of the Pencil Company's lawyers. The other was corpulent, middle-aged Luther Z. Rosser.

After a few moments Haas and Rosser stepped out into the corridor evidently to compare notes. While they were out in the anteroom, Chief Lanford opened the door of his office and shouted to Frank, "Come here!" When Frank complied, the chief shut the door tight. On discovering this Rosser started banging on the chief's door before Lanford and his aides had had a chance to ask the factory executive many questions. They finally allowed Rosser and Haas in, but only after Rosser announced that, Frank being his client, he would obtain a habeas corpus writ to prevent them from questioning the man except in his presence.

With Rosser and Haas inside the chief's office, Frank insisted on disrobing then and there. He reminded the police that they had said the murdered girl had put up such a fight for her life that her killer must still be carrying around bruises and

scratches. Frank pointed out that there was not a bruise or scratch mark on him—as they could see for themselves.

Next Rosser insisted that the police also inspect Frank's underwear to determine whether it bore traces of blood or seminal stains. One of the detectives suggested that the idea of changing his underwear possibly might occur to a person who had just committed a murder. On hearing that, Haas challenged the police to visit Frank's home and also Newt Lee's and look over the soiled laundry.

The challenge was accepted. No suspicious stains were found on the clothing in Frank's home, but in Lee's cabin police came across an old shirt that was heavily smeared with what appeared to be blood. On being shown the shirt, Newt Lee admitted that it was his. He insisted, however, that he had not worn it for a year.

After being released at headquarters that day (Monday), Frank returned to the factory. He was surprised to find production stopped, but Darley explained that most of the hundred-odd girl employees had been too upset to work so he had sent them home.

That evening Frank telephoned his assistant, Herbert Schiff, and asked him to find out how much it would cost to hire Pinkerton detectives to work on the case. In the afternoon after talking the matter over with Sig Montag, the company's general manager, Frank called in Harry Scott, assistant superintendent of the Atlanta branch of the Pinkerton Detective Agency. During their conversation Scott explained to him that Georgia's state laws required all private detectives hired for such jobs to work in co-operation with the local police authorities. Frank assured him that he and his employers were interested only in having the killer of Mary Phagan arrested and punished.

Early on Tuesday morning, April 29, Frank read in an extra published by the Atlanta *Constitution* that he was about to be arrested on suspicion. On being taken into custody he told reporters that he had been expecting it and that he would possibly be asked to give the police information that would lead them to the real murderer. That night he was taken to a cell in Fulton Tower, the county jail that was to be his home for many hundreds of nights to come.

Many men of good will who have studied the case like to say that what happened to Leo M. Frank after his arrest in 1913 could not happen today to a white citizen anywhere in these United States. Some assert it could not happen to a Negro either. It is probably safe to say that it could not happen to any of us in quite the same way or possibly for the same reasons. It is also unlikely that in 1955 so many people in every corner of the nation would become so excited about the fate of a man whose name they had never even heard until he was accused of murdering the little daughter of a poverty-stricken Georgia linthead.

This was the year before World War I began. The year before the roof fell in on the world. Fewer important events occurred in 1913 than during almost any year since then. There were moderate-sized floods in two states, Texas and Indiana; two assassinations, the victim of one being President Madero of Mexico, of the other King George of Greece. If it had not so quickly become such a bitter joke, the dedication of the Palace of World Peace at The Hague would be remembered now as the most memorable happening of 1913.

But that year in the city of Atlanta, everything was boiling, bustling, and expanding. Since 1900 its population had almost tripled; it was now 200,000. Atlanta, always a great railway center, then as now was a red-hot town of joiners and boosters who liked to call it "the New York of the South" and, even more hopefully, "the Half-Million City." However, the mushrooming of Atlanta had shackled it with a government, an economy, and a police force—particularly a police force—that lagged far behind the pace and demands of city-sized community life.

Before Mary Phagan was murdered similar crimes had been keeping Atlantans in turmoil for years. That in itself would have been bad enough, but in 1906, only seven years earlier, the city had been the scene of one of the most horrifying race riots in United States history, in which ten Negroes and two white men were killed and sixty Negroes and ten whites injured. During the previous two or three years eighteen women, all Negroes, had been murdered and the police had been unable

to get a single conviction. More recently they had failed to convict either of two white women, one a leading socialite, who had shot their husbands. Both ladies had been acquitted by juries.

In addition to all this, the police chiefs had often been at loggerheads with sporty Jimmy Woodward, Atlanta's mayor. At the time of the Phagan murder he was threatening an investigation if Chief of Police James L. Beavers and Chief of Detectives Newport Lanford did not stop their Vice Squad men from shaking down the brothels and blind tigers of that day.

On hearing of the murder in the pencil factory basement, Mayor Woodward called the two police chiefs into his private office. "Find this murderer fast," he told them, "or be fired!" He also prevailed upon the city fathers to offer a \$1,000 reward for the capture and conviction of the strangler, a sum which contributions from the newspapers and individual citizens soon swelled to \$4,300.

Leo Frank was a Jew, but at the time there was little, if any, anti-Semitism in Atlanta. In fact the entire social and economic position of the Jewish community in that city was both important and interesting. There were only a few thousand Jews there, many of whom were quite prosperous. One Jewish family owned the largest department store in Atlanta, another the most popular drug store. There was a Jewish town club in Atlanta, and a Jewish country club. To the Gentiles who knew them they appeared strange, stand-offish, and clannish. And they were clannish as Jews and snobbish as Southerners. For in Atlanta, as in all cities and in all centuries, they were aliens, and in their hearts they knew it.

Yet it is also true that by 1913 a new day seemed to be dawning for the Jews who had emigrated to the United States. Here, in this blessed and hospitable land, for the first time in two thousand years, Jews were finding it possible to walk in the sunshine with their heads and eyes up, unafraid. Though they had not yet been accepted socially, that, too, they were beginning to believe, would come in time.

Perhaps that is why what happened to Leo Frank came as

such a blow. Almost without exception Atlanta's older Jews looked upon Leo Frank as a fine example of what a young, well-educated, second-generation Jew could achieve in the new country. He was a graduate of Cornell University's College of Mechanical Engineering and though he had been in Atlanta for only five or six years was already, at twenty-nine, successfully directing a substantial business enterprise. In addition, he had thrown himself with such good will into the work of local Jewish social, fraternal, and charitable organizations that he recently had been elected president of the Atlanta chapter of B'nai B'rith, one of the most important of these.

Most of the Gentiles who knew him or worked for him thought of him as a Northerner rather than a Jew. Though born in Texas of middle-class German-Jewish parents, Frank had grown up and gone to school in Brooklyn, New York. In 1907, about a year after graduating from Cornell, his uncle, Moses Frank, a Confederate veteran and outstanding Atlanta businessman, invited him to come south to discuss the idea of starting the National Pencil Company with him and a group of his associates.

They all seemed pleased with Leo Frank. His uncle, who became president of the company, suggested that they send his nephew to Europe for several months to study production methods in pencil factories abroad. Following this trip, Frank was appointed superintendent of the new plant. On his first visit to the Southern city he had met his wife, Lucille. They were married on Thanksgiving Day, 1910, and had no children. His salary was modest but the company either gave him, or permitted him to buy, a small block of its stock.

Everyone who knew Frank expected him to go far. He was intelligent and intensely ambitious. Physically he was unimpressive, being a thin, nervous man of medium height, with narrow shoulders, a long, sharply pointed nose, very thick lips, and sharp, shrewd eyes.

Some of the reporters who interviewed Frank much later on, including several who thought him innocent, described him as cold and egotistical. a man whose personality repelled them.

The crime of which Leo Frank was accused had been com-

mitted at the height of the most intensive newspaper circulation war that ever rocked Southern journalism. Only a year before William Randolph Hearst had bought the *Georgian*, one of the three local dailies. Hearst had lost little time in introducing Atlanta to his particular brand of eye-popping whoopdedo and razzle-dazzle news coverage. His foot-high headlines, picture pages, comics, and other sensational features stunned the Georgia public.

But Hearst's general spiking and jazzing up of the news failed to click in Atlanta as it had in San Francisco, Chicago, and other cities until the Mary Phagan murder. Herbert Asbury, who was a reporter in Atlanta at the time, gave a most illuminating description of the smashing impact of the hopped-up Hearstian journalism on the case in the January, 1926, issue of *The American Mercury*.

The *Constitution*, of course, had a scoop on the finding of Mary's body, thanks to the intuitive genius of Britt Craig in selecting the police car at headquarters as a perfect place to sleep off his jag. But Mr. Asbury says the *Georgian's* editor, Foster Coates, "played the story harder than any Hearst paper had ever played such a case anywhere. Had he handled it differently . . . it is very likely that Frank would never have been arrested, the case would have attracted only passing attention, the Jews would not have raised the cry of persecution. . . ."

Mr. Asbury's story continued:

Before noon the next day [Sunday, when the body was found] every reporter on the *Georgian* staff was working furiously while the staffs of the *Constitution* and the *Journal* were slumbering peacefully in church or otherwise wasting the Sabbath. On Monday morning the *Constitution* printed a half-column or so about the crime and the *Journal*, in its first edition, printed even less. And had not Hearst owned the *Georgian*, it, too, would have published half a column and in a few days the story would have died a natural death . . .

Instead, the *Georgian* devoted three solid pages to the mystery, including interviews with the girl's family and neighbors, pictures of the factory, Mary's home, birth-

place and police officials. . . .

Foster Coates made a blunder when Frank was accused of the crime and taken to Police Headquarters. He put an extra on the street, of course—and wrote a banner line for it which said without qualification that the strangler had been arrested! The type was even larger than we used when we tried to convince the citizenry that there was news when there was none. The line was a blunder of the sort that is made every day in newspaper offices, but it had far-reaching consequences. . . .

It is also true that the other two Atlanta newspapers, the *Constitution* and the *Journal*, tried desperately, when their editors caught their breath, to compete with the *Georgian* by imitating its methods.

About the time Frank was being arrested, detectives, still unaware of the exact time Mary had died, collared two other white male suspects. One of these, a streetcar conductor who had been "positively identified" as having been seen with Mary Phagan on Saturday night, was quickly released when he proved he had been with his own girl that evening at a movie show.

The arrest of the other man looked for a time as though it might lead to something. He was lanky J. M. Gantt, a twenty-four-year-old former schoolmaster. His family and Mary's had been friendly neighbors in Marietta. He had worked at the factory and had been observed paying attentions to the dead girl. Two weeks before he had been fired by Frank for being a dollar or so short in accounts.

Most interesting of all, he had been at the factory at six o'clock on Saturday evening. A few minutes before Frank had left for the day, the police learned, Gantt had approached Newt Lee at the factory door and said he would like to go inside and get some shoes he had left there.

While they were talking about this, Frank had come out and jumped back in surprise on seeing the tall man he had discharged—Gantt was a six-footer—apparently waiting for him. When Lee told him what Gantt wanted, Frank, after thinking

it over for a moment, said it would be all right for Gantt to go inside and get his shoes, but only if Lee went along to watch him.

Gantt was carrying a traveling bag when the police found him. They had already been told by his sister, Mrs. F. C. Terrell, that she had heard that Gantt, whom she had not seen for a long time, was about to start on his way to California. It subsequently turned out that Mrs. Terrell made up the whole story because she was sick of answering the detectives' questions, and believed it was the quickest way to get them to leave her alone. Shortly afterward, on May 1, Gantt was released.

Newt Lee was considered an unlikely suspect when it was proved that he was asleep until near working time on Saturday and had not returned to his cabin during that night. After examining his "blood-stained" shirt, the city chemist said the stains had been clumsily smeared on and refused to identify them as blood.

On Thursday, two days after Frank's arrest, Jim Conley, another Negro factory employee, was arrested on being caught washing red stains out of his shirt at a faucet in the rear of the basement. Though Conley, a sweeper, had a bad reputation and had served time, the detectives spent little time questioning him. They threw him into a cell and apparently forgot all about him. By this time they had grown interested enough in the obscene notes found near Mary's body to obtain samples of the handwriting of both Frank and Lee for purposes of comparison. One handwriting expert was sure that Lee had written the scrawled notes. Another said that Frank had written one note, but not the other, in a hand cunningly designed to appear that of an ignorant Negro. But they took no samples of Conley's handwriting. The detectives merely asked him if he could write and when he said he could not, they investigated no further. Someone at headquarters also lost the shirt Conley had been washing, and which had caused his arrest.

During that whole first week the work of the police continued to be handicapped by a serious error in judgment on the part of Atlanta's legal officials. On Monday, the day after the child's body was found, a crowd of 10,000 morbidly curious persons stormed into Bloomfield's to see the remains. To avoid more

such scenes Mary's family begged permission to bury her in the Marietta cemetery. This permission was granted—even though no post-mortem examination had been made. Nine days after her death the authorities ordered the body secretly exhumed, and only then was the autopsy made. It revealed that Mary had died within a few minutes of being paid off by Frank.

Up to this time Chief Lanford's detectives had been chasing down the wildest sort of rumors. Most of these stories came from people who on Saturday night had either "heard" Mary screaming in the factory building or "seen" her reeling through the streets, apparently drunk or drugged, and in the company of sinister-looking men and women. Each man or woman who offered such information swore it was true. Of course, by Saturday night Mary Phagan had been lying dead on the ash-heap in the basement for many hours.

Whipped up daily by the warring newspapers of the city, the indignation of Atlantans kept mounting all that first week. All over the city angry men gathered each night on street corners to discuss the latest rumors. Apparently to escape some of the pressure he was working under, Chief Lanford announced repeatedly that his men had solved the case and that "the guilt lay between Frank and Newt Lee." In the face of all this, Leo Frank persistently refused to talk to newspapermen.

His refusal, like everything else that had happened, appears to have strengthened the public belief that he was Mary's murderer. But almost from the start what damned Frank in his fellow citizens' eyes was their conviction that he was a degenerate who preyed on little girls. This idea began to circulate through Atlanta a few days after the murder, when George Epps, a fifteen-year-old newsboy who lived near Mary, testified at the inquest conducted by Paul V. Donehoo, Atlanta's famous blind coroner, before a six-man jury.

The purpose of an inquest is to determine, if possible, the cause of death. Coroner Donehoo impaneled his jury on the Monday after the crime. With the six men he visited the scene of the crime and began hearing witnesses on Wednesday. Young Epps was one of the first persons put on the stand because he

had told a *Georgian* reporter that he was a friend and admirer of Mary's.

Under oath, Epps told the coroner's jury a story which shocked the already excited city. In his interview with the reporter he had not mentioned a word about being on the trolley car with Mary the morning she rode to downtown Atlanta and her death. Here is the testimony that branded Leo Frank as a man who had pursued the dead girl relentlessly.

Q. Did you both get on the car at the same time?

A. No. She was on first. When I got on she motioned to me to come and sit beside her. While we were coming to town she began talking about Mr. Frank. When she would leave the factory on some afternoons, she said that Frank would rush out in front of her and try to flirt with her as she passed.

She told me that he had often winked at her and tried to pay her attentions. He would look hard and straight at her, she said, and then would smile. She called him Mr. Frank. It happened often, she said.

Q. How was the subject of Mr. Frank brought up?

A. She told me she wanted me to come down to the factory when she got off as often as I could to escort her home and kinder protect her.

The Epps story, which was repeated and amplified during the trial, convinced thousands of Atlantans that Frank was a sexual monster. And by the end of the week, the city was swept by rumors that:

1. The walls of Frank's office were covered with lewd pictures.

2. After getting another under-age girl employee pregnant, Frank had shipped her off to the House of the Good Shepherd, in Cincinnati, to have her baby there.

3. Horrified on learning for the first time how the superintendent "satisfied his vile lusts" at his place of business, Mrs. Frank was refusing to visit him in his cell.

4. Frank was a homosexual who preyed on his defenseless young office boys.

5. The Jewish religion strictly forbade the defilement of Jewesses but condoned the ravishing of Christian girls.

That Sunday, during his sermon at Atlanta's War Memorial, the Reverend Dr. A. R. Holderby pleaded with his listeners to be calm. He asked why "people should be so hysterical and become so frightened because one demon has perpetrated a crime," and added that "the publicity of the details of this sickening crime" seemed to have demoralized a whole city. Other preachers and civic leaders tried to quiet their fellow citizens. Deputy Sheriff Plennie Miner suggested that "the daily papers refrain from printing anything calculated to inflame the public mind."

The publishers were about to get similar complaints from businessmen. In his *American Mercury* article, Herbert Asbury explains that these merchants had expected increased business because great crowds, fascinated by the case, were being drawn to the city from outlying districts. Some of these merchants had even ordered extra stock in anticipation of increased business. But "both visitors and townspeople were so busy reading about the murder and enjoying their thrills over the pictures and the diagrams that they did not have time to buy anything."

Alarmed by the public feeling that was steadily building up against Frank, groups of wealthy Atlanta Jews approached the newspapers with full-page advertisements in his defense. These ads charged that he was being persecuted because he was a Jew. At least two locally prominent Jewish newspaper editors are said to have pleaded with these leaders not to raise the question of religious bias.

Later on, when anti-Semitism became a prominent factor behind the widespread public hatred against Frank, many newspapermen asserted that it was the Atlanta Jews themselves who inspired it by their complaints on this score. This, of course, is both an interesting and a debatable point.

Despite headquarters announcements that the case was solved, the investigation seemed, during the next two weeks, to be collapsing. However, though Frank himself gave a straightforward and apparently convincing statement at the inquest, it changed public opinion of him very little. If anything, that feeling was intensified. This was partly due to the stories several young girls told about him before the six-man jury, partly to

some new and damaging attacks on his morals that were published.

One of the girls who testified before the coroner's jury was Miss Nelly Pettis. She had never worked for Frank but said she had visited the pencil factory once or twice to get her sister-in-law's wages, the last time being four weeks before.

Miss Pettis said when she asked for her sister-in-law's pay Frank suggested she see him first.

"I told him I didn't want to see him," continued Miss Pettis. "He pulled a box from the desk that had a lot of money in it. When he looked at me he winked, and said, 'How about it?' I instantly told him I was a nice girl." Under questioning by Coroner Donehoo Miss Pettis said she also told Frank to go to hell and then walked out of the office.

Another young woman said that several years before Frank had tried to close the door after inviting her into his office. Though she prevented this, he got close to her and "put his hands on me, barely touching my breasts."

In addition to George Epps, however, there were but two witnesses among all the scores heard at the inquest whose testimony could be interpreted as connecting him with the murder.

Robert P. Barrett, a machinist at the factory, testified that he had found blood spots and strands of female hair in the metal room on the second floor.

A far more damaging witness, from Frank's point of view, was Miss Monteen Stover, a teen-age girl who told of visiting the factory office on Memorial Day to get some back pay. She had quit some time before, she said, to take a job in a department store. Miss Stover swore that she had arrived at the office at 12:05, found it empty, and waited for five minutes. When no one appeared, she left. This, of course, categorically contradicted Frank's story of remaining in the office for an hour after Mary Phagan had got her pay and left.

If the state went through with its case against Frank (who had not yet been indicted) it would be able to use Barrett as a witness. But Miss Stover's evidence could serve much more importantly as the keystone to the whole theory of the case against the superintendent. This theory was that Frank had lured Mary into the metal room. When she had resisted his advances he

had struck her and she had fallen against a lathe, injuring her head. Then he had taken the body down to the basement in the elevator, intending to burn it. But at the last moment he had changed his mind, realizing that because of the holiday the furnace was out and that if he lighted it the smoke might arouse the suspicions of passersby.

Of the new crop of rumors that blackened Frank's name many were easily disproved, including the story that he was a bigamist, having previously married and deserted a girl in Brooklyn before coming to Atlanta. But it was more difficult to disprove the story the *Constitution* published on its front page one day under the headline:

### **Officer Swears He Found Frank With Young Girl**

The officer in question was Robert P. House, a former special policeman for a real estate company in Atlanta's Druid Hills section. House said that one night while going about his appointed duties he had followed the factory superintendent and the girl into the bushes "near a swampy place," but as he approached the man jumped out and said to him,

"I don't want you to see the girl. I admit that we came here for immoral purposes. Please don't make a case against us or arrest us. It would disgrace us both. We will leave instantly."

Instead of arresting them, House said he had ordered them to leave. The reason, he said, he was now coming forward was that, on reading about the murder, he recalled that the man in the bushes had explained he was the superintendent of a pencil factory, which made him think it might be Frank; he had come to Fulton Tower and positively identified him.

On the same day the famous Southern newspaper ran a page feature on Atlanta's unsolved murders of the past and concluded the story with the sage comment that these other cases "only go to show that murder will not always out, and that the case of Mary Phagan may be added to the list of murders that may remain forever unsolved."

But Frank was by no means without defenders. One of these was George W. Parrott, a stockholder in the National Pencil Company, who collected affidavits from its employees "that

Mr. Frank had never at any time in any way mistused or mistreated them and that none of them has ever known of a single incident of any familiarity with one of the female employes."

One day in May the progress of the investigation had so slowed down that a prominent attorney and colorful town character, Colonel Thomas B. Felder, who was a political friend of the mayor, announced that he would raise \$5,000 by popular subscription to bring in William J. Burns, in person. The newspapers promptly whooped it up for this worthy project, praising the head of the famous detective agency as "America's greatest sleuth."

But the full \$5,000 was never contributed. Instead of coming himself, Burns sent one of his trusted aides, C. W. Tobie, who immediately closeted himself with Colonel Felder in an eight-hour conference. Following this, Tobie gave out a statement about the case which said nothing very eloquaciously.

The big break in the case came on May 18, more than three weeks after the murder. The police held out on their newspaper friends on this occasion, probably at the suggestion of Solicitor General Hugh V. Dorsey, who had announced some time before that he intended to prosecute the case personally. The able and aggressive Dorsey was then in his early forties. Ever since he had taken office he had waited for a case big enough to attract the public's attention to his ability as a fighting prosecutor. As any intelligent politician would in similar circumstances, he correctly appraised the Phagan-Frank case for what it was—the opportunity of a lifetime.

On May 18 the newspapers ran only brief stories mentioning that James Conley, the Negro sweeper who had been in jail since his arrest on May 1, had been questioned by detectives for two hours, but denied all knowledge of the crime.

Five days later, on May 23, the local editors became aware of the potential significance of Conley's being questioned. And, by what seems no coincidence at all, on that same day Chief Lanford showed reporters an affidavit which, he said, he had had for eleven days. If true, the statements made in this paper branded Leo Frank as both the murderer and a sex monster. The affidavit was signed by a Mrs. Nina Formby, a notorious woman who ran a house of assignation in Atlanta.

The affidavit declared that between six and six-thirty p.m. on the evening of April 26, Leo Frank, an old customer of Mrs. Formby's house of joy, had telephoned her there. He wanted a room, her affidavit said, but ". . . he wouldn't give the girl's name. He flatly refused. He said he'd be renting an apartment. He said he was forced to obtain a room for him and the girl and he didn't want to go elsewhere because he put such implicit trust in me. I would not grant his request and hung up the telephone."

But Frank's calls, increasingly desperate, had continued at intervals until ten o'clock, when Mrs. Formby told him it would be of no use to call her again as she was going out for an automobile ride.

When the *Constitution* reporter to whom the chief gave this release asked him why Frank should wish to carry the body of the girl through the streets to Mrs. Formby's home, Chief Lanford confided the idea that the superintendent did not know even then—six hours after the murder—that Mary Phagan was dead. He said:

"The intent was to carry the girl to Mrs. Formby's apartment so that she could be restored to consciousness in surroundings which would not excite suspicion. The assault attempt had already been made, and Mary Phagan had been rendered insensible by the blow she'd received from the fall against the lathing machine. I believe that all the while Mrs. Formby was being telephoned, the unconscious girl was lying hidden in some part of the pencil factory, oblivious to everything, awaiting the terrible death which befell her. Mrs. Formby's statement is to the effect that Frank persisted desperately in an attempt to obtain a room and even went so far as to say it was a matter of life or death. When it was seen that the woman would not rent him a room in her apartment and the girl could not be removed to a place where she could be revived without creating suspicion, it was absolutely necessary to dispose of her. Dead folks tell no tales. . . ."

When he gave out this statement on the day before Frank's indictment, Chief Lanford had for weeks been aware that the autopsy made on Mary's remains showed that she had died around noon on April 26.

Within hours of the release of the Formby affidavit the police announced that Conley had confessed writing one of the murder notes at Frank's request. The sweeper said he had done this the day before the murder. Everyone around headquarters appeared overjoyed. Chief Lanford highly praised Detective John Black, who had co-operated with Pinkerton man Harry Scott in breaking Conley down.

But then it was pointed out that a jury might not believe that Frank would have been stupid enough to ask his Negro porter to write a note of that character a day before he killed the girl. Black and Scott, after thinking this over for some time, agreed. But they said it might be very difficult to get Conley to say he had written the note on Saturday because he had insisted repeatedly while being grilled that he had not been near the factory at any time on Saturday.

However, after the two detectives had another chance to grill the sweeper, spirits at headquarters rose again. This time Conley apologized for making a mistake. He said he had written the note on Saturday, now that he came to think of it. Later he agreed he had written both notes. But he remained adamant in his denial of any knowledge of the murder.

On hearing of the change in Jim Conley's story, Chief Lanford brought the sweeper to Fulton Tower with the idea of having him face Leo Frank. But Frank refused to see them. He also continued to refuse to be interviewed by newspapermen, supposedly on orders from his attorney, Luther Z. Rosser.

Whoever made them, both these decisions were mistakes and were to prove very costly. On being presented with Conley's story about writing the obscene notes, the grand jury indicted Leo Frank for the murder of Mary Phagan.

The *Journal* on its front page, published samples of the hand-writings of Frank, Lee, and Conley so readers could compare them with that in one of the notes, a fragment of which was also reproduced. The layout showed the close similarity between Conley's writing and the note fragment. Along with this was printed a denial of published reports that detectives had ever "for a moment entertained the suggestion that Jim Conley, the Negro sweeper, was guilty of the crime" or had any hand in it except to write the notes at Frank's dictation,

and added: "The officers regard Conley as the most material witness. They declared he connects up all the circumstantial evidence gathered by them."

On May 29, two days after his last statement, the detectives got Conley to sign still another. In this version he admitted having helped Frank carry Mary's corpse from the metal room on the second floor to the basement. And it was announced that despite the various changes in Conley's statements neither Lanford, Scott, nor Chief of Police James L. Beavers thought the sweeper had killed the girl. They did concede, however, that the case against Frank might be difficult to prove because of the piecemeal way it had been assembled.

The next day (Memorial Day up North) the police took Conley to the factory to re-enact the moving—by him and Frank—of Mary's body for the benefit of the reporters and factory officials. Chief Lanford questioned Conley, who said he had confessed of his own free will and after reading the newspapers. "Everybody in the factory," he complained, "was trying to put the blame on me; then I decided to tell the whole truth." By this he probably meant interviews in which his fellow employees had expressed faith in Frank and distrust of him, and also a recent joint statement by the company's executives pointing out that the language of the notes was that of a typical Southern Negro and expressing doubt that Frank, after only a few years in Atlanta, would be able to dictate such notes.

Shortly after his graphic demonstration, Jim Conley was moved from the county jail in Fulton Tower to Atlanta police headquarters. Chief Lanford candidly said that he wanted the sweeper there so he could talk to him whenever he wished, day or night.

The murder trial of Leo Frank was first set to start in June, then postponed until Monday, July 28. Until then the defendant, his family, and lawyers had said little or nothing for publication. But now the defense started to use the newspapers as though in a last-minute attempt to turn the tide of public opinion.

This counter-move began with an accusation from Frank's wife Lucille, who charged that Solicitor General Dorsey had egged on the police into frightening her Negro cook, Minola

McKnight, into signing a false affidavit to build up his case against her husband.

Dorsey replied that the saddest part of his work as prosecutor lay in the sorrow it brought to the families of the accused. At this stage he seemed to be certain that he had a solid case against Frank. But he was also troubled about the flood of statements the police continued to issue. As the day neared for the trial to begin, he prevailed upon the grand jury to remonstrate publicly with the department for its many leaks. The one result of this was that Chief Lanford announced that in future his men would leave the issuing of all statements to him.

Shortly afterward Rosser said his first words about the case for publication. He branded the affidavit of Mrs. Formby drivell, denounced Conley as a brutal Negro jailbird, and had this to say about the police's handling of the case:

So swiftly were Lanford and his associates pursuing Frank that they ran over the Negro standing in their path with the mark of guilt clearly upon him. Finally the pressure of public suspicion brought this Negro to Lanford's attention. Conley began to talk. Negroes like to talk so as to protect themselves, and as a means thereby to cast suspicion upon somebody else. Ordinarily a detective could be trusted not to aid a Negro in an effort to clear himself by placing the crime on a white man, but in this case it is to be feared that the Negro was not discouraged. Lanford has finally banked all his sense, all his reputation as a man and a policeman on Frank's guilt, and it would be remarkable if he discouraged this Negro from involving Frank. If Lanford and his followers had acted wisely and kept open minds, seeking only the murderer and not seeking to vindicate their announced opinion, the Negro would have by this time told the whole truth.

Conley made one statement. It did not meet the announced opinions of Lanford. He made another. This second was not up to the mark: it did not sufficiently show Frank's guilt. Another was made which was supposed to be nearer the mark. Whereupon there was great rejoicing. Forgetting all others,

this last statement—reached through such great tribulation—was proclaimed the truth, the last truth, and that there would be no other statement.

But the most striking explanation of why the police had chosen to ignore the obvious target of suspicion—Conley—in favor of Frank was advanced by C. P. Connolly, several of whose articles on the case appeared in *Collier's Weekly* in 1914. In his book, *The Truth About the Frank Case*, he put it like this:

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 only hasten the graft investigation and the political overthrow which they (the police) feared above everything else. Besides, due 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 got Conley to write the notes since the public was also convinced of Frank's guilt. . . . They determined the sacrifice was necessary to save themselves.

Although Chief Lanford did not bother to answer Rosser's charges, he was summoned a few days later by the grand jury to explain the use by the police of the third degree on Minola McKnight, of which Mrs. Frank had complained. The chief told the grand jury that the third degree was not a method of torture but "one of the most valuable assets of the detective department and without it many of the city's most glaring crimes would go forever unsolved."

Chief Lanford explained that with Negroes one detective would taunt and deride him; then his partner, coming in a little later, would appear sympathetic to the suspect, thus hoping to win him over. But with whites, he said, this was less successful, as they were less credulous. With them the police resorted to the third degree, which he described as incessant questioning designed to frazzle the nerves.

Ten days before the trial the breaks suddenly seemed to start coming Frank's way. The first break came with the news

that at the last minute the Pinkerton man, Harry Scott, had decided that Jim Conley was lying and the man he had accused was innocent. It was also announced that a newly named foreman of the grand jury intended to call that body into session to indict Jim Conley. And then, less than a week before the trial, W. D. McWorth and L. P. Whitfield, two local Pinkerton men, announced that on May 10 they had found a "bloody bludgeon" in the cellar which the defense would contend was the stick with which Conley had beat Mary Phagan over the head as she came downstairs. (Previously the Pinkertons had found a discarded pay envelope with the dead girl's name on it, but this was only one of hundreds of envelopes that had been thrown away, and proved valueless.)

But Chief Lanford scoffed at the bloody bludgeon theory, saying that the stick as described to him was too light in weight to be used in an attack on anyone. He also insinuated that by not reporting their find to the police the detective agency had broken its agreement with the city and might well lose its license.

When the Grand Jury finally met, it did not indict Jim Conley. Solicitor General Dorsey, who had opposed the idea from the start, had little difficulty in talking the jurors out of that.

## **II. THE PROSECUTION**



Leo M. Frank was tried for his life in a makeshift courtroom on the first floor of the old City Hall Building. The proceedings began on July 28 before Superior Court Judge L. S. Roan, who had been reported so ill a day or two before that it seemed the proceedings would have to be postponed at the last moment. For days the heat in Atlanta had been all but intolerable. Many lawyers expected Frank's counsel to ask for a delay unless relief came.

The room used for the trial was chosen because a new million-dollar county courthouse being constructed that summer was not ready for use. Knowing that enormous crowds would attend, the authorities had installed extra chairs and fans, also a new ventilating device known as the "ozonator." But soon after the trial started this ventilating equipment proved to be inadequate, so the judge decided that the windows would have to be kept open. Since the courtroom was at street level this meant the crowd outside—so large some days that it blocked traffic—could look in at the proceedings through the windows. The part of the room behind the judge's bench and the witness chair overlooked a long alley lined with low sheds. Many who claimed later that Frank had not got a fair trial pointed out, by way of proof, that on these sheds, ten feet from the windows, more curious loafers sat, staring in and, when the mood seized them, shouting, "Hang that Jew or we'll hang you!" (among other threats) to witnesses, jury, judge, and lawyers. From time to time there were also hand-clapping, jeering laughter, and hoots from the spectators inside the courtroom. The judge,

old, ill and wretchedly uncomfortable, apparently could not summon the strength to assert his authority except by administering an occasional reproof. Here is how the *Atlanta Journal* described the carnival atmosphere of the first day's proceedings:

There were three crowds at the trial this morning, each had an aspect and characteristic as different as east and west: The crowd in the courtroom, the crowd around the door and in the street, and the throng of witnesses swarming through the upstairs room. As one approached the red brick courthouse down Hunter Street, he could see the corner near Pryor black with people. A car would turn the curve, the motorman clanging his gong vigorously so the packed mass would open and let the car go by. They were mainly men and boys. At intervals a woman accompanied by an escort would struggle into the doorway. Clear across Pryor Street the crowd outside extended. People stood in the doorway of a drug store, in the street, and little groups on sidewalks. It was a silent throng on the whole, speculating in whispers as to what was happening within.

There were hardly fifty out of the hundreds without who could hope to get inside the building, yet they were content to wait hour after hour, satisfied that they could look at the windows of the building which held a man on trial for his life. They would see the people in the upstairs windows laughing and chatting. . . .

The windows upstairs were crowded with women and girls laughing and chatting as if they were on a pleasure party. They'd ask each other, "Are you subpoenaed? Isn't this a lark?" etc.

Later on in the trial the witnesses upstairs got impatient and began singing to while away the time. They reminded Britt Craig, the reporter, of people at a camp meeting, with their "songs of the Old Country Church." Among those they sang with zest was:

*There is a fountain filled with blood,  
Drawn from Emanuel's veins,  
And sinners plunged beneath that flood  
Lose all their guilty stains.*

Though "they rocked the building with music," Mr. Craig said there were no complaints from the people in the court. Instead "there was rejoicing."

In the courtroom itself, the lawyers were grouped around tables in front of the railing separating them, along with the defendant and his family, the witness chair, the judge, the court stenographer and other personnel, from the public section. The reporters had been assigned a table to the rear of the rather small, improvised courtroom.

Of the six attorneys working on the case, Luther Ziegler Rosser quite properly drew most of the attention. Rosser was then fifty-three and at the peak of his considerable powers. He liked playing the role of an old country boy who was still a rough diamond despite his long acquaintance with the city and its sophisticated ways. He was stout, wore old-fashioned clothes, a bowler hat, carried a knobby cane, and hated to have his photograph taken. He also had never been seen wearing a tie since the day he graduated from law school—with one exception: the day he got married.

His chief associate in Frank's defense was an equally celebrated criminal lawyer, Reuben R. Arnold, who had been called in to help a few weeks before the proceedings started. An aristocratic, heavy-set man with curly blond hair, Arnold was aptly characterized by Solicitor General Dorsey during the trial as "the mildest mannered man who ever cut a throat or scuttled a ship."

Herbert Haas, one of the Montag Brothers' lawyers, was the third man on the defense's legal team. He was younger and less experienced than the other two but, it will be recalled, had worked with Rosser since the defendant's arrest.

It is a familiar complaint among newspapermen that in the past quarter-century or so there have been few, if any, circus-like murder trials such as those in which Ruth Snyder and Judd

Gray, Harry Kendall Thaw, Chester E. Gillette, Lizzie Borden, Bruno Richard Hauptmann, Theo Durrant, and Mrs. Frances Stevens Hall were tried for their lives.

The same old wistful reporters also lament the disappearance of the tricky, quick-thinking, brilliant spellbinders who, more often than not, defended or prosecuted—sometimes both—the alleged killers. There were at least three types of these sensational courtroom performers: the old country boy type, typified by Clarence Darrow; the soft-spoken, well-bred gentleman whom Francis L. Wellman perfectly exemplified; and the master opportunist and courtroom hypnotist who so fascinates juries that they forget logic, as was William J. Fallon.

It may be of some interest that all three types, in a general way, at least, were represented in Frank's trial. Obviously Rosser was the old country boy, Arnold the gentleman and, less obviously, Dorsey the jury-hypnotizing opportunist. In fact, when the trial started many reporters harbored doubts that Dorsey, then forty-two, had the required cunning and resourcefulness to overcome the combination of Rosser and Arnold, admittedly both criminal attorneys of outstanding skill and great experience. But Dorsey, smaller physically than his opponents but always an audacious courtroom scrapper, had recognized from the first that the Frank case promised to be his big chance. Whether this ambitious prosecutor would prove as ruthless and reckless as he would need to be to beat his distinguished opponents in this improvised courtroom remained to be seen. His assistants were most able: Frank A. Hooper, a handsome, impeccably dressed corporation lawyer who had volunteered to help him without fee; and E. A. Stephens, the Assistant Solicitor General.

Some of the many lawyers who attended the session as spectators doubted that Dorsey could obtain a conviction unless he came up with one or more sensational surprise witnesses.

These attorneys contended that apart from Jim Conley's story, the prosecutor had very thin material to work with. And he could not be sure, they added, that the sweeper's evidence would withstand the sort of high-powered cross-examination the defense lawyers would certainly subject him to. In addition, Dorsey appeared to have only:

1. Frank's excessive nervousness.
2. His apparent contradiction of his own original statement that Newt Lee's time slip was punched correctly.
3. Frank's denial that he knew Mary Phagan even by sight.
4. His attempt to cast suspicion first on Lee, then on J. M. Gantt, the white employee he had fired.
5. His alleged withholding from the police the information that Jim Conley could write.
6. The conflicting stories the police said he gave them about the precise time he had left the factory to go to lunch on the day of the murder.

It did not seem enough for even a vigorous and resourceful prosecutor such as Dorsey to support Conley's story. And he could only succeed if the jury accepted and believed Jim's entire account, detail by detail. "Would they?" That was the big question.

