

Leo Frank, Guilty or Not Guilty, Francis Xavier Busch, 1952

NOTABLE AMERICAN TRIALS

GUILTY OR NOT GUILTY?

An Account of the Trials of
THE LEO FRANK CASE
THE D. C. STEPHENSON CASE
THE SAMUEL INSULL CASE
THE ALGER HISS CASE



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THE BOBBS-MERRILL COMPANY, INC.
INDIANAPOLIS *Publishers* NEW YORK

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The Trial of Leo Frank for the Murder of Mary Phagan (1913)

THE SIGNIFICANCE of the Leo Frank case lies not in the nature of the crime, but in the publicity which was given to it and the extraordinary consequences of that publicity. The trial would probably have attracted no attention outside of Fulton County, Georgia, had it not been for the ill-advised activities of a coterie of Frank's friends and coreligionists who raised the issue of religious prejudice. During the trial and the course of the case in the upper courts, this group made repeated public appeals, through newspaper advertisements and mailing circulars, for funds to aid Frank in his defense. The basis of the appeals was that Frank, an innocent man, was being persecuted because he was a Jew. These solicitations went to every part of the country, but were directed particularly to the North. The already high feeling against Frank in Atlanta was aggravated by these appeals. It was charged in the Southern press that \$250,000 had thus been raised "to make certain that the guilty Jew Frank escaped the gallows."

After Frank had been convicted and sentenced to death, the Northern press, almost without exception, denounced the verdict as a travesty of justice. Some leading Northern papers went so far as to send detectives and well-known lawyers to Atlanta to "investigate" and "review" the case. They all reported that Frank was innocent and that his trial had been a farce.

Then the case came before the Supreme Court of the United States; and the dissenting opinion of Justice Holmes and Chief Justice Hughes that-assuming the truth of facts alleged in a petition for a writ of habeas corpus-"lynch law [was] as little valid when practiced by a regu-

larly drawn jury as when administered by one elected by a mob intent on death" gave the Northern press sensational material to work with. The majority opinion, which denied the writ on the ground that all of the points raised had been passed on by the Supreme Court of Georgia, was ignored.

Editorial comment in the Northern press grew increasingly bitter. Georgia was denounced as a community of bigots; its courts were branded as incompetent and cowardly. An aroused Southern press met this attack with responses equally vitriolic. The North, it retorted, had its own unenviable record of crime and incompetency and corruption in its courts; let it put its own disordered house in order; its characteristic intermeddling in the purely domestic affairs of the South was officious, gratuitous and unwarranted.

The commutation of Frank's sentence to life imprisonment was regarded throughout the South, and particularly in Georgia, as the consequence of Northern propaganda. In some quarters the direct charge was made that it had been brought about by bribery. When Frank was forcibly taken from the state penitentiary by a mob and hanged, the battle between the Northern and Southern press was intensified. The North saw in the lynching a complete vindication of its previous strictures. Although a few of the Southern papers condemned the lawlessness of the mob, many condoned it, finding in it only a justifiable execution by outraged citizens of the righteous judgment of its courts. After Frank's death the excitement gradually subsided; but, as Mark Sullivan says in his *Our Times*, the Frank case "fanned into a new flame for the moment the old animosities of the North and South of fifty years before."

PRING ARRIVES early in Georgia. Flowers, wild and cultivated, always in profusion during the long spring

season, are at their height in April. It was probably for this reason that Georgia, when it was freed of the domination of Northern "reconstruction," designated April 26 as a memorial day on which to honor its Confederate dead. In 1913 the day perhaps had a greater significance in Atlanta than elsewhere in the state. Many were still living who remembered the "March to the Sea" and its attendant death and destruction. Memorial Day in Atlanta was as much a reminder of that "unforgivable infamy" as it was a tribute to the fallen wearers of the gray.

On Memorial Day stores and factories closed. Gentle hands placed bouquets and wreaths on cross-and-flag-marked cemetery mounds. There was the parade of soldiers, old and young, with the dwindling line of veterans of the War between the States in the place of honor and, at the climax, the oration of the day-flaming apostrophes which recalled immortal sacrifices for the "lost cause."

In 1913 Memorial Day fell on a Saturday. Thirteen-year-old Mary Phagan was only one of a thousand little girls who wanted to see the parade. She had been employed at the National Pencil Company factory. Her job had been to fasten metal caps on the ends of lead pencils; but at the close of the workday on the previous Monday the supply of metal had run out; and she had been "laid off." For her work she was paid ten cents an hour, and there was one dollar and twenty cents due her for her twelve hours' work on Monday. Because of the holiday, most of the help had been paid off on Friday, but Saturday was the usual payday. Mary had been told by one of her fellow workers that there would be someone at the factory on Saturday from whom she could get her "envelope." She told her mother she would call at the factory, get her money and then go downtown and watch the parade.

She dressed for the occasion-her best dress, her blue hat with the ribbons and flowers and her "Sunday shoes." She carried the only accessories she possessed: a little variegated parasol and a mesh bag. She was a pretty child-well developed for her age, blond, blue-eyed and rosy-cheeked. Though her clothes were of the cheapest she wore them proudly and made a pleasing picture.

Mary lived with her mother and stepfather in Bellwood -then a suburb of Atlanta-and reached the factory by streetcar. At 11:45 A.M. on April 26 she boarded the car near her home and arrived at the street intersection nearest the factory a few minutes after noon. It was only a three-minute walk from there to the factory. The conductor and the motorman saw her leave and start to walk toward the factory. The evidence as to what happened afterward is uncertain and conflicting. It is known that she entered the factory and while in there was brutally violated and murdered.

In the early morning of Sunday April 27, about three, thirty, central police headquarters received a telephone call. An excited voice reported that the dead body of a "colored woman" had been found in the basement of the pencil factory. Two police officers were immediately dispatched to the scene. There they were met by one Newt Lee, Negro night watchman, who was the only person at the factory. It was Lee who had found the body and notified the police. He told the officers he had gone to the basement to use the toilet and had then discovered the body. He led them to the basement.

The only light was from a single gas jet, turned down so low that it afforded little illumination. One of the policemen turned the jet on full. On the floor in front of the furnace was the cold, rigid corpse of a white girl who was later identified as Mary Phagan. She was lying face down-

ward. Her golden hair was matted with blood, and her face was swollen and black from dust and dirt. There was a deep cut on the back of her head and a cord, pulled tightly around her neck, had cut into the flesh. A strip of white cloth, torn from the girl's underskirt, was also wrapped loosely around her neck. A shoe was missing from one foot. It was later found some loo or more feet away.

The girl's hat and bloodstained handkerchief lay on a trash pile a short distance from the body. The little parasol, undamaged, was found¹ at the bottom of the near-by elevator shaft. Near the girl's head the police discovered two small sheets of paper, one white and one yellow, on which were scrawled in uncertain writing² two separate pencil notes: maam that negro hire down here did this i went to make water and he puch he down that hole a long tall negro black that hoo it wase long sleam tall negro ... wright while... he said he would. . . play like nigt witch did it but that long tall black negro did it buy hisself.

The papers on which the notes were written had apparently come from an order pad, a number of which lay on a trash pile near the body.

The body was removed to a mortuary. Later medical examination established that death had been due to strangulation. According to an autopsy and microscopic analysis, there was no indication of spermatozoa on the clothing or body; yet the epithelium of the walls of the vagina had been torn and bruised.³ The girl's drawers had been cut or ripped up the seam and were stained with blood and urine.

As the morning wore on, more police arrived at the building and a thorough search was begun. Nothing further of significant importance was discovered. The layout of the building, which assumed an importance later in the

1 The mesh bag was never found.

2 Dots indicate where the words were illegible.

3 This was a matter of dispute during the trial.

trial, was noted. The building occupied by the National Pencil Company was a four-story brick-and-frame structure with a basement. The factory had a frontage of seventy-five feet on South Forsyth Street and a depth of one hundred and fifty feet to a public alley. The main entrance was from Forsyth Street through a hallway on the first floor. Within this hallway, and some twenty-five or thirty feet from the entrance door, was a stairway which led to the upper floors of the building.

The second floor was shut off from the stairway by a partition, and access to it was obtained by a door. This floor contained the company's offices. The superintendent's inner office was separated from the outer office by a partition. Also on the second floor was the machine or metal room, also partitioned off. In this room there were numerous machines and inner, partitioned dressing and toilet rooms for female employees. Mary Phagan and a number of other young girls worked in the metal room.

There was an enclosed elevator shaft in the outer hall which extended from the basement to the fourth floor. The elevator was operated electrically. In addition to the iron stairs leading from the first floor to the basement there was, immediately behind the elevator shaft on the first floor, an opening or hatchway from which a ladder extended to the basement. When the factory was in full operation more than 100 persons, mostly women and girls, were employed on the first, second, third and fourth floors of the building. Lee, the night watchman, told Police Captain Starnes, who was in charge of the investigation, that after he found the body he tried several times, but without success, to get in touch with Leo Frank, the superintendent of the factory, by telephone. The captain also put in repeated calls, but it

was not until 7:00 A.M. that Frank answered the phone. Starnes asked him to come immediately to the factory. Frank replied that he had not had his breakfast, and asked where the night watchman was. Starnes told him that it would be necessary for him to come at once and that he would send an automobile for him. The captain did not tell him what had happened, and Frank did not ask. When the officers called at Frank's house a few minutes later, Frank asked what had happened. He was told to get dressed, go to the factory and see for himself. He then asked, "Did the night watchman report anything to you?" This question was also ignored. The officers were later to testify that during this interview Frank seemed very nervous and excited. When he had got into the police car, one of the officers asked him if he knew a little girl by the name of Mary Phagan. Frank asked, "Does she work at the factory?" The officer said he thought she did. Frank was told of the finding of the girl's body; then he said, "I can't tell whether I know her or not until I look on my payroll book. I know very few of the girls that work there. I pay them off but I seldom go into the factory and I know very few of them. I can look on my payroll and tell you if a girl named Mary Phagan works there."

Frank was then taken to the mortuary to which the girl's body had been removed. He glanced at the body, said he didn't know the girl, but could tell whether she worked at the factory by looking at his payroll book. The officers later declared that during this attempt at identification Frank was "extremely nervous" and "badly shaken."

The police next drove Frank to the factory. With them he went into the office on the second floor, opened the safe in the outer room and took out a time book. After running down the list of employees, he said, "Yes, Mary Phagan worked here. She was here yesterday to get her pay. I'll

tell you the exact time she left here. My stenographer left about twelve, and a few minutes after she left, the office boy left, and Mary came in and got her money and left." Frank asked the policemen if the envelope containing her money had been found. According to the officers, he still seemed to be in a highly nervous and excited state. Frank asked to see where the body had been found. He accompanied the officers to the basement, and the place was pointed out to him. Witnesses were later to testify that during this time also Frank showed intense agitation.

