

# HOLD BACK REPORT OF BURNS ON FRANK

## Defense Won't Publish It Now Because of Police Attitude to Defense Witnesses.

### PLEA FOR NEW TRIAL BEGINS

#### Frank Submits Statement Calling Police Methods Against Him In- iquitous and Vindictive.

Special to The New York Times.

ATLANTA, Ga., April 23. — Progress was made in the Frank case to-day when Judge Ben H. Hill began the hearing in chambers on the extraordinary motion for a new trial, based on the plea of newly discovered evidence. The hearing will continue from day to day until the matter is concluded.

Just before the hearing opened a statement was made public by Leo M. Frank, commenting on the methods employed by the police detectives, as evidenced by the recent detention of Albert McKnight following his reversion to the original story told by him at Frank's trial.

Leonard Haas, of counsel for Frank, announced that in view of the attitude of the police, the report of Detective William J. Burns, which had been completed and filed with the attorneys, would not be published at this time. He declared that the evidence found by the detective might be used in the extraordinary motion for a new trial, but that it was not deemed wise to publish the report in its entirety now in view of the manner in which the police were "going after" all defense witnesses, as evidenced by the McKnight arrest. It is possible that the Burns evidence will be reserved for use if Frank gets a new trial.

The statement issued by Frank follows:

The past few weeks have brought to light many new revelations in the "Frank case" and the actions of the city detectives, under the strain of these revelations, have been most interesting. I have been especially interested in their "secret" performances in view of Chief Lanford's public declaration that he would gladly co-operate with Mr. Burns in every possible way to ascertain the truth. This avowal on the part of the detective chief was most worthy, and yet his first public endeavor in this direction was the placing behind the bars of the negro, Albert McKnight, who now resides at police headquarters as a "voluntary guest." Is it not passing strange that a negro should, of his own volition, desire to be locked up at the station house? I venture the assertion that in the annals of police history no negro has ever made such a demand. It stands to reason that a negro ordinarily has no love for the station house and its environment, and tries to avoid it at all times. Is it not remarkable that a negro should try to break into jail?

And what pretext is advanced for this negro McKnight's visit to headquarters? Somebody is supposed to be pestering the negro, and in order to give him "protection" the police lock him up. Why not lock up the person who is doing the pestering? In future, if a man complains to the police that some one is trying to harm him, they will lock up the poor fellow who complains in order to "protect him." Protection, indeed, and against what?

McKnight had repudiated publicly before newspaper men the testimony given at the trial, and that in no uncertain way. Two months thereafter we learn that the irresponsible negro has made another affidavit and becomes the "guest" of the police for protection and in payment therefor. Is it not rather this last story of McKnight's that the police are desirous of protecting and not the prisoner? The truth needs no protection. It can even withstand third degree police methods.

#### Asks Public Not to Be Fooled.

Is it possible that the fair-minded public will longer be fooled and bamboozled by the cunning of our police and detectives? Is it possible that the public of this city will stand for the brazen announcement from police headquarters that McKnight is being entertained as a "voluntary guest" as a consideration for his apparent elasticity? It will be remembered that the verdict in my case was published, that "police methods were vindicated." Does he think that, having already fooled twelve men as to his iniquitous methods he can continue to keep the public in the dark? To further show the strength of the so-called "police vindication" it might be well for him to explain why Nina Formby, who, according to his own statement, was the last and final link in the chain of evidence around me, and who has since repudiated her statement in toto, is not residing at this time at the station house as a voluntary guest for protection. Oh, the cunning of our great detective chief!

How long is this "opera bouffe" performance to continue unchallenged? To every thinking man in this community the spectacle of the actions of the police and the detectives, in nursing and feeding witnesses at the public's expense, must be positively sickening.

Be it remembered also that the star witness for the prosecution, Jim Conley, was also a "guest" in the very apartment now occupied by Albert McKnight. It was there that Conley received his tutoring; it was there his outrageous story was nurtured and constructed. It is perfectly reasonable to suppose that the detectives believe that Albert McKnight also needs a bit of grooming and tutoring.