Something Thomas E. Watson, editor of the anti-Catholic anti-Negro weekly, *The Jeffersonian*, and later United States Senator, is supposed to have said during the trial is worth noting. Watson, who later used his magazine to whip up mob passion against Frank and his defenders, was quoted as criticizing Rosser and Arnold "for risking their client's neck in Atlanta, where there is so much excitement and public sentiment is so overwhelmingly against him. He has about as much chance as a snowball in hell."

This is a point that has never been explained. Why did not Rosser and Arnold seek a change of venue on the ground that the defendant could not get a fair trial with public feeling as it was?

The Monday morning the trial began Leo Frank had been brought to the building early. Sheriff Wheeler Mangum had decided this was the best way for his prisoner to avoid attention as they rode through the streets. Until court opened Frank was quartered in a small room in company with his father-in-law and two of the sheriff's deputies.

Despite having been in a cell for three months, Frank appeared to be in excellent health. Sheriff Mangum had permit-

ted him to have as many visitors as he wished. With many of these he had played checkers and chess for hours on end. Though Mrs. Frank had not visited him during his first two weeks in jail, she had been a daily visitor thereafter. Frank's lawyers explained that her absence had been at the prisoner's request and to spare her being questioned by the reporters. His spokesmen also said that she had not looked at a newspaper since shortly after the crime because the early reports had made her hysterical.

On that first day of the trial Frank's wife visited him in the little room where he waited for Judge Roan to call the court to order. Accompanied by her mother, handsome Lucille Frank was heavily veiled and dressed entirely in black—as if for a funeral. But as she kissed her husband that morning she managed to whisper something cheerful enough to make him smile.

To everyone's surprise the selection of the jury required only four hours. Most of the courtroom attachés had been saying it would take several days to fill the jury box. From Frank's point of view it looked like a very good jury. The average age of the twelve men was thirty-five and all but one of them were married. For the most part they were young, progressive-minded, intelligent-looking businessmen. The *Constitution* pointed out proudly that there were among them no professional jurors, rustics, or lowbrows.

With the jury in the box, Frank A. Hooper opened for the state with an address remarkably short and offering neither many facts nor much emotional appeal.

But if there was any question as to whether Solicitor General Dorsey intended to maintain this detached attitude he dispelled it when he put Mary's mother on the stand as his first witness. After Mrs. Coleman had described her daughter's last morning, Dorsey asked these questions:

Q. How old was she, Mrs. Coleman?

A. She was nearly fourteen years old. She would have been fourteen on June 1. [Here the bereaved woman had to stop for several moments to regain control of herself.]

Q. Was she pretty or ugly?

A. She was pretty, mighty pretty.

Q. Did she have dimples in her cheek?

A. Yes, a dimple in each cheek.

On being asked to identify the now soiled holiday outfit Mary had worn that day—Dorsey held the little dress up for her to see—Mrs. Coleman collapsed. Gallantly declining to press her (he had the witness identify the clothing two days later), the Solicitor General chose that agonizing moment to turn the witness over to Rosser.

The defense was equally gentle in cross-examining Mrs. Coleman. Rosser all but confined himself to questions about the still missing "small bunch of flowers and pale blue ribbon," from Mary's hat. He did try to get the witness to say that Mary "had detested the Epps boy." But when the prosecution objected, Judge Roan quickly barred that line of questioning.

The second witness was little George Epps himself. His head was shaven clean and he was barefoot. As at the inquest, he proved an alert and eager witness. On a defense objection, however, the court refused to let him repeat what Mary had allegedly said to him about Leo Frank on the trolley car ride. That left the time he claimed Mary got off the car (12:07 p.m.) as the one vital point of evidence in the newsboy's testimony. In his cross-examination, Rosser got to that without delay.

Q. (by Mr. Rosser) How did you know what time it was when Miss Phagan joined you going downtown that morning?

A. I looked at a clock just before I took the car.

Q. You didn't say anything about a clock when you testified before the Coroner's Jury.

A. No. But I looked at one that time just the same.

Q. How did you know what time it was when Miss Mary left you?

A. I estimated it from the time she got on the car and I told it by the sun. I can tell time by the sun.

Q. You can tell the time to within seven minutes by the sun, then?

A. Yes, sir, I can.

Q. Did Mary get off the car with you?

A. Yes, sir. She and me got off there and she went across the bridge towards the pencil factory and I went under the bridge to get some papers to sell.

Q. What time was it when you finished selling your papers?

A. I don't know, sir.

Q. Couldn't you tell by the sun?

A. No, sir. The sun had went down by that time.

As George stepped down, Rosser smiled. There had been no sun on April 26, a gray and dreary day.

Toward the end of the day Newt Lee, the pencil factory's tall, thin Negro night watchman, took the stand. He proved a surprisingly calm and intelligent witness. Lee said that during his three weeks on the job he had been reporting at the pencil factory at six p.m. on weekdays and at five on Saturdays. But the day before the murder Mr. Frank had asked him to come in at four that Saturday, explaining that he wished to "get off earlier than usual" as it was a holiday.

Q. (*By Mr. Dorsey*) What did he do when you went to the second floor on Saturday, the 26th?

A. He came to the door, rubbing his hands and saying he was sorry I had come so early. I told him I needed sleep and was sorry, too. He said, go out in town and have a good time because I needed it. I told him again I needed sleep, and he said I needed a good time.

Q. Could you have slept in the factory?

A. Yes, sir. In the packing room.

Q. When did Frank say you were to come back to work?

A. He said for me not to be gone more than an hour and a half.

Q. What did Frank say when you came back?

A. I went to the door, told him I was back and he asked me what time was it. I told him it was six o'clock, and he said, "Don't punch the clock yet; there are some workmen upstairs."

Q. What did he do then?

A. He put in a slip for the time clock.

Q. Did you see Gantt that afternoon?

A. Yes, sir. I saw him downstairs a little after six o'clock. He came across from a saloon and told me he had left a pair of shoes in the factory and that he wanted to get them. About that time Mr. Frank came downstairs unexpectedly. When he saw Gantt, he jumped back a little, frightened.

Q. What conversation ensued?

A. Mr. Gantt said he had left a pair of shoes in the place, and Mr. Frank said he had seen the boy sweep out a pair of shoes just a short time back. He said they were tan shoes. Mr. Gantt said he had left a pair of black ones too. Mr. Frank dropped his head a minute and said for me to go in with Mr. Gantt to get his shoes. We went into the shipping room and found both a pair of black shoes and a pair of tans.

Q. Did you see Mr. Frank any more that night?

A. No, sir.

Q. Did he telephone you?

A. Yes, sir. About seven o'clock, about an hour after he had left.

Q. Had he ever done that before?

A. No, sir.

Q. What did he say that night when he telephoned?

A. He said, "This is Mr. Frank, How is everything?" I told him that everything was all right, so far as I knew.

The night watchman was next asked about lights and he said that there was one light on the first floor near the Forsyth Street entrance to the building. Dorsey then produced a diagram of the factory and had the witness point out the location of the light.

Q. Did Mr. Frank say anything about that light?

A. Mr. Frank said, "Keep this light burning because it won't cost but a few cents."

Q. Was it burning Saturday afternoon?

A. Did you ever see a lightning bug? It looked just like one Saturday evening, just a tiny little light. That morning I had left it burning bright.

Q. What were Frank's instructions as to your rounds?

A. To make them every hour and every half-hour, on the hour, and on the half.

Q. Did you make your clock punches regularly on the night of April 26?

A. Yes, sir.

Q. Up to 3 a.m. did anything happen out of the ordinary?

A. No, sir. But at three o'clock I went to the basement closet and discovered the body. When I went to the toilet I

looked around towards the back door and picked up my lantern and saw something in the corner. I thought that, as it was a holiday, some devilish boys were trying to play a joke on me. When I saw what it was, though, I got out of there.

Q. What happened then?

A. I called the police station and tried to get Mr. Frank, but couldn't.

Q. When did you see Frank?

A. On Sunday morning, when they took me back to the pencil factory from the station house. That was about seven or eight o'clock, though. He was coming in the office where they had me.

Q. How did he look at you?

A. He looked at me and out the door, dropped his head, and didn't say anything. Mr. Darley, who was in the office, said, "Too bad, Newt. I don't believe you did it. I think you know something about it."

Q. Was any examination made of the time clock?

A. Yes, sir. By Mr. Darley, I think.

Q. Did anybody say anything about the clock being punched?

A. Mr. Frank opened it and said the punches were all right.

Q. What did he mean by "all right"?

A. Meant it was correct, accurate—punched every half-hour, beginning at 6 p.m. and ending at 3 a.m.

Q. After Frank left you in the office that morning, when did you see him again?

A. He went back to the station house with me in the automobile.

Q. Did he say anything?

A. No, sir.

Q. Did you see him any more?

A. Yes, sir. Some time soon after I was arrested they came to my cell and said they were going to let me and Mr. Frank have it out. I didn't know whether they wanted us to fight, or what. They put me in a room by myself, handcuffed to a chair, and brought Mr. Frank in. He looked at me and dropped his head. We were alone. When he looked up, I said, "Mr. Frank, it's mighty hard for me to be handcuffed to this chair for something I didn't do." He said, "What's the difference? They've

got a man guarding me." He also said he didn't believe I killed the girl, but said he thought I knew something about it. I told him I only discovered the body. He said, "Yes, and if you keep that up, we'll both go to hell." The detectives came in at that time.

Q. When Mr. Frank asked you on Friday, the 25th, to come in at four o'clock the next Saturday, did you object?

A. Yes, sir, but I agreed to come.

Rosser, in his cross-examination, got Newt to agree that, with the front door unlocked, a rapist-murderer might wander freely about the building without Frank, if he were in the second-floor office, knowing it.

Q. Did you go into the machine room and every floor of the building every half-hour that night?

A. All except the basement. I went there every hour.

Lee explained that until three o'clock that morning he had just gone down the ladder and looked around while standing near it. He did not walk through the cellar because his main task down there was to watch out for a fire, something he would detect from the foot of the ladder. He explained that he was going to the toilet in the cellar at 3 a.m. when he first saw the girl's body. He said he did not notice the girl's hat or parasol or shoe at the time, but this might have been because his lantern was dimmed by soot.

Lee was still on the stand when court adjourned for the day.

The next morning Rosser had to ask several questions of Newt Lee to establish that he had only gone about ten feet from the ladder before catching sight of Mary's body. But this apparently was because Newt was not accustomed to computing distances in feet. The Negro's earnestness seemed evident, along with his desire to tell nothing but the truth as Rosser's cross-examination continued.

Q. What did you do when you saw her?

A. I stood there and looked at that body until I made it out, and then I lithered [left in a hurry].

Q. Did you know it was a white girl?

A. I seed her frizzy hair and some white spots on her.

Q. And later you went back there with the officers?

A. I didn't go with them. They chased me down there and one of them says, "She's just a child and she's been down here two or three days . . ."

Though promptly stopped there because he was offering hearsay as evidence, Newt Lee was doing better than he knew. Perhaps his most impressive moment came when he became aware that the white man questioning him, who had seemed so friendly the day before, was trying to trap him into *seeming* a liar.

"Cunel, you see me sitting here," said Newt Lee then, with all the earnestness he could summon, "well, just as sure as I'm sitting here that lady's body was laying there like I done tole you."

Q. How do you know the time it was then when Frank put the tape in the time clock?

A. Well, Cunel, a little while ago you took off your specs, and I wasn't paying no special attention, but I know you did just the same.

Lee was followed on the stand by a series of police witnesses who described the progress of their preliminary investigation from the moment they got Newt's telephone call. They also gave their explanation of how their suspicions originally centered on Leo Frank because of his extreme nervousness.

The third police witness was Detective John Black, who had co-operated with the Pinkerton man, Scott, in obtaining the various versions of the crime from Jim Conley. Though he had been a detective for only four of his six years in the Police Department, the forty-year-old Black had been praised by the *Constitution* just before the trial began as the local force's "star investigator."

Under Dorsey's skillful questioning Black went much farther than previous witnesses in emphasizing the defendant's nervousness. He said that when he called for Frank on the morning after the murder, the defendant had betrayed his inner feelings "by the way he couldn't put on his collar and tie . . . his hoarse and trembling voice . . . his paleness . . . and how he kept asking what had happened in the factory."

The prosecutor also tried to capitalize on another point as an indication of Frank's guilty fears:

Q. Mr. Black, please state when Frank first had counsel?

A. On Monday morning . . . We reached the station house at eight-thirty o'clock, and in a few minutes Mr. Rosser came in, Herbert Haas following him a moment later.

Q. Did you hear Haas make a statement in Frank's presence?

A. Yes, Haas demanded that Chief Lanford and the detectives search Frank's residence. That was about 11:30 a.m.

Q. Was Frank under arrest at the time?

A. No.

Q. Was he restrained of his liberty?

A. No. But Haas said he was Frank's attorney, and was entitled to demand a search. [This demand was made, it should be recalled, to prove the absence of telltale seminal or blood stains. It seems to have occurred to no one at the time that a murderer would have washed or burned or otherwise destroyed clothing bearing such incriminating evidence.]

Q. Do you know what took place between Frank and Lee on Tuesday night?

A. I suggested to Frank that he take Lee in a room and try to get something out of him. They went together in a locked room and stayed five or ten minutes.

Q. Did you talk with Frank after he had been in the room with Lee?

A. We went inside where they sat, and Frank said Newt stuck to his story. He said he told the Negro that it looked like he knew something, as no one was at the factory but him that night. He said he could get nothing out of him.

Q. Did you talk with Frank with reference to getting data on the murder? If so, what did he suggest?

A. In a way, he seemed to suspect Lee and Gantt. He said no one was there from 6 p.m. but Lee, and the Negro should know something of it. He also stated that Gantt had been there that Saturday afternoon.

Q. When did Frank first say anything about Gantt, before or after Gantt's arrest?

A. Before.

Q. Did he mention anybody else?

A. Yes, Jim Conley. [This was the first intimation that Conley's name had been brought up that early in the investigation,

but the Solicitor General ignored it.]

Q. After you and Detective Haslett arrested Frank, did you observe his demeanor?

A. He seemed to be a little nervous, just as any man would be who had been arrested.

Q. Was Frank excited? If so, tell why you think he was excited?

A. On Monday Frank was jovial and friendly—on Tuesday he was sullen and unwilling to talk.

Rosser's cross-examination of Atlanta's star police investigator quickly established the caliber of Detective Black's memory.

Q. Wasn't it eleven o'clock before I got to the station?

A. No. I know that you got there between eight-thirty and eight o'clock.

Q. Didn't you swear a little while ago that I was there at eleven?

A. I won't answer it.

Q. Didn't I say, "Frank, what have they got you for?" and he answered, "They want me to make a statement"? Didn't I say, "Give it to them"? Didn't Lanford say, "Come on in here," like he was snarling at a Negro?

A. No. He didn't talk that way.

Q. Finally, after being released, Frank went home unmolested?

A. Yes, but he wasn't "released," as you call it.

Q. You swore so, didn't you?

The witness did not answer this.

The defense attorney next forced Detective Black to state that as far as he knew Frank had answered every question promptly and willingly at the inquest.

Q. And it isn't true that he declined to make a statement?

Again there was no reply.

Q. You're depending entirely upon your recollection, aren't you?

A. Yes.

Q. Then why is it you recollect so well some things, and fail so badly in others?

No answer.

Q. What time did you get to the Selig home?

A. I don't recollect perfectly.

Q. Why did you wait to tell Frank of the murder until you had got away from his home?

A. I had talked with Newt Lee, and therefore wanted to question him.

Q. Hurry and scurry is an enemy to memory, isn't it?

A. Yes.

Q. What sort of collar and tie did he have on that day?

A. I don't remember.

Soon after this the mind of John Black seemed to go utterly blank.

Q. Did Frank and Darley both say the slip was punched wrong?

A. I don't know.

Q. Frank intimated Gantt had been caught stealing, didn't he?

A. I think so.

Q. Were you present when Frank revealed his underlinen to me at police headquarters that Monday?

A. I don't recollect that I was.

Q. You were there when Mr. Haas made his demand, weren't you?

A. I was at police headquarters, but was on the outside of Chief Lanford's office.

Q. Didn't I, myself, demand that Haas go with you?

A. I didn't hear it if you did.

Q. Didn't you testify just now that Haas, in my presence, had made the demand?

A. I did not say in your presence.

Q. Wasn't I there?

A. I did not see you.

Q. In accordance with Haas's demand, didn't you go to the Frank home?

A. Yes, I went and examined his laundry.

Rosser next brought out that on the Tuesday morning after the murder the witness also had gone to Newt Lee's house and there found the bloody shirt. Getting this shirt from the prosecutor, the defense lawyer held it up so that the jury could see

the big red stains as the witness identified it.

When Rosser asked if Newt Lee had admitted it was his shirt, Dorsey jumped up and shouted that the shirt was a "plant" and that he also intended to prove that Frank had said the time clock was correct and two days later contradicted himself on this point. The next few questions—asked alternately by Rosser, Dorsey, and Judge Roan—reminded those in the courtroom why both sides considered the time clock so important.

Q. (by Mr. Dorsey) Would Lee have had time to get to his home that day [Sunday]?

A. I don't know.

Q. Did Frank ever tell you that Lee could have found time to get home, in view of the inaccuracy of his punches?

A. Frank said he could.

Detective Black then testified he had gone to Lee's home after Frank told him that Lee would have had time to go home and get back to work, according to the time record on the clock. Though a Negro woman was there, the witness said he had used a skeleton key to get in and had found the shirt under an old-clothes barrel there. But he was unable to say when the conversation with Frank about Lee's time slip had taken place.

As Detective Black left the stand, he said sheepishly to Rosser, "I don't like to admit that I'm crossed up, but you've got me in that kind of fix and I don't know where I'm at."

J. W. Gantt, so long-legged that he seemed to be sprawled all over the witness chair, was the day's last witness. With a smile he admitted being fired from his job as shipping clerk-paymaster less than three weeks before the murder. He said it was due to an "alleged shortage."

Q. (by Mr. Dorsey) Did Leo Frank know Mary Phagan?

A. Yes.

Q. How do you know this?

A. One Saturday she came into the office for her time record. Frank came in and said, "You seem to know Mary pretty well."

Q. When was that?

A. Some time last Christmas.

Q. How intimate were you with Mary?

A. I knew her when she was a child.

In answer to another question, Gantt said that the time clock which Mary and the other girls punched daily could be seen from Frank's desk except when the door of the safe was open. The purpose of this, as further questions made clear, was to establish that Frank had plenty of opportunity to see the dead girl as she punched in and out of the factory each day.

After Gantt had confirmed Newt Lee's story of Frank's encounter with him at six o'clock on the fatal day, the witness was turned over to Rosser, whose cross-examination consisted of this one question:

Q. You'll admit to this [reading from Gantt's statement before the coroner's inquest]: "I never saw Mary Phagan in Frank's company, never knew he was acquainted with her"?

A. Yes.

Court adjourned that day at 4:50 p.m.

Next morning's *Constitution* declared that the amazing absentmindedness of Detective Black on the stand had inspired Frank's family and friends "with high hopes for his acquittal. They were nothing short of jubilant."

There was a tense moment next morning when the Solicitor General called as his first witness Harry Scott, the round-faced, twenty-seven-year-old Pinkerton man. Because of Scott's last-minute decision that Conley had been lying, and also due to his curious position as investigator for *both* defense and the state, no one knew just what direction his testimony would take.

The prosecutor began by having Scott describe his first talk with Leo Frank in the factory office on the Monday after the murder, which was also the day before Frank was arrested. The Pinkerton man said,

"He told me about the crime and stated that he and the directors of the company had decided that the public demanded a thorough investigation to find the murderer. Then he said he had just left the police station and that Detective Black seemed to suspect him."

In repeating Frank's description of his movements on Memorial Day Scott differed on three vital points with the story the defendant had told the police.

1. That when Mary asked if the metal had come, Frank said he had told her "No." Scott's story was that Frank had originally told him he had said to Mary "I don't know."

2. That Frank had told him he had left the factory to go home for his noonday meal at "ten after one." The defendant had since declared it was at one o'clock that he had left.

3. That Frank had told him in that first conversation of theirs that "Gantt knew Mary Phagan very well and was intimate with her."

The first point Scott made, of course, substantiated the state's argument that Frank had lured the girl into the metal room by getting her to go with him to see if the shipment had come. The second allowed him ten more minutes to kill her and, with Jim Conley's help, get the body into the basement. The third showed that Frank knew Mary (despite his denials) and indicated that he had tried to shift suspicion to Gantt.

Despite all this Solicitor General Dorsey charged his witness with double-crossing him when he said that Frank had given him no further details about Gantt's and Mary Phagan's relationship. "The State has been trapped!" roared Dorsey. "The witness told me something and now he doesn't remember it. I'm not trying to impeach him. I'm simply trying to refresh his memory." And he again cried, "The State has been trapped! The State has been trapped!"

In the end he got the embarrassed Scott to admit that Frank had said "Gantt paid a great deal of attention to her."

Shortly after this the prosecutor angered the defense by asking Scott whether Frank's lawyers hadn't suggested that he suppress evidence. The court agreed with Rosser's argument that a man on trial could not be held responsible for what his lawyers did. But by rephrasing his questions Dorsey got the point across—like this:

Q. What was said about the matter?

A. During the first week in May, Pierce [the Pinkerton chief in Atlanta] and I went to Herbert Haas's office to discuss the handling of the case, and we told him we had strong suspicion of Frank. Mr. Haas said he would rather we would submit what evidence we might get to him before turning it over to the police, so that they would know what the evidence was,

and we told them we would quit the case rather than handle it that way.

Q. What was Frank's demeanor when he told you and Detective Black he had got nothing out of Newt Lee after talking to him?

A. He was extremely nervous; he squirmed in his chair and crossed and recrossed his legs. He didn't seem to know what to do with his hands and put them all over his face and rubbed his mouth with them several times—four or five times—and hung his head, swallowed hard, and sighed.

Scott also testified that he noticed some "white stuff" around the place where the blood stained chips had been cut out of the metal-room floor. He said this "white stuff appeared to have been smeared on rather than "merely spilled."

While cross-examining the Pinkerton man, Rosser also asked him to straighten out the jury about his associate, Herbert Haas.

Q. Mr. Haas said he wanted to find the murderer, whoever he might be, didn't he?

A. Yes, he said that *after* I told him we would quit the case before submitting new evidence to him—before going to the police.

Bitterly, Rosser attacked Scott's direct testimony, forcing the witness to admit not mentioning in his pre-trial statement that Frank had said anything about Gantt's "intimacy" with Mary. Or that the defendant had been nervous during their original conversation. He also forced from Scott an admission that during the inquest he had said nothing about the white smears he now claimed to have seen around the blood-stained chips. The defense scored again in this exchange:

Q. You say now that Frank told you that he left the factory about one-ten. But didn't you report to me that Frank said he left about one o'clock?

A. No, I said one-ten.

Triumphantly, the defense attorney showed the witness the report in his hand, whereupon the Pinkerton man said sullenly, "That was an error, it should have been one-ten."

Though it was the Scott testimony that got the newspaper headlines that evening and the next morning, the brief appear-

ance on the stand of Monteen Stover, former employee of the pencil factory, probably had more effect on the trial's eventual outcome. Unlike Scott and Black, Miss Stover ended up with the same story she had started with.

Q. (by Mr. Dorsey) You were at the factory on April 26?

A. Yes, in Mr. Frank's office.

Q. How long did you stay there?

A. Five minutes.

Q. Was Frank there, or was anybody in the building?

A. Mr. Frank was not there and I saw no one in the building.

Q. Did you look at the clock?

A. Yes, the first thing I did on going in was to look at the clock. It was twelve-five, and I looked at it when I went out and it showed twelve-ten.

Q. How were you dressed?

A. I wore a little yellow hat, a brown dress and had on tennis slippers.

Q. How about the door just east of the girls' dressing room, was it open or closed?

A. I don't know.

Q. Did you see a coat or hat, or any part of a man's apparel in Frank's office?

A. No.

Q. Why did you leave?

A. I thought that they had finished paying off.

Q. Ever go into that office before?

A. No.

Rosser, cross-examining, was able to show that Miss Stover was so unobservant that she had noticed neither the safe nor the men's wardrobe in that office. But on the vital point in her testimony—that the man on trial had not been in his office between 12:05 and 12:10—he failed to budge her.

Another girl employee, Helen Ferguson, testified that on the day before the murder she had got her pay from the defendant. She said that she also had asked him to give her Mary Phagan's pay envelope, but that he had refused to do this, declaring Mary would get it herself.

Other witnesses that day included R. P. Barnett, the machinist who reported finding the hair and blood spots, other factory employees, another detective and William P. Gheesling, the embalmer at Bloomfield's. Gheesling's testimony was grisly enough to have satisfied the most morbid person in the overheated courtroom.

"I first saw the body at four o'clock in the morning of April 27 on the floor of the factory basement," he said. "It was lying on the face with arms crossed and with a piece of wrapping cord and part of her underclothing looped around the throat. I put it in a basket and brought it to the P. J. Bloomfield undertaking establishment."

In reply to subsequent questions of the prosecutor he explained that the cord around the throat had sunk into the flesh to the depth of an eighth of an inch and that the girl's tongue protruded from her mouth a quarter of an inch.

The embalmer estimated that when he first saw the corpse Mary Phagan had been dead from ten to fifteen hours, possibly longer. He said he had found the blood on the child's underclothes and a black spot on the eye which he judged had been inflicted before death (because of the swelling). The wound on Mary's skull he thought had also been inflicted before her death because "blood had run from the gash, was matted in the hair." A hose supporter, he added, had been ripped loose from her corset.

Cross-examined by Rosser, the undertaker answered all questions freely except those involving trade secrets and the tricks of his embalming skill. But he was extremely generous with medical misinformation.

Q. Rigor mortis sometimes sets in fast, doesn't it?

A. Sometimes even before death.

Q. What are the particular kinds of cases with which you have had experience?

A. Bob Clay, who was recently hanged, and another executed man's corpse.

Q. In the case of death you embalm the body before the end of rigor mortis, don't you, so that the rigor [stiffness] can be retained?

A. Yes.

Q. When the heart stops, the blood stops wherever it is, doesn't it?

A. No. It goes back to the heart.

Q. What kind of fluid do you use?

A. My private kind.

Q. What ingredients is it composed of?

A. I would rather not reveal them. It is a formula of my own and I would rather not tell it.

Q. How much blood was extracted from Mary Phagan's body?

A. About one-half gallon. An equal amount of embalming fluid is injected.

Additional technical testimony was offered by Dr. Claude A. Smith, city bacteriologist and chemist, who had examined under a microscope the blood-spotted floor chips and also the bloody shirt found in Newt Lee's home. He said he had found blood corpuscles on one of the floor chips, but refused to say this was human blood.

Q. Did you examine the bloody shirt?

A. Yes. I inspected the spots. In the armpits of the garment I could find an odor or evidence that it had been worn since having been laundered last. Some spots were smeared on the inside and had not penetrated to the outside.

Dr. Smith also made the delicate observation: "The shirt didn't smell like a nigger," which Rosser asked to have expunged from the record. Overruled, Rosser protested, "I know as much about nigger smell as he does." And as it was Atlanta, Georgia, in the year 1913, no one in the courtroom, including Judge Roan, protested at the following exchange which took place during Rosser's cross-examination of Dr. Smith:

Q. The shirt had the odor of blood on it when you first got it, didn't it?

A. Yes.

Q. Then, wouldn't the odor of blood have killed the odor of nigger?

A. No.

Q. Then if a nigger had just put on his shirt and had taken it off in an instant, your nose would get him?

A. Have you ever smelled a Negro, Mr. Rosser?

"More than you ever smelled," said the defense lawyer scornfully. "I was smelling them before you were born."

Having thus established himself as an expert in this field, Rosser got the witness to say that only one of the chips had blood on it and that if there had been blood on the others he would have found it. And he stated that he could not tell whether the blood was fresh or not.

Just before the end of the court day Solicitor General Dorsey again complained in an outraged voice that he had been "trapped" by one of his own witnesses. The "double-crosser" this time was E. F. Holloway, a sixty-year-old employee of the factory whose duties included running the elevator and taking care of the freight. He testified that on Memorial Day he had operated the elevator from 6:30 to 11:35 a.m. He was denounced by the prosecutor when he declared he had left the elevator's power box unlocked that day.

"Your Honor, I've been trapped by this witness! On May 12, before Detectives Campbell, Starnes, John Black, and my stenographer, Mr. Holloway swore that he had locked this power box on Saturday, April 26, and that he always kept it locked."

"I said I locked it on Friday," protested the witness to the judge. But, shaking his head, the prosecutor insisted, "He swore on May 12 that he locked it on Friday *and* Saturday!" Then he turned to the quivering man on the stand.

Q. Didn't you, Mr. Witness?

A. (*mumbling*) I don't remember.

Q. Will you deny having sworn it?

A. No.

Q. Was it locked that Saturday?

A. No.

Q. Why did you *say* it was locked?

A. Because I forgot. [The significance of this exchange was established only later, during Jim Conley's testimony.]

Q. Did you notice J. M. Gantt's association with Mary Phagan?

A. Yes.

Apparently satisfied, the prosecutor turned over the witness to Rosser, who lost no time in getting into the record an explanation of the contradiction Dorsey had just brought out. Under Rosser's questioning, the witness said that he had forgot to tell the prosecutor he had sawed some lumber that Saturday morning for Denham and White. The saw used the same power as the elevator and he had neglected to lock the switch box after he was finished.

Rosser also used Holloway to bring out the fact that all of that morning the factory's front door was unlocked and that any stranger could have come in and wandered about the building at will. He said the sort of cord used to strangle Mary Phagan could be found anywhere in the building, including the cellar. He testified he had seen in the building that morning Frank, Newt Lee, Denham, N. V. Darley, Hattie Smith, and Alonzo Mann, Frank's office boy.

A colorful if somewhat grotesque touch was added that day by the appearance in court of buxom and pretty Mrs. Callie Appelbaum, who was described as slipping quietly into the rear of the courtroom to sit down "near the press table unnoticed."

The reporters considered Mrs. Appelbaum an expert on murder trials because she had recently been acquitted of shooting her husband.

Now, as reporters buzzed around the attractive widow, she told them with a brave smile, "Every Sunday I go out to Mr. Appelbaum's grave and put flowers on it. I make the trip even when I am sick."

She had come to the trial, she said, hoping that her presence (as one who had beaten a tough murder rap) would cheer up the man now fighting for his life. The murder looked to her "too much like the work of a Negro" and she predicted that Frank would be cleared "because right is right, and will conquer."

Asked to sit at the press table, curvaceous Callie graciously assented.

"I think you boys do owe me some consideration," she said, as she settled her well-padded contours in the midst of the

admiring journalists. "Remember the 'copy' I once furnished you?"

An important witness on August 1 was Dr. H. F. Harris, the prosecution's medical expert. A professor at the Atlanta College of Medicine, assistant professor of bacteriology at another medical school, Dr. Harris was also director of the State Board of Health laboratories. He testified that he had not examined the body of Mary Phagan until May 5, or nine days after her death.

After describing the dead girl's injuries, Dr. Harris said that the blow on Mary's head might have made her unconscious, but he was convinced that the cause of death was strangulation. He based this on the protruding tongue, congested blood, and other physical evidence. Far more important was Dr. Harris's testimony about the time Mary died. He said that judging from the state of the bread and cabbage she had eaten for breakfast this must have been from thirty to forty-five minutes after her morning meal. But he refused to commit himself about whether or not she had been outraged, though he was of the opinion that her sex organs showed that violence "of some sort" had been done her.

Due to a sudden attack of illness, Dr. Harris then had to leave the court. He returned twice more on other days to complete his testimony and was cross-examined by Rosser's associate, Reuben R. Arnold. He had little more to add, however, and remained unshaken by the defense lawyer's questions.

The Solicitor General was jubilant over Dr. Harris's statement about the time of death. The physician's estimate set the time at shortly before or after twelve o'clock, which was precisely the hour the state contended Frank had murdered Mary Phagen.

Mrs. Maggie White, wife of one of the two mechanics working on the fourth floor while Mary was being choked to death, testified next. She described her two visits to the factory that morning and told how Frank had come upstairs to announce he was locking the door as he started home for dinner.

On coming downstairs herself right after that, Mrs. White

said, she had seen Frank in his outer office and then "a Negro behind some boxes as I came down the steps. It was on the first floor, close to the stairway that goes up to the second floor, and at about ten minutes to one." (When Mrs. White heard about the murder she told Frank about this encounter with the Negro on the stairs. He always insisted that he passed on this information to the police, and both Mr. and Mrs. White are also supposed to have reported the incident to the authorities. Why this promising lead was never followed up remains one of the baffling features of the case.)

The next witness for the state was N. V. Darley, the factory's superintendent in charge of machinery. He told the court that Frank had been so nervous when he went to the basement with the detectives that he was unable to nail up the back door. His hands trembled so, said Darley, that he himself had taken the hammer from Frank and done the hammering for him.

"When the extra came out two days later, saying that Frank was to be arrested," the witness added, Frank had again become noticeably nervous. Much to the Solicitor General's annoyance, Darley added that most of the other employees were so upset that he wished he had closed the plant for a whole week instead of just for a single day.

Dorsey tried without much success to break the executive down by showing that in his testimony at the inquest he had described Frank as being much more nervous than he was now saying.

Under cross-examination by Arnold, Darley testified that the elevator was so noisy in operation that White and Denham, on the fourth floor, would surely have heard it if it had been run. The witness explained that he as well as Frank had at first mistakenly said that Newt Lee's time slips had been punched as usual.

The defense also used this witness to challenge the prosecution's diagram of the factory building. Darley said the building was between 150 and 200 feet long, 70 to 100 feet wide. In addition, he pointed out that this diagram, which he thought was designed to misrepresent facts, showed Frank's office as smaller than it was and omitted a bookcase, rolltop desk, two

cabinets, and a wardrobe that it contained. (The purpose of this line of questioning was to show the jury that even if Miss Stover had looked into the inner office between 12:05 and 12:10 p.m., as she said she had done, she might not have seen Frank there.)

And on that note the first week of the trial ended.

To many observers it must have appeared that Solicitor General Dorsey had made little, if any, progress during that first full week of the trial, thanks to his foot-in-mouth police witnesses and others who had made him wail "The State has been trapped!"

His "fishing expeditions" had also got him nowhere. No matter how hostile the mob in and around that courtroom became, no jury, he knew, would bring in a conviction for him just because Frank had been excessively nervous after the murder and because Monteen Stover had not seen Frank in the office when she looked in that day.

It was obvious that Dorsey's case depended completely now on what Jim Conley, his star witness, would say when he took the stand. But even though the mob inside and outside the courtroom was so bitterly hostile to Leo Frank, no Southern jury had ever been known in an important case to take a Negro's word over a white man's.

Would they this time?

That question Dorsey was willing to have answered immediately.

On Monday morning, August 4, when court opened, Dorsey called out, in a tense voice,

"Bring in Jim Conley!"

Those reporters who had not seen Conley for some time were astonished when he walked into the courtroom, sat down in the witness chair, and took the oath. During the weeks he had lain, almost forgotten, in Fulton Tower, they had described him as ragged, "squatty-looking and ginger-colored." He had seemed half-starved and looked half-drunk. Now he was well dressed, clean and obviously had been well fed—all in all, what a defense lawyer later called "slick as an onion."

Solicitor General Dorsey wasted little time on preliminaries.

Conley was all he had and he was intent on getting the sweeper's story before the jury as quickly as possible. Under his questioning Jim explained how Frank the day before the murder had instructed him to return next morning earlier than usual as "he had work for me to do." Consequently, upon that holiday Saturday he arrived at 8:30 a.m., the same time as the superintendent. And Frank told him, Conley now testified, that "he wanted me to watch the door for him as I'd done lots of times before."

Q. Had you ever watched the door before?

A. Yes, sir.

Q. Why did you watch the door? What for?

A. Well, when Mr. Frank would have young ladies up there to chat with him, I'd always watch the door for him while they was chatting.

Conley could not remember how many times previously he had done this for Frank, but said it was "lots of times." He did recall doing this for Frank on another holiday, last Thanksgiving Day, when "there was a big, handsome lady up there then and another man and another lady, too. They all stayed in the factory while I watched the door."

Q. Well, go back to that day of April 26.

A. Well, when Mr. Frank said I was there too early I told him I'd go down to the Capital City Laundry and see a person and come back, and he said for me to be sure and be back in forty minutes.

Q. Did you come back, and when did you next see Frank?

A. Well, suh, he told me to meet him on Forsyth Street near Nelson Street along where Montag's is, and I met him there.

Q. What time did you meet him there?

A. I don't know exactly.

Q. Did he say anything?

A. He said, "Ha ha, you're here, are you?" and I said, "Yes, sir, Mr. Frank, I'm here all right."

Q. Well, what did he say then?

A. He told me to wait there for him while he went on to Montag's and he said he'd be right back. And he come back in a few minutes and told me to come on with him. I followed him down the street going towards the factory,

On the way, he said, Frank had gone into Curtis's Drug Store and he had waited outside. He was again following Frank when the latter looked back and accidentally ran into a little baby on the sidewalk. The man who was with the baby "looked at me like he thought I done it, but the white man didn't say nothing and Mr. Frank and I went on. He told me to go sit on a box near a trash pile on the first floor and I did that."

Q. What happened then?

A. Then he said, "Jim, there will be a young lady up here to chat with me in a while and I want you to watch the door while we are up there. I want you to do just like you always do," he said, "and when the lady comes up, if I stamp my feet on the floor, you go and lock the front door and then when you hear me whistle, you go and unlock the door and get back somewhere."

Q. Well, did you start watching the door?

A. Yes, sir. Mr. Frank, he went on upstairs and I started to watch. By and by Mr. Darley, he come up and went on up the steps and then Miss Hattie Smith, she come up and then came on back down, and in a little while Mr. Darley, he come back and went on out right after Miss Hattie and he patted her on the back and I heard him say, "That's all right, Miss Smith, you just wait; you'll get that on next Saturday and you needn't worry no more." That was all I heard him say and the lady went on out wiping her eyes with a handkerchief, and Mr. Darley went back upstairs.

Q. Well, go on, what happened next?

A. Well, a lady she come in and went up the stairs and then a nigger come on in. He was a nigger drayman, a peg-legged nigger, and he went up the stairs and I waited around a while and Mr. Darley and Mr. Holloway both came down and left. Then Mr. Quinn come in and he went upstairs. He stayed just a little while, then he came down and left.