Captain Starnes at this stage saw nothing suspicious in Frank's story or his actions. He ascribed Frank's agitation -at the mortuary and on being shown where the body was found-to the natural reaction of a man confronted with news of the murder of one of his employees and concern for the effect the publicity might have on the pencil company's business.

Lee, meanwhile, had been arrested. A shirt with blood spots on the front of it had been found in a trash barrel near his home. He denied it was his, and no evidence was developed to prove the contrary. Despite police abuse (he was manacled to a chair, which made either rest or movement difficult) and almost continuous questioning, he stuck to his original story. Such additional details as he gave were consistent with it and were verified by investigation.

Soon after Lee had been placed in custody the police officers asked Frank to talk with Lee privately to see if he could obtain additional information from him. Frank, after conversing alone with Lee for some time, reported that he had talked freely, but had told him nothing he had not already told the police.⁴

On Sunday Frank suggested to the police that they might do well to question Jim Conley, a Negro roustabout worker

at the factory, and J. M. Gantt, a white man and former employee, who had recently been discharged because of a shortage in his accounts. Frank told the police that Gantt "had been on intimate terms with Mary Phagan."

Gantt, who had known Mary Phagan and her family for several years, was arrested. He was held in custody and Lee gave a different version of this conversation at the trial. Reference to this will be made later.

questioned for several days, but had comparatively little difficulty in convincing the police that he knew nothing of her murder. Conley was arrested the Thursday following the murder. He had a police record of convictions for a number of petty offenses and a generally bad reputation among both blacks and whites. In spite of his repeated protestations that he had been drunk all of Memorial Day and nowhere near the factory, the police were apparently convinced from the start that he knew something of the crime. They kept him in close custody and, in the language of one of the later witnesses, "continued to work on him."

It was determined almost immediately that the penciled notes found near Mary Phagan's body had not been written by her. Mary Phagan had had only two or three years' schooling, but specimens of her writing produced by her mother and friends were entirely unlike the writing in the notes and showed, moreover, that she capitalized properly and spelled and punctuated fairly well. The police quite logically concluded that the notes had been prepared and planted by someone who hoped thereby to divert suspicion from himself.

The elimination of Gantt as a suspect, the failure of the police to turn up any evidence directly incriminating Lee or Conley, and the piecing together of what the police deemed peculiar circumstances shifted suspicion to Frank. On April 29, three days after the crime, he was arrested,

lodged in jail and booked on a charge of suspected murder. Leo Frank was a native of Texas but had spent his boyhood and early manhood in Brooklyn. He attended the public schools there, took some preparatory work at Pratt Institute and matriculated at Cornell University. He graduated from this institution in 1906 with a degree of Bachelor of Engineering. His uncle had organized and established the National Pencil Company in Atlanta; so, after working for a short time in Boston, Frank went to Atlanta to learn, and to grow up with, the business. Starting as a draftsman, he became by successive promotions superintendent and vice-president. He was married but had no children. At the time of the Phagan murder he was twenty-nine years old. The newspapers described and pictured him as a slight, thin-faced, rather frail-looking individual, with heavy black hair, a prominent nose and "stary" eyes. This last feature was accentuated by the thick-lensed glasses he habitually wore. He was of medium height and weighed about 130 pounds.

The morning after the murder Frank called in one of the regular attorneys for the company, a Herbert Haas, "to protect the pencil company's interests." Ostensibly for the same reason, he asked the Pinkerton Detective Agency to make an "independent investigation" of the crime. The manager of the Atlanta Pinkerton office-a man named Scott-accepted the employment. An ordinance of the City of Atlanta licensed private detectives and required, as one of the conditions for the license, that when engaged in work on criminal cases they should promptly report their findings to the municipal police and co-operate with them in the apprehension and prosecution of criminals. Scott's relations with the Atlanta police were extremely friendly; and, in accepting the pencil company's employment, he made it clear to Frank that he intended to "work with the

police” to discover the murderer “regardless of who it might turn out to be.” Frank told Scott that Detective Black seemed to suspect him; but he professed his complete satisfaction with Scott’s declared intention to “get to the bottom of the matter.”

The police ordered the factory closed on Monday so they might make a more leisurely and thorough inspection of it. Scott participated with the officers in the inspection. Some stains which looked like human blood were found on the floor of the metal room near the dressing room. An attempt had apparently been made to obliterate or obscure the stains by rubbing some white substance over them. On

the handle of a bench lathe near Mary's machine were some strands of what looked like human hair. Employees who operated near-by machines were questioned. All were certain that neither the stains nor the hair had been there when they had left the factory the Friday before. The parts of the cement floor containing the stains were chipped out and, together with the supposed human hair, were preserved for possible future use as evidence.

Scott took a complete statement from Frank. It was substantially the same statement he made a few days later at the coroner's inquest and, except for slight modifications, was consistent with his longer and sworn statement made on his trial. Scott, however, found a number of items in the statement which, he later decided, convinced him that Frank was not telling the full or exact truth. Scott indignantly repudiated a suggestion that his reports should be submitted to Frank's attorney before they were shown to the police. This, it would appear, increased Scott's suspicion that Frank was in some way involved. Frank or Haas terminated the employment of the Pinkerton agency on Wednesday-the day before Frank's arrest-but Scott continued to work on the case with the Atlanta police. When official suspicion was definitely directed toward Frank, Scott made no effort to allay it; on the contrary, as new evidence against Frank came to light, he was one of the first to merge suspicion into accusation.

In their re-examination and appraisal of Frank's conduct the police recalled a number of circumstances which they now deemed suspicious: In the early morning of the twenty-seventh, following the discovery of the girl's body, Frank had not answered the repeated telephone calls made by Lee and Captain Starnes. He had balked when Starnes had said he should come to the factory immediately. When asked by the officers if he knew Mary Phagan he had answered that

he could not tell; that he knew very few of the factory girls by name. These circumstances were compared with his statement, made immediately afterward at the office, in which he said: A girl named Mary Phagan worked there, and she had got her pay on Saturday. He could tell the exact time she came and left. His stenographer had left at twelve o'clock, and his office boy had left a few minutes later. Mary came in after that.

To the conclusion which they drew from this comparison the police added another observation: Right on the heels of Frank's declaration that he did not know Mary Phagan he had directed suspicion to Gantt by saying that Gantt had been "intimate" with her. The police recalled Frank's extreme nervousness and agitation on Sunday morning when the officers had called at his home and had taken him to the mortuary to see the dead body of the girl and to the basement of the factory where the body had been found. Both Lee and Gantt had since told them of Frank's apparent fright when he had encountered Gantt at the door of the factory at six o'clock Saturday.

The police now regarded it as significant that before and after Frank reached the factory on Sunday morning he had asked if they had found the girl's pay envelope. Lee had denied Frank's statement that Frank frequently called him at the factory after hours to inquire if everything was all right. He said that his call at seven o'clock on the twenty-sixth was the first such call he had made. Lee had also told the police that when Frank had talked to him privately in his cell Frank had said, "If you keep up like this, both of us will go to hell."

In later searches of the factory premises the police had discovered several pieces of cord identical with the cord which had been used to strangle the girl; some of it had been found in the metal room.

The police arrested one Mineola McKnight, the Negro cook in the Frank home. She was detained for some time and questioned. Among other things, she told the officers that when Frank came home Saturday night he was drunk

and that he talked wildly and threatened to kill himself.⁵ By persistent questioning, the police also obtained statements from a number of girls who worked at the factory. They said Frank had embarrassed and annoyed them with his attentions.

On Monday April 28 the county coroner summoned and swore a jury to inquire into and determine the manner and agency by which Mary Phagan had come to her death. After viewing the body and the factory premises, the jury continued the taking of testimony to May 6. On that day Frank, Gantt, a number of factory workers, policemen, and relatives and friends of Frank appeared and testified. Frank, represented by Luther Z. Rosser of the firm of Arnold 9 Rosser-one of the best-known criminal-trial lawyers in the South-took the stand and submitted patiently to three and one-half hours of examination.

This was Frank's story: On Saturday April 26 he arrived at the pencil company's office at about 8:30 A.m. He intended to work all day, because he had to get out his end-of-the-month financial statements. When he reached the factory the day watchman and an office boy were already there. Two carpenters were also there, changing some partitions on the fourth floor. Several other employees came in, between 8:30 and 9:30. Between 9:30 and 9:45 he left the factory in the company of a man named Darley, general superintendent of the pencil company, and a man named Lyons, superintendent of a near-by factory.

Continuing his testimony, Frank stated: He stopped at the near-by office of Montag Brothers, an affiliate of the pencil company in the same block, to see if he could get that company's stenographer Mattie Hall to come over to the pencil company and do some work for him. He spoke briefly with some of his friends at Montag Brothers and

(5 Concerning Minola McKnight

She later repudiated all of these statements. She said that the police had abused and threatened her and that she had answered "yes" to everything they had asked in order to escape their brutality and get out of jail.) then returned to his office at 11:05 A.M. Miss Hall was already there. A Mrs. White, wife of one of the carpenters, was also there. She asked and received his permission to go up to the fourth floor to see her husband. Between 11:05 and 11:45 four other people came into the office and left. Frank further stated in his testimony the following: He told the day watchman he could leave as soon as he got certain work done, and the man left about 11:45 A.M. It was ten or fifteen minutes later that the little girl, whom he afterward learned was Mary Phagan, came into his office and asked for her pay envelope. He asked her what her number was. She told him. He went to the cash box, identified her envelope by number, took it out and handed it to her. As she started to leave she turned around and asked if the metal had come yet. He told her, "No."⁶ He heard her footsteps as she went away. He did not see her again until he was shown her dead body in the mortuary on Sunday morning. About five minutes after the girl left, one Lemmie Quinn, a foreman at the pencil factory, came in, and they talked for a minute or two.⁷

Frank, in his testimony in the inquest, was positive in the timing of his actions, At 12:45 P.m. he telephoned the cook at his house to inquire when lunch would be ready. Then he went to the fourth floor to tell the carpenters that he was locking up. The men said they would work through until he got back. Mrs. White followed him down the stairs and left the building at 12:50. He returned to his office, put away his papers, went downstairs, locked the outside factory door and left about 1: 10. He reached home about 1:20, had lunch, lay down and rested for a while. Then he got up

and telephoned his brother-in-law and told him that because of work at the office he could not go with him to the (6 In an earlier statement to the police and to Scott Frank said that his answer to her was that he didn't know; much was later to be made of this variation at the trial.