The object of legal investigation should be the ascertainment of truth. When reliable evidence points to the real solution of the case, why do not the detectives, in all fairness, follow these sign posts of truth, instead of browbeating witnesses and jailing them until they sign statements and pleading to the police? Who are these witnesses that, under police guidance and nursing, blow both hot and cold? They are State witnesses, vouched for at my trial by the prosecution, and whose word we are to take at face value to damn and destroy human life at whatever sacrifice. Has the due process of law and the safeguarding of human life become such a triviality that it can be so flagrantly outraged?

Let us have the truth in this case, and that speedily. Let us play with all the cards on the table, for the issue involves human life. Let the detectives get right, lest they fall themselves into the grave which they have dug for another. For the truth is on the march and all things hidden will come to light. Very truly yours,  
LEO M. FRANK.

#### Affidavits by Frank and Others.

The extraordinary motion has been published practically in full in the newspapers. It was read in detail to the court, consuming about an hour and a half. An affidavit was then read from Leo M. Frank, the convicted man now under sentence of death as the murderer of Mary Phagan, setting forth that he had been imprisoned in the Tower since April 20, and therefore had been deprived of opportunity to learn earlier the alleged facts now set forth as newly discovered evidence. A similar affidavit, but longer, was filed by each of the attorneys—Luther Z. Rosser, Reuben R. Arnold, Morris Brandon and Herbert Haas. Other affidavits were made by Dr. H. F. Harris, Harlie Branch, Attorney Leonard Haas, and Miss "Jimmie" Mayfield.

The affidavit of Dr. Harris related to the hair found on the lathe and examined by him in comparison with Mary Phagan's hair, but in it Dr. Harris did not swear he now thought the hair was not that of Mary Phagan. The affidavit of Branch was that Dr. Harris told

that he (Harris) thought the hair was not that of Mary Phagan.

The affidavit of Attorney William M. Smith, Jim Conley's counsel, was that he went to the Capitol one day to see Solicitor Dorsey and found him there with Dr. Dorsey, his brother, and Dr. Harris; that while he was waiting Dr. Harris told Dr. Dorsey he (Dorsey) might examine the sections of hair if he wanted to; and that he thought Dr. Harris told the Dorsey brothers that the hair was not like that of Mary Phagan.

In their affidavits showing why they had not learned earlier of the newly discovered evidence, the attorneys said they were combated on every side by public prejudice and that it was difficult for them to learn anything at all. They quoted certain grounds for the original motion for a new trial, denied by the Supreme Court, to which Judge Roan certified about the attitude and behavior of the crowds in the court during the trial.

Leonard Haas read his own affidavit that he had read the brief filed by the Solicitor General with the Supreme Court in this case and found therein emphatic language by the Solicitor stressing on the importance of the discovery of the hair on the lathe.

Charges that prejudice against Frank was intense in the days preceding his trial and at the time of the appeal, and that persons who had information favorable to his case feared to reveal it was made in the affidavit of his lawyers.

Only the attorneys engaged in the case at the time—Messrs. Rosser, Brandon, Arnold, and Herbert Haas—signed the affidavit. It was asserted that stories of such villainy had been circulated against the prisoner that the whole public had become embittered and prejudiced, and almost unanimously wanted a conviction.

This situation, according to the lawyers, made it almost impossible to get information of the circumstances that were favorable to their client. Persons having such information, they said, withheld it because of the undesirable publicity it would give them, and because they feared they would be hurt in reputation or in a business way.

#### Say Facts Were Hidden.

The lawyers represented to Judge Hill that, although they had spent weeks and months in the endeavor to bring to light every fact and circumstance of the crime of Mary Phagan's murder, there had been many things hid which had not been discovered until work was begun on the extraordinary motion for a new trial.

The first point made on the extraordinary motion was that the hair found on a lathe on the second floor, and used by the State to show that the crime was committed on the second floor, was not Mary Phagan's hair. This point was based on the opinion of Dr. H. F. Harris, as first expressed several weeks ago. Dr. Harris then stated that before the trial he made a microscopic comparison of it with Mary Phagan's hair and it was unlike that hair. The defense discovered this after the trial, said the motion.

The defense's contention was based on Miss Jimmie Mayfield's affidavit that she saw the hair found on the lathe and believed it was not Mary Phagan's, and on similar affidavits by Mrs. Cora Falta and by Miss Alice Marjorie McCord.

The next ground was concerned with Albert McKnight's repudiation, since withdrawn by the negro, of the testimony he gave for the State at the trial.