Q. Who came next?

A. Then a lady, she came and went up the stairs.

Q. What lady?

A. The lady what's dead.

Q. What is her name?

A. Miss Mary—Miss Mary Perkins, I always called her.

Q. Well, go on.

A. Well, then I hears footsteps and thought that two people was coming from the office and going to come down the steps, but I hear the footsteps all past the head of the steps and go back towards the back of the building, back towards the metal room, and after a little while I hear a lady scream back there and then everything got quiet again.

Q. Well, what took place next?

A. Miss Monteen Stover come and she come on in and went up the steps.

Q. How was she dressed?

A. She had on a raincoat and tennis shoes.

Q. Had you ever seen her before? Did you know her?

A. Yes, sir. I seen her once or twice before and I know who she was.

Q. Go on, Jim.

A. Well, this Monteen Stover, she come on down and everything was quiet and then I heard somebody tiptoeing from the back of the building towards the head of the stairs on the second floor, sounded like they was kinda running on their toes. Then I heard somebody go back towards the metal room on their tiptoes again, and about that time I just dozed off and I waked sometime later. I don't know how long 'twas, but it was Mr. Frank stomping on the floor was what waked me. I locked the door like he done told me to do when I heard him stomping, and finally he begin to whistle and I unlocked the door and went back to my box. Then in a few minutes I walked up the steps.

Q. Did you see Frank then?

A. Yes, sir, I seed him. He was standin' there in his office just a-shivering and a-rubbing his hands together and he had a cord in one hand.

Q. Did you look at his eyes?

A. Yes, sir.

Q. How did they look?

A. They was large and he looked funny out of them. His face was all red-like.

Q. Is this the cord you saw? [Dorsey displayed a small piece of wrapping twine similar to that found tied around the dead girl's neck.]

A. Well, it was a cord just like that.

Q. What was said?

A. Well, sir, Mr. Frank asked me if I'd seed a girl come up and I told him I'd seed two of them come up and I'd seed one of them go back down, but I hadn't seed the other go down yet. Then he said I never would see one of them go back down. He said that the little girl went to the metal department with him and he tried to be with her and when she tried to stop him he guessed he hit her too hard. "Jim," he says to me, "you know I ain't made like other men."

Q. Had you ever seen that he was not made like other men?

A. Yes, sir.

Q. When?

A. Why, on last Thanksgiving Day, for instance, I seed him with a lady upstairs.

Q. What did he mean when he said he wasn't built like other men?

A. Well, what I had taken it to be, the reason he said he wasn't built like other men, I had seed him in a position I hadn't seed any other man in that has got children. This lady was sitting in his office chair that time.

Q. Well, did you see him on any other occasions?

A. Yes, sir; I have seen him on other times there.

Q. What other occasions?

A. I have seen Mr. Frank in the packing room there one time with a young woman lying on the table.

Q. How far was the woman on the table?

A. Well, she was on the edge of it when I saw her.

The defense objected strenuously to this testimony, asserting it was "immaterial, irrelevant, prejudicial and hurtful to the defendant and involved other transactions not legitimately under consideration . . . and connected with crimes irrelevant. . . ."

Q. Had you seen this often?

A. Yes, sir, several times.

Q. In the factory?

A. Yes, sir.

Q. What did Frank tell you to do when you came upstairs on April 26?

A. He told me to go on back and get the girl and bring her

up there and I went back and found her lying there on her back with her hands kinda stretched out above her head and a cord tied around her neck. [The witness illustrated how the cord was tied.] She was dead and when I saw that I went back to where Mr. Frank was in his office and told him that the girl was dead and he then told me to get a piece of cloth and tie her up in it and take her downstairs to the basement. He said I could get a piece of that bagging like they wrap cotton in and that it was in the box on the same floor, and I got it and went back to wrap her up. I took the young girl and pulled her hands down to her sides and closed her feet together and wrapped the sack around her, and then I got kinda scared and went back to see Mr. Frank. I looked at the clock and it was four minutes to one. [Conley pointed out on the diagram where he had found the body of the dead girl.] I went on and I walked up to Mr. Frank and told him that this girl was dead and he done just like this and said, "S-s-s-h!" [Conley held up one hand as a person might do when he wished someone to stop talking. He then indicated on the chart where he got the bag he wrapped the dead girl in.] I then turned the dead lady over and went on and tied her up in the sack.

Q. Why did you do this?

A. Well, Mr. Frank, he was my boss and he told me to.

Q. Go ahead.

A. Well, I saw her hat and a piece of ribbon lying on the floor and I laid that across her and tied her up just like a wash woman does clothes to take them from the white folks' house to wash them. I picked her up and she was so heavy I dropped her on the floor and when she fell that scared me and I called to Mr. Frank to come help me. He said he would and he come running back there on his tiptoes and he was trembling an awful lot, but he grabbed her by the feet and helped me carry her to the elevator. We started on down and out, and at the first floor the elevator hung up and finally we got it started again and went on down to the basement. Mr. Frank told me to take the body on back to the far back end of the basement and to put it on the sawdust pile, and I did, half-dragging it, it was so heavy. I threw her down and took off the cloth she was wrapped in and her umbrella and her hat fell to one side and I picked them

up and started back towards the elevator and called out to Mr. Frank to ask him what I was to do with the umbrella and hat. And he said drop them right there, and I flung them to one side. Coming up in the elevator, Mr. Frank went to get off and he was so excited he could not wait for the car to stop but jumped off and fell and the car door hit me an awful whack on the shoulder. [The witness here rubbed his right shoulder and winced.] And Mr. Frank, he went on back to the sink to wash his hands where he got them dirty when he fell and as he went, he says, "Gee, that was a tiresome job."

Q. Was his face red then?

A. Yes, sir, and his eyes was looking like diamonds.

Q. What happened next?

A. Well, he heard someone a-comin' and he made me hide in the wardrobe for fear they'd see me and he shut me up in there and I heard someone come in his office to talk to him and then they went out together and after while, when I thought I would just die in that there closed place, he came back and let me out. "I was in there a long time," I told him, and he says, "Yes, I guess you were, Jim, you are all sweating." And he gave me some cigarettes out of a box and told me I could smoke. It was against the rules to smoke, ever, in the factory, but he told me to go ahead and smoke.

Q. What did he do then?

A. Well, he sat there in a chair and squirmed about and finally he said, "You can write, can't you, Jim, eh?" and I told him that I could, that I'd written before. Then he said there was only one way for us both to get out of it and asked if I'd help him and I told him I would. He was a white man and my superintendent and I thought I ought to help him out of his trouble. And he made me write some notes for him, he telling me what to write, and when I had written four notes he slapped me on the back and said that was right, that was fine, and he took out a nice roll of greenbacks and handed them to me and I said, "Mr. Frank, I'm going to take some of this money to pay for my watch." And he said I needn't worry about that watch, that we'd both have plenty of money and wouldn't have to worry about nothing. "Jim," he said, "I've got lots of money that I've saved up; that fat wife of mine wanted to buy an automobile,

but I wouldn't do it. I've saved my money." Then he told me he wanted me to go to the basement after a while for him and then he asked me to hand that money he'd given me back to him for a minute and I thought he wanted to count it and I handed it to him and he just kept the little money what he had given me. Well, then, he put the money in his pocket and said it would be all right about that, and finally he jumped up and clapped his feet together and he says, "Why should I hang? I've got wealthy folks and they'll take care of me." Then he told me to take the notes and put them near the dead lady's body and said, "Whatever you do, Jim, you keep your mouth shut," and I promised I would and went and put the notes by the body and then I came back and he said he wanted me to come back there in about forty minutes, but I could go out for a while.

Q. Well, what did you do then?

A. I went to a near-beer saloon and bought a "double-header" and some sandwiches and fooled around in the place for a while, and then I looked at the clock and it was twenty minutes after two and I came out with a nigger and he made me lend him a dime. After while I decided I would go on out home and give the old lady some money to pay the rent with before I went back to the factory. And I got there and found no dinner ready for me and I give a nigger child a quarter and said, "Here, you kid, you run up to that store and buy me some sandwiches," and when I get them I ate them and went to sleep and when I woke up it was about six o'clock.

Q. Did you see Frank again that day?

A. No, sir. Next time I seed him was on Tuesday following when I saw him at the factory and he came up and told me to keep my mouth shut, and then he said for me to come back to the office after a while, that he wanted to see me, and I thought he was intending to give me back that money. Then I worked around during the day and finally one lady told me that Mr. Frank had been 'rested.

Q. Did Mr. Frank know you could write?

A. Yes, sir, he knowed I could write.

Q. How did he know?

A. Well, when I'd be cleaning up I'd have to count the boxes lying around and write down the numbers of them on a piece

of paper, and Mr. Frank told me to do that and furnished the paper for me.

Q. Look at these tablets and notes and see if the notes are the ones you wrote at Mr. Frank's dictation.

A. (*examining the notes*) Dem's de ones.

Q. Where did you get them?

A. (*pointing to Frank*) That young man right over there, he give them to me, he knows all about it.

Q. What did he tell you to write?

A. Just what's on those notes there. I wrote jest like he said.

Conley had far less trouble than Newt Lee in tracing his movements on the diagram. When pointing out the furnace he said Frank had intended to burn the girl's body in it.

Q. How did he plan to do that?

A. I was to help do that when I came back in the forty minutes that Mr. Frank had allowed me, but I didn't come back no more.

Q. Could you have put the body in the furnace?

A. I don't know; I didn't try it.

Q. Do you know anything about the back door?

A. No, sir, not a thing.

Q. Do you know what became of the notes you wrote?

A. No, sir, I didn't hear anything more about them until I was in prison down at the police station.

Q. What time did you leave home that morning, Jim?

A. About seven or half-past.

Q. Who left the factory first after you put the body in the basement, you or Frank?

A. I left first, and Mr. Frank, he was standing there watching me like he was afraid I wouldn't go straight out.

Q. Do you know the name of the man who was there on Thanksgiving Day?

A. His name was Mr. Dawson. [Actually, Dalton.]

Q. What sort of work had you done around the factory, Jim?

A. I worked on the elevator till last Christmas and then they took me off and put me to cleaning up the building.

Q. Do you know Mrs. Arthur White?

A. No, sir. [A deputy brought Mrs. White in, but Conley said he could not identify her.]

Q. How did you find out that the girl was dead?

A. When Mr. Frank sent me back there I touched her and found out she was dead and I went in and told him so.

Q. What did the lady look like you saw in Frank's office last Thanksgiving Day?

A. She was a big, handsome woman wearing a big hat and she had on white shoes and stockings.

Q. Tell about other times you watched for Frank.

A. Well, I watched for him lots of times and sometimes he'd let another man and woman come in and that man and woman would usually go down to the basement.

Q. Tell us about that contract you made for a watch.

When Rosser objected to this as immaterial, Dorsey shouted, "I want to show by this contract, and by the testimony, that Frank advised the Negro about it and saw him sign it. Frank knew that Conley could write. Yet when Frank and Lee and Conley were booked up as suspects, and detectives were making Frank and Lee write so as to compare their penmanship with that of the murder notes, Frank kept silent about knowing Conley could write." He was upheld by Judge Roan.

Conley then testified that when he had got into trouble over the purchase of a watch, Frank gave him advice and had been present when he signed the final contract for the watch. A few minutes later Dorsey turned his star witness over to the defense.

Rosser started his cross-examination in the friendliest manner imaginable and Jim Conley seemed deeply grateful.

Q. When did you get your first job, Jim?

A. About eleven years ago, sir.

Q. How old were you then?

A. About eleven, I said, sir.

"I thought you said it was eleven years ago that you got a job," said Rosser, benevolently beaming upon the witness. "You must have misunderstood me."

Jim Conley grinned back, appreciative of the defense attorney's friendliness.

Q. Can you read the papers, Jim?

A. Yes, sir, I can read 'em, only not much. I just read dis and dat in 'em.

Q. Oh, you just read dis and dat? You just look through the papers, Jim, till you find dis and dat and you read dis and dat and you don't read anything else?

To prove that the state's star witness could not spell, Rosser asked him to spell a few words, naming successively easier ones, culminating in:

Q. Can you spell "cat," Jim?

A. Yes, sir, I can spell that word, sure.

Q. You spell it with a "k," don't you?

A. Yes, sir, with a "k." [He forthwith spelled cat "k-a-t."]

Q. And you and I understand each other rightly, don't we?

A. Yes, sir, we sure does, sir.

Rosser then established that Conley had gone to school for only one year, did not know what "figuring" was or what the word "counting" meant. But Jim demonstrated on the stand that he could count and also add. Herbert Schiff had hired him, but Mr. Frank, he said, occasionally paid him off, though he was not sure how many times this had happened. Often other Negro workers, to whom he was in debt, collected his money. If it were a small amount he owed (only fifteen cents or so) he would take the man into a near-beer saloon and pay him off by buying him beer.

Rosser got him to say that he was ashamed that he earned only \$6.75 a week (at the rate of eleven cents per hour) because Walter Pride, another Negro employee in the factory, earned \$12, and another man, \$8.40 a week. However, Snowball Bailey, he said, also was paid only \$6.75.

The friendliness between Rosser and Conley by this time was making Dorsey quite nervous. He betrayed it by shuffling papers, rubbing his hands, getting up every few moments to move restlessly around the counsel table. But the important question he was waiting for his opponent to ask came soon enough.

Q. When was the first time you ever watched—as you call it—for Mr. Frank?

A. Some time last July.

Q. What did Mr. Frank say at that time?

A. He just came out and called me into his office and said what he wanted me to do.

Q. The first time Frank talked with you, was a lady with him?

A. Yes, Miss Daisy Hopkins.

Q. What did he say?

A. He said, "Jim, see that lady there?" And when I said I did, he said, "Go on down and watch the door."

Q. Was Miss Hopkins present?

A. Yes, sir, she was there.

Q. Who else was there?

A. A man named Mr. Dawson.

Q. How long did this lady and man stay in Mr. Frank's office?

A. 'Bout fifteen minutes.

Q. How long before Mr. Frank came down?

A. It was about an hour before he came down, but the girl and man had come on down, and on his instructions I had opened the trap door to let the girl and man into the basement.

Q. What time was it when they came up?

A. It was after a while.

Q. What did they do when they came up?

A. The lady went on upstairs and a little while later Mr. Frank and her come down.

Q. What happened that Saturday two weeks later, Jim?

A. Well, I was in the rear of the fourth floor and Mr. Frank came to me and said, "Remember what you did last Saturday, Jim?" And I said I did and he said he wanted to put me wise to this Saturday. Miss Daisy Hopkins went into his office and Mr. Frank signaled with his fingers and I went down and locked the front door and watched for them.

Q. What next?

A. I stood on the steps and heard them go into Mr. Frank's office.

Q. How long did you stay?

A. I stayed about half an hour, then the lady come on down and went on out, and Mr. Frank gave me a half-dollar.

Q. About the next time?

A. Well, I can't remember the exact time. It must have been about the middle of August.

Q. What time of day?

A. Well, it was about the time Mr. Frank came back from dinner.

At Rosser's urging the witness tried to describe several of the women callers, but his descriptions were vague. He did say one of the women was dressed in green.

Q. What did Mr. Frank tell you about all this?

A. He told me not to let Mr. Darley and Mr. Schiff know about it.

Q. The next time was Thanksgiving, wasn't it?

A. Yes, sir.

Q. What were his words then?

A. He said, "How are you feeling?" and sent me to the first floor.

Q. What time was that?

A. About half-past eight at night.

Q. What time did the woman come?

A. About a half-hour later.

Q. Ever seen her before?

A. Yes, I think so. I think I saw her one night in Mr. Frank's office.

Q. Why were you there that late?

A. I had some boxes to pack.

Q. Where were you when he arrived on Thanksgiving Day?

A. On the first floor.

Q. What did you do?

A. I closed the door when Mr. Frank stomped on the floor.

Q. When Frank stomped, what did you do?

A. I kicked the elevator so he would know-I heard him and everything was all right.

Q. Did Frank come down then?

A. Yes, he came down and unlocked the door and went out and looked around and then he came back and went to the stairway and called for her to come down. She came on down and saw me and asked if I was the nigger he talked of and he said, "Yes, that's the best nigger in the world," and she asked

if I talked much and Mr. Frank said I didn't talk at all.

Q. When was the next time?

A. Way after Christmas, some time in January.

Q. How do you know?

A. Well, it was after New Year's.

Q. What did he say?

A. I can't remember, but one thing he said, I know, was that a young man and lady was coming and that I could make a piece of money off them.

Q. Did anybody hear you?

A. Gordon Bailey did.

Q. What did you do?

A. I went and stood by the door; it was open.

Q. Did they come right in?

A. No, sir, the gentleman, he come on in and the ladies stood back and then when he had talked to me, he went back to them and they came on in with him.

Q. How long did they stay that time?

A. It seemed like two hours.

Q. Had you ever seen the girls before?

A. No, sir.

Q. Describe how the women looked.

A. I disremember how they looked.

Q. How about the man?

A. He was tall and slender.

Q. Ever see him again?

A. I saw him talking to Mr. Holloway several times.

Q. You say you don't know him?

A. No, sir, I don't know him.

At this point the noon recess was called.

At the beginning of the afternoon session Rosser established that Jim Conley's memory was weak on many points: He could not remember how many hours he had worked in a certain week, though he said he was sure that Mr. Frank had given him \$1.25 that week for "watching." He could not say when Frank first asked him to "watch" for him. Though he cheerfully told of being in jail "somewhere between seven and eight times," he could furnish no details.

Q. When did Mr. Frank first talk to you about anything but business?

A. I don't know. He talked and jollied with me. Both he and Mr. Darley jollied with me sometimes.

Rosser pelted the witness with questions about Daisy Hopkins after Conley glibly asserted that she had worked at the plant from June on in 1912 but was unable to remember the color of her hair.

Q. What's the color of her complexion?

A. What's "complexion"?

Q. You're dark-complected—I'm white-complected.

A. Oh, she was white-complected.

Q. What kind of ears did she have?

A. Ears like folks.

Q. I didn't expect her to have ears like a rabbit—small ears, big ears, or what?

A. Kinda small ears.

Q. How old was she?

A. About twenty-two.

Q. How do you know she worked there in June, 1912?

A. I know it was 1912 one day she sent me down to the office with a note. It had June on it.

Q. How many times have you ever seen this man Dawson around the pencil factory?

A. Several times.

Q. On the third trip which you stated, how did he come to be at the factory?

A. Miss Daisy Hopkins brought him.

Q. How long has it been since you've seen Dawson?

A. About a month. I saw him down at Police Headquarters when they brought him in for me to identify him.

Q. Did you identify him?

A. Yes, sir.

Q. The first day you watched for Mr. Frank, did you see Mr. Holloway?

A. Yes, sir. Mr. Holloway was around the factory and he left about two-thirty.

Q. How much did you say you drank on Friday, April 25th?

A. Not so very much.

Q. When you were at Police Headquarters, did you tell them that you got up at nine-thirty a.m. on the morning of the 25th?

A. Yes, sir.

Q. That wasn't so, was it?

A. No.

Q. Yet you looked them in the face and lied, didn't you?

A. Yes, sir. [A surprising feature of Conley's testimony lay in his frequent—and cheerful—admissions that he had lied.]

Q. You also told them you went to Peters Street?

A. Yes, sir.

Q. And didn't go?

A. Yes, sir, I went to Peters Street all right.

Q. You stayed at Peters Street until eleven o'clock, didn't you?

A. No.

Q. You told Detective Scott so, didn't you?

A. I don't remember about that.

Q. Do you remember what you told Harry Scott and John Black?

A. Not all.

Q. The truth is, you lied all the way around?

A. I told some stories, I'll admit.

Q. Didn't you make three affidavits, not one of which is true?

A. Some of them are true.

Q. But aren't they all lies?

A. No, there's a lot of truth in all of them.

Attorney Hooper objected to this question on behalf of the state, saying the affidavits were in existence and that they should be shown to the witness as prescribed by law. To this Arnold replied, "It is easy to see that this Negro has been so tanned and grilled and prepared for this business, he would easily recognize the affidavits." During the angry exchange this provoked Arnold added that "each affidavit represents a world of pumping and labor on the part of detectives. We expect to show that the affidavits followed many contradictory statements, and that Conley never admitted *anything* until confronted by the fact that he could write."

This time Judge Roan ruled in favor of the defense.

Q. (by Mr. Rosser, continuing) How long did the detectives talk to you?

A. I don't remember.

Q. Where were you when this statement was made?

A. In the detectives' office in the police station.

Q. How long did they [Black and Scott] talk to you?

A. For quite a while.

Q. Didn't you buy a pint of liquor on Peters Street at ten o'clock Friday, the 25th?

A. No.

Q. What did you tell Black?

A. That I bought it about ten o'clock, as you say.

The prosecution protested, but the court ruled that the defense could continue testing Conley's memory. Rosser capitalized on this by bringing out that the witness had again and again made contradictory statements about when he bought his liquor the night before the murder. And once again Jim Conley blandly admitted he had lied.

Q. Didn't you look them straight in the face and lie?

A. No, sir. I hung my head whenever I told them a lie and looked them straight in the face when I told them the truth. I thought I'd tell just a little bit of the truth, so Mr. Frank would get scared and would send somebody to come and get me out of trouble.

Q. Oh, well, we'll get to that later on. What else do you do when you are lying?

A. Fool with my fingers.

Q. How long did the detectives talk to you—hours at a time?

A. Sometimes they talked to me for hours.

Q. Didn't John Black<sup>o</sup> say you were a good nigger, and didn't Scott curse you?

A. No, sir. Sometimes they'd sit and whisper together, but that's all.

Q. Didn't they put a Negro in there with you?

A. Yes, sir.

Q. Didn't you tell that ducky that you weren't worried—that you didn't know anything about the crime?

A. No, sir. I didn't tell him anything like that.

Next the witness testified that when he sent for Black on May 24, he told that detective he was going to tell part of the truth and hold back part of it. But he admitted he had not told this to anyone at the police station.

Q. Do you remember what was in the notes you say you wrote for Mr. Frank on the day of the murder?

A. Yes, sir; something about a long, tall, black Negro doing it.

Q. In your verbal statement to Black—the first one—did you say anything about a girl being dead, and toting her down into the basement?

A. I don't remember.

Q. In your second statement, did you say anything about that?

A. Yes, sir—I think I did.

Solicitor General Dorsey objected. He attempted to read from the state's statutes, but observing that the judge was turning from him to talk to a friend who had approached the bench, he threw down the law book with an indignant grunt.

Q. (by Mr. Rosser, sarcastically) Now, Jim, whenever you are lying or telling the truth, please be so kind as to give me some signals. Did you say anything about going into the basement in that second statement?

A. I don't remember.

Q. You said you were going to keep back some of it—what was it?

A. The best part.

When court adjourned, Rosser had been grilling Conley for five hours. Before leaving, Arnold requested the court to assume charge of the witness overnight so no one could attempt to exert pressure on him before he again took the stand the next morning. William M. Smith, Conley's lawyer, complained that such protection would be inadequate. Asking that a special guard be assigned to make sure no one approached his client, he added that Conley "needs special food after his ordeal of this afternoon. Frank is enjoying special meals, is allowed a better bed than any of the other prisoners, and I

ask the same for Conley." Thereupon Sheriff Wheeler Mangum assured the court that the state's star witness would be carefully guarded and well fed that night. (The next day Mr. Smith complained to the judge that he had been subjected to "much trouble and embarrassment" when he had tried to see Conley in his cell the previous evening. This time Judge Roan gave orders that Smith be permitted to talk to his client whenever he wished.)

The *Atlanta Journal* commented that evening, "Jim's story came so readily to his lips that he spoke faster than the jury could follow. Incidents which he alleged to have happened months ago were told by him as though they were . . . fresh in his memory. No witness, since the trial began, has been so glib of speech as Jim. . . . Even the smallest details were fitted into his story without one minute's hesitation." (Later on the *Constitution* gave Britt Craig what could have been an embarrassing assignment. Craig was asked by his editor to explain why Negroes, so inferior in every way to white men, made much better witnesses. Mr. Craig rose to the occasion and wrote that it was because Negroes were so much more ignorant than white men that they could not imagine what was coming next in the cross-examination.)

Craig did an equally interesting job in describing some of the women who were at the trial. Many of these ladies brought their lunches to the courtroom and ate them during the noon recess.

There was a chorus girl [he wrote] who sat next to an aged and withered woman who is undoubtedly a grandmother—a great-grandmother, maybe; there was a painted-cheeked girl with hollow eyes who bore the unmistakable stain of crimson, who sat between a mother who held in her lap an eager 13-year-old . . .

Craig said that not one of these left the courtroom though "Conley's talk reeked at times." He also said that most of the women there seemed to be ordinary, middle-aged housewives who "came early to the building and . . . some of them even so far forgot themselves as to fight for seats. . . . Women were

all over the courtroom . . . they sat between criminals, crooks and jailbirds . . . pride nor anything else counted . . . just so they could hear Jim Conley's story. . . ."

Meanwhile the lawyers on both sides gave out these conflicting statements that evening about Conley's testimony:

Dorsey: They have not shaken him a particle.

Rosser: I've caught him in a mess of lies.

Arnold: He has told 240 lies already. I kept track up until 200, then they came so fast. I couldn't keep up with him. . . .

But the most revealing comment was made by William Smith, Conley's lawyer, who told reporters that the state's star witness, on getting off the stand, had said to him, "Boss, I wonder what that jury is gonna do with me." When Smith told him he was just a witness, Conley appeared startled, and muttered, "Oh, ain't I on trial?"

From the beginning, the weakest part of Conley's story had seemed to be his testimony about writing the murder notes as a favor to Frank. During the sweeper's second day of testifying, Rosser worked him over on this point, hoping to show this tale had been sweated out of Conley by Scott and Detective Black.

Q. You told Mr. Scott and Mr. Black that you wrote those notes on Friday?

A. Yes, sir, I told them that.

Q. And they told you that that wouldn't do, didn't they?

A. No, sir; they didn't say nothing about that.

Q. Didn't they tell you it wouldn't fit in?

A. They didn't say them words.

Q. Are you sure, Jim?

A. Yes, sir, I'm sure.

Q. Didn't Black and Scott tell you it was all rot, that Frank had never had you there Friday?

A. No, sir.

Q. Didn't they try their best, on May 27th, to make you change your story?

A. No, sir, they never said nothing to me about changing my story.

Q. You swear to that?

A. Yes, sir, if you want me to.

Rosser next questioned Conley on other discrepancies in the stories he'd told the police on different days—the time he had got out of bed on the day of the murder, whether or not he'd eaten a sausage, how much beer he'd had.

The defense attorney was now deadly serious, and Conley seemed troubled by his questioner's disapproval. But each time Jim seemed to be boxed in, he would manage to wriggle out, pleading forgetfulness. Once, after admitting discrepancies in a whole series of details, he said, "I jest don't know what you're talking about."

Q. Well, you just went on from time to time, adding a little more each time to your statement?

A. Yes, sir, I'd jest tell a little more each time.

Q. Why did you tell it this way?

A. Well, boss, I didn't want to tell anything more than I had to.

Q. You talked to Mr. Dorsey seven times in all before you had taken back all the untruths and finally told the whole truth, didn't you?

A. No, sir, I told it all before that.

Q. You first told the officers you went to a moving picture show that Saturday, didn't you?

When Dorsey successfully asserted that the specific time and place must be mentioned, the harried defense lawyer lost his temper completely.

Q. Well, Jim, on May 28th, in the presence of Messrs Starnes and Campbell, in Atlanta, Georgia, Fulton County, didn't you say that on the Saturday of the murder in the city, State and county mentioned, you went to a moving picture show?

A. (*with the utmost seriousness*) I told them I went and stood in front of a moving picture show and looked at what I could see from the outside.

Several times after that Hooper objected to Rosser's method, saying "it would be a superhuman task for any person, let alone an ignorant one, to tell all that he said the day before."

"This witness," retorted Rosser, "stood up here yesterday and gave a parrot-like statement, and all I want to do is to

show that he cannot repeat that parrot-like story again today. . . ."

But Judge Roan ruled in favor of the state.

The most astonishing thing about all this is that Jim Conley seemed to need no help from anyone in his fencing match with Rosser.

When the afternoon session began, Reuben Arnold rose and made an impassioned plea that Conley's testimony about the act of sexual perversion he claimed to have observed Frank committing with a young woman, his testimony that Frank had told him he was "not built like other men," and Conley's explanation of this remark all be taken out of the record. Arnold said he would not read aloud the passages he was protesting as he considered them unfit for the ladies in the courtroom to hear. Instead he showed them to Judge Roan, declaring that the scene in the office which Conley had observed "had been brought in merely to prejudice the court against the defendant."

To this, Hooper made one of those brilliant lawyer's arguments that seemingly win the admiration of other lawyers but baffle laymen. Because the defense had already cross-examined the witness, he said, "it is now too late for their objection." Dorsey, supporting this argument, insisted that the testimony would have been held admissible no matter when challenged, and announced that he expected to offer corroboration of everything Conley had said.

Defense Attorney Arnold replied that in a criminal case you can try a man for only one offense at a time. "That's good old Anglo-Saxon law," he contended. "I sympathize thoroughly with the mother of the murdered girl, and I think it was one of the most diabolical crimes ever committed. But, my friend Dorsey and his cohorts, if they do not give this trial a fair deal, will be just as red-handed as the man who slew little Mary Phagan. This miserable wretch, Jim Conley, gets on the stand and details another capital crime. I'm sorry for any white man who believes him. Sodomy is a capital offense. That's what he laid at Frank's door. We are not called on to try *this* issue, thank the Lord."

Judge Roan, after listening, said; "There is no doubt in my mind but that this evidence, *as an original proposition*, is inadmissible," but said he would reserve his decision until he had considered it thoroughly. With that unsettled, Rosser continued his attempts to break down Conley.

Q. You say that you found out Frank wasn't going to do anything for you, and then you began to talk?

A. Yes, sir.

Q. Didn't you know he was in jail?

A. I didn't know whether he got out or not.

Q. Jim, you took the body of that girl, you say, and wrapped her in a cloth, didn't you?

A. Yes, sir.

Q. Was the cloth all around her?

A. No, sir, it didn't go over her whole body.

Q. Did it cover her head?

A. No, sir,

Q. Her feet?

A. No, sir,

Q. How much of her body was projecting out of the cloth?

A. I don't know, sir.

Q. You tied the cloth around her body in a bundle and put her on your shoulder, didn't you?

A. Yes, sir.

Q. Didn't her head stick out and lean back?

A. Yes, sir.

The attorney stood before the Negro and illustrated the manner in which the witness said he had carried the body, asking if he were not correct, and the witness said he was.

Q. You walked out with her that way, didn't you?

A. Yes, sir.

Q. Didn't she get so heavy you couldn't carry her?

A. Yes, sir, she fell.

Q. Didn't you say it was because she was so heavy that she fell?

A. I said that was what I told Mr. Frank.

Q. Was she so heavy, or what was the matter?

A. She was kinda both ways.

Q. Now tell us again why you let her drop.

A. Because she was heavy and I was scared.

Q. Where was her head?

A. Towards the elevator.

Q. Her feet?

A. I don't remember at that time.

Q. Then it was that you say you called Mr. Frank?

A. Yes, sir.

Q. Where was he?

A. At the head of the stairs.

Q. You said, didn't you, that you called to Mr. Frank that the girl was dead?

A. I hollered to him.

Q. I thought you said you went to him.

A. No, sir, I yelled.

Q. What did Frank do when you yelled?

A. He waved his hands and said, "S-s-s-h."

Q. Then, when you heard him say, "S-s-s-h," you walked up to him, did you?

A. Yes, sir.

Q. What did you tell him?

A. I told him she was too heavy for me to tote.

Q. What did he say?

A. He said, "Well, bring her on up here," and I said, "How am I gonna bring her when she's too heavy?" And he said, "Go back in the metal room and get some cotton bagging."

Q. How close were you to him?

A. I was talking to him.

Q. Then you went back to the metal room and got some black-and-white-striped bagging?

A. I didn't say anything about white-striped bagging—it didn't have any white stripes.

Q. What color was it?

A. I can't exactly describe the color.

Q. What did you do with the cloth when you got through with it?

A. Put it on the trash pile in the basement where I put the hat and slipper and ribbon.

Q. How much did the girl weigh?

A. I don't know, sir.

Q. You can carry a hundred and ten pounds—and surely she didn't weigh more than that—can't you, without any trouble?

A. I can carry it maybe, but I don't know about the trouble.

Q. You say Mr. Frank packed her up on you; what do you mean by that?

A. Mr. Frank caught her by the head and shoved her up on my back. We was both nervous.

Q. How were you—nervous and excited?

A. I didn't say I was excited—I said I was nervous.

Q. When you got down into the basement, you took the body out by the cloth, didn't you?

A. No, sir.

Q. How did you say you left her on the second floor; repeat that, will you?

A. Her head was towards Alabama Street, her face towards Forsyth, and her feet towards Hunter Street.

Q. Did the girl have any scratches on her face?

A. Yes, sir, a few. It was dirty, too.

Q. Who ran the elevator when you went up?

A. I did, because Mr. Frank said he would meet me on the first floor when he went up the scuttlehole.

Q. When you got to the first floor, what did he say?

A. He said, "Gee, but that was a hard job," and I said that his job wasn't half as hard as mine.

The elevator made some noise, Jim said, and he estimated that the whole job took about four or five minutes.

Q. While you were in the office, was anything said?

A. While we were in the office Mr. Frank said he heard somebody coming.

Q. Mr. Frank gave you some greenbacks, didn't he?

A. Yes, sir, two hundred dollars, but he took them back.

Q. Now, Jim, talking about this plan to burn the body, did you tell Black and Scott anything about it?

A. No, sir, they had been taken off the case when I first told about it. I think it was Mr. Starnes and Mr. Campbell I told it to first.

Rosser's next questions indicated that the defense had lined up several fellow employees of Conley's to testify that his ac-

tions were highly suspicious after the murder: Had he asked Miss Julia Fuss for a paper? Or told another factory worker that Frank was innocent? Or dropped his head when Miss Georgia Denton accused him of the crime?

Without flinching, Conley answered all these questions in the negative. He also denied telling Harlee Branch and Harold W. Ross, Atlanta *Journal* reporters, in an interview on May 31, that Mary had been murdered in the second-floor toilet, carried from there to the metal room, and that she was stiff when he reached her side and, finally, that it had taken him thirty minutes to carry her downstairs and return to the second floor. (Reporter Ross later became the famous editor of *The New Yorker* magazine.)

Next, Arnold, over Dorsey's violent objections, read the first of the affidavits Conley had signed at headquarters. His colleague Rosser interrupted him several times to call attention to the pompous language the detectives had used in the statement.

On calling the court to order on the following day, August 7, Judge Roan announced that he was not ready to rule on the defense motion asking him to ban those of Conley's statements which attributed unnatural sex acts to Frank prior to April 26.

Rosser then read aloud the second and third affidavits which Conley had signed. This reminded the jury that in the second affidavit the state's star witness, while admitting having written the murder notes, had not mentioned that he had helped the defendant move Mary Phagan's body. Also that in the third affidavit he *had* told the story of carrying the body to the basement.

To highlight all this, Rosser had Conley explain that now and only now, on the witness stand, was he telling the *whole* truth. Conley explained that if he had revealed certain facts on the stand which were in none of the affidavits, it was because he had decided to wait until the trial to tell all. What the defense lawyer was trying to hammer home was that, despite the details that Conley had added from time to time, he had said not a word in any of these three statements about "watch-

ing" for Frank or the alleged act of perversion of Thanksgiving Day. This strongly indicates that Frank's counsel knew only too well that the great public resentment against their client was primarily based on the widespread belief that he was a pervert. Having gone as far as he could with that, Rosser completed his cross-examination with a few questions about some of the remarks the witness had made to other factory workers. Finally, with a sigh, he said, "That's all!"

Grinning with joy, Conley started to step down, but Dorsey held up his hand. He had a few more questions to ask, including the following:

Q. From the time you were arrested, did you see Frank until the day you came into the courtroom?

A. Yes, sir; I saw him at the coroner's court down there at headquarters; he went by me and bowed his head and smiled.

Q. Was that before you had told on him?

A. Yes, sir.

Q. Tell the jury what, if anything, Frank did with your pencil while you were writing the murder notes.

A. Took the pencil out of my hand and rubbed out the letter "s" I had put at the end of "Negro."

Q. Did you ever see the pocketbook purse, a mesh bag, of Miss Mary Phagan?

A. Yes, sir; I saw it on Mr. Frank's desk after we came back from putting the body in the basement, and he took it and put it in his safe.

Q. What was the longest time any of the detectives talked to you?

A. You mean Mr. Rosser there, don't you?

Dorsey shot a quizzical look at the jury as he straightened Conley out about Rosser's being a defense lawyer. He tried to disabuse the jury of the idea that Conley had been grilled into his various stories by having him explain that he had been questioned by Black and Scott only for about three and a half hours during the all-day sessions, because of the breaks and breathing spells they had given him. In addition, Dorsey asked Conley to lie down on the floor of the courtroom to illustrate the position in which he had placed Mary's body on the basement floor.

He also tried to re-emphasize with his questions that Frank, fearing the sweeper would expose him, had concealed from the police the fact that Jim could write.

Q. (by Mr. Dorsey) Jim, can you write "luxury"?

A. Yes, sir. We had boxes with that on them at the factory and when they gave out I had to write it down and give it to Mr. Frank so he would know to order some more.

Q. Did he furnish the paper for you to write on?

A. Yes, sir.

The Solicitor General then said he had no more questions to ask, but Rosser quickly stepped up to straighten out one or two new points that the prosecution's re-examination had brought up.

Q. (by Mr. Rosser) Wouldn't you sometimes write Mr. Frank a note in order to draw on your wages?

A. Yes, I'd write out "please let me have fifty cents."

Q. And you'd say, "and take it out of my wages," wouldn't you?

A. No, sir: I couldn't write out all that last part. Mr. Frank, he'd know where to take it from.

Rosser next asked Jim to spell "luxury." Conley slowly spelled out "l-u-s-t-r-i-s." He also failed to spell "Thomas" correctly.

Jim Conley left the witness stand at 11:14 a.m. that day. During the three days he had been examined and cross-examined for sixteen hours.