7 In his earlier statements to the police and to Scott Frank made no mention of Quinn.)

ball game as previously planned. He took a streetcar back to the factory and arrived there shortly before 3:00.

The carpenters had just finished their work, Frank said, and they left the building at 3: 10 P.M. At 4:00 Newt Lee, the night watchman, came in. He had told Lee the day before to report at that hour, because he (Frank) had expected to go to the ball game. However, there was no work for Lee to do; so he told Lee to go off and amuse himself and come back at 6:00. After Lee left he continued to work until 6:00, at which time Lee returned. He closed his office, went to the front door of the factory and there found Gantt talking to Lee. Gantt wanted to go up to the fourth floor to get a pair of shoes he said he had left there, and he (Frank) told Lee it would be all right to let Gantt into the factory for that purpose.

Frank said he then left the factory, performed some errands and arrived home about 6:25 P.m. He called Lee on the telephone around 7:00 to ask if Gantt had got his shoes and if everything was all right at the factory. Then he had supper and read the newspapers. Some friends came in and played cards with his parents-in-law, and he retired about 10: 30. The telephone in the house, Frank explained, was in the dining room on the first floor, and the sleeping rooms were on the second floor; this accounted for the fact that he had not heard the early calls from Lee and Statnes. He said he awoke at 7:00 just in time to answer the last of Starnes's calls. Frank denied positively that he had ever

spoken to Mary Phagan before the twenty-sixth when she came in to get her pay or that he had known her by name before the tragedy.

The coroner's inquest was concluded on May 8. The jury returned a verdict of murder at the hands of a person or persons unknown. While it does not appear in the verdict, the questions and comments of the coroner and jurors indicated their theory: that the murder had taken place on one of the upper floors of the factory and that the body had been carried to the basement and placed in front of the furnace, with the intent of later burning it. There were suggestions, too, that the factory had been regularly used as a love rendezvous and that Frank had been guilty of improper relations there with some of the female employees. Meanwhile on May 3 a public announcement was made stating that Solicitor General Hugh A. Dorsey had assumed personal direction of the investigation to discover the murderer of Mary Phagan. On May 6 a grand jury was impaneled by Judge Ellis in the Fulton County Superior Court. He referred to the "unsolved Phagan case" and directed, because of the revolting nature of the crime and the public agitation over it, that it be given top priority in the jury's considerations.

Following the coroner's verdict a new and, as the event proved, most important witness appeared. One of the factory girls-one Monteen Stover-made an affidavit in which she said that she called at Frank's office at five minutes after twelve on Saturday the twenty-sixth to get her pay and that Frank was not in his office. She said she waited for him for about five minutes and then left. This was a direct contradiction of Frank's statement that he was continuously in his office from 11:05 to 12:45.

Another girl-one Helen Ferguson-told the police that on Friday the twenty-fifth, when she got her pay, she told

Frank that Mary Phagan had asked her to get her envelope. Frank refused to give it to her. He said that Mary would have to call for her pay herself. This was balanced against the admitted fact that pay envelopes of employees were frequently delivered to their fellow workers or relatives. Apparently the solicitor general was in serious doubt as to whether he should ask for a true bill against Frank or Newt Lee. He had a form of indictment prepared and in hand to fit either of them, and kept both names before the jury until the last witness had been heard. On May 24, however, he determined the question by asking for a true bill against Frank. The jury accordingly returned a no bill against Lee and an indictment against Frank charging him with first-degree murder.

By a strange coincidence, the Atlanta newspapers on the same day released a "confession" which the police had secured from Jim Conley. In it he charged Frank with the murder and confessed that at Frank's direction and with his assistance he had removed the body from the metal room on the second floor to the basement and left it in front of the furnace. Conley also declared that at Frank's dictation he wrote the notes which were found near the girl's body.

The death notes were compared with admitted specimens of Conley's handwriting. A similarity was apparent. No expert testimony on this point was offered on the trial, but Albert S. Osborn of New York, the most famous questioned-document expert in the United States, later declared that in his opinion there was no doubt that the notes had been written by Conley.

The case of the State of Georgia against Leo N. Frank came for trial at Atlanta in the Fulton County Superior Court on July 28, 1913. Presiding was the Honorable L. S. Roan, a veteran jurist of wide experience-able, conscien-

tious, impartial and kindly. Appearing for the State were Solicitor General Hugh A. Dorsey, Special Assistant Solicitor Harry Hooper and Assistant Solicitor E. A. Stephens. Frank was represented by Reuben R. Arnold, Luther Z. Rosser, Stiles Hopkins and Herbert Haas. Solicitor General Dorsey carried the burden for the prosecution. He was a large, strikingly handsome man and a determined and forceful advocate. He was fully convinced of Frank's guilt, as were most of the citizens of Atlanta, and conducted the trial throughout with an intensity of emotion. One of the Atlanta newspapers estimated on the basis of informal polls that four out of five of the townspeople held this view. that electrified the crowds which daily jammed the courtroom. Arnold and Rosser shared the work of Frank's defense. They were old hands at the game and, realizing the evidence and prejudice they had to overcome, sought by all legitimate means to impeach the State's witnesses and to build up an affirmative case for Frank of such preponderating weight that it would compel a verdict of acquittal. One hundred and forty-four veniremen were summoned. Despite the publicity given the crime-the police investigation, the inquest, the grand-jury proceedings and the activities of the police department and the solicitor general's office in the preparation of the case for trial-it took less than four hours to select and agree on a jury of twelve men who swore they had no preconceived opinions of Frank's guilt or innocence, and could give him a fair and impartial trial. Of the twelve chosen, eleven were married and five of them fathers. They were -of widely diverse occupations: two salesmen, two machinists, a bank teller, a bookkeeper, a real-estate agent, a manufacturer, a contractor, a mail clerk, an optician and a railroad claim agent. Special Assistant Solicitor Hooper in short and dramatic sentences outlined the State's case against Frank: The evi-

dence would show that thirteen-year-old Mary Phagan came to her death as the consequence of a premeditated rape of her person by the defendant. Frank had previously seduced and taken indecent liberties with a number of other young factory girls, and had made unsuccessful advances to Mary Phagan. Frank knew she was coming to the factory on Saturday because one of her fellow employees had asked him the day before for her pay envelope, and Frank had said that she would have to come herself and get it. To aid him in his lecherous activities Frank had trained the Negro Conley to act as a lookout and to see that he was not interrupted during his immoral and perverted acts. Conley had been told to report to the office on Saturday April 26 for another of these occasions. It would be the contention of the State, supported by evidence, said Hooper, that Mary Phagan came to Frank's office at 12: 10 P.M. Hooper sketched in the details of what then occurred: Frank was alone in his office. After he had given the girl her pay envelope she had asked him if the metal for her work had come. He had answered he didn't know and, ostensibly to find out, had followed her into the metal room. While in there he had made advances to her which she had repulsed. He had then knocked her down, rendered her unconscious and raped her. In a panic of terror lest she recover consciousness and accuse him of rape, he had strangled her to death. He had left the body in the metal room while he went up to the fourth floor; he wanted to get the people out of the building in order that he might dispose of the body. After he had got rid of Mrs. White he called Conley and told him that the little girl had refused him and that he "guessed he had struck her too hard." The two of them then dragged the body to the elevator and took it to the basement. They made plans to burn the corpse later. Frank gave Conley \$2.50 and, later,

\$200. But almost immediately he asked for and got the \$200 back, after promising Conley he would pay him when the job was finished.

Hooper outlined briefly the remainder of the State's evidence, emphasizing particularly the expected testimony of Monteen Stover that Frank was not, as he had told the police and the coroner, in his office continuously from 11:05 A.M. to 12:45 P.M., but was out of his office when she came there looking for him at 12:05; that she had waited for him for five minutes; and that when, in leaving, she had tried the door to the metal room, she had found it locked. The first witness called by the State was Mary Phagan's mother. Mary, she said, would have been fourteen years old had she lived until the first of June. She was a pretty girl and well developed for her age. On Saturday April 26 at 11:30 A.M. Mary had eaten a hearty dinner of bread and cabbage. About 11:45 she had left the house. She said she was going to the pencil factory to get her pay, and from there she was going to see the Memorial Day parade. She wore a lavender dress trimmed with lace, a blue hat with flowers in the center, and carried a little parasol and a German silver-mesh bag. Mary's mother identified the dress, underclothing, hat and parasol shown her as the things Mary had worn and carried when she last saw her alive.

One George Epps, a fourteen-year-old boy who lived "right around the corner" from Mary, testified he got on the same streetcar with her about 11:50 A.M. and rode with her until she got off the car at Forsyth and Marietta streets. It was then about 12:07.

The next witness was Newt Lee, the night watchman. He testified in substance as follows: His regular working hours were from 6:00 P.M. to 6:00 A.M., except on Saturdays, when he reported for work at 5:00 P.M. He got to the

factory a few minutes before 4:00 on Saturday and found the outside door and the double inside doors to the upstairs locked. In the previous three weeks of his employment at the factory he had never found either of these doors locked when he came on duty in the afternoon. He had keys to the doors and opened them. As he unlocked the double doors Frank came "bustling out of his office," a thing he had never seen him do before. Frank said, "Come here a minute, Newt. I am sorry I had you come so soon. You could have been at home sleeping. I tell you what you do. You go downtown and have a good time." Frank had never let him off like that before. He then told Frank he would lie down in the factory's shop room. At that Frank said, "Oh, no. You need to have a good time. You go downtown and have a good time. Stay an hour and a half and come back at your usual time at six o'clock." He (Lee) then left.

Lee continued his testimony: He returned to the factory a few minutes before 6:00 P.M. He was standing at the front door when J. M. Gantt came from across the street. Gantt told him he wanted to go up to the fourth floor and get a pair of shoes he had left there. He told Gantt that he was not allowed to let anyone into the factory after six o'clock. He was still talking to Gantt when Frank opened the front door and came out. When Frank saw Gantt he jumped back as if he was "frightened." Gantt told Frank he wanted to go upstairs to get his shoes. Frank said, "Well, I don't know." Then Frank "sort of dropped his head." He looked up and said to him (Lee), "You go upstairs with him and stay until he finds his shoes." He followed Frank's instructions. He went upstairs with Gantt, found the shoes, came downstairs and saw Gantt leave the building. At some time after seven o'clock Frank called him on the telephone and inquired, "Is everything all

right?" He replied that everything was all right so far as he knew. It was the first time that Frank had ever called him on the phone.