Next came the evidence based on the affidavit by Mrs. J. B. Simmons that she heard screams coming from the factory basement about 2:30 or 3 o'clock on the afternoon of the murder, combating Conley's story that the girl's body was moved to the basement by him and Frank before 1:30 o'clock.

The motion next took up Mrs. Ethel Harris Miller's affidavit, supporting the time alibi, that she was standing with Meyer Lefkoff at Whitehall and Alabama Streets at 4:10 o'clock on the afternoon of the murder and saw Frank pass.

Dewey Howell's affidavit that she was coached into testifying against Frank's character was the ground for the next section of the motion.

Miss Ruth Robinson's affidavit said she was insulted by the Solicitor with abusive language, and charged that she and other girls were coached by the Solicitor and Miss Maggie Griffin, as to what they should testify on the stand; and that she heard Miss Griffin coaching Dewey Howell in substantially the story the latter told on the stand.

The motion also took up affidavits by Mrs. Mamie Edwards, formerly Mamie Kitchens, Miss Marie Karst, and by others, who either repudiated testimony given at the original trial or made statements which strengthened Frank's time alibi that he was not in the pencil factory when the murder occurred. These affidavits were from Samuel A. Pardee, W. V. Green, Mary Rich, colored, and C. Brutus Dalton.

#### Confirms Story of Screams.

An affidavit corroborating the assertion of Mrs. J. B. Simmons that she heard screams issuing from the basement of the National Pencil Factory at 2:30 o'clock in the afternoon of April 26, 1913, was introduced by counsel for Frank. The affidavit was sworn to by Mrs. Elizabeth Cohen of 40 Robins Street, who swore that she came down town on the day Mary Phagan was murdered and about 3 o'clock, after watching the Memorial Day parade, met Mrs. Simmons near Forsyth Street. She asked Mrs. Simmons how she enjoyed the parade, and Mrs. Simmons replied:

"I've been badly frightened and scared by hearing a girl scream in the basement of the National Pencil Factory."

Mrs. Cohen said she laughed and told Mrs. Simmons that it probably was somebody celebrating Memorial Day and having a good time.

"The screams I heard were not made by any one having a good time," Mrs. Cohen says Mrs. Simmons replied. "They sounded like some one was being murdered."

Mrs. Cohen said she went to Mrs. Simmons's home the next morning and Mrs. Simmons's son-in-law came into the room where they were and said:

"You were right about those screams yesterday, mother. The screams you heard were Mary Phagan being murdered."

Sensations were promised at the hearing should the lawyers for the defense consider it advisable to make public parts of the report of Detective William J. Burns.

A feature of the report regarded by the defense as significant is the disclosure that the negro, Jim Conley, was a habitual note-writer before Mary Phagan was slain, and that he had used this device on previous occasions for reasons similar to those for which it was asserted he wrote notes after the murder.

"Conley has been pictured as an unintelligent and illiterate negro," said Burns before the hearing was called.

"He is illiterate all right, but he is not unintelligent by any means. He is about as shrewd and tricky a negro as one would find in a week's travel. I am going to show that the notes he wrote and placed by Mary Phagan's body were not the only notes he had devised for like purposes."

About twenty negro women have been murdered in Atlanta in the last three years and the murderer has not been arrested. In each case a note was found by the victim's body. Burns evidently believes that Jim Conley is the "Ripper."

### HURT WHEN AUTO FALLS.

#### Motor Car Backs Into Elevator Shaft, Taking Four Men with It.

Four men were injured, none of them seriously, last night when an automobile fell down the elevator shaft in the garage of the Jandorf Automobile Company, at 3 West Sixty-third Street. The auto was wrecked. The injured men were Samuel Simon, a chauffeur of 500 Greene Avenue, Brooklyn; Edward McAvoy of 531 West Fifty-third Street, George Rosenstock of 643 Cauldwell Avenue, the Bronx, and Samuel Arosen of 255 Vernon Avenue, Brooklyn. They all went to their homes after treatment at the Polyclinic Hospital.

The automobile had just backed into the garage, and Simon was turning it around to take it to its proper place, when in backing the rear of the machine plunged into the elevator shaft. The elevator was at the top of the shaft at the time, and the auto pitched back and fell to the bottom of the shaft, eighteen feet below. The men were thrown from the seats but were not thrown out of the tonneau.