Regarding the story, so crippling to the defendant's case, that he had calmly told during those three days, the *Constitution* commented:

No such record has ever been made in a criminal court case in this county. . . . Conley may be telling the truth in the main, or he may be lying altogether. He may be the real murderer or he may have been an accomplice after the fact. Be these things as they may, he is one of the most remarkable Negroes that has ever been seen in this section of the country. His nerve seems unshakable. His wit is ever ready. . . . As hour by hour the attorneys for the de-

fense hammered away and failed to entrap the Negro, the enormity of the evidence became apparent. Finally came the virtual confession of the defense that they had failed to entrap the Negro and they asked that the evidence be stricken from the records. All over the city the news spread that the Negro had withstood the fire and that Frank's attorneys were seeking to have the evidence expunged from the records.

At this point one fact was indisputable: the crowds in and outside that courtroom were taking charge of the proceedings to an extent seldom observed in a twentieth-century American court of law. They had proved it several times that day by vociferously applauding the prosecution's victories. And when the judge ruled for the state again in his most momentous decision of the trial, the crowd literally went wild. This, of course, concerned the sex perversion evidence. Judge Roan, after thinking it over, declared that while he had serious doubts that this evidence was admissible when first presented, he was going to allow it to remain in the record because the defense had waited too long before asking that it be expunged. The *Constitution* next day described the scene that followed in these words:

Dorsey's victory was perfectly patent to everyone in the courtroom, and the news was quick to reach the street and to be circulated by word of mouth all over the city. Spontaneous applause broke out in the courtroom as Judge Roan made his announcement and Reuben Arnold jumped to his feet, exclaiming, "If that happens again I shall move for a mistrial." Judge Roan announced that he would have to clear the room if there was a recurrence of the disorder.

When order was restored C. Brutus Dalton, the last important state witness, was put on the stand. He said he was a railroad carpenter and had often visited the pencil factory although he had never been employed there.

Q. (by Mr. Dorsey) Do you know Daisy Hopkins?

A. Yes, sir.

Q. Did you ever go into Frank's office with her?

A. Yes, sir. I went into his office with her two or three times.

Q. Were you ever in the basement of the factory?

A. Yes, sir.

Q. How'd you get down there?

A. I went down that ladder.

Q. Did Frank know that you were there?

A. I don't know if he knew that I was in the basement. He knew that I was in the building.

Q. Was there anyone in the office with Frank when you were in there?

A. Some women.

On being cross-examined by Rosser, Dalton said he did not know the ladies in Frank's office. He also was unable to fix the time he saw them there more exactly than sometime between "September and December." He did remember, though, he said, that it was Daisy Hopkins who introduced him to the defendant.

Q. When you were in Frank's office, did you ever notice if the windows had shades on them or whether they were open?

A. I didn't.

Q. Did you see Frank in the office with ladies any time this year?

A. No, sir.

Q. Did you ever go to the pencil factory with anyone else than Miss Daisy Hopkins?

A. I waited at the Busy Bee and went home with some girls from there.

Q. Who were they?

A. Laura Atkinson and a girl named Miss Smith.

Q. How many times did you pay Jim Conley to go in there?

A. I gave him a quarter one time.

Q. Did you ever see drinks in Frank's office?

A. Yes, sir; sometimes Coca-Cola and sometimes it was beer.

Q. Can't you be more definite as to the time you met Frank than merely sometime between September and December?

A. No, sir.

After some more minor testimony Dorsey announced that the State of Georgia, County of Fulton, had completed its presentation of its case against Leo M. Frank for the first degree murder of Mary Phagan.



### **III. THE DEFENSE**



We shall never know, of course, just what Leo Frank's lawyers were thinking and feeling as the moment approached to present his side of the case. Like most successful lawyers and politicians, Luther Z. Rosser and Reuben R. Arnold had the gift of being able to appear supremely confident at all times.

State Solicitor General Dorsey, their aggressively brilliant opponent, had done much with little to work with. Most of the legal authorities who later studied the state's evidence said there was nothing in it to convict Frank aside from Jim Conley's strange story. They also felt that the circumstances under which the police had obtained it from Conley, piece by piece, together with his bad reputation, greatly weakened it from the legal point of view.

But given the belligerent atmosphere that surrounded the proceedings from the start, one might better say *only* from the legal point of view. Regardless of what a higher court might decide later on, it seemed highly probable that in this tribunal the issue of Frank's innocence or guilt would be decided on an emotional basis. Believing the pre-trial rumors about Frank being a pervert, ninety per cent of all Atlantans thought he had murdered Mary Phagan. And the twelve jurymen who would decide his fate were part of Atlanta.

But from a strictly legal point of view, the defense lawyers' big job was to rip to pieces, if possible, Jim Conley's story. Also they could hammer away at these key points:

1. That Frank did not have time enough on the day of the murder to kill Mary, dispose of body, and get Conley to write

the murder notes.

2. That the above contention was proved by the number of reputable witnesses who had seen him at his office, and afterwards on the street at the time he was supposed to be in the factory committing the murder and trying to conceal his guilt.

3. That Mary got to the factory minutes earlier than the prosecution maintained.

4. That a man as nervous as Frank admittedly was, simply could not have calmly sat down a few hours after the murder and compiled the company's complicated weekly financial report.

5. That if the elevator had been used by Frank and Conley, the two mechanics—Denham and White—who were repairing equipment on the fourth floor would surely have heard it.

6. That the "blood" spots and hair found in the metal room by Barrett could not be identified as Mary's. Indeed, there was no evidence that she was killed on the second floor at all.

7. That Conley was a jail bird and was considered a liar by most of the people who knew him.

The biggest problem Arnold, Rosser, and Haas had to decide was whether or not to make their client's moral character an issue. They knew they could bring to the stand outstanding people who had known Leo Frank at every stage of his career and that these persons would swear that he was an upright citizen who had never committed an immoral or dishonorable act.

The difficulty was that if they made Frank's character an issue, it would open the door for Dorsey to attack it. And they knew now, if they had never known it before, that the Solicitor General was both crafty and an opportunist who would stop at nothing to convict their man. And a death sentence could easily lead Dorsey straight to the Governor's Mansion or even to the United States Senate.

For that matter, as men of the world, Frank's lawyers may have felt that their client's morals, like any man's, might not be as completely above reproach as some of his associates insisted. They were convinced that Frank had not murdered Mary Phagan and that Jim Conley was lying about "watching"

for the superintendent, writing the obscene notes for him, and carrying the body to the basement on his orders. But it could well be that they themselves may have wondered whether a high-strung, intense little man like Leo Frank, surrounded by more than a hundred women, many of them no more inhibited than most wretchedly paid factory girls, had not been tempted to take liberties with them now and then.

If it could be proved that he had—though it had no real connection with the murder—they knew it would cripple their case. On the other hand, if they failed to put Frank's character in issue the public, in its feverish state, would surely conclude they did not dare to.

If they had decided what to do about this, they told no one as they began their presentation of Frank's case. Their first move was to recall to the stand a series of state witnesses beginning with N. V. Darley, the factory's superintendent of machinery, and E. F. Holloway, watchman-time keeper, who had first noticed Jim Conley, washing out the stained shirt at the factory faucet.

Using a cardboard model of the plant, Arnold, while Darley was on the stand, was able to establish the following points:

1. That a body pushed down the chute from the first floor (as the defense argued Conley might have done with Mary's body) would land about 30 or 40 feet from the spot where the girl's corpse was found.
2. That there was not a bed or a lounge in the entire factory, and not so much as a chair in the metal room where stock and machinery was stored.

Then Arnold continued with other matters:

Q. What time did you leave the factory on April 26th?

A. At nine o'clock in the morning.

Q. If Jim Conley says it was about eleven o'clock, then he is lying?

A. Yes.

Q. Did you ever jolly with him?

A. No, I used to kick him whenever I caught him loafing.

Q. This man Dalton testified that he saw a Negro night watchman at the factory in September. Is this correct?

A. There was no colored night watchman at the factory until

we employed this man Newt Lee three weeks before the murder.

Q. Did Frank have anything to do with the hiring or firing of the help?

A. No.

Darley also said that Jim appeared nervous and would not look at him when he spoke to him on the Monday after the murder. The next day, however, when Frank was arrested, the sweeper had worked in the usual way.

In his cross-examination of Darley the Solicitor General annihilated with one question the first important point the defense had made through this witness:

Q. If anyone shoved a corpse down that chute, wouldn't he have found a world of boxes and crates there, behind which the body could have been hidden indefinitely?

A. Yes.

On returning to the stand, Holloway said he had never missed going to the factory any Saturday and had never seen any other woman visitor there except Mrs. Frank. He said that no immorality had taken place in the building at any time and that Daisy Hopkins had not been there since quitting her job. Much of the value of his evidence was destroyed a few minutes later when Dorsey proved that Holloway's memory was unreliable, and that after having Conley arrested, he had quickly asserted his claim to the reward if the sweeper proved to be the killer.

Dorsey had even greater success attacking the credibility of the next witness, Miss Daisy Hopkins. No beauty or pearl of great price was Daisy, a bony, plain-looking young woman of extremely countrified appearance who was dressed entirely in white except for a big yellow straw picture hat. She explained that she had worked from October, 1911, to June, 1912, at the factory. She admitted a slight acquaintanceship with C. Brutus Dalton, but swore she had not gone to the factory with him at any time and knew Frank only by sight. The stories Dalton and Conley had told under oath about her visits to the factory for furtive lovemaking she denied with great indignation.

Quietly, then, Dorsey went to work on her:

Q. You say you have been married?

A. Yes. In Redan, about three years ago.

Q. Who was your husband?

A. A. N. Sill. He's dead.

Q. Aren't you under a physician's treatment?

A. (*hesitantly*) Yes.

Q. For what?

A. (*looking around the courtroom in perplexity*) I had my stomach pumped.

Q. Anything else?

A. No.

Q. How many times have you been in jail, Miss Daisy?

A. (*angrily*) I've never been in jail in my life.

Q. (*indicating Deputy N. A. Gardner*) Do you see this man here? Didn't he get you out of jail recently?

A. No, he never got me out of jail. I've never been in jail.

Q. Well, who did, then?

A. (*hesitantly*) Mr. W. M. Smith. He's a lawyer. [Conley's lawyer, as it turned out.]

Q. What were you there for; wasn't it for immoral actions?

A. No. People told tales on me and that got me in jail.

Thus the defense's first three witnesses had more or less gone down, one after another. But they were, after all, only minor witnesses. Now Frank's lawyers started their major job—to tear apart Conley's story—by bringing back to the stand Harry Scott, the Pinkerton man. In making this move Rosser's aim was to get into the record the step-by-step account of how Scott and Detective Black had helped Jim Conley "assemble" the story which Rosser had characterized as "an unfathomable mass of fabrications and contradictions."

As brought out by the defense lawyer, the serious questioning of Conley had begun on May 18, the day the witness had learned the sweeper could write. That day Conley had denied any connection with the murder. During a two-hour grilling he did not mention being at the factory on April 26.

On May 24 the witness and Detective Black had Conley's first sworn statement taken down by a stenographer. In this the Negro said he had written the murder notes on Friday—on Frank's orders—but denied having seen the body.

He was grilled again on May 27, Scott testified, after being taken to the Solicitor General's office to be questioned.

Q. (by Mr. Rosser) You impressed him with the fact then that his first statement was not plausible; that his story of writing the notes on Friday would show premeditation?

A. Yes.

Q. You stayed with him all day that time, explaining that his first statement was far-fetched as well as unbelievable?

A. Yes.

Q. On this day he made another statement, changing the date the notes were written from Friday to Saturday?

A. Yes.

Q. He said this was his last statement, didn't he, and that he had made up his mind to tell the truth?

A. Yes.

Q. He said that when he left the Capital City Laundry he met Frank and that Frank followed him to the factory?

A. Yes.

Q. How many notes did he say he wrote?

A. Three.

Q. What sort of Negro was Jim when you first saw him?

A. He was dirty and ragged.

Q. When they brought him into court the other day, he was as slick as an onion, wasn't he?

A. Yes.

Q. He told you the reason he washed his shirt the day he was arrested was because he'd been wearing it a long time?

A. Yes.

On May 29 he and Black, Scott testified, had stayed with Conley until six o'clock in the evening, but had not given him "what you'd call a third degree." Again the sweeper had said nothing about watching for Frank or seeing the little girl's purse. And this time he said he had written only one note. He explained he had not told the truth until then because he expected Frank to get him out of jail.

There were other matters, Rosser emphasized in his examination, that Conley had neglected to mention during the day-long grilling. Among these were important points made in his court testimony. For instance, Conley that day had said

nothing about:

Hearing footsteps going to the metal room after he saw Mary Phagan go upstairs to the office.

Hearing a girl scream on the second floor.

Refusing to go to the basement without Frank.

But, as on every day he had been questioned, Conley had added fresh details to his story. He told the detectives that Frank had sent him back to the metal room, described how he had wrapped up the child's body and how tightly the cord about her neck had been tied by the murderer.

The defense lawyer next asked the witness to describe how they had prevailed upon Conley to write for them. "We took him," said Scott, "into Chief Lanford's office and gave him a pad, telling him to write. We told him we knew he could write, and that he needn't hesitate. He picked up a pencil and wrote easily."

Having set before the jury this account of the writing, revising and repeated re-revising of Conley's story—the defense later compared it to a movie scenario—Frank's lawyers began setting up a time schedule for Mary's movements on the last morning of her life. Later, of course, they planned to synchronize this with a similar schedule of Frank's movements to prove that the defendant simply had not had time enough to do all Conley had said Frank had done: kill Mary, help the sweeper take her body to the basement, and supervise Jim's writing of the murder notes.

Before this Holloway had testified that he had personally clocked the time it took to walk from the corner where Mary had left the trolley car that day to the factory door at two and a half minutes.

Now they put on the stand Motorman W. M. Matthews and Conductor W. T. Hollis, the crew of that English Avenue trolley car. They both declared that Mary had left their car that day at 12:10 p.m., or a half-minute later. Both men testified that though they had noticed Mary on the car, she had not been with George Epps or any other boy.

The next morning, Saturday, August 9, the defense recalled young Epps. He was questioned by Arnold, who asked him

about the interview he and his sister had given J. M. Minar, a *Georgian* reporter, the afternoon of the day Mary's body was found.

Q. Did he ask you and your sister when was the last time either of you had seen Mary Phagan?

A. I heard that he asked sister; he didn't ask me.

Q. Didn't your sister say she hadn't seen her since the previous Thursday and didn't you stand there and say the same thing?

A. No, sir. I'd gone to get a wrap for her.

Arnold next summoned Hearst reporter Minar for his version of this interview.

Q. Please state what, if anything, they answered.

A. The sister said she had last seen Mary Phagan on Thursday, and the boy told me that he frequently rode to town with her in the morning.

Q. Did the boy say anything about riding with her on Saturday?

A. No.

Q. Did he say he had seen her since Thursday?

A. No, nothing at all.

Even by that time it was acknowledged pretty generally that the Epps boy was an unmitigated liar. After the trial was over, Atlanta people fell into the habit of using the expression "an Eppism" as a synonym for an outrageous distortion of the known facts.

Hooper, who cross-examined Minar, tried to get the reporter to admit that his paper was pro-Frank and angled all its stories in the defendant's favor. But Minar pointed out that at the time of the interview Frank's name had not been mentioned in connection with the crime.

Six years before, the entire medical profession had lost the respect and trust of a vast number of Americans due to the venal behavior of the handful of specialists who testified—for very fat fees—in the circuslike murder trial in New York of Harry K. Thaw, the millionaire playboy, who had shot Stanford White, the country's most distinguished architect. The handful of specialists unfortunately included several of

America's leading alienists. Again and again these doctors flatly contradicted one another's scientific opinions. The public, by and large, concluded that the country's most eminent medical men would testify under oath any way they were asked to—if the price was right.

And by a coincidence, one of the few stories that seriously competed for front-page space in the Atlanta papers during the month-long Frank trial was the one that described how Harry Thaw had escaped from his quarters in the New York State's Matteawan Hospital for the criminally insane. His lawyers had been trying to extricate the self-confessed murderer from Matteawan for years, without success. The escape, with the connivance of members of the hospital staff, had not increased Americans' respect for the medical profession.

There was nothing about the medical testimony given for either side in the Frank case to restore America's faith in its doctors. But the great physicians and specialists of Atlanta appear not to have been so much corrupt as ignorant.

Six of the most distinguished medical men in Georgia testified for the defense. They were expected to dispute Dr. Harris's contention that Mary died within forty-six minutes of eating that revolting morning meal\* her mother served her. And if the state's expert had been exposed under cross-examination as more fool than man of science, certain of his six colleagues were to share his humiliating experience when cross-examined by the prosecution.

Dr. Leroy W. Childs, a leading local surgeon, was the first of the defense doctors to take the stand. Arnold, who handled the examination of the group of medical men, started Dr. Childs off with the usual complicated theoretical question:

Q. If a person dies and the body is found at three o'clock in the morning, when rigor mortis had set in to a certain extent, and the body is then embalmed at ten o'clock that day

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\*The only less appealing breakfast in American murder annals probably was the one eaten by Lizzie Borden's father and step-mother in Fall River, Mass., on August 4, 1892, the day they died. This consisted of mutton soup, mutton, johnnycake, and bananas.

and later disinterred nine days after, and the physician finds a wound in the back of the head, say about two inches long and cut through to the skull with perhaps a drop of blood on the skull, but with no pressure on the brain and no injury to the skull, could that physician determine whether or not that wound had caused unconsciousness before the death?

A. The physician might hazard a guess under those conditions you have outlined, but personally I would not like to do it.

Q. Would not a wound made right after death resemble one made just before death?

A. It would be a guess to say so.

The witness declared this would be particularly true in the case of Mary Phagan, whose injury was not examined by a physician until nine days after she died. He insisted that because of hemorrhages and congestion of blood vessels even experts could not determine precisely when a strangled person died. And he was scornful of Dr. Harris's theory that the condition of the cabbage found in the child's stomach proved that she had been killed within three-quarters of an hour after eating her breakfast. He said that he had examined cabbage eaten twelve hours before death and that it looked very much like the samples Dr. Harris had exhibited in the courtroom.

Dr. Childs had delivered his direct testimony with the Olympian air of an authority who knew what he was talking about. But Dorsey's cross-examination soon drove him to the sort of medical doubletalk physicians often use to conceal their self-doubts. While discussing the process of digestion the prosecutor held up a vial before the witness.

Q. Suppose, Doctor, that this cabbage that I have here in this vial was taken from a normal stomach with no part of the cabbage in the small intestine, and upon removal of the stomach it was found that the combined hydrochloric acid was present in thirty-two degrees, what would you say as to how long the substance had been in the stomach before death?

A. I couldn't tell within an hour and a half of the time. I recall an instance where we forced emesis on a patient where cabbage had caused indigestion and it was in a state similar to this cabbage.

Q. But that stomach was diseased, wasn't it?

A. To a certain extent.

Q. The structure of the stomach might have been normal, but how about the gastric juices?

A. Any normal stomach might suffer irritation.

Here a ripple of laughter ran over the courtroom and Arnold jumped to his feet and charged those who had laughed at the expert's statement with being "hoodlums who had no business in a trial room." But once more nothing was done.

Dorsey dismissed Dr. Childs after getting him to admit that his cabbage tests were limited to the one instance in which he had forced emesis plus "casual observation."

The next medical witness\* was Dr. T. H. Hancock, who said he had performed fourteen thousand surgical operations in his twenty-two years of practice. He testified that he had examined Leo Frank at his lawyers' request and declared that he was "perfectly normal." Another of the defense's medical experts later confirmed Dr. Hancock's opinion. (This testimony was, of course, offered in an attempt to discredit Jim Conley's testimony about what the defendant had said to him about not being "made like other men.") Dr. Hancock also declared that after a body was embalmed it would be difficult for anyone to ascertain whether a wound near the brain had caused death. Cautiously saying that he was no expert, the witness testified that he believed it was impossible to estimate the time of death from partly digested bread in a corpse's stomach and that digestion would be retarded by excitement, anger, violent exercise, and other factors.

Arnold also questioned Dr. Hancock about the cause of the injuries to the child's sex organs. Dr. Hancock expressed the suspicion that the men who had examined and handled Mary's remains might have inadvertently damaged her sex organs.

Q. Take the case of a fourteen-year-old girl, Doctor, when a chemist finds the epithelium detached from the walls, and finds also the blood vessels in the female organs are congested,

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\*Actually, the doctors for the defense alternated with other witnesses over a period of several days. Their testimony is offered here in sequence in the interest of clarity.

and, upon making this find, learns that a digital examination has been made, what could have caused the epithelium to become detached?

A. The digital examination could have caused a rupture of the blood vessels which the epithelium could only be expected to shed off after death.

Q. Would that necessarily indicate any signs of violence?

A. No.

Q. Aren't conditions like that caused often by things other than violence?

A. Yes.

Q. Suppose a man who found these conditions believed there was violence, could he tell how long before death it had been inflicted?

A. No.

Dr. Hancock also said that death by strangulation might or might not cause dilation of the blood vessels in the female organs.

Solicitor General Dorsey began his cross-examination of Dr. Hancock by bringing out that he did medical work for the local public utility, a fact the prosecutor seemed to believe was unlikely to incline the average jurymen in the witness's favor. Then with a few rapierlike questions Dorsey proved the witness to be no expert whatever on the subject of sexual abnormality.

Q. You don't mean to say, do you, that homosexuality is confined to defected [sic] patients?

A. In my experience, I have not touched much on that line.

Q. Didn't you say you had examined Frank?

A. Yes, but I judged merely from his outward appearance.

Q. You know but little, then, of homosexuality?

A. I do not undertake to tell the jury any expert testimony on the examination I made of Frank.

Q. Are you an expert on stomach analysis?

A. No, I can't say that I am.

Q. In order to give a good statement of stomach conditions, you must be an expert?

A. I am a practicing physician and they generally know as much of the stomach as any others.

Another outstanding Atlanta physician to testify for the defense was Dr. Willis Westmoreland, who said he had resigned as head of Georgia's State Board of Health because he believed that Dr. Harris, the board secretary, was guilty of "scientific dishonesty."

Dr. Westmoreland proved to be in full agreement with the other defense doctors about the impossibility of determining the time of death from the condition of food in the stomach. He said that "would be the wildest guessing I have ever heard of." Arnold's next question proved, if nothing else, that he had a fantastic imagination.

Q. Doctor, couldn't one man eat another man's stomach and have the acids that would digest the foreign stomach benefit the stomach in which it had been placed?

A. Yes.

Dr. Westmoreland declared that he had never heard of stomach tests similar to those made in the current case. Through him the defense was able to condemn the prosecution for failing to permit Frank's experts to examine either the specimens taken from Mary's remains or the state's findings before the trial.

Q. Have you ever before known a chemist to make an analysis in a lawsuit of parts of a body and then destroy the parts without showing them to the other side or produce them in court?

A. No.

Q. Such conduct is unethical, isn't it?

Dorsey's objection was sustained by Judge Roan, who held that medical rules of professional ethics must be stated before such a question could be asked.

Q. (by Mr. Arnold, continuing) What are your ideas of ethics?

A. In the case of a chemist destroying the specimens, I would first call in another expert or preserve the specimens of my test.

Dr. Westmoreland also agreed with the previous testimony

in saying that Mary Phagan might not have been ravished.

Q. If you take the case of the stripped epithelium after a digital examination has been made, and the hemorrhage in the distended blood vessels in the female organs, is that any indication of violence?

A. The epithelium is easily separated and a digital examination could have detached it from the wall. Such conditions would not necessarily indicate violence.

Q. In such a case, could a chemist give a scientific opinion on violence?

A. No; such an opinion would be the rashest I ever heard.

Q. Did you examine Leo Frank?

A. Yes.

Q. Does he appear to be a normal man?

A. Yes.

Dorsey then took up the cross-examination—and with it the matter of Frank's normality.

Q. Are sexual inverts normal as far as physical structure is concerned?

A. Yes, unless they belong to certain classes.

Q. Aren't there about three classes?

A. About forty.

Q. It is possible for digital examination to be made without impairing the blood vessels, walls or organs, isn't it?

A. Yes.

The witness explained that he had neither kindly nor unkindly feelings toward Dr. Harris, the colleague he had got appointed secretary of the Georgia State Board of Health. But re-examination by Mr. Arnold brought out that Dr. Westmoreland had also brought charges of "scientific dishonesty" against Dr. Harris and had resigned from the State Board when, after finding Harris guilty, it refused to drop him.

The defense's other medical experts—Dr. John C. Olmstead, Dr. William S. Kendrick, and Dr. George Backman, professor of physiology at the Atlanta College of Physicians and Surgeons—also disagreed with Dr. Harris's opinion that the condition of the cabbage in Mary Phagan's stomach showed that she had been murdered shortly after eating it. But Dr.

Kendrick, head of Medicine at the Atlanta Medical School, for thirty-eight years a general practitioner, helped Frank's lawyers not at all. After agreeing with his colleagues that Dr. Harris's deduction was guesswork, Dr. Kendrick admitted on cross-examination that he had not read a medical treatise on digestion in ten years. Furthermore, he declared it was possible he had never read such a treatise in his whole life. But he remarked (to general laughter) that he couldn't eat cabbage without having to go to bed. This remark enraged Dorsey, who announced, "I don't care a rap for your stomach, with all due respect for you. We are talking about Mary Phagan's stomach, not yours, please remember that." Defense Attorney Arnold disagreed, hinting that a physician's own stomach could be an excellent guide in his scientific studies. However, Judge Roan ordered that all references to Dr. Kendrick's stomach be expunged from the record.

As often happens when doctors disagree, they had managed to create more confusion than anything else.

The most valuable witness for the defense that week proved to be Frank's assistant, Herbert G. Schiff. Though only in his early twenties, Schiff revealed a complete understanding of every phase of the factory's routine. He was able to cast fresh light on facts which until then had either been misrepresented or misunderstood. He testified that:

1. The idea that Leo Frank, while exploiting the company's workers, was personally getting wealthy was erroneous. The witness said his own salary was \$80 a month and Frank was paid \$150 a month.

2. That Conley was lying when he declared Frank had given him—and then taken away—about two hundred dollars in a roll of bills on April 26. Schiff submitted office records to prove that not more than from twenty-five to fifty dollars in cash was ever kept in the office safe and that Sig Montag alone was authorized to sign checks to pay bills for larger amounts. (Documentary evidence was later offered that Frank had nothing like \$200 of his own on April 26. He had only a few dollars on his person and a few more in his bank account.

3. That the immoral practices in the factory on Saturdays

which Conley had described could not very well have taken place without his or other employees' knowledge. The witness said that on Saturday mornings he himself worked until 11:25; he then left to eat and get some rest, and returned to work at the factory between 2:15 and three o'clock. It was Frank's practice on Saturday to leave the factory at one o'clock and return at three. Other office workers, the sweepers and the mechanics, who oiled and repaired the machinery on Saturdays, also came in to work even though the rest of the employees had the day off.

4. That he—not Frank—had paid off Helen Ferguson on April 25 and that neither Helen nor any other girl had asked him for Mary's envelope. Schiff said he could recall no instance of an employee's asking Frank for wages when he, Schiff, was in the building.

5. That Monteen Stover was in error when she said she could see the clock outside from where she was standing in the office.

6. That the factory elevator, as Conley had testified, was noisy when running (meaning that the mechanics on the fourth floor would have heard it if it had been used on April 26).

7. That the elevator's motor box was kept locked at one time, but by April 26 the insurance people had insisted it be kept unlocked.

In addition, Frank's youthful assistant added his vigorous denial to those already made about immorality at the factory with statements that he had never seen Dalton on the premises at any time nor Daisy Hopkins since she quit working there.

As for the alleged act of perversion on Thanksgiving Day, Schiff declared it could not have taken place. Frank and Conley had worked on that holiday, it was true, but so had he, Schiff, and an office boy. Conley, Frank and Schiff had left the factory together at 10:30 that morning. A few moments later he had seen Frank get on a trolley car to go home. He was sure the superintendent had not returned to his office that afternoon.

Schiff said he had overslept on Saturday, April 26, which was the only reason he had not shown up that morning, something

which made it more difficult than usual for Frank to compile his usual weekly financial report that afternoon.

Next Arnold had him explain in minute detail the tedious work this involved; the job usually took three hours, though it possibly could be done in two and a half if there were no interruptions—a very important defense point since Frank's lawyers were eager to prove that he had written the whole report that afternoon. Frank was such a nervous, tense man that they hoped the jury would be impressed by the improbability of his completing so exacting and complicated a task after having killed a child and left her body in the cellar where anyone might stumble on it at any moment.

Arnold also had the witness tell about Frank's nervousness. When things went wrong in the factory, he testified, either he or Darley had to straighten things out. Frank showed his nervousness sometimes by trembling. Once the superintendent had got so nervous—when a trolley car he was on ran over a little girl—that the witness had to give him spirits of ammonia, and even then he was unable to work for the rest of the day.

Asked about Conley's character, Schiff, said it was bad and that he would not believe the sweeper under oath. Far from excusing Jim for not punching the clock, he said, he had occasionally fined him for failing to do so. On the Tuesday after the murder, he declared, "I saw Conley in the factory and he seemed to be trying to conceal himself. I asked him what he was doing there, and he said he was afraid to go out and that he would give a million dollars if he were a white man, that he would go out if he were. I told him that being a white man didn't help, that Mr. Frank had been arrested and that if he was innocent he had better go out and not be afraid."

Concerning the much disputed blood spots in the metal room, Schiff explained that the employees often cut their fingers, adding, "when they did they came to the office where we kept the box of things to tie them up, unless the cut was so bad we had to send for the doctor." He declared that the place where Barrett had found the blood spots was on the route such employees would follow going from the metal room to the office. But there was no blood, he insisted, at the place Conley said he had found the body. He refuted the idea that the murderer

had washed Mary's blood off the floor with the words "there had never been any water there and to my knowledge it had not been washed or scrubbed in the four years I worked there."

In beginning his cross-examination of the formidable assistant superintendent, Dorsey apparently tried to throw Schiff off balance by quietly asking him an insulting question. The question was whether it was true that he, Schiff, had told the embalmer, Gheesling, that Mary Phagan was shortly to become a mother. The witness's face reddened as he retorted angrily that he had said no such thing. Arnold interrupted to point out that it was already in the record the girl was not pregnant. The Solicitor General granted this was so, but contended that he was trying to establish not only that the witness had *said* that about her, but had been inspired to this cruel slander by Leo Frank. He then concentrated on what he had hammered on as the telltale sign of the defendant's guilt: his nervousness.

Q. How many times on Monday did Frank telephone you and ask you to arrange to get the Pinkertons on the case?

A. Several times.

Q. Wasn't he very anxious?

A. Yes, he appeared anxious; he said he thought the factory owed it to the employees to try to find the murderer and that he wanted me to take the matter up with Mr. Montag and see if he would employ a detective agency and would suggest the Pinkertons.

Q. Was Frank sick at home then?

A. He was at home, but not sick.

With his next series of questions Dorsey tried to wring from Schiff the admission that Frank betrayed guilt by his excessive nervousness after the murder, but with no success. He had better luck, however, with his next questions:

Q. At the time of the murder the factory had been without the services of a stenographer for quite a while, hadn't it?

A. Yes.

Q. What was the condition of the work as regards the work of a stenographer?

A. It had accumulated to a certain extent.

Q. How long does it take to do the billing?

A. From seven to eight minutes.

Q. (*quickly*) *Didn't you tell the coroner under oath that it did not take over half an hour?*

A. Yes.

Dorsey's success in implying that the witness had willfully deceived the coroner was greeted by a spattering of applause around the courtroom. A defense protest resulted only in the judge's informing the deputies that the spectators would have to answer to him if the scene were repeated and suggesting that if another disturbance occurred, they find out who was responsible. Soon after this incident court adjourned for the weekend with Schiff still on the stand.

On Monday morning Dorsey resumed his attempt to break Schiff down in regard to the time required to make out the financial report.

Always a flashy courtroom performer, the aggressive prosecutor was particularly fascinating to watch and listen to now that he was matching wits with a man of equal intelligence. When he failed to make any headway on the time needed to compile the report, he tried his familiar trick of comparing the witness's statements with his inquest testimony. The record here reveals the Solicitor General's variety of approaches in attacking Schiff.

Q. Didn't you say at the inquest that it would take one and a half to two hours to get up the financial sheet?

A. No; two and a half to three hours. If not, there was a mistake made somewhere.

Q. Well, if you swore to one and a half to two hours, then, and now make the time longer, will you please tell the jury why?

A. I must have misunderstood the question, if I swore anything like that at the inquest.

The prosecutor, smiling confidently, then went on:

Q. If a man was working on a job like this and for some reason *wanted* to get through quicker than usual, wouldn't he be able to do it in thirty minutes less than usual?

A. Not and make it look the same, and be accurate.

Q. Isn't Frank a faster worker than you?

A. Yes, on financial work.

Q. How much?

A. I can't say.

Q. Didn't you tell the coroner that Frank could get up the financial sheet in half an hour less time than you?

A. No, I just estimated it.

Q. Do you deny you answered it that way?

A. I don't deny the answer, but I didn't use those terms.

Q. Did you tell the coroner that it would take one and a half hours to balance sixty or seventy dollars?

A. Yes, but I didn't exactly mean that. You see, our money is kept in nickels and dimes and it takes a long time to count it.

Dorsey next turned to the events of Thanksgiving Day:

Q. Do you know what Frank did that day?

A. I was with him in the office in the morning. I know he did not come back to the factory that afternoon.

Q. How did you know it?

A. A man that was with him told me.

"Oh, you said when Mr. Arnold was talking to you," Dorsey commented sarcastically, "that Frank did not come back and you gave the jury the impression that you *knew* it and now you admit it was only *hearsay*."

Schiff protested that he had not said anything like that.

The prosecutor next demanded that the witness explain just how it was that he could recall in such detail so many unimportant things that occurred that day. The witness replied that on hearing about the murder he had tried to think of everything that had preceded it. Then:

Q. Didn't you try to fire Conley and didn't Frank overrule you?

A. No.

Q. Who told you that Conley was unworthy?

A. Plenty of people, including Miss Rebecca Carson.

Q. You had authority to fire Conley. Why didn't you?

A. He knew the business too well.

Q. Who first called your attention to Conley's worthlessness?

A. I can't recollect; he'd been in the chain-gang two or three times.

Q. Did you know Conley could write?

A. Yes, I've seen him writing in the basement.

Q. You say Jim Conley was acting suspiciously; why didn't you tell Frank about it?

A. I was fixing to tell Mr. Darley.

Shortly afterward the prosecutor dismissed Schiff.

The next witness was Joel Hunter, an expert accountant, who described in detail a careful study he had made of the time required to make up one of the factory's weekly financial sheets. He estimated that the job would occupy three and a half hours.

On the following day, August 12, the defense recalled to the stand C Brutus Dalton. It soon became apparent that Frank's representatives had done considerable research into this witness's history. Arnold quickly forced this state witness to admit that he had been convicted of theft in Walton County, where he grew up. Though Dalton insisted he had been pardoned before finishing his term, Arnold had other embarrassing questions to ask him:

Q. In 1894, didn't you plead guilty in three cases and go to the chain-gangs?

A. No, I pleaded guilty to one thing, stealing a shop hammer, and the other Daltons [his cousin and his brother-in-law] pleaded guilty to the rest.

Q. Well, in the February term of 1899, weren't you indicted for stealing cotton?

A. I was indicted for helping to steal cotton.

Q. Yes, and they found you guilty and you went to the chain-gang, didn't you?

A. No; I paid a fine of \$141 and some costs.

Dorsey, on taking over, got the witness to explain that something like eighteen years had passed since the lamentable stolen-hammer episode and even that happened only because "me and the other Dalton boys got drunk." To this the defense counter-attacked by pointing out that Dalton was at that very moment under indictment for selling liquor (Georgia was then a dry state).

The defense also produced six witnesses who testified that Dalton was a liar. Four of them were old neighbors of Dalton in Walton County, who declared they would not believe

him under oath. The other two were Laura Atkinson and Mrs. Minnie Smith, who swore he had not told the truth on the stand about them. Mrs. Smith insisted that she did not even know C. Brutus Dalton.

The next witness, Magnolia Kennedy, a factory employee, was the prettiest young woman to appear at the trial. And the story she told promised to help Frank immensely. On April 25, Miss Kennedy said, she had gone with Helen Ferguson to get her pay envelope. Both of them had got their money from Herbert Schiff.

Q. Where were you in relation to Helen Ferguson as you appeared at the pay window?

A. I was directly behind her.

Q. Did she ask Frank for Mary's pay?

A. No.

Q. Did she speak to Frank at any time?

A. No.

Q. Did she mention anything to you about Mary that day?

A. Yes, about five o'clock she mentioned the fact that Mary wasn't there.

Q. Were you with her all that afternoon?

A. Most of it.

And Magnolia withstood Dorsey's cross-examination without fluttering an eyelash.

Miss Hattie Hall, the stenographer whom Frank had "borrowed" on Memorial Day morning from Montag Brothers, next took the stand. She described the work she had done that day for Frank and told of leaving at precisely twelve o'clock. She was sure it was twelve because she had heard the whistles blowing in a nearby building just then. On starting downstairs, however, she had got only halfway down before she realized she had left her umbrella behind, and returned to get it. On passing the time clock she had observed it was two minutes after twelve.

Q. Did you see a little girl there at any time?

A. No I did not. [Another thrust at the prosecution's theory that Mary had got to the office no later than noon.]

After Miss Hall, Gordon ("Snowball") Bailey, another

Negro factory sweeper, denied categorically one of Jim Conley's statements. This was that he had seen Conley and Frank talking on the day before the murder. Bailey also denied that he had ever overheard the superintendent instructing Jim to return to the plant on a Saturday to "watch" for him, or, that he had ever seen Frank bring women or beer into his office. Of one thing he was particularly positive: he had never seen Conley guarding the entrance on behalf of Frank.

Among other witnesses that day were Mrs. Frank's parents, Mr. and Mrs. Emil Selig, and their Negro cook, Minola McKnight. They were all put on the stand to fill in the timetable on Frank for April 26.

Shortly before the trial started, it will be remembered, Frank's wife had abruptly ended her silence about the case by accusing Dorsey and the police of forcing Minola to sign a false affidavit. This paper confirmed an affidavit signed by the cook's husband, Albert McKnight, branding as false Frank's account of the time he had spent in the Selig home on returning there for his midday meal. The two affidavits also said the Franks had been quarreling.