Lee then repeated the story he had told the police. His account included his discovery of the body, his calling the police station, his unsuccessful attempts to reach Frank by telephone, and of the arrival of the officers and his directing them to the body. He testified he didn't see Frank after that until sometime between seven and eight o'clock, and then he did not speak to him.

The next conversation Lee had with Frank was two days afterward, on Tuesday evening, at the police station. He was at that time under arrest, and the officers had brought Frank into his cell. This is Lee's story of their meeting:

He was handcuffed to a chair. Frank sat down in another chair and "hung his head." When they were alone he said to Frank, "Mr. Frank, it is mighty hard for me to be handcuffed here for something I don't know nothing about."

Frank answered, "What's the difference? They have got me locked up and a man guarding me." He then asked Frank, "Mr. Frank, do you believe that I committed that crime?"

Frank said, "No, Newt, I know you didn't, but I believe you know something about it." In answer to Frank's statement he said, "Mr. Frank, I don't know a thing about it any more than finding the body." Frank then said, "We'll not talk about that now. We will let that go. If you keep that up we will both go to hell." At that time the officers came in and took Frank out.

Lee's testimony was not weakened by Rosser's careful and exhaustive cross-examination. Some beneficial qualifications were developed: The locked double doors inside the entrance to the building would not have prevented anyone from going to the basement. The front door and the double doors were unlocked when Lee returned to the fac-

tory at six o'clock. Frank had previously told Lee that Gantt had been discharged and that if he saw him hanging about the factory to watch him. Lee also said that Gantt was "a big fellow about seven feet tall." Gantt may have startled Frank. Lee in making his rounds after six o'clock had gone through the machine room and the ladies' dressing room every half hour and noticed nothing unusual. When he first saw the body he thought it was that of a Negro because her face was so black and dirty. When he was in the basement with the policemen, one of them showed him the notes they had found near the body. He swore he had never seen them before.

Various members of the police department gave their testimony⁹ as to their notification of the murder, their going to the factory, their conversation with Lee, the finding of the body, the position and condition of the body and its removal to the mortuary. The notes found near the body, the girl's clothing and the parasol were identified and received in evidence. Other officers told of the telephone calls to Frank and their conversations with him at his

⁹ In the narrative of this case the exact order in which the witnesses were called has been disregarded.

home, at the undertaker's and in the factory. All agreed that during the entire morning Frank was in a highly nervous state—"his hands shook," "he appeared excited," "was jumpy," "talked rapidly," at times "hung his head," and asked the same questions over and over again.

Harry Scott, superintendent of the local branch of the Pinkerton Detective Agency, testified in substance as follows: He was employed by Frank to represent the National Pencil Company and to "endeavor to determine who is responsible for this matter." He questioned Frank closely as to his movements on Friday and Saturday. Frank answered all of his questions readily and told him substan-

tially the same story that he later told at the coroner's inquest. Frank, in his statement to him, declared positively that he was continuously at his desk in the inside office from the time he got back from Montag Brothers at 11:05 A.M. until 12:50 P.m., at which time he went upstairs to the fourth floor to tell the carpenters that he was leaving the factory to go home to lunch. Frank was equally positive that Gantt had paid a good deal of attention to Mary Phagan and had been "intimate" with her.

Scott, continuing his testimony, stated that after Frank was arrested on April 29 and confined in the same police barracks as Lee, Detective Black suggested to Frank, in his (Scott's) presence, that he did not believe Lee had told all he knew; that Frank was his employer and ought to be able to get more out of him than anyone else. Then Black asked if Frank would talk to Lee. Frank readily consented, was taken to Lee's cell and left alone with Lee for about ten minutes. He (Scott) didn't hear all that was said, but he did hear Lee say, "It's awful hard for me to be handcuffed here to this chair." Later he heard Frank say, "Well, they have got me, too." After Frank left Lee's cell Black asked if Lee had told him anything and Frank replied Lee had not. Lee had stuck to his original story. Frank, when he came out of Lee's cell, appeared "extremely nervous," "hung his head," "shifted his position," "sighed heavily," "took deep swallows", and "hesitated."

Scott and Black both testified to finding a bloodstained shirt in a trash barrel at Lee's house the Tuesday morning following the murder. The city chemist, who examined the shirt, refused to swear positively that the stains were human blood. He said the shirt showed no signs of having been worn since it had last been laundered.

Two of the factory machinists, who reported as usual for work Monday morning, testified to finding some splotches

which looked like blood on the floor near the ladies' dressing room in the metal department. Some "white stuff" which they thought might be potash or "haskoline" had been smeared over the spots. They found also some strands of what looked like hair on the handle of a bench lathe near the machine where Mary worked. Neither the spots nor the hair, they said, had been there the previous Friday.

A number of police officers and other witnesses testified the spots were pointed out to them and looked like blood. Witnesses identified pieces of cement chipped from the floor, which showed the stains. The city chemist had also examined and tested these. He testified he was unable to declare positively that the stains were human blood.

Several witnesses testified there were pieces of cord in the machine room of the same kind as that which had been used to strangle the girl. They said that similar cord was used throughout the factory and could be found on any of the floors.

Much of this testimony was uncontroverted and, with the exception of Lee and Scott, the cross-examinations were relatively brief. One of the witnesses-Darley, general manager of the pencil-company factory-was friendly toward Frank, and both on direct and cross-examination, did everything he could to aid him. There was nothing significant, he said, about Frank's nervousness on Sunday after he had been told of the crime. Frank was naturally high-strung and became nervous and excited at any unusual occurrence. Darley admitted having seen the supposed blood spots on the metal-room floor but said he frequently saw blood and "white stuff" on the floor in and around the ladies' dressing room. The factory was a very dirty place, he added.

The undertaker who embalmed the body, and two phy-

sicians gave testimony as to its condition. The undertaker testified: When he saw the body-about 9:00 A.M. Sunday morning-it looked as though the girl had been dead for ten to fifteen hours. There was a scalp wound two and one-half inches long on the back of the head, but the skull was not fractured. The girl's hair was clotted with blood and around her neck there was a cord drawn so tightly that it cut into the flesh. He said he examined the girl's clothing. The right leg of her drawers had been slit with a knife or torn up the seam. There were stains of urine, some discharge and dried blood on them.

The undertaker's testimony was corroborated in part by that of the county physician. He testified in substance as follows: The head wound had been made before death, The cuts on her face and the bruises and scratches on her right elbow and left knee had been made after death. The cord around the girl's neck was imbedded in the skin, and her tongue protruded an inch and a half through her teeth. There was no question that she had died of strangulation. Although he found blood on her private parts he found no evidence of violence to the girl's female organs. The hymen was not intact, but she had normal genital organs which were somewhat larger than usual for a girl of her age. This condition could have been produced by penetration immediately preceding death.

On cross-examination the county physician testified that the blood he found might have been menstrual flow. He said that he discovered no "outward signs" of rape.

The testimony of Dr. H. F. Harris, who made a post-mortem examination of the body, was considerably at variance with that of the county physician. Dr. Harris testified: The vagina definitely showed evidence of some kind of violence before death-an injury made by a finger or by other means. The epithelium was pulled loose from the

inner walls and completely detached in some places. The violence which had produced this condition had occurred before death. He found evidence of internal bleeding. It would have taken considerable violence to tear the epithelium to such an extent that bleeding would ensue. He had also examined the stomach contents. The digestive process had ceased with her death. In his opinion the girl had lived for from one half to three quarters of an hour after she had eaten her meal of bread and cabbage.

Helen Ferguson, who worked in the metal room with Mary Phagan, testified she saw Frank at seven o'clock Friday night when she got her pay. She asked him to give her Mary's envelope so that she might take it to Mary and save her a trip to the factory, but Frank said she could not have it. On previous occasions she had got Mary's pay envelope for her but not from Frank.

J. M. Gantt gave testimony which was highly damaging to Frank. He testified in substance as follows: He had known Mary Phagan ever since she was a little girl. Frank knew her too. One day she came into his (Gantt's) office to get her time corrected, and after she left Frank said, "You seem to know Mary pretty well." He had not previously told Frank that the girl's name was Mary. He went to the factory Saturday afternoon to get his shoes. When Frank came out of the door and saw him he "jumped," "looked pale" and "hung his head."

Gantt admitted on cross-examination that Frank had discharged him on the previous April 7 for an alleged shortage in the payroll and that when he testified at the coroner's inquest he had said nothing about Frank's having known Mary Phagan.

Mrs. J. A. White testified: She went to the factory Saturday morning about eleven-thirty to see her husband. Frank permitted her to go up to the fourth floor, where her hus-

band was working, and she stayed there until 11:50. She then left the factory. She returned at 12:30 and again went up to the fourth floor. When she talked to Frank at 11:30 he was in the outside office. When she went upstairs at 12:30 he was standing in the outside office at the safe. Frank came up to the fourth floor at one o'clock and said that unless she wanted to stay until three o'clock she had better leave because he was going to lunch and was locking up the factory. She left shortly afterward, and as she passed Frank's office she saw him at his desk writing.

She concluded her testimony with a statement of which much was to be made- in later argument. She said as she was going out of the building she saw a Negro sitting on a box on the first floor, just inside the door. On cross-examination she said she paid no particular attention to the man and could not identify him.

Fourteen-year-old Monteen Stover gave damaging testimony against Frank. She repeated the story she had told the police. She was positive she reached the factory at 12:05 P.M. on Saturday. She waited in Frank's office for five minutes. Since he was not there she concluded that he had gone for the day. She was sure of the time, she said, because she had looked at the clock. She testified further that she had intended to go to the ladies' dressing room, inside the metal room, but when she tried the door she found it locked.

Albert McKnight-the husband of Mineola McKnight, who was the Negro cook in the house where Frank lived with his wife's parents-gave testimony which was directly contradictory to the statement Frank had made to the police and the testimony he had given at the inquest. McKnight swore he was in the kitchen with his wife when Frank came home about 1:30 P.M. and that Frank did not eat any lunch. Frank, said McKnight, left the house after

five or ten minutes.

The State's star witness, who was one of the last called, was James Conley, the Negro. Conley told a long and startling story: He worked days at the factory as a general handy man, a roustabout. He had worked at the pencil factory for a little over two years. On Friday afternoon, about three o'clock, Frank came up to the fourth floor, where he was working. Frank said he wanted him to come to the factory Saturday morning at 8:30 because there was some work for him to do on the second floor. He followed Frank's instructions and came to the factory about 8:30 on the twenty-sixth and found Frank there. Frank said, "You are a little early for what I want you to do for me, but I want you to watch for me like you have been doing on the rest of the Saturdays."

Conley explained Frank's order by stating that on several previous Saturdays and on Thanksgiving Day 1912 he had stayed on the first floor by the door and watched while Frank and "some young lady" were on the second floor "chatting." He and Frank had a code of signals by which when the right lady came along Frank would "stomp" on the floor and Conley would lock the door. When Frank "got through with the lady" he would whistle, and this meant that Conley should unlock the door so the lady could get out. Conley said that when Frank told him he didn't need him for a while he left. He returned to the factory at some time between 10:00 and 10:03 A.M. He was standing at the corner of the building when Frank came out of the factory door, passed him and said he was going to Montag Brothers but would be right back. Frank told him that he should wait right where he was.

When Frank came back (Conley did not state the time) both he and Frank walked to the front door of the factory and stepped inside. Frank then showed him how to turn

the catch on the knob, on the inside of the door, so that no one could get in from the outside. Then Frank pointed to a little box near a trash barrel just inside the door and gave him his instructions: He (Conley) should sit on the box, keep out of sight as much as he could and keep his eyes open. Later on, said Frank, there would be a young lady come along, and she and Frank were "going to chat a little." Frank said that when she came he would "stomp" as he had done before; then Conley should shut and lock the door. Later he would whistle; then Conley would know he was through and should unlock the door and come upstairs to the office. This would give the young lady time to get out.

Conley said he promised Frank to do as he was directed. Frank then went upstairs. Conley told of seeing various people come into and leave the factory. After these people had come and gone he said he saw a girl, whom he afterward found out was Mary Phagan, come to the door, enter the building and go upstairs. Later he heard footsteps going toward Frank's office. After that he heard the footsteps of two people. It sounded as if they were walking out of the office toward the metal room. Shortly afterward he heard a lady scream, and then he didn't hear any more sounds. The next person he saw, according to his testimony, was Monteen Stover. He described what she wore. He said she stayed in the factory for a short while; then she came down the steps and left. After that he heard someone run out of the metal room-running as if on tiptoes-and then he heard somebody tiptoe back toward the metal room. Following this, he said, he must have "kinda dozed off to sleep." The next thing he knew Frank was over his head "stomping." He got up and locked the door. Then he sat on the box for a little while until he heard Frank whistle.

Conley did not attempt to fix the time of these sequences. He said that when he heard the whistling he unlocked the door and went upstairs. There he saw Frank standing at the door of his office "shivering and trembling and rubbing his hands." His "face was red" and "he looked funny out of his eyes." In one of his hands, said Conley, Frank held a piece of white cord. Conley said it was "just like this here cord"-the one in evidence.

Conley continued: After he got to the top of the stairs Frank asked him, "Did you see that little girl who passed here just a while ago?" Conley replied he had seen one girl come in and go out; and then another girl came in, but she didn't come down. Then Frank said, "Well, that one that you say didn't come back down, she came into my office awhile ago and wanted to know something about her work, and I went back there to see if the little girl's work had come, and I wanted to be with the little girl and she refused me, and I struck her and I guess I struck her too hard, and she fell and hit her head against something, and I don't know how bad she got hurt." To this Frank added, "Of course, you know I ain't built like other men."

Conley testified that Frank asked him to go back to the metal room and bring her out so that they could put her somewhere, and to hurry; there would be money in it for him. Conley said that he then went back to the metal room and saw the girl lying on the floor with a rope around her neck. Another piece of cloth was around her head to catch the blood. He noticed the clock at that time; it was four minutes to one. He saw that the girl was dead and immediately ran back to Frank and told him so. Frank said, "Shh," and told him he should go back to the cotton box, get a piece of cloth, wrap it around her and bring her out.

Conley said that he did as he was directed, but when he

tried to lift the body he found that it was too heavy for him to carry. He returned to Frank and told him that he could not move the body alone; Frank would have to help him. Together they carried the girl's body to the elevator, and after Frank had got the key and opened the elevator door they put the body in the cab and ran the elevator to the basement. There they rolled the body out onto the floor and left it. Then they went back upstairs to Frank's office. Conley said they had hardly reached the office when Frank jumped up and said, "My God! Here is Emma Clark Freeman and Corinthia Hall. Come over here, Jim; I have got to put you in this here wardrobe." Frank put him into the wardrobe, and he stayed there until the women left-it seemed a long time to him. After the women left the office Frank opened the wardrobe and said, "You are in a tight place; you done very well."

Conley continued his testimony: They sat down and Frank handed him one cigarette and then the broken package which contained several more. Frank said "Can you write?" He answered, "A little bit." Frank gave him a lead pencil and dictated a number of notes. The first notes evidently did not satisfy Frank, but after four or five attempts he (Conley) wrote a note which Frank "laid on his desk" and "looked at smiling." Frank "pulled out a nice little roll of greenbacks" and said, "Here is \$200." Frank looked at him and added, "Now, you go down in the basement and take a lot of trash and burn that 'package' that is in front of the furnace." He told Frank that he was afraid to go down there by himself. Frank asked him for the roll of bills, and he gave them back to Frank.

After that, according to Conley, there was the following conversation: Frank said, "Why should I hang? I have wealthy people in Brooklyn." Conley said, "What about me?" Frank replied, "Don't you worry about anything; you

just come back to work on Monday morning like you don't know anything and keep your mouth shut. If you get caught I will get you out on bond and send you away. You can come back this evening and do it." Conley asked if he was going to get any money. Frank said he was going home but would be back in about forty minutes and fix everything. Conley told Frank, "All right," he would be back in about forty minutes.

After that, Conley said, he went across the street to the nearest saloon. When he went to take a cigarette out of the package Frank had given him he found it contained also two one-dollar bills and two silver quarters. He had a drink, went home, fell asleep and did not wake up until six-thirty the next morning. The next time he saw Frank was the following Tuesday morning on the fourth floor of the factory. Frank passed him and said, "Keep your mouth shut. If you had come back here Saturday and done what I told you there wouldn't have been any trouble."

Conley, when asked what Frank had meant by his statement that he was "not built like other men," testified the reason Frank had said that was "because he had seen him (Frank) in a position I haven't seen any other man that has got children." On two or three occasions before Thanksgiving he had seen Frank in the office "with a lady in his office, and she was sitting in a chair and she had her clothes up to here-" indicating above his waist-"and he was down on his knees, and she had her hands on Mr. Frank." At another time he had seen Frank in the back room with a young woman lying on a table.

Conley testified that sometimes when Frank had a woman with him and he (Conley) was "watching" for him a man by the name of Dalton was also there with a woman; that Frank, Dalton and the two women frequently had soft drinks and beer in Frank's private office. Dalton, he said,

occasionally handed him a half dollar or a quarter after the parties were over. At one such time Frank gave him fifty cents and told him to keep his mouth shut.

Conley was subjected to a long and grueling cross-examination. Under pressure he said Daisy Hopkins was the name of one of the women who had been with Frank and Dalton. He told of an occasion when Frank and Dalton had gone into the basement with another woman whom he did not know. Conley said Frank once talked to him about watching within the hearing of another Negro employee who responded to the nickname "Snowball." He repeated his direct examination as to the persons he had seen come into and leave the factory Saturday morning, but he said he had no recollection of having seen either Mrs. White or the office boy, Alonzo Mann. He denied having told a Mrs. Carson and a Miss Fuss that "Frank was as innocent as the angels in Heaven" or of having ever admitted to anyone that he (Conley) had killed a girl.

Conley admitted that he had lied to Scott in a statement made shortly after his arrest and that he had lied to the police in at least four statements prior to his alleged confession. For nearly a month after the murder he had maintained, in spite of almost continuous questioning, that he knew nothing whatever about the murder. He said he had done this to protect Frank, because Frank was a white man and his boss and had been good to him-had not docked him for some of the times he had been drunk and had failed to punch the clock. It was brought out that Conley had been arrested and convicted a half-dozen times for drunkenness and disorderly conduct and had served several jail sentences. He admitted that the police had questioned him night and day and would not let him sleep, but he denied that they had abused or threatened him to force his confession.

On redirect examination Conley testified that he had seen Mary's mesh bag in Frank's office and had seen Frank put it in his safe. He described the bag as "a wire-looking, whitish pocketbook."

The impression created by a witness on the jury which hears and sees him cannot be read on the printed page; but by judging from what he reads in cold type the disinterested investigator can only conclude that Conley and his loose and disconnected story were wholly discredited by Rosser's devastating cross-examination.

Conley's story was corroborated to a degree, however, by the testimony of Dalton, the man he had named as Frank's companion in some of his unmoral relationships. Dalton testified he knew Frank and Conley. He said that he and Frank had frequently had relations with women at the factory and that on such occasions Conley had acted as their "lookout." He had given Conley a half dollar or a quarter probably a half-dozen times. He also said there were a stretcher and an old cot in the basement. The cross-examination of Dalton was scathing. He was badly confused, repeatedly contradicted himself and was made to admit that he had been convicted and had served time for larceny in the state penitentiary.

Mrs. White was recalled and asked if she could identify Conley as the Negro she saw sitting on the box at the foot of the stairs on Saturday. She was unable to do so.

The statement Frank first made to the police and his testimony at the coroner's inquest, authenticated by the testimony of the stenographic reporters who took them, were offered and received in evidence.

Two witnesses called by the State proved more helpful to the defense than to the prosecution. Darley, the general superintendent of the pencil company, testified there never had been a bed, cot or sofa in the factory. Hallway, the

Negro day watchman, corroborated Frank's statement: He saw Frank arrive at the factory Saturday morning at eight-thirty and go to his office. Frank left about 10:00 A.M. to go to Montag Brothers. He returned a few minutes before 11:00 and went immediately to his office on the second floor. Miss Hall, the stenographer, was already there. At Frank's suggestion he left the factory for the day about 11:45. A short distance from the factory he met Mrs. Freeman and Corinthia Hall. One of them asked him if Frank was in his office, and he answered that Frank was. Hallway further testified he had frequently seen bloodstains in and near the entrance to the ladies' dressing room in the metal department and that potash and kerosene-both white substances-were often accidentally spilled and smeared on the floor.

Both Hallway and Darley declared there was no lock on the metal-room door. Both also testified they saw nothing of Conley on Saturday. They said they saw him Monday morning; his furtive actions made them more suspicious of him than of anyone else. They had never seen Frank "jolly" Conley or act familiarly toward him. Hallway did admit, reluctantly, that Conley did not always "punch the clock" as the rest of them did; he did about as he pleased and got his pay just the same.

The foregoing summarizes the State's case in chief.