Though obviously nervous, Minola described in a steady voice the occasions on which she had seen Frank that day. She testified that at 6:30 a.m. he had come downstairs from the bedroom he shared with his wife, eaten breakfast, and left for work. He had returned home at 1:30 p.m. and eaten at 2:00 p.m. She next saw the defendant when he again returned from the factory.

All this merely confirmed the testimony of Mr. and Mrs. Selig. What Arnold was eager to get into the record, to supplement Scott's detailed story of how the police had obtained Conley's confession, was the cook's description of the manner in which the city's law officials had tried to bully her into perjuring herself. After being taken to Dorsey's office, she said, detectives escorted her to headquarters. Then:

Q. Was Albert, your husband, there?

A. Yes.

Q. What did they try to get you to say?

A. One thing, that Miss Lucy wouldn't sleep with Mr. Frank because Mr. Frank wouldn't let her.

Q. What was Albert claiming?

A. That I told him that Miss Lucy had come down and said Mr. Frank had come home drunk and made her sleep on a rug on the floor.

Q. What did the detectives do?

A. They said they'd put me in jail until I told a better lie.

Q. Did they make you sign anything?

A. Yes. In order to get out of jail I signed something I didn't know a thing about.

Dorsey began his cross-examination by reading aloud to Minola the first of her statements. Then:

Q. When you were in my office on May 3rd, didn't you make this statement?

A. Yes, but some parts of it I didn't like.

Q. On June 2nd, Albert confronted you with certain things you had told him, didn't he?

A. Yes.

Q. And you denied them?

A. They wanted me to tell a lie.

Q. What kind of a lie?

A. They wanted me to stand sponsor for what that nigger said.

Q. Didn't Albert put his arm around you and say you were telling a lie and that he wanted you to tell the truth?

A. Yes, but *he* was telling a lie.

Q. Didn't you sign a statement at the police station in the presence of your attorney, George Gordon?

A. Yes.

Dorsey then read that document aloud, and looked at her.

Q. Well?

A. I signed my name to it but they made me sign it.

Q. How did they make you?

A. They said that if I didn't, they'd put me in jail and keep me there.

Dorsey asked her if her pay of \$3.50 a week had been raised lately by the Seligs. Minola denied this, and was excused.

But two days later her employer, Mrs. Selig, was recalled by Arnold, who wished to ask her about certain statements

contained in the now repudiated affidavit.

Q. Is it true that there was talk in your home about the time of the murder, of Leo Frank's being caught with a girl at the factory? That the Negro cook asked if it was a Jew girl or a Gentile, and you or Mrs. Frank said it was a Gentile?

A. (*almost crying*) It is not true; there was no such conversation that I know of.

Q. Did Mrs. Frank say that he had told her he was in trouble, that he did not know why he would commit murder, or did she tell you he had asked her for a pistol to kill himself with?

A. No.

Q. Did you raise the wages of Minola McKnight, your cook, right after the murder?

A. Not a penny.

Mrs. Selig was so belligerent when cross-examined by Dorsey that she did not help the cause of her son-in-law very much. To his first dozen or so questions she replied "No" or "I don't know." These questions concerned how long Frank had been in jail before his wife visited him, and his movements on Sunday, April 27. But apparently Mrs. Selig, after a while, must have realized that she was making an unfavorable impression on the jury. Though she could not conceal her detestation of the man asking the questions, she finally decided to co-operate as best she could.

Q. (*returning to the main point of attack*) How long did you say it was after Frank was locked up before his wife went to see him?

A. I don't know. I think it was on Thursday that she first went.

Q. Did you say that Mrs. Frank did not tell you her husband did not rest well that Saturday night?

A. She did not tell me that.

Q. She didn't tell you he was drunk?

A. She did not.

But after that, Mrs. Selig's revulsion again got the better of her. When asked repeatedly to fix the day her daughter had gone to see Frank in jail, she said she couldn't "because I'm not trying to." On being grilled about the rumor that Minola's

pay had been increased fifty cents a week, that she was given five dollars besides, Mrs. Selig was emphatic in her denials. All she would admit was that she had once advanced her cook a week's wages and that Mrs. Frank had given Minola a hat.

When Mrs. Selig was excused, Judge Roan granted the defense's motion to exclude from the record all references to the defendant's marital life. He also instructed the jury to disregard the testimony about the number of days Mrs. Frank had waited before visiting her husband in jail. The dissatisfied prosecutor grumbled, "I ought even to be allowed to show that Frank had to send for his wife to come to the jail before she finally went."

The next witness on the stand was fifteen-year-old Frank Chambers who had been Frank's office boy from December, 1912, to less than a month before the murder. Like so many of the people who worked for the superintendent, young Chambers said he had never seen Frank "touch any girls or women" or talk to Mary Phagan. Though he had usually worked in the office until four-thirty or five o'clock on Saturday afternoons, he had never known the door to be locked or anyone "watching" it.

- On cross-examining the office boy, Dorsey asked questions that implied clearly that the man being tried for his life was a homosexual. Questions such as these:

Q. What did Frank try to get you to do that you complained to Gantt about?

A. I never complained to Mr. Gantt.

Q. Do you deny that you told Gantt of improper advances and propositions Frank had been making to you?

A. Yes.

Q. Didn't you tell Gantt that Frank had threatened to fire you if you didn't permit him to do with you what he wanted to?

Attorney Arnold jumped up before the witness could reply and requested the court to rule out all questions and answers of this nature as grossly prejudicial and irrelevant. Judge Roan upheld him and ordered the offending questions to be expunged—but, of course, by then the jury had heard them.

On Thursday, August 14, the defense lawyers at last answered the question everyone had been wondering about: whether they would open the door to more of Dorsey's bare-knuckle attacks on Frank's morals—or lack of them—by putting character witnesses on the stand. In fact, on that day they started a parade of witnesses without a parallel in any other notable American murder trial. There were scores of them. But far more impressive than their number was their apparent respectability, high intelligence, and dignity, particularly when contrasted with the motley and illiterate crew the state had produced. The group included:

Two of Frank's old professors at Cornell, who told of his moral behavior and high scholarship when studying under them;

Assistant District Attorney Harry E. Lewis, a Brooklyn neighbor who later became one of that borough's greatest prosecutors and subsequently a distinguished judge;

A large group of young engineers and other successful businessmen who had been schoolmates of Leo Frank's either at Cornell or at Pratt Institute, in Brooklyn.

All of them had interrupted their own busy careers to travel hundreds of miles to testify to the affection and esteem they held for the man on trial.

In addition, there was another group from Atlanta itself, including some of the city's outstanding professional and business men and leaders in Jewish fraternal organizations, who, without hesitation, were eager to stand up and be counted as ardent friends and admirers of Leo Frank. The temper of the city being what it was—boiling with hate of Frank and thirsting to revenge itself on him—this required unusual courage, even though the young man on trial was president of the local chapter of B'nai B'rith.

Dorsey listened thoughtfully as these well-dressed, soft-spoken professors and college men from up North told what they knew about Leo Frank and rarely cross-examined them. One of the local businessmen to testify was Sig Montag, Frank's boss and the president of the National Pencil Company. During his direct examination by Defense Attorney Rosser the executive was able to clear up several points, including the mys-

terious speed with which legal help for Frank had appeared at police headquarters.

Q. Did Frank report the murder to you that Sunday?

A. Yes

Q. Was he nervous?

A. Yes, but no more than I.

Q. Were there any scratches or discolorations on his face?

A. None that I could see.

Q. What did you do when you learned that Frank was being taken to the police station Monday?

A. Telephoned Herbert Haas, my personal attorney. But he said his wife was too ill for him to leave the house.

Q. What did you then do?

A. I went to the police station. They refused me admission and I telephoned you, Mr. Rösser.

Q. What instructions did you give at the factory in reference to aiding the detectives?

A. I told the help to help them in every manner possible.

The sisters, brothers-in-law, and friends of Mrs. Frank who had played cards with her and her parents on the evening of the murder all testified, and told the same story. Though the defendant had not sat in the game, he had been in plain sight all evening, reading a magazine. A baseball story had amused him so much that he had offered to read it aloud. They said Frank had retired early, about ten o'clock or so. He had not used the telephone that evening.

In a trial conducted in less bizarre circumstances, this testimony might have counted heavily in the defendant's favor. Particularly in view of the fact that Mrs. Formby, the brothel madam who had reputedly signed an affidavit that Frank had kept phoning her that evening for a room where "he could take a young girl," had again disappeared. Mrs. Formby never did testify and later repudiated her affidavit. In fact it was proved that the brothel telephone could not be called from the one at the Selig home because they were on the circuits of two different telephone companies.

None of this helped Frank in his trial. The defense also later charged that the crowd in the courtroom and the mob outside

jeered when the Jewish names of the guests at the Seligs' card party—Goldstein, Marcus, Mrs. Abie Marx, Ike Strauss—were called out in court. When Dorsey cross-examined any of these guests, or most of the fifty to sixty additional character witnesses from the factory, he did so in a perfunctory fashion. However, he worked hard to trip up one of this latter group. This was Lemmie Quinn, who, as foreman of the metal room, had been the dead girl's boss.

Quinn corroborated previous testimony that the hairs Barrett found might have been blown onto the lathe from the nearby ladies' dressing-room, also to Barrett's deep interest in the \$4,300 reward for arrest and conviction of the killer. But what aroused Dorsey's sharp interest in Lemmie Quinn was his contribution to the defense's timetable on Frank. During his direct examination Quinn said that he had visited the factory on the fatal day between 12:20 and 12:25, hoping to see Herbert Schiff. On meeting Frank, the metal-room foreman, who had been given the day off, said he had made some remark about the management not being able to keep him away even on a Saturday.

Dorsey started his attack on Quinn's story by questioning the witness's eagerness to help Frank.

Q. Didn't you go to see Frank and didn't you say, "Why, Mr. Frank, I was there Saturday," and didn't he say, "That's right, you were there"?

A. The first time I mentioned it to Frank he said he would tell his lawyer and the next time I mentioned it to him he said he had told his lawyer.

Q. Didn't you say to him, "I don't want to be mixed up in this thing, but if it will help you, Mr. Frank, I'll do whatever you say for me to do"?

A. I think it was like that.

Dorsey then demanded to know why Quinn now said he was at the factory between 12:20 and 12:25 on April 26 when at the inquest he had set the time between 12:00 and 12:20. Lemmie Quinn replied that he had since discussed the matter with his wife, who had reminded him that he had gone to the butcher's for her that day, which delayed his arrival at the factory.

During his cross-examination of another defense character witness Prosecutor Dorsey once again demonstrated his skill at blackening the defendant's character by innuendo. In this instance the witness was J. Ashley Jones, Frank's insurance agent, who had praised the superintendent as a moral and clean-living man. Dorsey began by getting Jones to admit that he had never interviewed the factory girls about Frank's character.

"About five years ago," said the witness, "Frank took out a policy with my company in New York and we got a report on him both morally and physically, and the fact that he showed up so well on both points is proved by the fact that he got a standard policy." Frank had renewed his policy since coming to live in Atlanta, explained the insurance man, which meant that he had once more been investigated by the company and reported on favorably.

Q. Then you never heard that Frank took girls on his lap and caressed them?

Here Arnold interrupted angrily. "Your Honor, this is outrageous. We are trying this man on every vile and slanderous lie that's been circulated against him since April 26 by a lot of crack-brained extremists. If every long-tongued, lying, crack-brained idiot that has circulated lies against him since April 26 was believed, then we have no character to begin with at all."

"Your Honor, I am not four-flushing one bit," replied Dorsey earnestly. "I propose to introduce a witness who will testify that the witness did hear the reports circulated against Frank to which I have just alluded."

Defense Attorney Arnold banged the table with his fist. "Your Honor, we cannot and will not submit to such outrageous statements on the part of the Solicitor. He knows that he cannot prove what he is saying. If he makes another such statement, we will then move for mistrial."

Dorsey was instructed to continue the examination.

Q. You never heard that Frank went to Druid Hills with a little girl in his lap, and that he played with her?

A. No.

Q. You never heard of Frank going out there to Druid Hills and being caught, did you, before April 26?

A. No. But our reporter, it was his business to find out, and if he had found it out, he certainly would not have issued such a policy.

Q. About twelve months ago, you never heard of Frank kissing any girls and playing with the nipples on their breasts around there?

A. No, I never heard of such a thing.

Q. Did you ever hear of his putting his arms around Myrtie Cato in the office?

A. No, sir.

Q. Did you ever hear about the time he went in when little Gertie Jackson was sick, lying in the dressing room with her dress up, and stood there and looked at her, and did you hear any talk of the girls there about his attitude?

A. No, sir.

Q. Did you ever hear about his frequently going into the dressing room with Vernie McDaniel?

A. No, sir.

Q. Did you ever hear of the time it was said Miss Pearl Darlson, about five years ago, when he held out money in one hand and put his hand on the girl, that she threw the monkey wrench at him? You never heard about that time?

A. No, sir.

Q. Did you ever hear them say that he paid special attention to the girls, and winked and smiled at them, and had nude pictures hung up in his office, and walked around and slapped the girls on the seat?

A. No.

Q. (*repeating in an incredulous voice*) Didn't you hear, about twelve months ago, that Frank played with little girls in his office?

A. No, sir.

At this point the ashen-faced mother of Leo Frank rose and screamed at Dorsey, "*No, and you haven't either, you dog!*" Arnold took the old woman's hands in his.

"Mrs. Frank, if you stay in this courtroom," he told her, "I'm afraid you will have to hear these vile, slanderous lies, and I would suggest that when you reach the limit of your patience you retire for a while." The mother hesitated, and

then went out, leaning on the arm of Herbert Haas.

The next day Dorsey demanded that both Frank's mother and wife be barred from the trial. He declared that he would produce witnesses—and that the defense had opened the door for *his* witnesses to testify to the defendant's bad character—who would justify every question he had raised about Frank's immorality. But Judge Roan permitted the women to remain, though he cautioned them to restrain themselves.

There were more factory witnesses that morning and afternoon, and also the next day, who declared they believed in Frank's good character but distrusted Jim Conley. Among these was Miss Rebecca Carson, a forewoman, who testified: "I asked him where he was on the previous Saturday, and he told me he was so drunk that he didn't know where he was or what he was doing. My mother said, 'Jim, they haven't got you yet?' And he answered that he hadn't done anything to be gotten for. He told my mother and I that Frank was as innocent as either of us, and then Mama said that whenever they caught the man Mrs. Arthur White had seen on the first floor they would have the murderer, Jim dropped his broom and looked startled."

Like many of the other factory employees, Miss Carson was asked, while being cross-examined, whether her salary (as forewoman she earned \$10 a week) had been raised since the murder, and denied it. Her mother later corroborated her story.

Sixteen-year-old Julia Fuss, one of the prettier factory girls, also told of Conley's behavior after the murder, testifying that he had asked her to let him look at the newspaper. When Julia asked him if he considered Frank guilty, the sweeper told her, "Mr. Frank is as innocent as the angels in heaven."

Mary Perk, the polishing department forewoman, told of having actually accused Conley of murdering Mary Phagan. That was the day after the body was found and, Miss Perk testified, "he ducked his head and walked away."

From any viewpoint, however, the defense's most important witnesses were the many persons who testified briefly that day, and on other days, to seeing Leo Frank either just before, during, or just after the time on April 26 that the state of Georgia said he was strangling Mary Phagan and, with Conley's help,

getting her corpse down to the basement. These witnesses, like those who praised his character, were all of excellent reputation.

Miss Corinthia Hall testified she had come to the factory at 11:25 with her friend, a recent bride, Mrs. Emma Freeman, to get her pay. They had gone to the fourth floor and, coming down to the office, had spoken again to Frank. On seeing Mrs. Freeman he had asked, "How's the bride?" She said she had left at 11:45, which Mrs. Freeman corroborated.

Miss Hattie Hall, of course, had already testified to leaving the office at twelve sharp, then coming back a moment or two later. Then there was Quinn saying he was there between 12:20 and 12:25.

Helen K. Curran, a pretty stenographer, told of having seen Frank on a street corner in downtown Atlanta about 1:10. (At this, reporters in the court raised their eyebrows, remembering how Jim Conley on the stand had told of looking at the clock and seeing it was "four minutes to one" as he put Mary Phagan's body in the sack.)

Mrs. Albert G. Lieby, who lived directly across the street from the Seligs, testified that at 1:20 p.m. (or ten minutes after Miss Curran said she saw him) Frank had got off a trolley car at her corner. And there were several witnesses who had talked to the usually nervous Frank that day who declared he did not seem unusually upset.

One of the rare moments of comedy relief during the proceedings came when a factory employee named Joseph Stelker took the stand and explained why he considered Conley's character deplorable.

"Jim played me a mean trick," he testified. "On my job in the factory I drink a can of beer about ten-thirty every morning, and one day last summer I sent Jim out to get me twenty-five cents' worth of beer, and he drank half of it and filled the can up with water. He came back and says, 'Here's your beer, Joe,' and I tasted the stuff and found that it was half water." Perhaps unnecessarily, Stelker added, "I went after my own beer after that."

But there was no amusement for anyone there on that day, Friday, August 15, when, following Stelker, Mrs. Rae Frank,

the defendant's leaden-eyed, woe-ridden mother, took the stand. Arnold's purpose in calling her as a witness was to counteract the general local opinion that Frank's family were people of wealth.

Mrs. Frank testified that she and her husband were anything but rich. Her husband, now sixty-eight, was retired and too ill to come to Atlanta to be at their boy's side during the trial. Their only property, she testified, was their \$10,000 home in Brooklyn which was mortgaged for \$6,000 and their sole income was derived from the interest they received on capital of \$20,000.

Arnold then had her identify and read aloud the letter her son had sent on the day of the murder to his uncle, Moses Frank, then in New York on his way to Europe.

It was the theory of the defense that the tone of the letter indicated how calm and in what a peaceful state of mind the defendant had been when he wrote it. It is interesting that Prosecutor Dorsey used this same letter to prove how Leo Frank betrayed in it the guilty feelings that were tormenting him.

Here is the letter:

Atlanta, Georgia

April 26, 1913

Dear Uncle: I trust that this finds you and dear Auntie well after arriving safely in New York. I hope that you found all the dear ones well in Brooklyn, and I await the letter from you telling me how you found things there. Lucille and I are well.

It is too short a time since you left for anything startling to have developed down here. The opera has Atlanta in its grip, but that ends today. I've heard a rumor that opera will not be given again in a hurry here. Today was Yontiff here, and a thin gray line of veterans, smaller each year, braved the 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, etkc., 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.

Much love to you both, in which Lucille joins me, I am

Your affectionate nephew,

(Signed) Leo M. Frank

The defendant's mother was still on the stand at adjournment time. Right after she concluded her testimony next morning a defense witness gave Frank and his lawyers an unpleasant surprise.

The witness was an eighteen-year-old former factory worker, Miss Irene Jackson. She testified that she had quit her job at the time of the murder because her father, A. W. Jackson, a city policeman, insisted on it.

Miss Jackson said that the other girls were afraid of Frank, though they said little about it. One day Frank had come to the women's dressing-room door when she and Ermillie Mayfield, another employee, were in there. He just pushed the door open, looked in, and walked away. At the time she was fully dressed but the other girl had her top dress off. There had been similar incidents when she had been in the dressing room with other girls and the superintendent came in without knocking.

Coming as they did, on top of the prosecutor's innuendoes of Frank's perversion, these charges had to be considered important by the defense. Then and later Frank's lawyers went to considerable trouble to try to establish that if Frank broke into the ladies' dressing rooms without warning it was not for the purpose of ogling the girls but to stop their flirting from the windows with men on the street below.

The defense tried to repair the damage its own hostile witness had inflicted by rushing to the stand, one after another, a whole group of women employees who commended Frank's character and behavior.

His most ardent admirer among these girls proved to be Mrs. Cora Barnes, a slender, attractive young woman. She praised Frank as "one of the best men I or anyone else has ever seen. I would be willing to die in his place, for he is innocent. I would fight for him and die for him if I could."

The crowd laughed at her while she was being cross-examined by Dorsey about her reasons for appearing as a witness. "I believe he is innocent," Mrs. Barnes declared. "I wish I could make everybody believe it."

W. D. MacWorth, one of the Pinkerton men who had worked on the case, testified that he had found the "bloody club," a pay envelope with the initials "M.P." on it, and seven stains "that resembled blood" close to the trap door near the elevator. This, of course, had potential importance, as the defense believed that Jim Conley had killed Mary at this spot in the basement. But Dorsey managed to draw from the witness the admission that the police had not been informed of the finding of the bloody club for nineteen hours, which gave the impression that the Pinkertons had purposely delayed reporting to the authorities so the defense could make up its mind whether the belated discovery of this new murder weapon would help or hurt Frank.

That weekend the *Constitution* observed that the strongest point so far made by the defense lay in the larger number of persons who saw Frank "calmly walking around only a few minutes after the murder is claimed to have been committed." The newspaper also commented favorably on the variety and social quality of the defense's "avalanche of character witnesses," and ran the following item as well:

### **Too Much Noise to Suit the Sheriff**

As the afternoon session began Sheriff C. Wheeler Mangum arose with dignity from his seat near the witness stand and rapped for order. As silence settled down over the buzzing courtroom he spoke: "As sheriff of this, Fulton County, if I hear any more laughing or hissing or giggling or anything unbecoming of a gentleman in this courtroom, I'll have him brought up before the judge,

who will do with him what he thinks ought to be done. That's all I've got to say."

Most of Monday morning (August 18) was occupied by the taking of the testimony of more than twenty additional character witnesses who had worked for Frank.

After that the main event was at hand. Now Leo M. Frank would read his statement, this being all the Georgia state law permitted a man on trial for murder to do. Though it might save his life, he was not allowed to testify or answer the questions of his own attorneys. On the other hand, the prosecutor was not allowed to cross-examine a defendant unless the accused man consented.

Shortly after two o'clock that afternoon Leo M. Frank took the stand to read what the *Constitution* later pronounced "in all essentials the most remarkable statement which has ever been delivered in a courtroom in the South."

The courtroom, of course, was packed. They were, indeed, all there: the human hyenas and wolves who are always to be found where blood is being spilled or someone is being hurt or humiliated or tormented; the simple-minded who had been prodded and excited by street-corner whispers into believing that as real, true-blue Southerners they should hate Frank as a Northerner; the Jewish relatives, in-laws, and friends who were his staunch defenders; and lastly, the judge, the lawyers, the police, the newspaper reporters, all of them in the highly competitive professions which offer high rewards for creating saints and devils and for making melodramatic entertainment of human agony.

They all sat tensely that day in the stifling courtroom, with the vast crowd outside muttering louder than ever, and inside, the little man trying to read his way out of the hurricane of accusations, contradictions and prejudicial innuendoes which suddenly and insensately seemed to be sweeping him away. Like the eye of a hurricane, the defendant seemed in dead calm.

As Frank was about to begin Judge Roan interrupted to explain that the law gave the prisoner the right to read such statements as he deemed proper to his defense, and reminded him that he was not under oath. The jury could believe him,

if they wished, in preference to the sworn testimony. He also said the defendant "shall not be compelled to answer any questions on cross-examination" and "should feel free to decline to answer them."

Speaking soberly, Leo Frank then began his statement to the jury. He said he was born in Terrell, Texas, on April 17, 1884, and had moved with his parents as an infant to Brooklyn, where he went to the public schools and to Pratt Institute. During the fall of 1902 he had entered Cornell University, where he studied mechanical engineering and was graduated in June, 1906.

Frank's first job had been as a draftsman in Massachusetts. Then he had worked for a short time as a testing engineer and draftsman with a Brooklyn firm. In October, 1907, he continued, he had come South for two weeks to discuss with Atlanta businessmen the project of starting a pencil factory in that city.

In preparation for his job he had studied the machinery and business methods of pencil manufacturers who had plants in Europe. Returning to Atlanta in August, 1908, he had gone to work as superintendent of the new company; he had married Lucille Selig on Thanksgiving Day, 1910. Most of their married life had been lived under her parents' roof.

His duties at the plant were quite extensive. He was in charge of the technical and mechanical processes; he checked the product to keep its quality at least equal to competitors; he purchased machinery as needed and supervised its installation and the purchases of material. He also ran the office and was responsible for the company's lead plant, which was situated on Bell Street.

On Friday, April 25, he said, he had made up the payroll with Herbert Schiff. He had noticed a shortage in the accounts of about \$1.20, and stayed there trying to locate it. But no one had come to the office asking him for anyone else's pay envelope.

The statement continued:

"Mr. Schiff placed the envelopes in the box and placed the box in the safe and left them. I placed in the time clock slips which would be used the next day. I took the two time slips

dated April 25, which had been used by the help on Friday, April 25—these were the two that I put in the slot [exhibiting same to jury].

“Gentlemen, as I was saying, these two slips that had April 26, 1913, written at the bottom, were the two slips that I put in the clock on the evening of Friday, April 25, to be used on the day following which, of course, was April 26.”

Here Frank mentioned that N. V. Darley as “superintendent of labor and manufacture” hired and discharged the help, decided whose wages were to be raised, and “was the man who came directly in contact with the help.”

On Friday evening Frank had got home at 6:30, he said, and after supper he and his wife played auction bridge at a friend’s house. They retired about eleven o’clock.

Frank said that on Saturday, April 26, he got up between seven and seven-thirty, “leisurely washed and dressed to make my breakfast,” took a streetcar to work, arriving at the factory at about twenty minutes after eight. He found Holloway, the watchman, there, and his office boy, Alonzo Mann.

Next, Frank read from his prepared statement:

“I took off my coat and hat and opened my desk and opened the safe and removed the various books and files and wire trays containing the various important papers which were placed there the evening before, and distributed them in their proper places about the office. I then went out to the shipping room and conversed a few minutes with Mr. Irby, who was at that time shipping clerk, about the work he was going to do that morning.

“According to my recollection, we did no shipping that day owing to the fact that the freight offices were not receiving any shipments due to the fact that it was a holiday.

“I returned to my office and looked through the papers and sorted out those which I was going to take over on my usual trip to the general manager’s office that morning.

“I then turned to the invoices covering statements which were made by the pencil factory on Thursday, April 24, and which were typewritten on Friday, April 25, by Miss Eubanks, who was the stenographer who stayed at my office. She had hurried through with the office work on the day previously so that

she could go home and spend the holiday in the country where she lived."

He then attended to some routine matters that he hadn't had time to take care of before, such as sending out invoices and so on. Picking up the invoices, he showed them to the jury and went on:

"This particular piece of work is the most important work in the factory. It is the invoices [sic] covering shipments and is sent to the customer. It is very important that the prices are correct and the amount shipped agrees with the amount which is on the invoice, and the terms are correct and the prices correct. In some cases there are freight reductions, all of which must be carefully checked or looked into, because I know nothing else that exasperates a customer more than to see invoices which are incorrect.

"There are initials as to the salesmen's names and one column represents the shipping point, another the date, and so forth. The next step is to fill the orders on this sheet and separate the orders into price groups. This sheet is about the only way we have of telling how much of the various goods is being sold—the barometer of the business—and requires most careful work.

"After I finished that work, I have had to do this, and notwithstanding any insinuations that have been made, I wrote these requisitions.

"Now, that is all my handwriting except what was written on subsequent dates to April 26.

"Miss Hall left my office on her way home at this time. There were then at the building Arthur White, Harry Denham and Mrs. White. It must have been from ten to fifteen minutes after that that this little girl, whom I afterward found to be Mary Phagan, came in. She asked for her pay. I got my cash box, referred to the number and gave her the envelope. As she went out, she stopped near my outer office door and said, 'Has the metal come?'

"The safe door was open and I could not see her, but I answered, 'No.' The last I heard was the sound of her footsteps going down the hall. But a few minutes after she asked me, I had the impression of a voice saying something, but it made no

impression on me.

"The little girl had hardly left the office when Lemmie Quinn came in. He said something to me about working on a holiday and went out. A few minutes before one o'clock I called up my wife and told her I was coming to lunch at one-fifteen. I then went upstairs to where Denham and White were working and found they had a bit of the floor taken up and were sawing.

"I explained to them that I was going to lunch and would lock the door when I left. Mrs. White left at this time. Some lady said that at twelve-thirty-five o'clock she found me in front of the safe. It is barely possible that she did. I don't recall her being there, but her memory is probably fresher than mine on this point.

"When I went upstairs I asked Mr. White if his wife was going to stay there with him. She said no, that she would go. She left then, and I got my hat and coat and left, locking the outer door.

"Now, gentlemen, to the best of my recollection, from the time the whistle blew until I went upstairs to see Mr. White, I did not stir out of my office. I went on home.

"I called my brother-in-law, Mr. Ursenbach, to tell him I was unable to keep the engagement to go to the ball game. The cook answered the phone.

"My wife and mother-in-law were going to the opera. My father-in-law and I ate lunch. He went to the back yard while I lit a cigarette and lay down for a few moments.

"I left and while passing the home of Mrs. Wolfsheimer, saw Mrs. Michael up on the porch. I went in to see her and saw Mrs. Wolfsheimer, Mr. Loeb and others.

"To catch the next car, I ran down to Glenn Street. On the car I met my wife's cousin, Mr. Loeb. The car was blocked at the corner of Washington and Hunter Streets. I walked up Whitehall Street and stood there possibly for fifteen minutes, watching the Memorial Day parade.

"As I walked down Whitehall Street I met Miss Rebecca Carson. This was probably three-ten or three-fifteen o'clock. I greeted her and walked on. I stopped at Jacobs Pharmacy and walked on. I went from there to the factory.

"When I reached there I went upstairs and let the boys know

I had returned. A minute later, I returned to my office and started to work on the financial sheet.

"In a few minutes the clock bell rang and Arthur White came into the office to borrow two dollars. It was while I was at work on the sheet, at probably four o'clock, that I went to the toilet.

"As I returned towards the office I noticed Newt Lee coming toward me from the head of the stairs. I told him he could go on off, but to be sure to be back at six o'clock. I told him I was very sorry I could not let him know about the half-holiday, but that he was at liberty to enjoy himself as he saw fit. But that he must not fail to return at six o'clock.

"The first night that Newt Lee came to work at the factory I took him over the building and stressed the fact that he must go into the basement, especially the dustbin, every half-hour.

"I told him that it would be part of his duties to watch the back door. He was to make a complete tour every half-hour and punch the clocks.

"Now, besides the making of this large sheet here and the financial sheet, there are three other sheets that I made out. Now I want to call your attention to this: I did not typewrite it, I merely filled in the blanks. I have several of them typewritten and keep them in my desk.

"In addition to that, I make up two condensed financial sheets, showing the principal figures. They are sufficient for a director or stockholder to see what the factory is doing. One of these statements I mailed to my uncle, Mr. M. Frank, who is president of the company, and the other one to Oscar Pappenheimer, who was a director. I put one in an envelope and addressed it to Mr. Pappenheimer and the other I sent to my uncle along with a price list, and I wrote him this letter. This price list is too long for an ordinary envelope, hence the large envelope.

"After finishing the financial sheet I folded the large sheet and addressed it to Mr. Sigmund Montag. I then took up the checking of the cash and balancing of the cash book. I did that work, as near as I can remember, between five-thirty and five minutes to six o'clock. I did not take an hour and a half. I did it in about twenty-five minutes. There was thirty dollars

and thirty-four cents. There couldn't have been any more. It was mostly in small change. There was one loan to Mr. White, making the total amount of cash twenty-eight dollars fifty cents.

"Beginning that week we had thirty-nine dollars twenty-five cents as a balance. We drew two checks for fifteen dollars each—I mean by that we went to Mr. Montag's office and had him draw the checks. The total amount of money we had to account for was sixty-nine dollars twenty-five cents. What it was spent for, of course, is shown on the debit side.

"I found at the end a shortage of four dollars thirty-four cents coming about in payrolls within the last three months."

At this point Frank paused to take a drink of water; he had been talking for about two hours and thirty minutes.

"I finished this work I have just outlined," he continued, "at five minutes to six o'clock. I took those slips—I won't show them to you—stamped April 28. They were put into the clock because no one was coming into the office until Monday.

"Newt Lee's punches on Monday night would appear on the strip placed on the clock Monday night. Just before I left I put a new tape in the clock and made Newt Lee punch it. Then he went downstairs to wait and let me out.

"As I started out of the factory I saw Newt Lee talking to a man named Gantt, who had been released about two weeks before. I gave him permission to go into the factory and get Gantt's shoes, which he said were left there, and I told Newt Lee to go with him.

"I reached home at about six-twenty-five o'clock and at six-thirty, thinking Newt Lee would be near the clock, I called him over the phone to see if everything was all right. I could not get him. I called again at seven o'clock, and again at seven-thirty. At that time I got him and he told me everything was all right.

"That night my parents-in-law had company at the home. Those present were Mr. and Mrs. Marcus, Mrs. Goldstein, Mrs. M. Marx, Mrs. Abie Marx, and Mr. Ike Strauss—who came in about ten o'clock. I read a magazine until ten-thirty, then retired.

"I believe I have taken in every move Saturday night. I retired Saturday night. Sunday morning about seven o'clock I

was awakened by the telephone ringing and a man's voice, which I afterwards found out to be Detective Starnes', said. 'I want you to come down to the factory.' 'What is the trouble?' I asked. 'Has there been a fire?' 'No,' he said, 'a tragedy has occurred.' I said, 'All right,' and he said he would send an auto.

"They came before I finished dressing. At this point I differ with Detectives Black and Starnes about where the conversation took place. They say it was after we were in the machine. I say it was before we left the house, before my wife. At any rate, here is what was said:

"They asked me if I knew Mary Phagan. I answered that I did not. They asked me if I did not pay off a little girl with long hair down her back that afternoon before. I said I did. They said they wanted me to go to the undertaking establishment to see if I could identify the body. They made the trip to the undertaking establishment very quickly. I went in and stood in the doorway. The attendant removed the sheet from the little girl's face and turned her head toward me. His finger was right by the cut on her head. I noticed her nostrils were filled with dirt and cinders and there were several discolorations. I noticed a piece of cord around her neck, the kind we used in the pencil factory: I said it looked like a little girl that came into the factory the day before. They had already told me it was Mary Phagan. We went to the factory and by examining the payroll I found that Mary Phagan had drawn her pay the day before and that the amount was one dollar twenty cents.

"As I went into the factory I noticed Mr. Darley going in. We went to the office and I found Newt Lee in the custody of the officers. They told me they wanted to go down to the basement. I got the elevator key, but when I tried to start the elevator machinery I found I could not and told Mr. Darley to see if he could start it.

"He started the car, and when we got further down I found that one of the chains had slipped. They showed me where the body was found, where the shoe was found, and pointed out everything that was at that time known. After looking about the basement we got some nails and a hammer, and Mr. Darley nailed up the back door. Back upstairs, Mr. Darley, Chief Lanford and myself went on a tour of inspection of the

three upper floors. We went through the metal room, the metal room that has figured so prominently in this trial, and neither Mr. Darley nor myself noticed anything peculiar on that floor. Nor did Sergeant Lanford, Chief of the Atlanta Detective force.

"We went to the time clock. I took out a slip and a casual note of this slip would indicate nothing was on it. It had been apparently rubbed out. It could not be rubbed out altogether without rubbing out the printed lines. I did write with pencil across the face of it, 'eight-twenty-six a.m.' We noticed a slip, but overlooked any skips. I folded the time slip as it is now and handed it to Chief Lanford.

"Now, gentlemen, I've heard a great deal during this trial about nervousness. I was nervous. I was completely unstrung. Imagine yourself called from sound slumber in the early hours of the morning, whisked through the chill morning air without breakfast to go into that undertaking establishment and have the light suddenly flash on a scene like that. To see that little girl on the dawn of womanhood, so cruelly murdered—it was a scene that would have melted stone. Is it any wonder that I was nervous?

"I got in an automobile and sat on Mr. Darley's knees. I was trembling, perhaps. Later Sunday morning I went to the home of Mr. Sig Montag and told him what had occurred. I got home about eleven o'clock. My wife and I went over to my sister-in-law's, Mrs. Ursenbach's, and with a number of friends we discussed the tragedy.

"We went back home to dinner, and mentioned there the terrible crime. After dinner I read a short time and about ten minutes to three o'clock caught a car downtown. The conversation on the car was about the little girl that had been found dead in the factory. . . .

"My wife had left word that I was to call her up at the Haas home. I went over and met her a few minutes before seven o'clock. . . . Between eight and eight-thirty we were at home and had supper and were reading the newspapers. I called up my brother-in-law, and retired about ten-thirty o'clock.

"The next morning I arose at seven-thirty. While dressing, the doorbell rang and my wife answered it. I came downstairs and learned that Black and Haslett were there. They said they

wanted me to go to police headquarters. We walked down Georgia Avenue, and I asked Haslett, 'What is the matter at the station?' Haslett answered, 'Newt Lee has been saying things.' I asked him what he had said.

"Haslett answered that Chief Lanford would tell me when we got to headquarters. We waited around the station about an hour. Mr. Montag and some friends came up and I spoke to them. About that time Luther Rosser came up and said, 'Hello, boys, what's the matter?' Haas and Rosser walked up together. Lanford, who appeared to be busy answering the phone, came in and shouted, 'Come here!'

"He showed me the time slip and questioned me about it. We were in the room alone. I heard Mr. Rosser outside say, 'I'm coming into that room; that man's my client!' That was the first time I knew that Rosser was my attorney.

"Beavers then came in and asked me to make a statement. And I told him I sure would. I thought it was only right. I heard Beavers and Lanford say that a man who committed such a crime would be all marked up with bruises. When I heard that I showed them my body. The detective went to my house to examine my clothes. They took them out, piece, by piece, and looked at each. They appeared to be well satisfied.

"After dinner, while at home, I telephoned to Schiff and told him to employ detectives, preferably Pinkertons, to work in co-operation with the city detectives. I then went back to the factory. Schiff, Quinn and a number of others were there. The factory was closed down because the girls were demoralized over the tragedy." [At this point Mrs. Frank left her seat to bring her husband a glass of water. He smiled his thanks.]

"Barrett told me of the hair on the machine, and said that the strands were so few that he could not see them until he wrapped them around his fingers several times.

"Now, gentlemen, if there is one thing about that factory after my seven years in charge of the place it is the care I have given it. We used drying compound on the floors, metal and tools. Opposite the dressing room was a scrap barrel. Fluid put in the barrel will naturally flow on the floor. There is a great deal of lubricant used on the machines and naturally it is bound to cake from a half-inch to an inch around the machines.

"All of the accidents that occur in the factory are not reported except in cases where the injured employee is incapacitated. There are many who cut their fingers, but such accidents are not reported. When they cut their fingers they invariably pass by the dressing room. About those spots on the floor, I have examined them myself, and you could scrape dirt from the spots that had accumulated several days.

"The spots, had they been blood stains, and, coming in contact with the compound, would have been pink not white.

"I then took the financial sheet that had been made out a week previous to Sig Montag and had a long conversation with him. I wrote a telegram to my uncle telling him that I was all right and asking him not to worry. I met Hymes, one of the salesmen, and we walked over to the factory. Harry Scott came in and spoke to me in the presence of Darley.

"I gave Scott all the details I had, including Mrs. White's story that she saw a Negro lurking near the elevator. I showed Scott all through the building. I took him into the metal room and showed him the table and the lathe.

"We then went on the fourth floor and looked around, going next to the basement. We made a thorough search of the basement. Scott looked all around the place. I saw him pick up several articles, and I noticed particularly that he picked up a piece of cord like that found around the girl's throat.

"I asked about the rates of the Pinkerton agency, and then telephoned Montag and he agreed to employ the agency for at least a few days. Scott went back to headquarters, after explaining to me that it was the custom of the agency to work with city detectives on such cases, and I went home and had supper. My wife and I later retired.

"On Tuesday I rose at eight-ten and arrived at the factory at eight-thirty. At nine-thirty I went to Montag Brothers and had quite a conversation, returning with Mr. Jordan to the pencil factory. I did some routine work, putting papers away. Scott came down and took me to police headquarters in an automobile.

"I answered willingly all Chief Lanford's questions. About that time Black and Scott came in with a bundle, and they asked me if I had a shirt like the sample which they showed me."

Newt Lee was brought in and they asked him. Lee said that he had once possessed a shirt like it. I sat in the office until twelve o'clock.

"When Mr. Rosser later came in and told me that Beavers had decided that it would be best to detain me, Detective Starnes came in and dictated to me one of the notes to get a sample of my handwriting. I wrote as Starnes dictated. Starnes spelled out each word. When I was through I put a date on it so that I might identify it and to prevent any erasures being made. I was glad, as you can see, to let them compare my handwriting with the notes.

"Now, about midnight Tuesday, Scott and Black came in and said, 'Mr. Frank, we want to talk to you a little bit.' They stressed the belief that possibly the watchman let couples in the factory. I told them I didn't know of such a practice and that had I known of any such conduct, I certainly would have stopped it.

"Then Detective Black said, 'You are Lee's boss. We can't get him to talk, and want you to see what you can get out of him. Tell him, and tell him strong, that he had better open up and tell the truth, or you will both go to hell.' I said I would do what I could. They brought Lee in and handcuffed him to a chair. I said, 'Lee, do you know anything about that murder? If you do, tell the truth, or we will both go to hell.' Lee replied, 'Lord God, boss, I don't know a thing.'

"Now, that was my first insight into the third degree practice down at police headquarters. They put Lee through it and he shrieked and cried.

"Let us look into the charge that they have made that I would not see Jim Conley, I went to the undertaking establishment voluntarily and then went to the station house. There I answered every question they asked, I went again Tuesday and answered all I was asked, agreeing to speak to Lee alone.

"What was the result?

"They put words into my mouth that I never uttered, and so distorted my meaning that I decided that if that was the sort of treatment they were going to give me, it would be best to wash my hands of them. Black came back to me and said that he had a suspicion that Darley had something to do with

the murder, asking me what I knew about him.

"I told Black that he had come to the wrong person. Darley is the soul of honor. Black walked away, saying to Scott, 'Come on, Scott; you can't get anything—there's nothing doing!'"

"Now, about the charge that I did not say anything about Conley's ability to write. I want to say that I told the detectives that Conley could write, because I received too many notes from him asking for money loans. I told them to go look in the drawer of my safe and that they would find the address of the jeweler who sold Conley a watch.

"Gentlemen, the person who paved the way to developing the fact that Conley could write is sitting in this witness chair.

"About the charge that my wife did not come to see me, it is all false. She did visit me and she was willing to share the cell with me, but I did not want to subject her to the embarrassment which I knew would be the natural consequence. I wanted to save her from snapshotters and detectives. I consulted Rabbi Marx and he advised that it would be best for her not to stay with me.

"I never saw Conley in the factory on that date [April 26]. The statement of Dalton about him bringing Daisy Hopkins to my office is false. I never peered into the girls' dressing room, as Irene Jackson testifies. It is nothing more than a room in which the girls change outer garments. I had learned that the girls flirted from the window and I wanted to break up the practice.

"I never looked into that room at any time when I had reason to suspect that girls were dressing or undressing therein. The employees are supposed to be through undressing at seven o'clock in the morning.

"Conley's statement is a lie from first to last. The statement that women came to my office is infamous, and the statement that he saw me in that unspeakable position with them is a lie so vile and vicious that I have not the language with which to denounce it.

"Some of the newspapermen have referred to me as the 'silent man of the Tower.' Yes, I was silent. Silent under advice. This is the time and this is the place. Gentlemen, I have told the truth, the whole truth."

When Frank went back to his seat he was embraced by his sobbing wife and mother. Friends gathered around to congratulate him. Trying to control himself, Frank beckoned to Sheriff Mangum, who quickly accompanied him out of the room.

The day after the climax of Frank's statement Prosecutor Dorsey rushed rebuttal witnesses to the stand in an attempt to prove that Frank knew Mary Phagan and also had been guilty of gross immorality. He said the first of these, Nellie Wood, was ready to testify that because of Frank's indecent advances she had left her job in the factory after working only one day. But when Miss Wood took the stand she admitted she knew nothing whatever about Frank's character.

As on previous occasions, Dorsey complained that he had been "misled by this witness." More to his liking was the testimony of another ex-employee, Willie Turner, now a farmer in Sandy Springs, who swore he had seen Frank talking to Mary Phagan in the metal room one day in the middle of March. Nobody else was in the room at the time. It was shortly before noon.

Q. What did Mary do?

A. She told Mr. Frank she had to go back to work.

Q. Anything else?

A. She backed off and he went on walking towards her, talking to her. The last words I heard him say to her was that he wanted to talk to her.

Q. What was it that Frank said to her?

A. He said he was superintendent of the factory and that he wanted to talk to her.

Under cross-examination Turner was asked to describe Mary Phagan and said, "She had light hair and—I knew her, but I can't describe her. I knew her because I had heard other boys talking about her."

On the following day the prosecutor was able to produce one factory worker after another who, under oath, offered the opinion that Frank's character was not only bad but "lascivious" as well. The puzzling failure of the defense attorneys to cross-examine these witnesses is one of the main reasons given by some students of the case for the jury's verdict.

There was, for example, the testimony of Miss Mamie Kitchens, who corroborated Irene Jackson's story. She said, "I was in the room when Irene Jackson was undressed and he looked in the door. He just looked in and grinned. She [Irene Jackson] seemed to think he was looking longer than necessary, and said, 'We are dressing, blame it!'"

Rosser asked the witness whether Frank didn't ask the two girls whether they had work to do, and she said, "Yes," adding, "but he did not ask it in the same tone you are using."

Miss Ruth Robinson, called by Dorsey, said she had seen Frank talking to Mary Phagan about her work and showing her how to put the rubbers in the pencils. Miss Robinson also said she had heard Frank call the dead girl "Mary."

Next came Dewey Hewell, another girl who told about the same story. The state had brought Miss Hewell, then an inmate of the House of the Good Shepherd in Cincinnati, all the way from Ohio, believing she would deliver important evidence against Frank. She had worked at the factory during 1912 and for two months in 1913. Now she said on the witness stand that she had seen Frank talking to Mary three or four times in a single day. He had leaned over the dead girl's shoulder, Miss Hewell testified, and called her "Mary."

That same day the hard-working prosecutor made an effort to impeach Miss Rebecca Carson, a forewoman who had been among Frank's staunchest defenders. Concerning this, Dorsey said, "I propose to show that this woman [Rebecca Carson] brought here to swear to Frank's good character, had been seen entering a dressing room with him when no one else was in there, and she and Frank had remained in there by themselves for fifteen to twenty minutes at a time. I am going to impeach this woman!"

On being hurriedly sent for, Miss Carson took the stand and denied ever going into a dressing room with Frank. This statement was contradicted by two of her fellow workers, Myrtis Cato and Maggie Griffin, whom Dorsey promptly put on the stand for that purpose. Miss Cato swore she had seen Frank and Miss Carson go into a dressing room together on two separate occasions, but could not recall the date, except to say "it

was this year." Miss Griffin recalled three or four such visits of the couple, and declared they remained in the dressing room "sometimes fifteen minutes and sometimes thirty minutes."

Frank's lawyers intently listened to this evidence, but for some reason never explained afterward, failed to cross-examine either of the two young women. Instead, they put on the stand several witnesses who described the violent hatred of Frank openly expressed by George Kenley, a streetcar motorman and a minor state witness who had testified that he had seen Mary on the street a few minutes *after noon* on April 26. T. Y. Brent, employed by the defense to get witnesses, asserted hearing Kenley say that "Frank wasn't anything but an old Jew and they ought to take him off and hang him." N. E. Starr quoted Kenley, telling "a number of his friends that Frank was as guilty as a snake, and if he wasn't convicted, he'd be one of five or seven to hang him." This was confirmed by J. Asher. C. S. Haas said he had been a passenger on Kenley's car when "he said that Frank was guilty and that ninety per cent of the respectable people believed he should hang." A boy objected and Kenley turned to him, saying, "Are you hired by the Jew?"

Toward the close of the taking of evidence Dorsey introduced three doctors who confirmed Dr. Roy Harris's assertions that Mary Phagan had died within forty-five minutes or so of eating the cabbage. These three physicians also believed that she had been subjected to criminal violence.

Dorsey also introduced in evidence a telegram to Adolph Montag, care of the Imperial Hotel, New York City, dated April 28, and purposed to be signed by Leo M. Frank:

ATLANTA, GEORGIA, APRIL 28, 1913—ADOLPH MONTAG, IMPERIAL HOTEL, NEW YORK CITY. YOU MAY HAVE READ IN ATLANTA PAPER OF FACTORY GIRL FOUND DEAD SUNDAY MORNING IN CELLAR OF PENCIL FACTORY. POLICE WILL EVENTUALLY SOLVE IT. SHOW MY UNCLE I AM ALL RIGHT IN CASE HE ASKS. OUR COMPANY HAS CASE WELL IN HAND. (Signed) LEO M. FRANK.

The defense did not object to this, although it might have if it could have guessed how the prosecution intended to use

it. Finally, Dorsey made heroic efforts to impeach Minola McKnight, the Seligs' cook. Though his effort failed, he got into the record a spirited defense of her handling by the police.

Yet the most revealing account of this incident was given unwittingly by Atlanta Police Detective John Starnes. Dorsey had put Starnes back on the stand, but this witness made his illuminating remarks while he was being cross-examined by Defense Attorney Rosser:

Q. What authority did you have to arrest her?

A. The feeling of an honest and conscientious officer who thought she ought to have been arrested.

Q. Did you have any warrant?

A. No.

Q. Did Dorsey know you were going to lock her up?

A. I suppose he did.

Q. He didn't protest against it because it was against the law?

A. No.

Q. She was carried from Dorsey's office screaming and hysterical, wasn't she?

A. Yes.

Q. And declaring that she had told all she knew?

A. I don't think she said that.

Q. Your purpose was to get her to make another statement besides the one she had already made—the one that didn't suit you?

A. My purpose was to get the truth.

Earlier the prosecutor had brought Daisy Hopkins back to the stand. When the defense challenged his right to ask her about dates she had with other men, Dorsey declared he had a witness who would testify that Daisy had told him "she had gone to the pencil factory a few hours previously and had practiced unnatural immoral conduct with a foreman of the plant."

In the ensuing argument Arnold said plaintively, "Surely, Frank cannot be held responsible for all the intercourse which took place in the pencil factory or Atlanta."

His stand was upheld by the judge.

Shortly after this, at four p.m. on Wednesday, August 20, the state of Georgia rested. A few minutes later the defense also closed its case. The fate of Leo M. Frank now would be decided—after the lawyers had summed up for both sides and Judge Roan had delivered his instructions—by the twelve men who had listened day after day, week after week, to the lawyers who had alternately vilified and defended him.

**IV. "AND THE  
PEOPLE DANCED  
IN THE STREETS"**



To an imaginative or highly sensitive person, a visit to a much publicized murder trial is likely to prove a deeply disturbing experience. It is with good reason that such trials have been called courtroom circuses. The lawyers themselves contribute very heavily to the impression that one is watching a theatrical performance. With their gestures, the emotional range and lush richness of their voices, the craftsmanship with which they build up to climactic heights, they behave much like actors.

This theatricality is probably the fault of our jury system rather than of the attorneys. Almost everything they do or say during such a trial—bully, sneer at or cajole witnesses, quarrel noisily (but hollowly) with one another, quibble with the judge, himself a lawyer—seems designed more to sway the emotions of the twelve men in the box than to arrive at a reasonable approximation of the truth.

The play acting is never more evident than when the supreme moment arrives, the time for them to sum up, offer their closing arguments. They surely seem like stage performers then, as they rise, one after another, bow ceremoniously to judge and jury, and then offer up every trick in the book—wit, eloquence, little jokes, innuendoes, their knowledge of the law and its endless technicalities—to charm and hypnotize twelve ordinary and very tired citizens.

Like the jurymen themselves, the spectator is more often than not swept away as he watches and listens to these attorneys. Afterward he may be shocked to realize that the stake fought for with all that artful and passionate flummery, the

pawn of the lawyers, was the life of a man or a woman—a sentient being like himself, subject to the same hopes and the same fears.

In the case of Leo M. Frank the order of the summations seemed to give the state a considerable advantage, with Hooper of the prosecution speaking first, followed by Arnold and Rosser in turn, for the defense, and Prosecutor Dorsey presenting his argument last.

The elegantly dressed Mr. Hooper talked for two hours and very effectively, though most of the points he made were later covered by the prosecutor. Arnold once interrupted him to protest a statement that Frank's factory employees could have given him a "much more convincing" bad character if the judge had permitted them to go into greater detail. But the defense attorney's complaint that Hooper was not restricting himself to the evidence was overruled.

On resuming, Hooper described Frank as following Mary Phagan "like some wild animal, telling her of his superiority, coaxing, persuading"; he also charged that the defendant had fired Gantt so that the latter could not be in the factory to protect her. Hooper's main contribution, however, was his theory of why Frank got Conley to write the notes. He said it was "the only time the brainy Frank lost his head."

Defense Attorney Arnold's speech occupied the rest of Thursday, August 21. He devoted most of his time to the defense's main argument: the killer was Jim Conley. He said the murder was not the work of a white man but of a Negro; it was "the crime of a beast, a low, savage beast." In analyzing the evidence he was particularly scornful of the discovery of the hair and the blood spots by Barrett, the mechanic, who, he said, found them "after telling the whole second floor that he was going to get the \$4,300 reward if Frank was convicted." Arnold also told the jury that though there were 8,000 red corpuscles in a single drop of blood, scientific tests made on the wood chips dug out of the floor of the metal room revealed only five red blood corpuscles. The defense lawyer also said the hairs Barrett found were on a lathing machine a few feet from a dressing room where the factory girls curled their hair

before a gas jet. And this gas jet, he said, was in front of a window from which came drafts that often blew loose strands of hair toward the lathing machine.

Arnold flatly declared that if Frank had not been a Jew he would not have been prosecuted. He castigated the detectives' third-degree methods and asked the jury to contrast the defense's highly respectable witnesses with the prosecution's "jail-birds and floaters."

"This case has been built up by degrees," he continued. "They have a monstrous perjurer here . . . in Jim Conley. . . . This entire case is the biggest frame-up in history." Later on he paid his respects to the prosecutor personally in these words:

"Oh, my friend Dorsey, he stops clocks and he changes schedules, he even changes a man's whole physical make-up. He has almost changed the course of time in an effort to get Frank convicted.

"I hate to think that such a sweet, pure, good little girl as she was, with never a breath of anything wrong said about her, should have had her memory polluted by such rotten evidence against an innocent man."

He suggested that the jury ask themselves these questions: Would Frank, if he had killed the child, ever have admitted seeing her that day? Would he not have put her pay envelope back in the safe? Would he have left the building to go to lunch with the body lying there in the basement and the two men, White and Denham, working upstairs? Would he have dared run the elevator, as Conley said he did, knowing that White and Denham would hear it and might become curious because all the other machinery was shut off that day? Could so nervous a man as Frank showed himself to be the next day have committed a murder and then calmly made out the complicated financial statement a few hours later?

Shaking his head slowly, Arnold said passionately:

"After Mary got her pay there was a black spider waiting for her down there near the elevator shaft, a great, passionate, lustful animal, full of mean whiskey and wanting money to buy more mean whiskey. He was as full of vile lust as he was of the passion for more whiskey, and the Negro (and there are a thousand of them in Atlanta who would assault a white woman

if they had a chance and knew they wouldn't get caught)\* robbed her, and struck her and threw her body down the shaft, and later . . . if she was alive, committed a worse crime."

Once during his speech, Arnold threw back his handsome head and roared to the jury to "leave out the slander and filth hurled at Frank—the statements made by the poor little girls dragged up here by the State . . . away with your filth and your dirty, shameful evidence of perversion; your low street gossip, and come back to the *time!* The time element in the case!" And he used a chart and a pointer to trace Frank's movements, minute by minute, that day to show that it would have been physically impossible for him to have killed Mary, helped Conley with the moving of the body, dictated the notes, and done everything else the sweeper had described.

He thought that if Monteen Stover came to the factory at all on April 26, she probably had just looked into the office. In that case, Frank would have been hidden from her by the safe. Or it was possible that he had just stepped out of the office for a moment to go to the toilet.

In attacking Conley's tale, the big blond defense lawyer literally wailed:

"Gentlemen, am I living or dreaming that I have to *argue* such points as these? This is what you have got to do. You have got to swallow every word that Conley has said—feathers and all—and you have got to believe none of it. How are you going to pick out of a pack of lies such as these what you will believe and what you will not? Yet this is what the prosecutor has based this case upon. If this fails, all fails."

That the defense was well aware that its own failure to cross-examine some of the girls who had testified that Frank's character was "bad" and his behavior "lascivious" might prove costly, was revealed when Arnold said, "We are not trying this case on whether you or I or Frank have been perfect in the past. This is a case of murder. Let him who is without sin cast

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\*Again it should be noted that the men defending Frank, while protesting the prejudice against Jews, saw no reason why anyone should object to their own often expressed prejudice against Negroes.

the first stone."

In closing, he told the jury that the state's case was made up "of just two things—prejudice and perjury. I have never seen such malice, such personal hatred in all my life, and I don't think anyone else has." And he said again that the state had nothing but Conley's story, and "we have shown Conley to be a liar."

On the following day Luther Rosser also worked hard to drive home to the jury how thin and unconvincing the testimony against Frank was. In conceding that the defendant was nervous on seeing Mary's crushed, mutilated body, he asked who would not be at so shocking a sight. He effectively ridiculed the significance that Dorsey had tried to attribute to Frank's nervousness and such incidents as Frank's failure to awaken when the phone first rang on the night the body was found. As he brought up each one of the so-called damning details, he demanded angrily,

"Would you hang Frank for that?"

Of the prosecutor he said with an air of tolerance that he was a good man in his way but would be a better man "when he gets older and loses some of his present spirit and venom." The defense lawyer was in no way tolerant about the behavior of the Atlanta Police Department. "Who is Conley?" he demanded. "Who was Conley, as he used to be and as you have seen him? He was a dirty, filthy, black, drunken, lying nigger. Black knows that, Starnes knows that, Lanford knows it, Beavers knows it.

"Black got all balled up in his statement. Scott meant to tell the truth (he might find a flea if he had a spy-glass). I asked Scott if this nigger looked like the one they got up here. He said, 'No.' I asked, 'You slicked him up, didn't you?' He said they did. I asked, 'Who made that dirty nigger look like that? Why didn't you let them see him as he was?' They shaved him, they washed him and dressed him up."

In repeating Arnold's argument that the state's only evidence was on "the word of this Conley," he emphasized that this included the perversion charges, since no one else had said "this awful thing about the defendant."

He did not want to say, he continued, that there was anything wrong with the "misleading little girls" who had testified that Frank was "lascivious" and that his character was bad. They might even *think* they were telling the truth, he suggested. But he pleaded with the twelve jurors to consider whether more than a hundred girls would have continued working for Frank if conditions in the factory were so immoral, or whether Georgia's working men, or Darley, or Schiff, or Holloway, would have countenanced such disgraceful treatment of girls as the state described.

Rosser declared that C. Brutus Dalton had taken Daisy into the "dirty, nasty, fetid hole where the slime oozed and no cat or dog would go, and there he had satisfied his passion." He said the world could forgive adultery and fornication, even though they were wrong, but not a man who bragged openly about such exploits.

Returning to his bitter attack on the police handling of Conley, he mockingly compared Black and Scott and Prosecutor Dorsey to three professors with Conley as their one dull but eager-to-please pupil. "They went on and got first one affidavit, then another, out of him. . . . Scott says, 'We told him what would fit and what would not.' And it was, 'Stand up, Jim Conley, and recite. When did you fix those notes, James?' And James would answer that he had fixed them on Friday, and then his teachers would tell him he was wrong and he must have fixed them on Saturday, and James would know what was wanted and would acknowledge his error. . . . Everywhere you go, you find Conley lied. Conley has heard the story so much he could wake up any time, day or night, and tell it. Was it fair for two skilled white men to train that Negro boy by the hour and by the day, to teach him, and get a statement from him, and call it the Truth?"

But Rosser said that though Scott and Black milked Conley dry they "got no evidence of moral perversity and no watching," even though Conley had had several lessons from Dorsey and "God knows how many times the detectives had him." And the defense attorney, pointing out that Conley had only thought about the mesh bag while on the stand asked, "Who knows what will be the final story Conley will tell?"

In concluding, Rosser reviewed Frank's minute-to-minute schedule for April 26. He then said, "I don't believe any man, no matter what his race, ought to be tried under such testimony. If I was raising sheep and feared for my lambs, I might hang a yellow dog on it. I might do it in the daytime, but at night when things got quiet I would be ashamed of myself."

Rosser sat down at 3:30, having spoken for five hours.

Dorsey began his address by describing his opponents as two of the ablest lawyers in the country. He characterized Rosser as "the rider of the wind and the stirrer of the storm" and called Arnold "as mild a man as ever cut a throat or scuttled a ship." With a smile, he reminded the jury that they had heaped so much calumny on him that Frank's mother had denounced him as a dog. But he told the jury not to be disturbed by the defense attorneys' "purchased indignation," saying "they ought to be indignant. They were paid to play the part."

About the anti-Semitism Dorsey declared it was not the state but the defense which had originally made it an issue in the trial. He then praised the Jews as a people whose "forefathers were civilized and living in cities and following laws when ours were roaming at large in the forest and eating human flesh. I say that his [Frank's] race is as good as ours, but no better."

He also reminded the jury that the Jews had produced Disraeli, the Straus brothers and the great English lawyer, Judah P. Benjamin, who was a member of Jefferson Davis's cabinet, and announced that he had roomed with a Jew in college and had another Jew as his law partner.

After that Dorsey felt free to describe a good many Jews who had been involved in grisly murders and other sensational crimes. And with one clever stroke he attempted to destroy all the careful work the defense had done during the trial to establish Frank's reputation as a respectable and pious man.

Instead of challenging this conception of Frank, the prosecutor pointed out that Theo Durrant, who had recently murdered two girls in San Francisco, was, like Frank, a religious worker and a very nervous individual. He said that though Durrant had been highly praised by the same high type of character witnesses as had vouched under oath for Frank, the

Californian had been convicted on purely circumstantial evidence.

Just before adjournment time Dorsey began pounding away at the most conspicuous flaw in Frank's defense: the failure of his lawyers to cross-examine the girl witnesses who had testified against him for "lasciviousness."

"They didn't dare do it," he exclaimed exultantly. "*They didn't dare do it!*"

At this point Judge Roan asked him if he had almost completed his speech. Dorsey was unable to conceal his astonishment.

"Your Honor, my time is unlimited," he declared. "As yet I have not touched the case."

Adjournment was called shortly afterward.

The next morning Dorsey again slammed away at the defense's failure to cross-examine the girls. He said he believed Frank had used his presidency of the Atlanta B'nai B'rith to cover up his evil deeds. To show that Frank was not the first respectable man to get into tragic trouble he dragged in the names of many illustrious villains of the past, beginning with David and Judas Iscariot, continuing through Benedict Arnold, but concentrating on Oscar Wilde, the Irish playwright.

Dorsey explained Wilde's eminence as a playwright and also told how his homosexuality had been exposed despite his amazing effrontery and coolness under cross-examination. "He was a man of Frank's type," he said. "Wilde will remain forever the type of pervert as is the man who stands before you charged with the murder of Mary Phagan." Completing the parallel, he added, "Not even Wilde's wife suspected he was guilty of perversion. . . ."

Dorsey seemed to think that Frank's respectability was the one thing that might soften the jurors' judgment. In any event he continued to talk about outstanding men who had been respectable only on the surface. The group included England's notorious Dr. Crippen, the mayor of a Southern city, a Boston clergyman, and Abe Ruef, the political boss of San Francisco. The prosecutor described Ruef as "a man of Frank's race" who had not only corrupted that city's politicians but had "led a life of heinous sin, ruining and debauching girls without end."

When Dorsey came to Frank's alibi, he switched to a folksy-jokesy approach, introducing the subject with this old Deep South laugh-getter:

"Rastus, what's an alibi?"

"An alibi is something that shows you was at the prayer meeting where you wasn't, and not at the crap game where you was."

The prosecutor then asserted that at police Headquarters, when first arrested, Frank had said he had left the factory that Saturday at 1:10 p.m. Only later, Dorsey declared, on becoming fully aware of the importance of time, did Frank change that to "about one o'clock."

Next Dorsey declared that two girls had testified to seeing Lemmie Quinn at 11:45 a.m. on April 26, which conflicted with the time of 12:20 to 12:22 on the defense's chart. At this point Arnold got up and contradicted the prosecutor, saying,

"There is no evidence to that effect, Mr. Dorsey. The girls didn't see him at the factory."

"I don't doubt that anyone didn't see him," laughed the prosecutor in answer to this unqualified charge that he was misrepresenting facts. The crowd roared at his double-negative joke, but it failed to amuse Arnold, who said he would ask Judge Roan to clear the courtroom if the outburst recurred.

In high good humor Dorsey called the jury's attention to the eagerness of certain factory workers to testify for Frank. "Do you remember one lady, almost hysterical, who wanted to die for Frank?" He ascribed this to "a passion born of something more than mere friendship." He indirectly cast aspersions on the morality of other factory girls by saying that until Frank met Mary Phagan he had known whom to approach, but that Mary "called him." He also said the idea that Frank would need Schiff's help on the financial sheet after making it out every week for six years, was absurd.

On and on he went, never overlooking a weakness and using sarcasm, ridicule, or humor wherever the defense seemed on safe ground. At times, the Solicitor General was so swept away that he distorted the meaning of the evidence by misinterpreting it or omitting details.

Take, for example, his handling of the words "the thin gray

line of veterans is growing thinner every year" in the letter which Frank had written to his uncle, Moses Frank. The detail omitted here was the fact that the uncle himself was a Confederate war veteran. To the jury of Southerners, who were unaware of this, he remarked with bitterness that Frank, the Northerner, did not care for the veterans, only for the factory's dividends.

Much more important was the fact that Dorsey announced—without qualification of any sort—that Frank had *said* "I don't know" to Mary's question about whether the metal had arrived. What Frank had always quoted himself as saying to Mary was "No." During the inquest, Scott also quoted him as saying "No," but changed this to "I don't know" during the trial. Reminded by the defense that he had made the other answer before Coroner Donehoo, Scott ascribed the discrepancy to the error of the inquest stenographer.

But Dorsey told the jury, "There's a big difference there, gentlemen. For Frank to have told the little girl that he did not know would have sent her back to the metal room to see for herself. But to have told her no, that it had not come, would have sent her on out of the building. Frank did not want to give us here any reason to suspect that the child ever went back there to that metal room."

Frank took the \$200 back, he said, when Conley refused to burn the body for him. The defendant, Dorsey charged, had intended to call the police at once when the sweeper went to the basement, and "What chance would the Negro have had, found there with the body?"

With a "you-know-and-I-know" air, the prosecutor then said he doubted that Frank had plotted to murder Mary but "wanted to use her to satisfy his passion." And, he added, "You can't tell me that a brilliant man like him could pass her machine every day and she as pretty and attractive a little girl as she was, and as bright, and not learn who she was. You can't tell me that this man with the brain he has got could have helped to make out a payroll for fifty-two times in a year and then been so little familiar with the names as to have to look at the time book to find out whether a girl by the name of Mary Phagan ever worked there."

His witnesses had told the truth—Dewey Héwell, the juvenile delinquent from Cincinnati; Willie Turner; and Gantt when he testified that Frank remarked he (Gantt) seemed to know Mary pretty well. He also cited Helen Ferguson's story of Frank's refusing to give her Mary's money on Friday as though it were a corroborated fact.

Dorsey then turned to address Frank directly, in the manner of a man who could contain his indignation no longer.

"You went tiptoeing right back [from the metal room] to see if everything was all right, and then you signaled Conley and you soon learned by what Conley said about not seeing a certain girl go back down the steps that you were given away, and so you sent him back to get the body. There was no blood there where you had killed the girl. The blow was not sufficient, and no blood was there until Conley dropped the body and caused it to spatter." Here Dorsey's voice rose almost to hysteria. "No, you had struck the girl and gagged her and assaulted her and then you went back and got a cord and fixed the little girl whom you had assaulted when, thank God, she would not yield to your proposals.

"You got that cord because you wanted to save your reputation . . . but you forgot that murder will out. Oh, had that little girl lived to tell of the assault made on her in that factory, there would have been a thousand men in Atlanta who would not have feared your wealth and your power and relatives, rich and poor, but would have stormed the jail and defied the law in taking vengeance on you. It is not right that it should be so; people ought to wait for fair courts and honest juries to decide these things, but they don't and you knew it then."

Turning back to the jury, he said that if Frank hadn't put the handbag in the safe it would "have turned up" on the first floor along with "the blood spots" and the "envelope the Pinkertons found."

Holding up a cloth before the twelve men, he shouted, "This cloth that was found around her throat was torn from her underclothing and placed over her mouth for a gag while Frank tiptoed back to his office for the cord with which to strangle her. *When she did not yield to his lust that was not that of other men*, he struck her.

"They scuffled.

"She fell against the machine.

"Her brain lapsed into unconsciousness."

A nerve-shattering scream filled the courtroom. It came from Mary's mother, and then she and the daughter who was with her burst into tears. With great consideration Dorsey waited patiently for their grief to subside. Then he resumed, speaking in a low voice.

"They say he had no marks on his person, the dead girl's avenger. *She had no time to inflict marks.*"

Denying that Barrett's finds were planted, he spoke sarcastically about the envelope and "the bloody bludgeon" found by the Pinkerton detectives. He also defended the police handling of Minola McKnight. In discussing their work generally, he reminded the jury of the truth that detectives could not work on a big murder case like this one "with the manner of a dancing master."

After Dorsey had been speaking for four hours the judge interrupted to suggest that the prosecutor looked too exhausted to continue, and adjourned court for the weekend.

On entering the courtroom on Monday morning the prosecutor was greeted with cheers. But his legal opponents, who naturally did not share in the general enthusiasm, interrupted him no less than three times shortly after he resumed his summation.

The first occasion was when Dorsey was speculating on Mrs. Frank's reasons for not visiting her husband for two weeks after he was jailed. The defense branded this as an "unwarranted attack" on her.

The next interruption came when Dorsey accused Frank of not telling the police that Conley could write. Rosser branded this a deliberate misstatement, since Frank had been the first person to reveal this fact.

The prosecutor was again accused in open court of misrepresenting the facts when he declared that Frank did not look at Mary's body at the undertaker's. (This last charge Dorsey shrugged off, saying he did not care to quibble about such a thing.)

Later that morning the Solicitor General told the jury that

Frank's *lack of nervousness* in the Selig home the evening of the murder revealed his guilt because he felt safe there. And he contrasted it—and very effectively—with Frank's nervousness before the officers next day and when he tried to run the factory elevator. By that time, said Dorsey, Frank did not feel safe, and was showing it.

He asked the jury if they could believe that Rogers, Black, and Starnes—men who merely wished to do their jobs as officers—would perjure themselves. Then he reminded them that Frank had not dared ask Newt Lee directly about Gantt by name, but merely asked if anything had happened, and had asked Starnes on the phone if there had been a fire and if anything was wrong in the same evasive, guilty way.

After putting similar interpretations on other incidents, Dorsey told the jury that with all these things piled up against Frank, nobody could tell him prejudice and perjury were all there were to the case. Not one of the incidents in itself was strong enough to hang a man, he said, adding, "No, but we can weave a rope out of all these strands that will send him to the gallows . . . all together they make such a strong case that there is no room for any reasonable doubt; no room for any doubt."

Now, nearing the end of his summation, Dorsey once again reminded the jury of the defense's failure to cross-examine his witnesses and emphasized that a Negro of Jim's limited education would write the word "done" for "did" in the notes (unless, of course, a well-educated white man dictated the word that way).

Of the victim, he said, "She died a noble death. Without a splotch or blemish upon her, a martyr to the virtue she protected to the extent of death, in saving it from her employer." Holding Mary Phagan's bloody garments high above his head, he said in a deeply moved voice to Judge Roan, "Your Honor, I have done my duty—I have no apologies to make." And then he turned back to the jury and said even more earnestly, "There will be but one verdict—Guilty! *Guilty!* GUILTY!"

As he said these words twelve o'clock struck and the church bells of the city began chiming in tones that seemed like an echo of his peroration "Guilty! Guilty! Guilty!"

The superstitious—and there were many present—recalled that it was precisely at that moment, twelve noon, that Mary Phagan had walked into the factory to her death; to them it was a sign that God wished the child avenged.

As Dorsey sat down, Reuben Arnold stood up and asked that the jury be excused. After the twelve men had filed out, he demanded a mistrial, citing the demonstrations from the crowd during the past three days. He had compiled a list of these outbursts which he gave the court. It included one demonstration which took place while the jury was on the street, less than a block away and near enough to hear the crowd shouting, "Hooray for Dorsey!"

It was Arnold's contention that this demonstration was intended to coerce and influence the jury. However, when the deputies and other officials who had been in charge of the jury during the alleged demonstrations were put on the witness stand they denied that they had heard the noise or said they hadn't known what the applause was for. When the crowd in the courtroom applauded one of the witnesses Arnold glumly requested that this demonstration be added to the list he had just submitted.

Judge Roan thereupon announced that he would postpone his ruling on the motion for a mistrial until after he had charged the jury. Looking greatly disturbed, he summoned the lawyers on both sides into an anteroom. There he revealed to them that something most unusual had occurred during the prosecutor's summation. This was an appeal sent to him by the three local newspapers whose editors said they feared that in the event of an acquittal, the mob might attempt to seize and hang not only Frank but also the lawyers who had defended them. Later the *Journal* was to say that it was generally known that "a verdict of acquittal would cause a riot that would shock the country and cause Atlanta's streets to run with innocent blood." A lawyer, C. P. Connolly, later wrote for *Collier's Weekly* that it was common talk among the crowd before the courthouse that day that if Frank was acquitted he would be lynched before he could get home. "Innocent or guilty, we'll get the damned Jew!" was the remark most frequently heard.

In view of this situation the counsel for the defense agreed that neither they nor Frank would insist upon the defendant's right to be present in the courtroom when the verdict was brought in.

They then went back into the courtroom with Judge Roan and listened to his charge to the jury, which was both brief and meticulously fair to both sides. Though the judge properly waited until the jury had left before ruling on the defense motion for a mistrial—which he dismissed—he curiously enough permitted the twelve men to see him conferring at the bench with Chief of Police Beavers and a colonel of the Georgia militia before they started their deliberations. (As both these officials were known to many of the jurymen, Frank's attorneys later complained in their appeals that those men must have guessed that they were discussing how best to handle the riot that was expected in the event of an acquittal, and as a result were intimidated into voting for a verdict of guilty.)

Before retiring to deliberate, the jury went out through the overcrowded streets for lunch, and returned at two o'clock. They sent for documents thirty-five minutes later, and exactly an hour after that, at 3:35, reached their verdict, although it was not until 4:56 that they reported their decision to Judge Roan in a courtroom from which both the defendant, Leo M. Frank, and his two principal lawyers, Rosser and Arnold, were absent. Besides the newspapermen and the judge, Solicitor General Dorsey, Frank A. Hooper, and a few other lawyers—including Luther Z. Rosser, Jr., and Styles Hopkins, who represented the defense—and friends of Frank were present.

The verdict was "Guilty!"

There was no recommendation of clemency.

The scene that followed was reported in the *Constitution* in these words:

A veritable honeycomb of humanity spread over the section. . . . 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 above 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 Dorsey appeared in the doorway of the courthouse . . . there came a mighty roar . . . muscular men swung Mr. Dorsey on their shoulders and handed him over the heads of the crowd. With hat raised and tears coursing down his cheeks, the victor in Georgia's most noted criminal battle was tumbled over the shrieking throng that wildly proclaimed its admiration. Few will live to see another such demonstration.

But that was only the beginning of the city-wide celebration of the end of the longest, most famous murder trial in the history of Georgia.

That afternoon, streetcar conductors and motormen abandoned their trolley cars on the downtown streets to join the happy throngs. In the stores and at social functions women clapped their hands and hugged one another at hearing the splendid news. At the ball game there were more demonstrations of joy when the news of the verdict was posted on the scoreboard.

Later the Southern Bell Telephone Company reported that everyone in Atlanta seemed to want to use their phones upon getting word of the conviction. More than three times as many calls were made on that day as had ever been made in the history of the company.

And in front of the National Pencil Company's factory, where Mary Phagan had died, hundreds of men and women danced the cakewalk to express their delight that the little girl had been avenged.