Frank's attorneys properly concluded that the successful defense of their client required (1) corroboration of the previous statements he had made to the police and at the coroner's inquest, and the statement he would later make to the jury; (2) testimony which would so completely discredit Conley and Dalton that the jury would be compelled to reject their evidence; (3) testimony which would negative the inferences to be drawn from the testimony of the State's witnesses, particularly that of Lee, Gantt, Helen

Ferguson, Monteen Stover and the police officers; and (4) testimony which would establish Frank's general reputation as a law-abiding citizen and his particular reputation for morality and uncriticizable conduct toward the female factory employees.

The record reveals a thoroughness in investigation and pretrial preparation which resulted in the production of a mass of evidence-nearly 200 witnesses-to satisfy these requirements. Neither Frank nor his attorney ever contended that there had been any abridgment of his constitutional rights to summon witnesses in his own behalf and make a full and complete defense.

These were Frank's contentions: He had got to the factory on Saturday the twenty-sixth at 8:30 A.m. He was in his office until 9:30 or 9:40 when he left to go to Montag Brothers. He returned to the factory and went to his office at 10:55. He stayed there continuously until 12:45 or 12:50. He left the factory shortly after 1:00 and returned just before 3:00. He remained there until about 6:00 when he left for home. He arrived at his home about 6:25, had dinner shortly afterward and retired at 10:30. He knew nothing of the crime until he heard about it the next morning.

More than twenty witnesses were called to corroborate these place-and-time sequences. Mattie Hall, the stenographer borrowed from Montag Brothers, Robert Schiff, the assistant superintendent of the pencil factory, Corinthia Hall, Emma Clark Freeman and the office boy Alonzo Mann swore that Frank was in his office on the second floor from eleven o'clock until noon and that during that hour he talked to several people. Lemmie Quinn, one of the factory foremen, testified he saw Frank in his office about 12:20 P.M. White and Denham, the carpenters, testified Frank came up to the fourth floor about one o'clock and told

them he was locking up to go to lunch. One Helen Kerns, an employee of Montag Brothers, testified she saw Frank at Alabama and Whitehall streets, a short distance from the pencil factory, at 1:10. A Mrs. Levy, who lived across the street from Frank's home, testified she saw him get off a streetcar between one and two o'clock and cross the street to his home. Frank's father-in-law and mother-in-law testified Frank came in at 1:20, ate his lunch and left about 2:00.

Three witnesses corroborated Frank's statement that he called his brother-in-law, Ursenbach, on the telephone at 1:30 or 1:40 P.M. to say that he could not go to the ball game. Six witnesses swore they saw Frank at two o'clock. Two of them testified they saw him get on a streetcar which was traveling in the general direction of the pencil factory. A forelady at the factory and her mother testified they saw Frank looking at the parade in downtown Atlanta between 2:30 and 2:35. Denham and White testified they saw him at 2:50 when he returned to the factory.

Frank's father-in-law and mother-in-law testified Frank came home for dinner about 6:30 P.M. Dinner was served at seven o'clock. About eight o'clock some friends of theirs came in to play cards. Frank did not play but read the newspapers and retired at 10:30. The four persons identified by Frank's parents-in-law as the persons who came in to play cards testified they arrived at the Frank home about eight o'clock and saw Frank there. According to their recollections, however, Frank excused himself about nine o'clock and went upstairs.

Twelve of the fifteen witnesses who saw Frank after one o'clock testified they were close to him and noticed no bruises or scratches on his face or hands, and he appeared and acted as usual.

With the exception of Quinn the testimony of none of

these witnesses was weakened by the solicitor general's cross-examination. As bearing on the interest of the several witnesses, it was developed that all who were not employees of Montag Brothers or the pencil company were relatives by marriage or close friends of Frank. Quinn, under a slashing cross-examination, failed to stand up to his declaration made on direct examination that he had seen Frank in his office at 12:20 P.M. Quinn was bitterly denounced in the State's closing arguments as a perjurer. Mineola McKnight, the Negro cook in the Frank household, contradicted the testimony of her husband, who had been a State's witness. She swore that her husband was not at the Frank residence at any time on Saturday. Frank, she said, came home to lunch about 1:20 P.M. and left about 2:00. She next saw him when he ate dinner with the family at night. She said the police tried to get her to say that Frank would not allow his wife to sleep the night of the twenty-sixth and wanted to get a gun and shoot himself; that that was not true; that the police took her to the station house in a patrol wagon and locked her up, and she then told the police anything they wanted her to say so they would let her out of jail; that any statement she might have made to them was untrue. She denied that Mrs. Selig, Frank's mother-in-law, had raised her wages or given her any extra money since Frank's arrest. Mrs. Selig corroborated this statement.

Emil Selig, Frank's father-in-law, testified in refutation of Newt Lee's testimony that he had frequently heard Frank call up the night watchman at the factory from his home at night.

To account for Frank's presence at the factory on Saturday afternoon three witnesses testified to the volume of end-of-the-month work Frank had to do. They said that it would have taken a diligent and skilled bookkeeper from

three and one-fourth to three and one-half hours to complete it. The stenographer Miss Hall, in addition to her testimony corroborative of Frank's story, testified that Frank asked her to stay and help him with his work Saturday afternoon. She told him she could not do so on account of a previous engagement.

Magnolia Kennedy, one of the factory workers, testified that when the girls lined up for their pay on Friday she was right behind Helen Ferguson. Helen Ferguson did not ask for Mary's pay envelope; moreover, although Frank sometimes "paid off" he had not paid the employees on Friday the twenty-fifth. Schiff, the assistant superintendent, testified that he, not Frank, paid the employees on Friday April 25. He said that Helen Ferguson did not ask for Mary's pay and that one employee could not get the pay envelope of another without a written order.

W. M. Matthews and W. T. Hollis, motorman and conductor of the English Avenue streetcar, testified that Mary Phagan was a passenger on their car on April 26 and that she got off at Hunter and Broad streets, about a block from the pencil factory. They said their scheduled arrival time was 12:07Y2 .M.11 and that the car was on time on April 26. A superintendent of the streetcar company corroborated their testimony as to the schedule and running time between various points. The testimony of the conductor and motorman, so far as it was designed to establish the exact time Mary Phagan got off the car, was considerably weakened by the cross-examination of the superintendent, who testified that the English Avenue schedule was a difficult one to maintain and that the company frequently had occasion to suspend trainmen for "running ahead of schedule."

Two civil engineers were called to testify they made accurate measurements of the distances between the front

door of the factory and certain street intersections and of the length of time it would take, walking at a fair pace, to cover those distances. The distance from the pencil factory to Marietta and Forsyth streets was 1,016 feet, and it took them four and one-half minutes to walk that distance. The distance from the factory to Whitehall and Alabama streets was 831 feet, and it took them three and one-half minutes to cover that distance. The distance from Broad and Hunter streets was 333 feet, and to cover that distance it took them one and three-quarters minutes.

More than a dozen of the witnesses called gave testimony either to impeach Conley or discredit his story. Nine witnesses swore that his general reputation for truth and veracity was bad and that they would not believe him under oath. Eight defense witnesses testified they were at the factory at various times Saturday morning and at no time did

11 Much was made of the exact time Mary Phagan left the streetcar at Broad and Hunter, or Broad and Marietta, streets. If the time of the arrival of the car was 12:07 P.M. and it took three or four minutes to reach the factory, Monteen Stover, according to her own positive testimony, would have left the factory before Mary Phagan arrived, and Frank's absence from his office between 12:05 and 12:10 would lose its significance.

they see Conley. A Mrs. Carson and her daughter testified they saw Conley at the factory on Monday morning. He told them he had been so drunk all day Saturday he could not remember where he was or what he did. Conley told them that "Frank was as innocent as a child." Another factory worker, a Miss Fuss, testified she talked to Conley on the Wednesday following the murder, and he said that "Frank was as innocent as the angels in Heaven." These and other witnesses who saw Conley on Monday, Tuesday and Wednesday following the murder testified that he was nervous, avoided answering questions and acted suspiciously.

Several witnesses swore that Conley could read and write.

One of the girls testified that on Monday he borrowed some money from her to buy newspapers and that he was so excited he bought two copies of the same edition.

A reporter for one of the Atlanta papers testified he talked with Conley on May 31—after Conley had made his confession—and Conley told him he finished his work and left the factory at 1:30 P.M. on April 26 and that he had never seen any mesh bag.

Some of the factory help testified they were regularly or frequently at the plant on Saturday afternoons and at no time saw Conley there. Witnesses did testify that Conley was at the factory on Thanksgiving Day 1912, sweeping up and doing his regular work, but they said Frank left the building shortly after twelve o'clock on that day and did not return. They also testified that Frank usually worked Saturday afternoons, but there were never any women in his office, nor was there any drinking there. None of them had ever seen Dalton in the factory on Saturday afternoons. They all testified that to their knowledge none of the outside or inner doors of the factory were ever locked on Saturdays, that Frank's office was always open and that the blinds and shades in his office were never drawn.

Daisy Hopkins, named by Conley as one of the girls Dalton brought to the factory for the Saturday-afternoon assignments, swore that she had never been at the factory with Dalton or anyone else, that she did not know where the basement was and that she had never spoken to Frank. She admitted on cross-examination that she had been arrested and charged with fornication but had never been tried. Two other women who had been suggested in the State's case as companions of Dalton at the factory took the stand; one denied that she had known either Dalton or Frank, the other denied that she had ever been at the fac-

tory with Dalton. Eight witnesses were called who declared that Dalton's reputation for truth and veracity was bad and that they would not believe him under oath.

Gordon Bailey, the Negro worker at the factory known as "Snowball," denied that he had ever seen Frank and Conley talking together or heard Frank say anything to Conley about "watching" for him.

Four factory employees testified that when the elevator ran it made a very loud noise and jarred the floor when it stopped. Denman and White, the carpenters who were working on the fourth floor of the factory all day Saturday up to three o'clock, corroborated this testimony and also testified that from where they were they could have seen the wheels in the upper part of the elevator shaft turn and that those wheels did not turn at any time Saturday while they were there.

A Dr. Owens testified he conducted a series of experiments to determine how long it would have taken Conley and Frank to do what Conley said they did after twelve o'clock Saturday noon. He said the actions described could not have been performed in less than thirty-six and one-half minutes and that was not allowing any time for the dictation and writing of the notes as testified to by Conley. He said from twelve to sixteen minutes would have to be added for that action.

A number of factory employees testified they frequently saw splotches of blood on the second floor in the metal room and in and around the ladies' dressing room. The operators often got their fingers cut or crushed in the machines and bled. The floors were never kept clean and white substances-potash and "haskoline"-which were used in the factory were frequently spread on the floor to cover the blood spots. One witness, a machinist, testified to two specific instances when employees working around the

machinery had been quite badly injured and suffered a serious loss of blood. Lemmie Quinn, the metal-department foreman, testified the girls "fixed their hair" in the metal room, and many times their combings were scattered around the room.

The defense called three physicians-one of them was a professor of physiology and physiological chemistry at the Atlanta College of Physicians and Surgeons-who testified it might take as long as four and one-half hours for cabbage to digest and pass from the stomach into the intestines. It all depended, they said, on mastication, and from an examination of the stomach contents one could not tell within two and one-half hours how long the digestive process had been going on before death.

Three other physicians testified they had examined Frank and that he was a sexually normal person. They also testified there was nothing significant in the post-mortem finding that the epithelium had apparently been torn loose from the walls of the dead girl's vagina. Such a condition, they said, could have been due to the embalming of the body and did not indicate violence to the vagina before death.

Fifty-six witnesses-associates of Frank at Cornell University and in Brooklyn and Atlanta-testified that his general reputation as an upright, law-abiding citizen was good. Forty-nine of the women employees at the pencil factory testified that not only was his general reputation good but also that his reputation for moral rectitude was good. Specifically they said that they had never heard of his being otherwise than a gentleman where women were concerned or of his ever "having done anything wrong." The testimony of one of these witnesses did not stand up too well on cross-examination. She testified that on two or three occasions she had heard "remarks" about Frank's coming into

the women's dressing room and staring at the girls and that she herself was in the dressing room on one such occasion when he came in.

The defense was concluded with Frank's statement.¹²

While it was very lengthy-eighty pages of typewritten record-it added very little beyond details to the statements he had previously made. The only significant variation was his attempt to avoid a direct clash with Monteen Stover, who, it will be remembered, testified in the State's case that when she went to Frank's office at 12:05 P.m. he was not there and that she waited until 12:10 and when he did not appear concluded he was not in the factory and left.

In Frank's statement to the jury he said that to the best of his recollection from the time the twelve-o'clock whistle blew³ until 12:45 when he went upstairs to talk to the carpenters he did not leave his inner office. "But it is possible," said Frank, "that to answer a call of nature or to urinate I may have gone to the toilet. Those are things a man does unconsciously and cannot tell how many times nor when."

The defense had made a strong case. It was destined, however, to be badly riddled by rebuttal. Under the law the State could not attack the general or specific reputation of the defendant until the defendant first put his reputation in issue. Frank had done that. He had produced more than 100 character witnesses. The State had a score of witnesses (¹² Under Georgia practice a defendant in a criminal case is not a competent witness in his own behalf. He may, however, if he desires, make a sworn or unsworn statement, but he is not subject to cross-examination.

¹³ This was a slip on Frank's part, and he was to hear from it in the solicitor general's summation. April 26 was a holiday. The factory was closed, and the whistle did not blow that day.)

in readiness to meet this mass of negative testimony with positive testimony of the most damaging character.

The State called more than seventy witnesses in rebuttal. Gantt testified he knew exactly how long the work Frank had to do for the end-of-the-month records would take; that he had seen Frank do the entire job in an hour and a half.

One R. L. Craven, a friend of Mineola McKnight's husband, swore he went to the police station with McKnight to see if they could have her released from police custody. He was present, he said, when she made and signed a statement to the police. In that statement she said that when Frank came home on Saturday evening 'he showed signs that he had been drinking; that after he went to bed he did not rest well, made his wife get out of bed and wanted her to get a pistol so he could shoot himself. Craven's testimony was corroborated by George Gordon, a lawyer, who said he went to the police station with a writ of habeas corpus to get Mineola McKnight out of jail, and she told him she had made a complete and true statement to the police of everything she knew. Another witness who worked for the same company as Albert McKnight testified he went to the station with McKnight to see Mrs. McKnight, who told him that Mrs. Frank and Mrs. Selig had given her a lot of extra money and cautioned her not to talk.

Two men, Tillander and Graham, who had gone to the factory Saturday morning to get their sons' money, testified they arrived there about 11:40 A.M. Frank, they said, was in his inner office. The stenographer was in the outside office. They had a few minutes' conversation with Frank, got their boys' pay envelopes and left. Both said that as they entered the factory from the street they saw a Negro in the dark passageway. They asked him where Frank's office was. Neither would identify Conley as the man they saw, but both said he was about the same size as Conley.

Another witness testified he saw Conley a

Forsyth and Hunter streets between one and two o'clock on Saturday April 26, and so far as he could observe Conley was not drunk.

One of the male factory workers testified he frequently saw Conley at the office when he came there on Saturday afternoons around two o'clock.

Eight witnesses testified that Daisy Hopkins' reputation for truth and veracity was bad. One of them said he had seen her at the factory talking to Frank. Another testified to having had an assignation with her at 8:30 P.m. on a Saturday, and she told him she had been at the pencil factory during the afternoon.

Fourteen witnesses testified that Dalton's reputation for truth and veracity was good. Another witness swore he had seen Dalton come into the factory with a woman in July 1912 on a Saturday afternoon between one and two o'clock.

Six employees of the Atlanta Streetcar Company testified. The consensus of their testimony was that the English Avenue car was scheduled to arrive at Broad and Marietta streets at 12:07, not 12:07 P.m., and that it frequently arrived ahead of schedule as much as four or five minutes because the trainmen wanted that additional time for dinner and a layover. One witness testified he was at the corner of Forsyth and Marietta streets on Saturday April 26 when the English Avenue car operated by Matthews and Hollis arrived at 12:03. Another witness, one McCoy, testified he saw Mary Phagan in front of Number 12 Forsyth Street. She was walking toward the pencil factory, and it was not later than "three or four minutes after twelve."

L. T. Kendrick, a factory employee, testified there was no unusual noise in the operation of the elevator, and he did not believe one could have heard the elevator running if one were hammering on one of the floors some distance away from the shaft.

One of the witnesses referred to in the defense testimony as having been hurt by one of the machines in the metal room testified that the blood from his wound dripped on the floor alongside the machine where he was working. None of it was anywhere near the ladies' dressing room, he said.

Three witnesses, employees or former employees of the pencil company, testified they had frequently seen Frank talk to Mary Phagan and that he called her by her first name. One of them said that during her employment in March 1913 these conversations occurred two or three times a day, and that she had seen Frank "standing pretty close" to Mary, "leaning over her face" and "have his hand on her shoulder." Another witness told of an occasion in the middle of March 1913. Mary, this witness said, was going to work and Frank stopped her. Mary told him she had her work to do, but Frank said he was the superintendent of the factory and wanted to talk to her. Mary "kind of backed off," but Frank kept following her, still talking to her.

Twenty girls, former employees of the pencil company, testified that Frank's reputation for lascivious conduct was bad. None of these was cross-examined, a significant circumstance of which much was made later in the State's arguments. One of these witnesses testified to an occasion when she was in the dressing room with another one of the women employees. While they were undressing "Frank stuck his head inside the door and stood there and laughed." Another testified that on one occasion Frank went into the dressing room with one of the factory girls and stayed for some time.

Three physicians who had not previously appeared in the case were called. Two of them were recognized stomach specialists. They refuted the testimony of the defense witnesses, declaring it was possible from an examination of the

stomach's contents after death to tell at what stage digestion had been arrested and that the process of the digestion of the cabbage in Mary Phagan's stomach had ceased an hour after she had eaten it. The third physician, who had also participated in the post-mortem examination, testified that in his opinion the epithelium had been torn loose from the walls of the vagina before death.

There was very little surrebuttal. Frank made a supplemental statement denying the testimony that he had forced his conversation upon Mary Phagan and that she had backed away from him. It was possible, he said, that on some occasion he might have passed through the metal room and talked to the girl about her work, but he never called her by her first name because he did not know it. He positively denied the testimony of the two factory girls by saying that he had never looked or gone into the ladies' dressing room.

Four witnesses were called by the defense to testify that George Kendley, a streetcar-company employee and one of the rebuttal witnesses, had publicly expressed himself as violently antagonistic to Frank-that "he was nothing but a damned Jew and should be taken out and hung," that he was as "guilty as a snake" and that "ninety per cent of the best people in the state think he is guilty and ought to hang." It was on this note-a most unfortunate one-that the evidence closed.

Special Assistant Solicitor Hooper commenced the summations for the State. He spoke for over two hours. He carefully reviewed the prosecution's testimony. That testimony, he said, was consistent and plausible. The murder had occurred in the metal room sometime between 12:05 and 12:20 P.M. Frank had made indecent proposals to Mary Phagan or had attacked her, and when she repulsed him he had struck her and knocked her down. In falling she had

hit her head against something which had rendered her unconscious. Then Frank, in a panic of fear lest she recover consciousness and accuse him of having attempted to rape her, strangled her to death with a piece of cord which he picked up in the metal room. Frank, fearing discovery and not knowing what to do with the body, left the metal room, locked the door and returned to his office. At 12:30 he might possibly have been seen by Mrs. White or Lemmie Quinn. After Quinn had left, Frank tried to get everybody out of the building and that was the reason for his trip to the fourth floor at 12:45. It was after this he called Conley, and between 12:50 and 1:20 they removed the body to the basement.

Hooper argued that Conley had told the truth; Conley had no motive for doing otherwise. Hooper laid great stress on the fact that defense counsel had not cross-examined any of the twenty young women, called by the State, who had sworn that Frank's reputation for lewd, lascivious conduct was bad. The prosecutor supplied the reason:

The conduct of counsel in this case . . . in refusing to cross-examine these twenty young ladies refutes effectively and absolutely [the testimony] that Frank had a good character. . . . If this man had a good character no power on earth would have kept him and his counsel from asking these girls where they got their information and why it was they said the defendant was a man of bad character. . . .

I have already shown you that under the law they had a right to go into that character, but you saw that on cross-examination they dared not do it. And their failure [to cross-examine] . . . is a circumstance against them. . . . You know, as twelve honest men seeking to get at the truth, that the reason these able gentlemen did not ask "those harebrained fanatics," as Mr. Arnold called them before they ever went on the witness stand-those girls whose appearance is as

good as any they brought, those girls that you know by their manner are telling the truth, those girls who were unimpeached and unimpeachable-you know the reason they did not cross-examine them. They did not dare to do so! Hooper dosed with the declaration that the guilt of Frank was as clear as the noonday sun and demanded a verdict of death as the only penalty that would "fit this horrible crime."