What with one thing and another it was almost an hour before Leo Frank was notified of the verdict. He was in Fulton

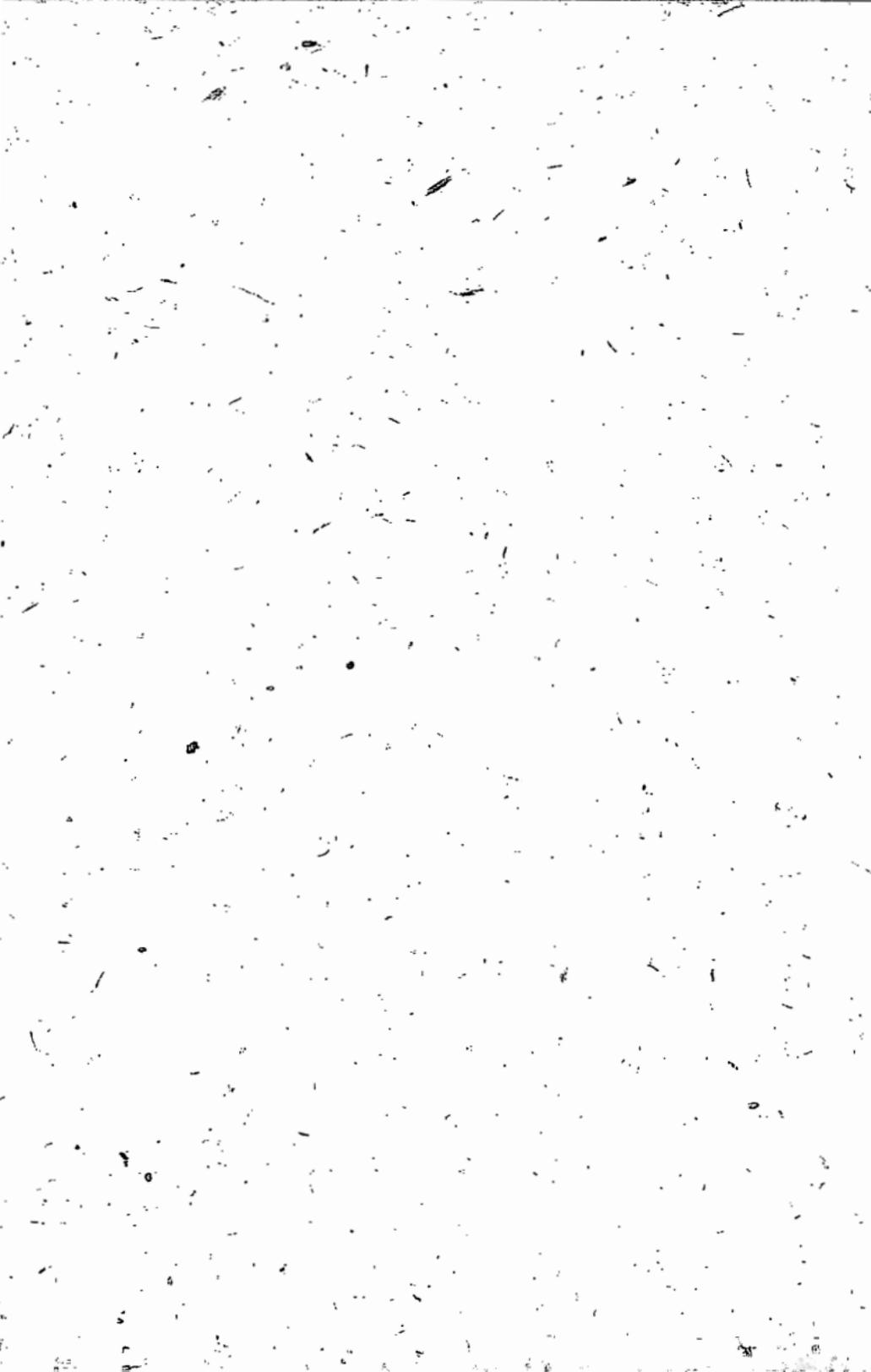
Tower with his wife when friends told him the news, and also that Judge Roan might not sentence him for several days. The condemned man said,

"My God! Even the jury was influenced by mob law. I am as innocent as I was a year ago."

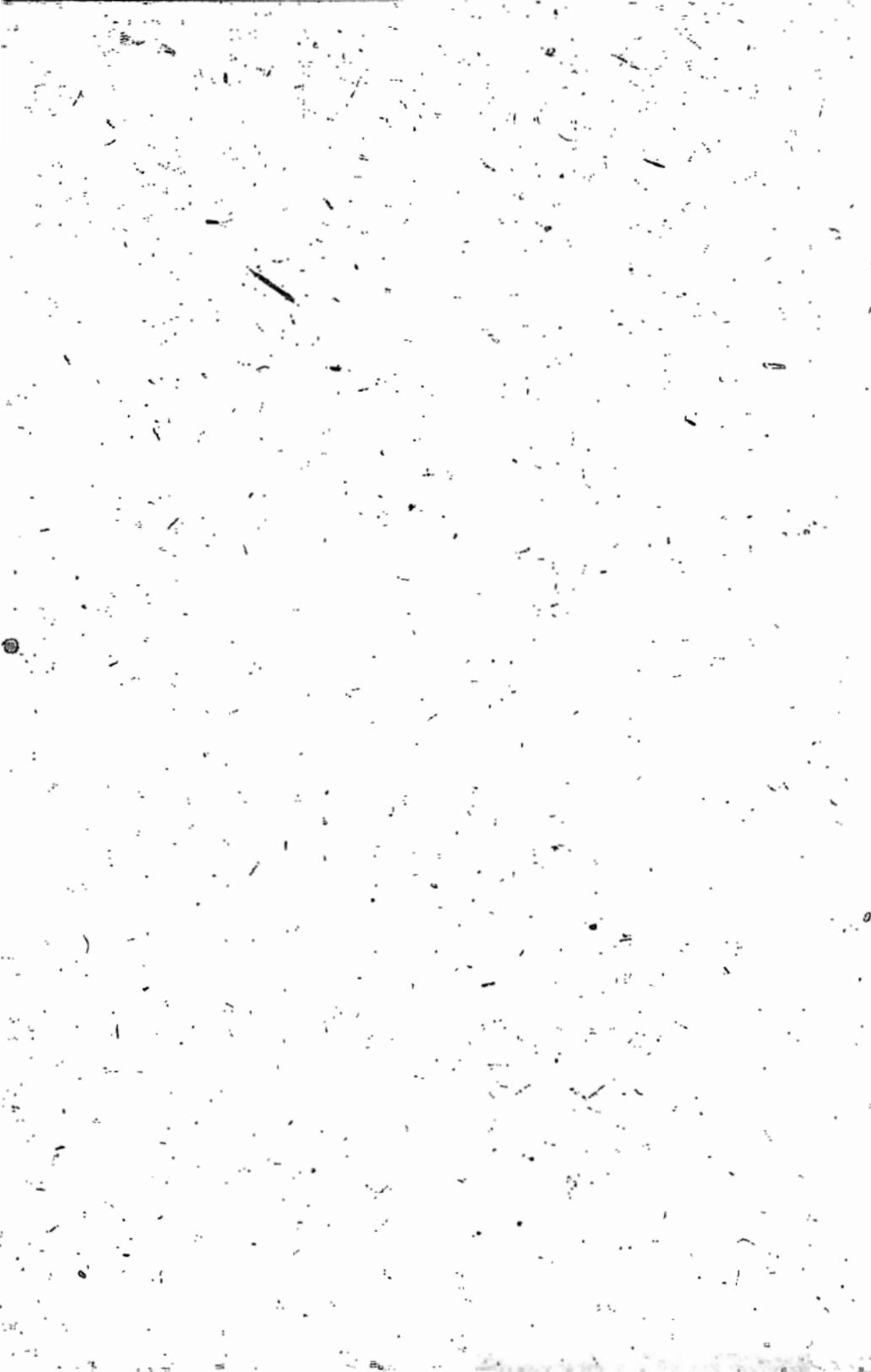
As he spoke these words, his wife fainted.

Sought out by reporters, Chief Lanford said, "Frank was given one of the fairest trials it has ever been my lot to figure in."

Throughout Atlanta and the state of Georgia, however, other men and women doubted very much that Leo M. Frank had had a fair trial. On that "victorious" day their voices were drowned out by the celebrants, but later, as their anger and feelings of guilt increased at what they believed to be the martyrdom of an innocent man, they would insist on being heard. And they were heard for many a day to come, as the ordeal of Leo M. Frank dragged on and on.



# V. FIGHT FOR A LIFE



The fight to save Leo M. Frank from the gallows began almost before the streets of Atlanta had stopped echoing to the delighted cries of the thousands of men and women who had hailed his conviction as a vindication of Georgia's honor.

The following morning Sheriff Mangum's men brought Frank as unobtrusively as possible to Judge Roan's regular courtroom, instead of the one used for the trial. Frank betrayed not a trace of the nervousness that had been so noticeable during his years as a factory executive. Asked if he had anything to say before being sentenced, the prisoner replied calmly, "Your Honor, I am innocent. Further than that, the case is in the hands of my counsel."

Judge Roan then spoke the dread words, which concluded:

"... it is further adjudged and ordered by the court that on the tenth day of October, 1913, the defendant, Leo M. Frank, shall be executed by the sheriff of Fulton County in private, witnessed only by the executing officer, a sufficient guard, the relatives of such defendant, and such clergymen and friends as he may desire; such execution to take place in the common jail of Fulton County and that said defendant on that day, between the hours of ten o'clock a.m. and two o'clock p.m., be by the sheriff of Fulton County hanged by the neck until he shall be dead, and may God have mercy on his soul."

Again Frank never flinched.

His attorneys immediately filed a motion for a new trial on the grounds that the verdict was contrary to the evidence, the law, the weight of the law; they also charged that the court had erroneously allowed testimony concerning crimes not mentioned in the indictment.

The judge set October 4—six days before the scheduled hanging—as the date on which he would hear the motion. This automatically guaranteed postponement of the execution because, even if the application was rejected, further time would be required to take the appeal to a higher state court.

Reuben R. Arnold and Luther Z. Rosser also issued a joint statement to the press in which they expressed both shock and rage:

The trial which has just occurred . . . was a farce and not in any way a trial. In saying this, we do not make the least criticism of Judge Roan who presided. Judge Roan is one of the best men in Georgia, and is an able and conscientious judge.

The temper of the public mind was such that it invaded the courtroom and invaded the streets and made itself manifest at every turn the jury made; and it was just as impossible for this jury to escape the effects of this public feeling as if they had been turned loose and permitted to mingle with the people.

In doing this we are making no criticism of the jury. They were only men and unconsciously this prejudice rendered any other verdict impossible.

It would have required a jury of stoics, a jury of Spartans, to have withstood this situation.

The time ought to come when this man will get a fair trial, and we profoundly believe it will. The final judgment of the American people is a fair one. It is sometimes delayed in coming, but it comes.

We entered into this case with the profound conviction of Mr. Frank's innocence. The result has not changed our opinion. Every step of the trial has intensified and fortified our profound conviction of his innocence.

Reuben R. Arnold  
Luther Z. Rosser

There was a brief postponement until October 31, when the "good and conscientious judge" heard their appeal; he rejected it. Because of state law this decision threatened to be a far

more serious setback than it would have been in most other states. It so happened that the Georgia laws placed the power to grant a new trial at the discretion of the judge who had heard the case. When appealed to, the higher courts of Georgia could only overrule him on *errors of fact*, which meant that there could be no retrial on new evidence alone, no matter how important the new evidence was.

On February 17, 1914, the Supreme Court of Georgia, with two of its six judges dissenting, sustained Judge Roan's rejection of the plea for a new trial.

Exactly a week later James Conley was brought to court on the charge of being an accessory to the murder of Mary Phagan. He was found guilty and sentenced to a little more than a year in prison.

And on March 7 Judge Ben Hill, sitting in Superior Court in place of Judge Roan, resented Leo M. Frank to be hanged. This time the date set was April 17—by a grim coincidence Frank's thirtieth birthday.

Meanwhile Frank seemed to be developing the rocklike shell in which sensitive men facing a ghastly fate try to wrap themselves in order to avoid cracking up entirely. He appeared supremely confident and drew great comfort and strength from his belief in God.

Most of his waking hours were spent reading, talking to his lawyers, his wife, and other daily visitors. Sometimes he played chess with one of them. For these games Frank would set up the board and arrange the men on a wooden box adjacent to the bars of his cell. The visitors then could reach through the bars to make their moves.

With the approach of spring that year of 1914, the tide of hatred against the Man in the Tower seemed to be on the ebb. Northern newspapers, notably the *New York Times*, *Collier's Weekly*, and other national periodicals were beginning to interest themselves in his plight. But his first really big newspaper break came on March 10 in Atlanta itself, where it should have helped him most. On that day the *Journal* published an editorial demanding a new trial. The writer was careful to indicate that though he cared little for Leo Frank, he was deeply concerned with upholding the honor of his state.

Was a fair trial under such circumstances possible? Could a man be legally and fairly convicted with a threatening and uncontrollable mob breathing vengeance in the face of the jury and judge? . . . *Let justice be done though the heavens fall!*

This complete reversal of the newspaper's attitude during the trial deserves commendation as journalistic humility of the highest type.

During the following month W. R. Hearst's *Georgian* asserted that four-fifths or nine-tenths of the "thinking people of Atlanta would be glad to know that this young man, Leo Frank, would have another chance to prove his innocence." It pointed out with pardonable pride that the *Georgian* was the first of the state's daily newspapers to advocate this.

Then and later on Atlanta's businessmen and its Chamber of Commerce had reason to fear that Northern sympathizers with Leo Frank might penalize them commercially, by boycotts and other measures crippling to their bank accounts. The local Hearst paper, completely aware of this potential menace to Atlanta's progress and prosperity, stated:

No feeling of prejudice or proscription against the Jewish race was ever representative of Atlanta. The *Georgian* firmly believes that no feeling or discrimination growing out of the earlier details of the Frank trial expressed the representative feeling of this broad-minded and liberal-spirited capital of the South. . . ."

Unfortunately for Frank, however, the *Journal's* editorial suggesting a new trial also attracted the fascinated attention of as colorful and dangerous a scoundrel as ever enlivened the loud-talking, hard-hitting, and free-wheeling political system of the South.

This was Thomas E. Watson, who had been a Democratic Congressman from Georgia and later the Populist candidate for the presidency. A historian of brilliance, he made his greatest mark as a legislator by being the first to advocate an appropriation guaranteeing rural free delivery of the United States

mails. Though Watson had horrified the orthodox machine politicians of his state by his desertion of the Democrats to head the slate of the People's Party, he had made, then unmade (and would continue to do so) one Democratic governor after another, including the incumbent, John M. Slaton, whose election Watson's support had assured in 1912.

In the *Jeffersonian*, which he had published and edited from his little home town of Thomson since 1906, Watson had blossomed for a while in his true trade, that of professional gadfly. He had been printing savage and obscene attacks on popery and Catholicism besides calling on his readers never to forget the virile virtues of White Supremacy.

But at the time he seized on the Frank case as juicy editorial material for his magazine, Watson had fallen upon evil days. The Democratic Party was prepared to shuck off his influence, the circulation of his hate-peddling *Jeffersonian* was down to 10,000 or less, and he was under Federal indictment for sending obscene matter through the mails.

The first notice Watson gave the case was mild compared to what was to come later on when he realized that he had found a subject that would interest those readers who had grown tired of his lies about Catholics and Negroes. His first target, though, was the *Journal* itself rather than Frank, even though his headline was "*When and Where Shall Rich Criminals Be Tried?*"

The editorial in the *Atlanta Journal* bears the modest headline, "Frank Should Have a New Trial." The case is still pending; Judge Ben Hill knows that he will soon have to pass upon an extraordinary motion for a new trial; and hence, Judge Ben Hill is peremptorily, abruptly, and insolently told what he must do. Not only has Judge Hill received the orders of the *Atlanta Journal*, but the justices of the Supreme Court have been notified that they had better be prepared to bend to the rod. Who is paid for all this?

According to the law and to uniform practice, Frank has had a fair trial and has been justly condemned. Where shall our murder cases be tried? Are the newspapers to do it? . . . If so, let us try all of them the same way. Let

us not have one law for the rich and another for the poor.

At the time this appeared probably not even the diabolically clever Mr. Watson realized that he had fired the first gun in what would prove one of the most successful campaigns of vilification of a race in the history of rattlesnake journalism in America. The filth and the slimy distortions of the truth that Watson's pen spewed out at Frank, his race, his lawyers, and his supporters re-established Watson's political power and his dwindling fortunes, skyrocketed his magazine's circulation to something between 50,000 and 75,000 copies per issue, and kept thousands of his fellow Georgians in a state of anti-Semitic rage.

Watson's readers were by no means confined to Georgia's hard-pressed, ignorant mill workers, crackers, "woolhats," and rednecks. His subsequent editorials, accompanied by lewd and scurrilous cartoons denouncing Frank, the "Jew pervert," were read by thousands of the state's so-called gentle folk.

Nevertheless, thousands of other Georgians and many newspapers in the state took the other side. Some of them doubted Frank's innocence yet demanded that he have a second and fairer trial.

If no one that spring could foresee that Watson would ride back to political glory on the tail of the Frank case, it would have been equally impossible to predict the national dimensions the controversy over Frank's impending execution would presently assume.

As has been said, those Georgians who today will discuss the Frank case at all usually make a major point of the fact that anti-Semitism was all but unknown in Atlanta at the time of the crime. Granting the truth of this, it may be of much greater sociological importance that there came to be millions of persons whose interest in saving Frank had nothing to do with his being a Jew.

A great many of these were non-Jewish immigrants or the children of such immigrants, who had come here not only for economic reasons but also to escape political persecution.

Frank became a symbolic figure to them because they be-

believed in the words written on the Statue of Liberty in New York Harbor:

. . . Give me your tired, your poor, your huddled masses, yearning to breathe free. The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me. I lift my lamp beside the golden door.

That winter and early spring the free-spending defenders of Frank left nothing undone to arouse popular interest in his plight. They hired swarms of private detectives, including the world-famous William J. Burns. And they sent not only Burns but lawyers and philanthropic workers to New York, Chicago, and other centers of population to tell newspapermen and any one else who would listen to the convicted man's side of the story.

The day before April 17, the date he had been resentenced to hang, Frank's lawyers were granted a stay of execution on their claim that his constitutional rights had been violated. They also appealed for a new trial on the grounds that they had secured new evidence that had never before been submitted. By that time the world had gradually become aware that Frank's defenders had been gathering proof of a conspiracy against him that might shake the country.

In February both Nina Formby, the brothel proprietor, and Albert McKnight, the husband of the Seligs' cook, confessed that the sworn statements they had made against the condemned man were false. Mrs. Formby's new story was told at the *Times* office in New York, where she had been living for some time in order (she said) to avoid any further trouble with the police. On her own volition she had gone to the newspaper and signed an affidavit asserting that she had never so much as met Frank before his arrest. She said that Detectives Chewing and Norris of the Atlanta Police Department had come to her establishment night after night with bottles of whisky; they got her drunk and kept urging her to swear to an affidavit that Frank was a degenerate. One day when she was intoxicated they had taken her to Chief Lanford's office, where she was pressured into signing the document. (This, of course, was the

affidavit about Frank's persistent telephone calls to Mrs. Formby pleading for a room to which he could take a young girl, which was used by Chief Lanford. It will be recalled that this affidavit was used as the basis for his claim that he could prove Frank's guilt and also to start the rumors of Frank's "degeneracy.")

In his disclaimer Albert McKnight accused certain white men he worked for of telling him they would help him get part of the \$4,300 reward if he lied about seeing Frank hurry in and out of the Selig house on April 26. Now he said he had not even been in the Selig home that day.

A couple of weeks later Albert was found lying near a railway track in Atlanta. He had been beaten unconscious and at the hospital where he was taken it was said he might die. But he recovered and on being "interviewed" by the police gave out a statement withdrawing his retraction and declaring that the story he had told at the trial was true. This time Albert accused Frank's supporters of bribing him with a promise that had never been kept. He said they had promised to get him a \$40 a month job as a Pullman porter which, with tips, would bring him \$100 a month. For this reason only had he signed the repudiating affidavit. He denied having been beaten and said he had been hit by a train.

Subsequently his wife Minola was also assaulted and left to die. Her unknown assailants caught up with her in her cabin home in Atlanta's Negro section and stabbed her savagely. But, like her husband, Minola also recovered.

On March 27 the defense released a whole dossier of affidavits signed by prosecution witnesses who wished to retract their testimony. In these:

*Mamie Kitchens* now said that none of the girls in the dressing-room were undressed when Frank had looked in through the doorway and that, in her opinion, he had no improper intentions toward her or the other girls. She explained that she would have said this on the stand if the authorities had permitted her to tell her story in her own way.

*Dewey Hewell*, the girl brought back by the state from

Cincinnati's House of the Good Shepherd, swore she had been carefully coached on what to say on the witness stand.

*Ruth Robinson* charged that during an hour and a half interview with Prosecutor Dorsey in his office she had been shocked by his insulting language and broad insinuations. She said she had testified falsely that Frank knew Mary by name, but only because Dorsey badgered her into it.

*Marie Karst*, one of the girls who had sworn, under Dorsey's direct examination, that Frank's character was lascivious, now revealed that she did not know what the word meant.

*C. Brutus Dalton*, the swaggering kiss-and-tell basement Romeo, repudiated every word of his incriminating testimony against Frank. He accused the detectives and Prosecutor Dorsey of inducing him to tell lies about Frank's "abnormal sex practices." Dalton now declared Frank to be a moral man, insofar as he knew. But he said that when he had tried to tell that to Detectives Starnes and Campbell they had just laughed at him. And in the end they had got him to take the stand and testify falsely against Frank. Dalton also said he had lied about his visits to the factory; he now said he had only gone there in the company of a woman who went to draw her pay.

To no one's great surprise, *George Epps*, the "eager witness," also recanted everything he had sworn to both at the coroner's inquest and at the trial. He had not sat with Mary Phagan on the trolley she took right before her death. She had never mentioned to him that Frank was paying her unwelcome attentions. He accused Detective Black of inventing that lie for him to tell and also the quickly exposed whopper about being able to tell time by the sun on a sunless day.

Not even the defense could have been much shocked, though, when Epps and Dalton, on being grilled by Dorsey's men, again declared that in their first stories they had told the truth, the

whole truth.

In view of the harsh Georgia law that permitted the death sentence for persons offering perjured testimony in a murder case, it was surprising that so many other state's witnesses stood by their repudiations of their own stories after sessions with detectives or men from the prosecutor's office, especially since the investigators probably called the attention of these self-confessed perjurers to the risks they were running.

If Dorsey or the police suborned perjury from state witnesses, as charged—and there seems little doubt that this was done in instance after instance—they could hardly have prosecuted the "turncoats" without risking exposure of the role they themselves had played in what now seems an outrageous frame-up. And the fact is that Dorsey prosecuted none of these people.

Instead, he counterattacked with charges of subornation against certain defense representatives who seem to have been equally guilty of skulduggery—with one important difference: the illegal maneuvers charged against Frank's side were alleged to have happened *after* his trial, not before. Burns himself, as well as several of his men, were accused by Dorsey of tampering with witnesses. One of his main targets was a C. W. Burke, a Burns man who had been hired by Defense Attorney Rosser.

Many curious accounts were given of Burke's working methods. The oddest, though, was told by Helen Ferguson, the girl who had testified that she had asked Frank for Mary's pay on the day before the murder.

Helen said that she was first approached by agents of the defense, who offered her \$100 to leave town. When she spurned this, a chap using the name of J. W. Howard began calling on her. After paying her steady court he finally promised to marry her if she would retract her testimony. "Howard," whose real name was Jimmy Wrenn, then introduced her to Burke. Failing to get her to repudiate her words, he compromised and accepted her affidavit that while working in the factory on the Saturday before the murder Jim Conley had made drunken advances to her. (This indicates that Burke was so busy thinking up clever subterfuges that he had neglected to examine the often repeated testimony about the factory girls never working on

Saturday.)

Besides being subjected to Dorsey's sharp fire, Burke's chief, William J. Burns, was also having other troubles, partly due to his overfondness for giving out newspaper interviews. On being retained, Mr. Burns had announced without equivocation that he would save Frank from the hangman. Asked about the work of the Atlanta police, he said he was not yet prepared to say they had mishandled the case. He added, "I do know that many detectives are crooks and grafters of the worst sort and they frequently muddle up a case and obscure the truth."

After studying the facts, Burns offered \$1,000 to anyone who could give proof of a single act of immorality on Frank's part. After that he had a talk with Chief Lanford that sent him out of police headquarters with an amazed look in his eyes. The chief of detectives, the old master of double-talk, had blandly informed Burns that the police had never charged that Frank was a pervert.

"At the trial we did not bring up the subject of abnormalities," Lanford announced virtuously. "That was brought out by Frank's lawyers." Burns mulled this over for a while, then told newspapermen he would increase his offer to \$5,000.

Burns was a fat man with ruddy cheeks and eyes as bright and glistening as the buttons on patent-leather shoes. Though an excellent investigator, he had a weakness for elaborate disguises à la Sherlock Holmes, in addition to his love of personal publicity.

If he had been less of a publicity hound Burns might have escaped a most humiliating experience while visiting Marietta, Mary Phagan's birthplace and the town where she was buried, on May 1. Marietta was swarming with farmers who had come in that day to vote in a primary election.

With his Southern manager, W. D. McWorth, Burns was standing in front of a garage waiting for their car to be repaired when a passerby who had seen his picture recognized the round-faced, big-bellied Burns. He yelled to some friends, who gathered around the two private detectives and began calling Burns "a Jew" and "a Jew-lover." Robert Howell, described by reporters as "a prominent young man of the city," suddenly stepped up to Burns and punched him in the face. Then Howell

challenged him to a fight.

A prudent man, though no coward, Burns took one look at the menacing faces all around him; then he and McWorth raced to seek safety in a nearby hotel. They hid there until calmer citizens quieted the crowd, finally sneaking out the back door under the guard of deputy sheriffs.

Despite such occasional mishaps and a few verbal blunders, Burns and his men did solid work on the case. The \$5,000 reward—which no one ever attempted to collect—convinced thousands of people that the immorality charges against Frank had been dreamed up by the police. But Burns did more: he produced evidence that convinced additional thousands that Jim Conley, not Frank, was the pervert in the case and the murderer of Mary Phagan. The evidence came from a Negro woman, Annie Maude Carter, who had met the sweeper while they were both in jail. Miss Carter had been sent to jail for highway robbery the previous October and often talked through the bars to Conley, whose cell she passed daily. That spring of 1914 she was out on bail, pending an appeal.

She asserted that Conley had confessed the crime to her after he had asked her to marry him. On getting out of jail, Miss Carter said that she had tried to tell her story at police headquarters and that Lanford and two of his men had taken an affidavit from her. But she had withheld the important details. "I knew he was guilty and Mr. Frank was not," she declared, "but I knew they wanted to help Conley." Later that day she visited one of Frank's attorneys and she signed a second affidavit, setting down in detail what Conley had allegedly told her.

Even more valuable from a legal point of view were one hundred obscene letters suggesting acts of perversion which Annie Maude Carter turned over to the Burns detectives, saying that Conley had passed them to her while they were both in jail. Burns showed them to the reporters, pointing out the similarity in the handwriting to the notes found near the body. Also, he showed the reporters that the word "Negro" was spelled correctly and that the word "done" was used correctly, in contrast to its misuse in the murder notes.

These charges were important enough to bring an angry

statement from Dorsey branding the charges as false, also counter-charges against Burns and his men. There was another application for a new trial to be heard by Judge Hill on May 7, and both sides realized the importance of timeliness in favorable public relations. Similar flurries of activity, statements to the press, and a spirited exchange of charges and counter-charges had preceded each of the subsequent hearings in regard to the case.

But on May 7 Judge Hill refused the request for a second trial without even hearing the defense's arguments.

As he left the court that day in disgust, the elegant Mr. Arnold groaned, "Why, you could search the chain gangs, prisons and penitentiaries over the nation and you would not find a more choice bunch of crooks than those with whom my friend Dorsey convicted Frank."

The only practical result from the investigative work that turned up Conley's letters to Annie Maude Carter was a threat from Judge Hill to jail Burns and his Atlanta superintendent, Daniel S. Lehon, for contempt of court. This threat came after Dorsey had informed the judge that the two private detectives had spirited Miss Carter out of town to prevent the police from questioning her. Because the woman was out on bail to his Superior Court, the judge told them they had no legal right to transport her beyond his jurisdiction. And the judge declared he would ask the grand jury to investigate every accusation of perjury, bribery, and other improper influence in connection with the pro-Frank affidavits used at the hearing of the motion for a new trial. "Apparently," said Judge Hill, "the case reeks with perjury, bribery and intimidation, and I shall urge the Grand Jury to go into every charge and find out who is responsible."

Annie Maude Carter was produced in Judge Hill's court in short order after that. When Judge Hill finished questioning the woman—whom the private detectives had sent to New Orleans at the defense's expense—he dismissed the charges against Burns but fined his Atlanta superintendent \$100 and sentenced him to thirty days in jail. Another result was the suspension of the Burns Agency's license to do business in Atlanta by the local police commission, which charged the agency with failing

to comply with the regulation that required all private detectives to "co-operate" with the local authorities. And the following month the grand jury indicted the Burns operative, Burke, for subornation of perjury.

With the coming of the summer that would round out a full year since Frank's conviction, it became apparent that his best chance to win a new trial now lay in an appeal to the United States Supreme Court. His lawyers had already laid the basis for such an appeal when they protested that Frank's constitutional rights had been violated because he was not present when the jury pronounced him guilty. But they were determined to exhaust every legal possibility in the Georgia courts before making that move.

The case also had become a statewide political issue as Solicitor General Dorsey began to be talked up as the likely Democratic candidate to succeed Governor Slaton, who was reputed to have his eye on a seat in the United States Senate. But the politicians of Cobb County, of which Marietta was the county seat, were already accusing Slaton of being a law partner of Frank's "leading attorneys"; they suspected he would pardon Frank if the courts refused him a new trial.

On the other hand, in a letter to the *New York Times*, E. H. McMichel, speaker pro-tem of the Georgia House of Representatives, wrote that "there was a thirst for the blood of the murderer of Mary Phagan" and during the trial the feeling was so intense "that the very atmosphere in and out of the courthouse was charged with sulphurous fumes of anger." Representative McMichel confessed that when visiting the court he himself "had become prejudiced against Frank without reason." Now he asked for a new trial.

It was also obvious that the case of Leo Frank was going to inspire more widespread and embittered newspaper comment than any other sex-murder case in our history. Top papers all over the country were about to send investigators into Atlanta in an attempt to find out the truth. The paper beyond the borders of Georgia which devoted the most space to the case was the *New York Times*, which then as now prided itself on the detached manner in which it handled all the news that was fit to print. But Edward Marshall, one of the first of many

'crack *Times* reporters sent to Atlanta, was so emotionally shaken by what he learned there that he pronounced Frank "absolutely innocent" and the victim of "a great miscarriage of justice." After interviewing Conley, he described the sweeper as "literally a black monster."

While conceding that Atlanta, as claimed, suffered from no anti-Semitism at the time of the crime, he repeated the defense's charge that A. H. Henslee, one of the jurors who convicted Frank, had called him a "damn Jew," and that Kenley, the streetcar motorman, had advocated publicly and often that Frank should be hanged "innocent or guilty."

Marshall also wrote that "since the day Frank was convicted Atlanta had known no peace of mind." He listed many local Protestant ministers, including some not convinced of Frank's innocence, who believed he deserved a new trial. Among these was the Baptist pastor, Rev. J. S. Rogers, who also suggested a change of venue, saying that "the great State of Georgia can well afford to spend a king's ransom rather than hang a man about whose guilt there is at least a great shadow of doubt."

In his *Jeffersonian* Tom Watson continued to inflame his ever growing army of readers with lurid attacks on the Jews. Like every other rabble-rouser in history, he used half-truths whenever they suited his aims, lies and slander when half-truths proved inadequate.

Many thousands of Georgians, intelligent, kindly, cultured people who despised Tom Watson and everything he stood for, nevertheless resented with all their troubled hearts the growing "interference" of Northerners and other outsiders in what they considered a purely local matter. They also sincerely believed that if the do-gooders would just go home and mind their own business, Frank would get justice.

Honest people in Massachusetts a dozen years later said the same thing about the outsiders who came rushing into their state to save Sacco and Vanzetti. Later still, Alabamans contended that they, the good and decent people of their state, would have saved the Scottsboro boys if outsiders had not done it for them.

Perhaps the most mystifying thing about such good, decent

people is their invariable habit of getting confused about who is being crucified.

During that summer of 1914 Frank's attorneys filed a long bill of exceptions to Judge Hill's ruling. Two weeks later they argued it before the six justices of the Georgia Supreme Court, who then retired to their summer homes to consider the voluminous briefs. It was announced they would hand down their decision on October 14.

The lawyers also retired to their summer homes to lick their wounds, count their blessings, and prepare for more legal warfare. That August, an Austrian grand duke was assassinated at Sarajevo and the shots that killed His Royal Highness sparked the beginning of the death agony of a whole civilization. Kingdoms and empires were about to vanish from the earth forever and soon barons and princes would be driving taxicabs in Paris and blueblooded ladies would be selling themselves in the brothels of Vladivostok and Constantinople.

Soon democracy would be on the march in the war to end all wars. And out of the slaughter of ten million men and the crunching to earth of half of Europe would emerge a Socialist dream of paradise won that would quickly be lost in a Communist-made nightmare.

But if the lawyers and judges, fanning themselves and sipping their long green mint juleps in the Deep South, were unaware of what the shots fired at Sarajevo meant, so were the journalists and diplomats and historians of their time.

Three days before the tensely awaited decision from the six justices a melodramatic development came from an unexpected quarter. William M. Smith, Conley's lawyer during the trial, abruptly announced that, after carefully weighing the facts, he had concluded Frank was innocent and his own client's story a "cunning fabrication." This started a nationwide debate on the subject of a lawyer's obligations to his client that filled whole pages of newspapers in many American cities. But the uproar had no effect on Georgia's Supreme Court, which upheld Judge Hill's opinion that the defense's new evidence did not justify a new trial.

Six days later the same justices refused to certify a writ of

error for Frank, meaning that according to the laws of Georgia his constitutional rights had not been violated. Though this was anything but a victory, it cleared the way for Frank's lawyers to carry the fight into the Federal courts.

As it turned out, this meant more tense months of wrestling with legal procedures and writs of error, culminating in the appearance of Attorneys Louis Marshall, Henry Peeples, and Harry A. Alexander for the defense and Solicitor General Hugh Dorsey and Warren Grice for the state of Georgia, before the United States Supreme Court on February 26. While all of Georgia and half of the rest of the country seemed to be holding its breath for the final decision from the highest court in the land, Judge Roan died on March 23, in New York. It seemed one more defeat to many who were for Frank, because it had been hoped that the old judge, a kindly man, would say a word or two in favor of a new trial.

It was apparent, though, that nothing would melt the hearts of the South's great literary acid-thrower, Tom Watson, or those who regarded his lies as gospel truth. Most prominent among these followers were the stern men of Marietta who had driven Burns and McWorth out of town as "Jew lovers."

But elsewhere, including many other counties of Georgia itself, there was an overwhelming demand for a new trial. Shortly before Christmas 6,000 of Frank's fellow Brooklynites had signed a petition asking the authorities to give him another chance before the bar of justice. And now the idea of petitions, mass meetings, public appeals by both his paid and volunteer advocates seemed to be sweeping the country, east, west, north, and south. Not least of all in the Deep South where in Waycross, Georgia, the editor of the local paper, the *Journal*, wrote that even if Frank lost the final round in his long-drawn-out fight in the courts, the governor of Georgia—whether he happened to be Governor Slaton or Governor-Elect Nat Harris—would commute the sentence and after a few years Frank would be granted a full pardon!

It is an obligation of the Justices of the Supreme Court to be influenced in their weighty deliberations neither by public opinion nor by the daily press, and in their decision as to whether Frank's constitutional rights as an American citizen had been

violated, they ignored both. On April 19, 1915, the decision was handed down: The highest court had decided against granting a second trial to Frank by a vote of seven to two, holding that Frank had been given a fair trial in the courts of his state, and that it was a matter for those courts alone to decide; Justices Oliver Wendell Holmes and Charles Evans Hughes dissented.

Mr. Justice Holmes wrote the dissenting opinion. After reviewing the circumstances of the case, he said:

. . . Whatever disagreement there may be as to the scope of the phrase "due process of law," there can be no doubt it embraces a fundamental conception of a fair trial, with opportunity to be heard. Mob law does not become due process of law by securing the assent of a terrorized jury. We are not speaking of mere disorder, or mere irregularities in procedure, but of a case where the processes of justice are actually subverted. In such a case, the Federal court has jurisdiction to issue the writ. . . .

Any judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the enviroing atmosphere. And when we find the judgment of the expert on the spot, of the judge whose business it was to preserve not only form but substance, to have held that if one juryman yielded to the reasonable doubt that he himself later expressed in court as the result of most anxious deliberation, neither prisoner nor counsel would be safe from the rage of the crowd, we think the presumption overwhelming that the jury responded to the passions of the mob. Of course, we are speaking only of the case made by the petition, and whether it ought to be heard. Upon allegations of this gravity, in our opinion it ought to be heard, whatever the decision of the state court may have been, and it did not need to set forth contradictory evidence, or a matter of a rebuttal, or to explain why the motions for a new trial and to set aside the verdict were overruled by the State Court. There is no reason to fear an impairment of the authority of the State to punish the guilty. We do not

think it impracticable in any part of this country, to have the trials free from outside control. But to maintain this immunity it may be necessary that the supremacy of the law and of the Federal Constitution should be vindicated in a case like this. It may be that on a hearing a different complexion would be given to the judge's alleged request and expression of fear. But . . . it is our duty . . . [to] declare lynch law as little valid when practiced by a regularly drawn jury as when administered by one elected by a mob intent on death.

Three weeks later Leo M. Frank, chin up and eyes staring at Judge Hill, stood up in an Atlanta courtroom and heard once again that he was to be hanged. The date was set for January 22.

Even then he seemed unable to believe it. Neither did millions of other Americans—no matter what their courts said. Now the organizing, the mass meetings, the petitioning resumed in frantic earnest. Chicago's Frank Committee announced shortly after the defeat in the Supreme Court that in that city alone 415,000 persons had signed the petitions. And this, the committee declared, would be only the beginning. They shortly were to have a Leo M. Frank Day, during which three hundred of the community's leading social workers and other women would collect more signatures on street corners throughout the Loop. There was a similar increase of activity in Denver, Minneapolis, Buffalo, and other cities by the Frank Committees there. And in New York they were trying to outdo Chicago by gathering a million names!

Celebrities by the dozen and by the score either signed the petitions, gave money to the cause, or made speeches for Frank. Among the more famous of these were Thomas A. Edison, Henry Ford, Jane Addams, founder of Hull House, Secretary of the Navy Josephus Daniels, Myron T. Herrick, later United States Ambassador to France, and ex-Secretary of State Philander C. Knox. Also United States Senator William E. Borah, and among others, the entire state legislatures of Michigan, Illinois, Texas, West Virginia, Tennessee, and the governors of Texas, Pennsylvania, Illinois, Louisiana, West Virginia, and Michigan. Billy Sunday, the era's leading evangelist,

shouted that if he were governor of Georgia, "Frank would go free tomorrow."

Torn as the good people of Georgia were by dissension among themselves, it did not seem possible that they could continue to hold out against the overwhelming desire of so many other Americans that Frank be shown mercy—no matter how much they resisted and passionately resented interference with their state's internal affairs.

Meanwhile final legal maneuvers by Frank's attorneys had achieved another postponement of the death sentence. But on May 10 Judge Hill set June 22 as the date for Frank to be hanged. This was four days before Governor Slaton was to turn over the reins of his office to Nat E. Harris; both men had been elected with the help of Tom Watson.

Slaton and Harris had been snowed under with telegrams, letters, and huge rolls of signed petitions from all over the country. It was estimated later that between two and three millions of his fellow Americans appealed to Slaton to show Frank mercy. It was also said that Watson, his one-time political supporter, had told him that if he let Frank hang he, Watson, would guarantee him his most cherished ambition—going to Washington as United States Senator from Georgia, and the control of the state's political system "for the next twenty years."

It was a great temptation.

And if Slaton preferred not to sacrifice Frank for his own lifelong ambition, he could pass on the troublesome problem to Governor-Elect Harris by granting a temporary stay of one short week to the so-called "Jew pervert." Some intimation of how Harris would handle the hottest political potato in Georgia's history was contained in an interview he had given out to a reporter. In this, he had declared:

"You can just say for Nat Harris that if the matter of dealing executive clemency to the condemned man is to be considered by him, the entire outside world will not be taken into consideration one bit. It is entirely a Georgia matter, and if I am to consider the case, I shall consider it altogether from a Georgia basis, with the interests of Georgia and the interests of Georgia persons at heart."

As tension mounted, Frank's attorneys filed an appeal for a clemency hearing before the Georgia three-man Prison Commission whose function it was to pass on recommendations to the governor, who then might accept or reject them.

The hearing was held in the Commission's audience chamber on May 31. No one appeared to oppose clemency, though Frank's adherents overflowed the modest-size room. They included delegations from many other states, including Massachusetts, which was headed by one of the Bay State's former governors, Joseph Foss, who spoke briefly in favor of commutation. Other speakers for Frank were Hooper Alexander, United States District Attorney for Georgia, and Coroner Paul E. Donehoo, who said he had always doubted Frank's guilt and was now convinced of his innocence. Other celebrated persons pleaded for Frank's life in the name of Georgia's honor, Democracy, and God. Voluminous documents were submitted to convince the Commission that an awful mistake had been made at the trial.

But the high point of the hearing came when ex-Congressman J. W. Howard, of Augusta, a typical Southern lawyer, stepped forward and with a quaver in his voice held out a piece of white paper, saying, "This is our most precious document in the case. It is in reality a voice from the tomb."

The piece of paper proved to be a letter written to Frank's lawyers by Judge Roan shortly before his death, and read:

It is possible that I showed undue deference to the opinion of the jury in the case when I allowed their verdict to stand . . . I was still in a state of uncertainty and so expressed myself. My search for the truth, though diligent and earnest, has not been so successful. . . . The execution of any person whose guilt has not been satisfactorily proved to the constituted authorities is too terrible to contemplate. I do not believe that a person should meet the extreme penalty of the law until the court, the jury, the governor, shall all have been satisfied of that person's guilt. Hence, at the proper time I shall express and enlarge upon these views directly to the governor and the Prison Commission.

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

Mr. Howard next read a confirming letter from T. J. Roan, a brother of the judge, in which he said the latter had given him the impression that "mob violence permeated the whole atmosphere of Atlanta and even entered the courtroom . . . and that Frank had accounted for every moment of his time on the day of the murder except for a few minutes. . . ."

Soon after that the hearing closed.

The pro-Frank delegations could hardly believe it; no one, no one at all, had spoken against the commutation of Frank's sentence.

That night the long, hard fight seemed won.

But the next morning fifty square-chinned, determined-looking men from Cobb County marched into the Prison Commission offices and demanded that the hearing be reopened. They said they had several spokesmen who wished to be heard. Without a quibble the Prison Commission formally reopened the hearings. The men from Cobb County included former Governor Joseph M. Brown and Herbert Clay, Solicitor General of the Blue Ridge Circuit, who spoke for hours against commutation. There was no doubting their sincerity. They really appeared to believe with all their hearts that the administration of justice in Georgia would be dishonored for all time if Frank were spared the just deserts of his abominable crime.

The three Commissioners listened and said nothing until the very end of the hearing, when they announced they would offer their recommendation to the governor within a week. They gave no indications of what that recommendation would be.

While all Georgia and a good part of the rest of the country waited for the Commissioners to make up their minds, millions of Americans had the uncomfortable feeling that the war in Europe might be getting uncomfortably close. In April the *Lusitania*, a British-owned ocean liner, had been sunk off the coast of Ireland by a German submarine with the loss of 1,198 lives, 124 of them Americans. Before that, another German submarine had fired on the *Gulf Flight*, an American-owned

ship, killing two. President Wilson was thundering about the "freedom of the seas," though the last thing he wished was to get his country into what was then called the Great European War. Poison gas was being used for the first time on the battlefields of France, and the British were accusing the Germans of introducing this new military horror in defiance of all the recognized "laws of war." And except for a few of our great German American cities such as Milwaukee and St. Louis, the majority of Americans seemed to favor the Allies instead of maintaining the strictly neutral attitude which the President had requested.

But at the moment the people of Georgia—a state that furnished some of the most valiant soldiers when the United States finally entered that war—were much more interested in what their Prison Commission would suggest to their governor about the long-drawn-out case of Leo Frank.

In every county of the state mass meetings were held. People in the north of Georgia were for commutation; the majority elsewhere was against the easing of his sentence. That week Jim Conley was released from prison camp, still bitter against Frank, who he continued to say had not only betrayed him but had accused him of Mary Phagan's murder.

One of the protest meetings against any commutation of sentence was held on the grounds of the State Capitol. Four thousand persons gathered there. Governor Slaton thought this gathering menacing enough to order state militiamen attached to an armory nearby alerted for action. But there was no disorder. The large crowd listened quietly to the only speaker, Rev. D. C. Hendley, pastor of the Atlanta Baptist Church. He militantly criticized his fellow clergymen of erring on the side of mercy. Despite these and other mass meetings, all that week hopes kept rising in the pro-Frank camp. The rumors that the Prison Commission would save Frank reached Solicitor-General Dorsey. He was said to be prepared to attack Chairman Davison and Judge T. E. Patterson, who were reported to favor commutation, for having made up their minds about the matter in advance. Rainey, the third member, was said to be undecided.

But on June 10 the Prison Commission refused to recommend commutation to Governor Slaton. It was said that Chair-

man Davison and Patterson had voted against clemency and Rainey for it.

Now Leo Frank's fate rested in the hands of one man who would leave office within less than three weeks. He said he would hold hearings on June 12.

Once more the pro-Frank and anti-Frank groups prepared to march upon Atlanta. Once more the newspapers everywhere offered their advice. Down in Augusta the fearless Thomas W. Loyless wrote a flaming editorial in the *Chronicle*, suggesting that if the twelve jurymen could have been intimidated, the Prison Commission might also have been by the "poison pen of Tom Watson, the professional scourge of Georgia politics and public men. The latter, with all the abuse and vindictiveness for which he is famous, demanded Frank's life. . . . Slaton owed it to himself, to his State and to his God to commute the sentence. . . . Even though all the Watsons in all the Atlanta mobs that could be gathered together stood on the State House grounds and threatened him. . . . And we believe Governor Slaton will dare to do just this, if his mind and heart tell him he should.

"And in doing it he will prove himself a bigger and braver man in one minute than all the bloodthirsty hordes that cry out against him will ever be, all put together, in all their natural lives. As for the personal, political harm that may come to him for thus doing his duty as he sees it, even if he were disposed to consider these things, we say bosh and nonsense."

But Jack Slaton knew better, knew that the idea of "political harm" was not bosh and nonsense, knew that granting commutation would very likely mean committing political suicide.

He began to read the trial record, the documents, affidavits, statements, and reports of the subsequent court actions as soon as he received them. A few days later he sat in his private chambers in the Capitol listening gravely to Solicitor General Dorsey arguing against any more delays, then to ex-Congressman Howard pleading for clemency. Told that a Marietta delegation, headed by former Governor Brown, was waiting to be heard, he invited the men in. He listened to Brown and two of the others. During the days and nights that followed the newspapers gave him no peace. Unless he acted before the follow-

ing Monday, Leo Frank would die on the scaffold.

One minute after midnight on the day before the scheduled execution Sheriff Mangum's men smuggled Frank out through the back way of Fulton Tower, where he had been a prisoner since his arrest. They did this to avoid the reporters who had established a twenty-four-hour-a-day watch at the front gate. They got him down to the railway station without incident and onto the train to Macon, whence they drove by car to the Mill-edgeville Prison Farm.

The next morning, June 21, Governor Slaton gave out his statement to the press, announcing that he was commuting Frank's death sentence to life imprisonment. The statement reviewed the entire case and carefully analyzed the evidence. It also pointed out incident after incident that could not be reconciled with Conley's story. Among other things, he questioned the truth of Conley's account of how the body got into the basement, and the Epps boy's testimony, and mentioned the obscene notes written in jail by Conley to the Carter woman.

The governor strongly stressed the circumstance that under Georgia law the only authority with the power to review the merits of the case, and question the verdict, was the trial judge, and that the State Supreme Court could order a new trial only to correct errors of law.

Apparently what swayed him most in his decision was the fact that Judge Roan was not satisfied with the verdict:

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

This statement was not embodied in the motion overruling a new trial. Under our statutes, in cases of murder on circumstantial evidence, it is within the discretion of the trial judge to sentence the defendant to life imprisonment (Code Section 63).

And here Governor Slaton, an able lawyer himself, did not neglect to point out that Solicitor General Dorsey himself admitted in his written argument that Frank was convicted on circumstantial evidence. Furthermore, Slaton said Judge Roan's charge to the jury revealed that he misconstrued his power, and if "he entertained the extreme doubt indicated by his statement and had remembered the power granted to him by the Code, he would have sentenced the defendant to life imprisonment." As proof he quoted from the late judge's letter to Frank's lawyers expressing his intention of asking for commutation of the death sentence to life imprisonment.

The statement also made the capital point that commuting the sentence would not be attacking the jury's verdict, since the penalty for murder was still being imposed. Granting commutation, in fact, would mean the carrying out of Judge Roan's wishes in the matter. And Governor Slaton concluded:

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

In my judgment, by granting a commutation in this case, I am sustaining the jury, the judge, and the appellate tribunals. And at the same time I am discharging

that duty which is placed on me by the constitution of the State.

Acting, therefore, in accordance with what I believe to be my duty under the circumstances of the case, it is . . . ORDERED, That the sentence in the case of Leo M. Frank is commuted from the death penalty to imprisonment for life.

This 21st day of June, 1915.

(signed) John M. Slaton,  
Governor.



**VI. AND NIGHT FELL  
ON GEORGIA**



The news of the commutation staggered most of the good people of Georgia. As for the rest, they reacted in the manner of savages who see their ritual blood sacrifice snatched away at the last moment. And they quickly gave unmistakable signs that they would not be content merely with the life of the unspeakable Jew; they also wanted the blood of their "turncoat" governor.

That day and night and all through John Slaton's last week in office mass meetings of indignation were held on half the Main Streets of Georgia. Local rabble-rousers shouted Watson's lies until they were hoarse, and the people who believed them listened with fanatical hatred in their hearts.

When the men of Marietta heard the news they hanged effigies of both Frank and Slaton in the public square. On the governor's effigy they put a sign reading "Our Traitor Governor." One gentleman brought his three daughters down to the square and handed his pistol to each in turn, telling them to shoot holes in the dummy symbolizing the governor.

And in Atlanta that Monday morning crowds began to gather on the street corners as early as eight o'clock—the time the *Constitution* reached the street. Most of the angry men gradually drifted to the lawn of the Capitol to wait for the arrival of Jack Slaton, the man they once had loved.

While waiting they listened to orators exhorting them to act like true-blue Southerners and take the law into their own hands. And down in "Nigger Town," as it was called by the white Georgians, the Negroes, seeing and hearing the crowds,

remembered only the terrible slaughter of 1906. Warning their children to keep off the streets, they shivered and wailed and prayed to God on their knees to save them from the wrath of their neighbors.

Chief Beavers and the other local police officials rushed out all officers with orders to disperse the crowds, if possible without using physical force. But during the day Beavers lost his own temper on discovering that one of his policemen, J. A. Bozeman, was doing nothing at all to quiet down the ever growing mob on the Capitol lawn. The chief pushed Officer Bozeman in the face, ripped off his collar and badge, and took away his gun. But Bozeman was not the only Atlanta police officer who refused to work hard to discourage the mob from violence. At one o'clock some of the civilians, led by a gaunt, gray-haired man of about sixty, were unopposed as they surged up the steps of the Capitol, rushed past the Senate Chamber, and broke into the governor's suite of offices.

"I want to see that Jew-loving Slaton face to face," he told the governor's secretary. "We all do."

The secretary protested that the governor was not there. But the men refused to leave until he opened the door of the governor's private office so they could look in and see for themselves he was not at his desk.

During the day the police made frequent efforts to disperse the crowds only to be met by jeers, hoots, and physical resistance. A handful of the would-be rioters was arrested. But a huge crowd was still waiting near the Capitol when darkness fell. At about eight-thirty part of the mob started to drift out Peachtree Street in the general direction of the Slaton estate at Buckhead, eight miles away. At several points the police tried to push them back; they made some arrests but they were hopelessly outnumbered.

The mob carried dynamite and a rope. Its leaders frankly declared that they intended to burn or blow up the house and lynch the governor.

On reaching the fringe of Slaton's property they were held off for a short time by Sheriff Mangum, his deputies, and some deputized citizens, aided by the governor's horse guards. Rocks were being thrown and clubs swung when the militia arrived

and drove the rioters off with a series of bayonet charges in which the butt-ends of rifles were also used as prods. By that time dozens of men on both sides had been injured and twenty-three were arrested.

During his last week in office as Governor of Georgia, John M. Slaton and his home were under heavy day-and-night guard. Throughout Georgia the mass meetings continued.

Nowhere did the bitterness mount as it did in Marietta. One night a hundred and fifty citizens met at Mary Phagan's grave and jointly swore an oath never to rest until the murder of the girl was avenged. As the "Knights of Mary Phagan," they set about organizing lodges in other Georgia communities.

Jews who had lived peacefully for a generation or more in Marietta had for some time been receiving letters threatening them with violence if they did not leave. The threats became more pressing that week. And in Atlanta, street peddlers of anti-Semitic literature were doing a thriving business. One of the mildest examples, circulated on thousands of small cards, read:

Carry me in your purse. Stop and think. Before you spend your money, shall it be to a fund to protect murderers to buy governors? Stop and think. Now is the time to show your colors, to show your true American blood.

Is it streaked? Can't you buy clothing from an American? Can't you buy shoes from an American? Can't you buy the necessities of life from an American? American Gentiles, it is up to you.

This little card is only a little anthill to start with. Help it grow into a mountain.

At Milledgeville special precautions were being taken to protect Frank from attack. He was reported close to a nervous breakdown, though later in the week he was said to be adjusting himself fairly well to the routine on the prison farm.

On Tuesday Governor Slaton, guarded by twenty soldiers, visited his office for the first time that week; no untoward incidents occurred. But Atlanta rippled with rumors that the anti-

Frank faction intended to stage another demonstration that Saturday after Slaton turned over his seal of office to his successor. Watson and his other political enemies were urging this as the only way to register disapproval of the man who they charged had broken down trial by jury in the state. Slaton retorted that, thanks to Watson and his followers, for the first time in history the governor of one of the United States had had to declare martial law in order to defend himself and his family from a vengeful mob.

The mob did not wait for Slaton to step down before attempting another attack. At four o'clock on Saturday morning—just a few hours before the scheduled inauguration—another mob of rioters tried to storm the Slaton home. They exchanged shots with the militia. The soldiers managed to arrest twenty-six of these men and routed their companions. The mobsters were heavily armed and plentifully supplied with dynamite.

When they were taken to Fulton Tower later in the morning the twenty-six men said that they had not been arrested together but had been on their way home from a night of fishing when they inadvertently entered the forbidden area close to the governor's house.

During the past week those close to the governor pleaded with him not to endanger his life by making a public appearance at the coming inauguration.

"I will complete the obligations I undertook when I was elected governor," he responded to each such plea.

Chief Beavers, however, anticipated serious trouble. With thousands of persons pouring into the city for the inauguration, he ordered the near-beer saloons and other resorts closed on Friday night. Two full regiments of soldiers—the Fifth National Guard Regiment of Atlanta and the Second National Guard Regiment of Macon—were assigned to help the police maintain order. What followed can be explained only by the fact that the sympathies of the vast majority of both policemen and soldiers were not with the departing governor.

At twelve o'clock Governor Slaton made his way through the tense but comparatively quiet crowds that were swarming in and about the Capitol. They watched him go in—and did nothing, but during the ceremony when Slaton arose in the hall

of the House of Representatives to present the Great Seal of the State of Georgia to the new governor, Nat E. Harris, there was a torrent of hisses and boos and catcalls. Slaton sighed, but otherwise tried to ignore the interruption. And in a voice that rang with conviction and rose above the angry mutterings of the crowd, he presented the seal:

"Governor Harris, I know that during my term of office this Great Seal of our State has not been dishonored."

His dignity seemed to have won the day, for there was a prolonged outburst of applause. But as Slaton, still guarded, started to walk down the Capitol's marble steps, a wild-eyed crowd, screaming "Lynch him!" and "Remember Mary Phagan!" tried to fight its way through the guards that surrounded him. The soldiers, however, got him into his car safely and it sped away in the direction of the nearby railway station. Assuming that he was rushing to take a train out of the state, the frustrated mobsters tore down the streets in pursuit. Though they did not find him in the station they were still convinced that he was hiding. The leaders of the mob not only thoroughly searched the station itself but refused to let three successive trains depart before going through every coach looking for the former governor.

Slaton, however, had gone to a luncheon at a hotel in honor of the new governor. Harris in his speech of thanks made no reference to the rioting that had marred his assumption of office, or to the cause of that disgraceful spectacle. In his own address, though, Jack Slaton movingly justified what he had done:

"Honest people may disagree with me, an honest man, but we realize that we must be measured by our consciences. Two thousand years ago another governor washed his hands of a mob and turned a Jew over to a mob. For two thousand years that governor's name has been a curse. If today another Jew were lying in his grave because I had failed to do my duty, I would all through life find his blood on my hands, and must consider myself an assassin through cowardice."

Two days later, with Mrs. Slaton, he was permitted to leave Atlanta without incident from the same railway station where he had been hunted like a mad beast.

Many years passed before it was considered safe for Jack Slaton to return to Georgia. His political career, of course, was ended, as he had known it would be the night he put his signature to the document that was designed to save Leo Frank from the hangman.

Even as he was on the train to New York the grand jury refused to bring felony indictments against the twenty-six men who had been arrested. Instead it reduced the charge to a misdemeanor, which is subject to a much lighter sentence.

With the success of Tom Watson and his followers in banishing the governor, the fate of the man Slaton had tried to save became inevitable. If the system of law and order in Georgia had so completely broken down that a rioting mob could drive its chief executive out of the state, it was obvious that the officials of that system would be even more helpless to protect Frank—even if they wished to.

During the weeks immediately following the violent scenes at the Capitol and at Slaton's home there were rumors that the friends of Frank were determined to free him by force from the State Prison Farm at Milledgeville. It was also rumored that his enemies were making elaborate plans to storm the prison, kidnap him, and lynch him. These rumors were officially recognized on July 13 when Adjutant General J. Van Holt Nash of the Georgia National Guard alerted the military company at Milledgeville for action and also ordered three other companies in Macon to be prepared to start for Milledgeville at any time. The Milledgeville warden, James E. Smith, declared he would be able to defend his prison against any attack without the help of troops. "There are large stores of rifles and ammunition here," he told reporters, "and prisoners and several guards have been on duty ever since Frank was sent here."

But a few days later, on July 17, the problem of how to defend the most hated man in Georgia was all but taken out of their hands when one of Frank's fellow prisoners, a psychotic murderer named William Creen, crept up to the sleeping Frank's cot and savagely cut his throat with a huge butcher knife. It so happened that there were two skillful doctors among the prison population. They immediately sewed up the cut with

twenty-five stitches. The wound extended from the front of the neck almost halfway around to the back, and had partially severed the jugular vein, though neither the spinal cord nor the windpipe was injured.

"Am I going to die?" Frank asked the doctors after they had done all they could for him. One of the convict-physicians confessed that he did not know, but gave Frank a chance of surviving. Looking up at them, Frank said, "I am not afraid. There is nothing between me and God." And he added, "I hope the man who did this will be forgiven."

Leo Frank did not die from Creen's attack. Once again his life had been spared.

Taken before Governor Harris, who personally conducted the investigation of the assault on Frank, Creen explained that he thought killing Frank would save other people's lives. "I felt that as long as he was there," he said, "there was danger of the prison being attacked. I was afraid people would be killed when the guards and the people making the attack shot at each other."

Following the investigation, Governor Harris made the usual promise of radical reforms in the housing of convicts.

There was also a meeting of citizens at La Grange, Georgia, which adopted several resolutions, inspired by Tom Watson. Among these were:

**RESOLVED:** that the Jews of Georgia be called upon to affirm or deny the charge that they have been subjected to prejudice or race hatred. By their silence they have endorsed all the vile charges and if these charges be true, it is high time that they were seeking more congenial climes.

**RESOLVED:** that John M. Slaton and William J. Burns never be permitted to pollute the air of Georgia with their foul breath.

A day or so later the *Augusta Chronicle* carried angry comment on a telegram sent to Governor Harris from a group of citizens who asked him to grant a full pardon to William Creen. The *Chronicle* said this was "obviously in the idea that

his murderous assault on Frank fully atoned for his two previous murders.

"But those were, no doubt, either ignorant or vicious people who sent this telegram; yet what must we say of those men of admitted intellect and influence who make a business of inciting such passions in the people? Verily, Georgia has fallen on hard days when incendiary publications can find a readier sale on the streets of her capital city and elsewhere than the sanest message ever printed by editors with more conscience and patriotism."

Tom Watson, nevertheless, was doing better than all right. He was getting rich on the vastly increased weekly sale of copies of the *Jeffersonian*, and was a more powerful figure than ever in state politics. His anti-Semitic editorial policy had attracted more readers than his assaults on Negroes and popery ever had. But the most magnificent triumph of all was still to come—on August 16.

Shortly before midnight on that day twenty-five men arrived at Milledgeville in five automobiles and took Leo Frank from the prison farm. After handcuffing one guard and overpowering another, they rushed up to Frank's room, awakened him, and dragged him from bed. Four of them grabbed his arms and legs, a fifth seized him by the hair. Dragging him roughly downstairs, they shackled his hands behind him and threw him into a car. Meanwhile other masked men had cut telegraph and telephone wires to prevent the prompt broadcasting of an alarm. They also kept at bay the prison officials who had been awakened by the noises they made.

The prison raiders, however, missed one wire and the news of the abduction of Frank was flashed to Augusta from which word went out to all Georgia sheriffs to stop the kidnapers and arrest them. Apparently the captors of Frank quickly were tipped off about this alarm for they drove for seven hours over back roads to avoid being intercepted, approaching Marietta, a hundred and fifty miles from Milledgeville, as dawn was breaking.

The twenty-five men, though never afterward identified, were believed to have been members of the "Knights of Mary Pha-

gan." It was said they had originally planned to hang Frank in the Marietta public square but changed their minds at the last moment. They compromised by hanging him from an oak tree in a little grove which was hidden from the nearest road. Despite the secrecy, by eight o'clock that morning a crowd had already gathered and was gaping at the dangling body. Here is what they saw and heard, according to the account written by the late Rogers Winter, of the *Atlanta Journal*:

Frank hung with the top of his head near the limb of the oak tree, his feet about four feet above the ground. A white handkerchief was over his face and the corners knotted at the back of his head. The hangman's knot lay against his right jaw. The wound in his throat, where William Creen attempted to kill him at the state farm a few weeks ago, was pulled open, underneath his left ear.

Frank's body from the waist up was clothed in a thin white pajama jacket. Worked in the jacket on the left side of the chest were some letters in red thread that looked like L.M.F. The sleeves of the pajama were chipped away by souvenir hunters, wielding their pocket knives until both sleeves were gone as far up as the elbows.

The body from the waist down was wrapped in a dirty piece of brown cloth that looked like khaki. It was stretched across the front like a shirt drawn tight, and tied together by the corners behind, somewhat towards the left hip.

The crowd gathered with the rapidity that only intense curiosity and intense excitement can produce. They swarmed the road from both directions. They seemed to rise up out of the ground so fast they came. The automobiles came careening recklessly disregarding life and limb of occupants. Horse-drawn vehicles came at a gallop. Pedestrians came running. . . . Women came. Children came. Even babes in arms. The sight of the body, swaying in the wind, with the red, gaping wound in the throat, made some of the women sick, and they would

utter little shrieks and groans and turn their heads away. Other women walked up to the packed mass of men and pushed their way into the pack, and looked on the dead body without the quiver of an eyelash.

Excitement began to manifest itself as soon as the crowd began to gather, and as the crowd increased, the excitement increased.

One of the first arrivals was a man in a frenzy of passion. He was bare-headed, coatless, his eyes blazing like the eyes of a maniac. He ran through the crowd, ran up to the body, threw up his hands and clenched his fists and shook them at the body. Then his hands would open and his fingers would writhe and his fists would close again, and he would shake them at the body.

"Now we've got you!" he screamed. "You won't murder any more little innocent girls. We've got you now! We've got you now!" His voice would rise to a shrill note . . . and he would chant his words in a kind of sing-song, repeating one imprecation over and over.

And every once in a while, when he paused, some man in the crowd would give a yell, and the crowd would join in the yell, and it would grow and get higher and higher, and the sound of it would fill the little grove and echo back and forth.

These demonstrations seemed to fan the fury of the man by the body. His gesticulations became more violent, his raving words came faster and faster from his mouth.

"They won't put any monument over you," he cried. "They are not going to get you. They are not going to get a piece of you as big as a cigar!"

The crowd yelled and packed closer. At this juncture a short, thick-set man with blue eyes gleaming, ran up to the crowd, jostled his way through the crowd, and pushed up to a place beside the man who was cursing the body. He climbed up on something so that he could see over the heads of the crowd. "Men, hear me," he said. It was Newt A. Morris, former judge of the Blue Ridge Circuit, who had just arrived in an automobile from Marietta with Attorney John Wood, of Canton.

"Whoever did this thing," said Judge Morris, "left nothing more for us to do. Little Mary Phagan is vindicated. Her foul murder is avenged. Now I ask you, I appeal to you, as citizens of Cobb County, and the good name of our county, not to do more. I appeal to you to let the undertaker take it."

The man by the body broke in again. "We are not going to let the undertaker have it!" he shrieked. "We are not going to let them erect a monument over that thing! We are not going to let them have a piece of it as big as a cigar! We are going to burn it! That's what we are going to do! We are going to burn it! Come on, boys, let's burn the dirty thing!"

Judge Morris raised his voice. "Men, I appeal to you," he shouted. "Don't do anything to this body. This man has a father and a mother, and whatever we think of him, they are entitled to have the body of their son. Men, men, I appeal to you for the good name of our county. Let all who favor giving this body over to the undertaker say 'Aye!'"

There was a chorus of "Ayes!"

"Now all who oppose it, say 'No.'" said Judge Morris.

The man beside the body, at the top of his voice, yelled "No!" . . .

Judge Morris got down and ran back through the crowd and began to call for an undertaker. While he was calling, somebody laid a knife on the rope and Frank's body dropped to the ground with a thud and the crowd packed around it in a solid mass, with the excited man standing at the head.

A Negro ran up to Judge Morris. "Here I am, Judge," he said. "Here's the wagon." Judge Morris gave orders, and the Negro and another Negro opened the back end of the wagon and pulled out a long undertaker's basket, and started with it toward the body.

"Bring the body on, men," shouted Judge Morris. "Bring it on. Quick, for God's sake!" But none of them would pick it up, and Judge Morris, beckoning to the

Negroes, wedged in and worked his way towards the body, until the Negroes finally got hold of it and started towards the undertaker's wagon.

The man who had voted "No!" reached out and struck at the body, and the Negroes dropped it, and when it hit the ground, the man stomped upon the face, and ground his heel into the dead flesh, and stamped again and again, until the crowd, stricken silent and motionless by the horror of the sight could hear the man's heel as it made a crunching sound.

Again and again as a man grinds the head of a snake under his heel, did the man in the awful frenzy drive his heel into the face of Leo M. Frank, grinding the black hair of the dead body into the black dirt and the dead black leaves.

"Stop him! For God's sake, stop him!" cried Judge Morris, and ran up to the man and begged him to stop. And while the judge begged and pleaded with him, the Negroes at an order from the undertaker, seized the body and ran with it to the basket, and seized the basket and ran with the body in the basket to the wagon, and shoved the body into the wagon, snapped down the door and leaped to the seat and drove toward Marietta with the big horse running on a dead run.

Judge Morris and Attorney Wood broke and ran for their automobile, and got in and started after the undertaker's wagon. Several cars, quicker than they, got ahead of them, but these they soon passed, with the crowd swarming along the road in the dust raised by the undertaker's wagon.

At the entrance to the National Cemetery, just inside the town of Marietta, Judge Morris caught up with the undertaker's wagon, got out of his car, and ordered one of the Negroes to take his place, and then climbed up himself to the driver's seat of the undertaker's wagon, riding for a few blocks with Attorney Wood driving the automobile ahead. The judge seized the first favorable opportunity, and jerked the long basket out of the undertaker's wagon and laid it across the back seat of At-

torney-Wood's car, then, jumping in beside the attorney, Judge Morris said, "Now, John, drive like hell to Atlanta!" Thus the body was taken from the crowd . . . and thus began the automobile ride to Atlanta.

Even though the men of Marietta had lost the race for possession of the body to Judge Morris, they had the privilege later in the day of standing on the county courthouse steps and singing, to the tune played by "Fiddling Jack" Carson, the words of a folksong that had recently become very popular throughout Georgia under the title of "The Ballad of Little Mary Phagan." It ran, in part:

Little Mary Phagan

Left her home one day.

She went to the pencil factory

To see the weekly pay.

Leo Frank he met her,

With a brutish heart we know.

He smiled and said, "Little Mary,

You won't go home no more."

Sneaked along behind her

Till she reached the metal room.

He laughed and said, "Little Mary,

You have met your fatal doom."

The tears flow down her rosy cheeks,

While the blood flows down her back;

For she remembered telling her mother

What time she would be back.

You killed little Mary Phagan,

It was on one holiday;

Called for old Jim Conley

To carry her body away.

He taken her to the basement,  
She was bound both hands and feet;  
Down in the basement  
Little Mary she did sleep.

I have a notion in my head,  
When Frank he comes to die  
And stands examination  
In a courthouse in the sky.

Come, all you jolly people,  
Wherever you may be,  
Suppose that Little Mary Phagan  
Belonged to you or me.

Now little Mary's mother  
She weeps and mourns all day,  
Praying to meet little Mary  
In a better world some day.

Frank he's got little children,  
And they will want for bread;  
Look up at their papa's picture,  
Say, "Now my papa's dead."

If Americans outside of Georgia were horrified by the lynching, so were great numbers of Georgians. And the *Atlanta Journal* spoke for these and most of the state's newspapers in an editorial published the day after the lynching. Pointing out that this was the state's ninth lynching in the past eight months, it said:

If this mad spirit goes unpunished and unchecked, what becomes of the power of law and the security of property and life? . . .

The mob that committed this crime does not represent the decency and intelligence of Georgia any more than

any mob represents the decency and intelligence of any state. But this mob does represent a savage, anarchistic impulse that will wax hydra-headed and uncontrollable unless it is crushed. Lawless people are no more numerous in Georgia than elsewhere but they have been tolerated to such an extent that they have become all-defiant. The individuals guilty of this outrage must be brought to justice and made an everlasting example. . . .

The *Brunswick News* agreed, saying, "Georgia hangs her head. . . ."

The *Marietta Journal*, presenting the opposite viewpoint, declared:

We regard the hanging of Leo M. Frank in Cobb County as an act of law-abiding citizens . . . determined that the sentence of the courts should be carried out, whether the offender was white or black, Jew or Gentile. And the law-abiding citizens of Georgia carried out that determination to the letter of the law:

"That he shall hang by the neck until dead." Nothing else was done. That was all one desired—life for life.

The body of Leo Frank swung by the neck until the coroner of Cobb County was officially notified and ordered the body cut down and removed from the scene. It was not a case of violence, it was the demands of justice that the guilty be punished. It was a case where the people ruled.

Leo Frank was not scratched, nor a hair of his head harmed, he was hanged by the neck until dead as the law had declared as his just dues. We have no apology to make or regrets to express.

The people demanded that the verdict of the court be carried out and saw to it that it was. We insist they were, and are, law-abiding citizens of Georgia because they came from somewhere within our boundaries. We presume they are from Cobb County, we do not know.

On August 24, the Cobb County coroner's jury, after hearing eleven witnesses, brought in a verdict of "hanged by unknown persons." It had deliberated for three minutes. The local grand jury also was unable to identify any of the lynchers.

And on the first page of the *Jeffersonian* Tom Watson ran the following:

A vigilance committee redeems Georgia and carries out the sentence of the law on the Jew who raped and murdered the little Gentile girl, Mary Phagan. . . . In putting the murderer to death the Vigilance Committee has done what the sheriff would have done if Slaton had not been of the same mold as Benedict Arnold.

Jew libertines, take notice.

Georgia is not for sale to rich criminals.

Two men received most of the credit for sending Frank to his doom: Hugh Dorsey, the prosecutor, who convicted him on evidence so flimsy and unreliable that it would have utterly discouraged a less ambitious man; and Thomas E. Watson, whose newspaper inspired the lynching.

Though Georgia exiled Jack Slaton, she rewarded her two other sons: Dorsey became governor; Watson, United States Senator.

And when Watson died, in 1921, the President of the United States sent his condolences and a delegation of his fellow senators attended the funeral, along with seven thousand of the lawmaker's faithful constituents.

Governor Slaton, whose courageous act ended his political career, died on January 11, 1955, in an Atlanta hospital at the age of eighty-eight. For years after he commuted Frank's sentence he was advised by friends that it would not be safe for him or his wife to show their faces in Georgia. But at last feeling died down enough to allow him to come home and practice law again in his native state. The day after he died the *Constitution* ran a laudatory editorial, which said, in part:

He [Slaton] lived out a rich, full life, having fun, going to parties with his nieces and nephews, practicing law,

teaching Sunday School.

He was that rare, independent man in modern politics—putting principle and integrity above gain and ambition.

From almost any point of view—social importance, suspense, or pure horror—this melodrama of one man's life, ordeal, and awful death has few equals in the long, tumultuous history of our criminal courts.

Frame-ups and faked evidence, of course, have never been employed in the United States on the monstrous scale that became commonplace in Communist Russia, Nazi Germany, and other totalitarian countries during the past thirty years. But it is nevertheless true that they have been used far too often to justify complacency. Edwin M. Borchard, professor of Law at Yale, had written a shocking study, *Convicting the Innocent*, which contains documented accounts of sixty-five calamitous legal "errors," all but three of them made in our courts. Twenty-nine of these mistakes occurred in murder cases.

In fact, the Frank case is merely the first of the four most celebrated modern criminal cases in which frame-ups were obviously perpetrated. The others were the Mooney-Billings case in California in 1916; the Sacco-Vanzetti case in Massachusetts in 1927; and the case of the nine Scottsboro boys in Alabama in 1931.

Few who have studied the court record in these three cases would say that the defendants were guilty as charged, or that they were given fair trials. But the Frank case, the fourth classic example of injustice in our twentieth century courts, finds the experts still undecided.

Ralph McGill, the fair-minded and widely respected editor of the *Constitution*, straddled the issue, saying after Governor Slaton's death that "there was a considerable body of evidence for and against Frank."

As recently as 1952 Francis X. Busch published a highly praised study of the case in his *Guilty or Not Guilty*. In this he concluded that Frank "may have been guilty, and he may have been innocent. . . . There is evidence and reasonable probability to support either conclusion." However, Mr. Busch

also qualified this, saying, "Frank's guilt was not proved beyond a reasonable doubt . . . he may have been the victim of one of the most flagrant miscarriages of justice recorded in American criminal annals.

Along with many other persons who have made a careful study of the facts, the present authors believe that Leo Frank was the victim of one of the most shocking frame-ups ever perpetrated by American law-and-order officials.

In at least one other respect the Frank case is unique. It is the only celebrated American murder case of the twentieth century in which religious prejudice played a dominating role.

But if we, as Americans, look with shame on the treatment of Leo Frank and the defendants in the other three cases, we may take pride in something else that happened in all four cases: In each instance, when the circumstances of the convictions became widely known, millions of men and women who had never before heard the names and would never see the faces of the victims, or be thanked by them, gave of their time, their money, and their hearts to help them. And these millions of Americans were of all races, religions, ages, and political parties.