Both Arnold and Rosser argued at length for the defendant. Their combined arguments lasted better than a day. In blistering terms Rosser scored Conley, Dalton, Scott and the police officers. They were perjurers and suborners of perjury bent only on the destruction of Frank. Arnold followed much the same line. His attack on Conley was savage. "My brother Hooper," declared Arnold, "says that Conley had nothing to hold him on the stand but the truth. My God! He had the desire to save his own neck. What stronger motive could a man have on the stand? The whole case against Frank is based on Jim Conley's testimony. If the prosecution can't hobble to a conviction on that broken crutch, then they know they will fail. Before I get through I am going to show you there was never such a frame-up against a man since God made the world as that which has been concocted against this defendant."

Arnold faced the question of religious prejudice squarely. "Leo Frank," he said, "comes from a race of people who have made money and that has made some people envious. I tell everybody, all within the hearing of my voice, that if Frank had not been a Jew he never would have been indicted. That nigger Conley has been brought into court to tell his long tale; not corroborated but prompted. I am asking my kind of people to give this man fair play...."

This is a case that has been brought about by the story of a monstrous perjurer by the name of Conley, and they ask

you to believe this nigger against Frank.” Arnold then dwelt at length on the 100 or more witnesses who had come to testify to Frank’s good character; no man with such testimonials could be guilty of the fiendish crime which had been charged against him, said Arnold.

Dorsey concluded the summations. The solicitor general attempted no detailed defense of Conley, nor did he reply to Arnold’s repeated characterizations of him as “a lousy nigger,” “a dirty, black nigger” and “a lying nigger scoundrel.” Instead he countered with an argument well calculated to appeal to the white Georgians on the jury: The job of the police and the prosecution would have been infinitely easier had they been able to unearth evidence to fasten the crime on Conley. Conley was a “nigger”-shiftless, penniless, friendless-with a chain-gang record. Frank was a white man with powerful and influential relatives and friends who were prepared to spend and had spent thousands of dollars in his defense.

Dorsey repudiated the suggestion that Frank’s religion had had anything to do with his indictment or prosecution. He outdid Arnold in his tributes to the Jewish people and in citing their contributions through the ages to the advance of civilization. He argued, with great eloquence and persuasiveness, the testimony of Lee, Gantt, Monteen ‘Stover, the police and the witnesses who testified to Frank’s relations with women and declared that that evidence, even without the testimony of Conley, established Frank’s guilt.

Frank’s defense, declared Dorsey, was negative-over 100 witnesses testified that he bore a good reputation and that they had never heard anything against him. In the face of positive evidence of criminal conduct such testimony, said Dorsey, was utterly worthless. He recalled the cases of Oscar Wilde, “an Irish knight, a scholar, a literary

man, brilliant, the author of works that will live through the ages," of Abe Ruef, "a Jew, the boss of San Francisco, respected and honored," of McCue of Charlottesville, "a man of such reputation that his fellow citizens had elevated him to the head of their municipality, and yet he tired of his wife and shot her to death in a bath tub," of Richeson, "the Boston preacher who had seduced a poor servant girl," of Beatty of Richmond, "a man of good reputation from one of the oldest and finest families" who had murdered his wife, of Crippen, "an eminent physician of England," who had murdered his wife that he might elope with his secretary. All of these, said Dorsey, had good reputations, yet all were proved to have committed despicable crimes, and their good reputations did not avail to save them from the consequences.

Dorsey dosed with a stirring plea to the jurors to base their verdict on the evidence of what had happened in the pencil factory on Saturday April 26, 1913. That evidence, he said, pointed unmistakably to Frank as the defiler and murderer of Mary Phagan.

At the conclusion of the summations and before Judge Roan began his charge, Defense Counsel Arnold asked that the jury be excused. The jury was withdrawn and the defense formally moved the Court to declare a mistrial. In that motion it was charged that the conduct of the spectators throughout the trial had been "disgraceful." They had frequently applauded statements of the solicitor general and rulings of the Court which were adverse to Frank. Repeated pleas of the defense to clear the courtroom had been denied. Large crowds, unable to get into the courtroom, had gathered daily in front of the courthouse and, in the hearing of the jury, had loudly cheered Solicitor General Dorsey whenever he entered and left the building. These demonstrations were designed and tended to intim-

idate the jury and influence its verdict. The Court overruled the motion, declaring that the crowds and the noise were inseparable from any trial in which the public interest and curiosity had been aroused. Judge Roan did, however, clear the courtroom on the last day of the trial.

The summations were concluded about noon on August 25. Although the courtroom had been cleared hundreds of persons stood in the streets outside the courthouse awaiting the outcome of the case. There was no disturbance; rather, an ominous quiet. Before Judge Roan commenced his charge to the jury he summoned counsel into private conference and suggested the possibility of danger to the prisoner and his counsel if the jury should disagree or return a verdict of not guilty. He asked, in the interest of avoiding possible trouble, that counsel agree that the prisoner need not be present when the verdict was received and the jury polled. In the absence of, and without the knowledge of, the defendant both sides consented. The judge then proceeded with his charge to the jury.

It was a simply worded, dispassionate statement of the law of the case; its impartiality was attested by the fact that very few of the numerous assignments of error on appeal attacked the charge and such of them as were argued were clearly shown to have been without merit.

The jury was out for a little more than two hours. Neither Frank nor his counsel was present in the courtroom when the verdict was received. When the verdict-guilty of murder in the first degree-was pronounced, and before more than one juror could be polled, there was such a roar of applause from the crowd outside that the polling could not go on. A semblance of order was restored, but even then the continuing noise was such that it was difficult for the Court to hear the answers of the jurors although he was only ten feet away from them.

Thus ended the longest and most celebrated trial in the history of Georgia.

Defendant's counsel urged over 100 different grounds for a new trial. Judge Roan held the motion under advisement for more than two months. When he handed down his ruling on October 31 he declared the case had troubled him more than any case he had ever tried. He said that while personally he was not thoroughly convinced of Frank's guilt the jury had undoubtedly been so convinced; that, after all, the jury, under the law, was the judge of the facts, and he felt it to be his duty to overrule the motion. Frank was sentenced to death by hanging.

AFTERMATH

And now commenced Frank's long fight through the upper courts. Exhaustive and able briefs were filed in the Supreme Court of Georgia. That Court, on February 17, 1914, handed down its decision affirming the judgment of the lower Court. Two of the six justices dissented.¹⁴ The

14 141 Ga. 243.
date for the execution of the sentence, which had been postponed on appeal, was fixed for April 17.

On April 16 an extraordinary motion in the nature of a petition for a new trial was presented to the Supreme Court of Georgia. It was taken under advisement, and the date of execution again postponed. On November 14 the Court denied the motion. Another motion in the nature of a writ of error, which, if allowed, would have nullified the judgment of the lower Court, was immediately filed. This, too, was overruled.

All of the approaches to the state courts having been closed, resort was now had to the Federal courts. Applications for writs of error were successively presented to Supreme Court Justices Lamar and Holmes and lastly to the

full bench of the Supreme Court of the United States. All were denied. One last hope remained—a petition for a writ of habeas corpus based on the ground that errors in the conduct of the trial in the state court amounted to a deprivation of the defendant’s liberty without the “due process of law” guaranteed by the Fourteenth Amendment to the Constitution of the United States. Such a petition was filed in the United States District Court of Georgia. It was heard by District Judge W. T. Newman and denied December 21, 1914. On application made, Supreme Court Justice Lamar granted a certificate of importance so that the matter could be reviewed by the Supreme Court of the United States.

On April 19, 1915, the Supreme Court of the United States handed down its decision affirming the judgment of the lower Federal Court denying the writ.¹⁵ Two of the justices dissented. The opinion of the majority held that Frank had been formally accused of a crime cognizable solely by the courts of the State of Georgia. He had been ;afforded a fair trial by a court of competent jurisdiction -15 27 U. S. 309.

in that state. He had been found guilty and sentence had been pronounced pursuant to the laws of that state. By three different proceedings his case had been reviewed or considered by the Supreme Court of Georgia, and every ground urged in his present petition for habeas corpus had been urged and adversely passed on by Georgia’s court of last resort. It was their final conclusion that Frank was “not shown to have been deprived of any right guaranteed to him by the Fourteenth Amendment or any other provision of the Constitution or law of the United States....”

The dissenting opinion was written by Justice Oliver Wendell Holmes and concurred in by Chief Justice

Hughes. Basing their view on the theory that the allegations of the petition were untested, the dissenters felt that the defendant should be permitted to make proof of his contentions that the atmosphere of prejudice and hostility which surrounded him had infected the jury and made a fair trial impossible. If the allegations were found to be true, it was clear, said the dissenting justices, that Frank had been deprived of his liberty and was about to be deprived of his life without due process of law and in violation of the Fourteenth Amendment. Justice Holmes, as was his wont, used vigorous language in expressing this view, which was quite generally misinterpreted by the press and the lay public as a statement by him of the undisputed facts of the case. The contrary is clearly shown by the opinion itself. Justice Holmes said:

The single question in our minds is whether a petition alleging that the trial took place in the midst of a mob savagely and manifestly intent on a single result, is shown on its face.... This is not a matter for polite presumptions; we must look facts in the face. Any judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the environing 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 jurymen 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.... It may be that on a hearing a different complexion would be given to the judge's alleged request and expression of fear. But supposing the alleged facts to be true, we are of opinion that if they were before the Supreme Court [of Georgia] it sanctioned a situation upon which the Courts of the United States should act, and if for any reason they were not before the Supreme Court, it is our duty to act upon them now and 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.¹⁶

Even before the decision of the Supreme Court of the United States was handed down another desperate attempt was made to secure a new trial through a motion to that end in the Circuit Court of Fulton County. It was heard on April 22 by Judge B. H. Hill, who had succeeded Judge Roan, and denied. Frank was resentenced-execution to take place on April 25.

The possibilities of judicial review being now exhausted, an appeal was made to the governor and to the state's Prison Commission for a pardon or commutation of sentence.

Execution of sentence was again postponed, pending investigation and report of the state's Prison Commission.

On June 9 that body, by a vote of two to one, denied

¹⁶ The above is quoted at length because of the impression created at the time by the publicity given to the great jurist's dissent (which was out of all proportion to that accorded the majority opinion) that Frank had from the outset been the marked victim of mob terrorism.

Frank's plea for clemency. The dissenter argued: Frank and Conley had equal motive and opportunity to commit the crime. There was possibly more of a motive for Conley-robbery, in addition to rape. It was undisputed that Conley had written the notes. The trial judge who heard

the evidence expressed a doubt as to Frank's guilt. There were what amounted to the opinions of two judges of the Supreme Court of the United States that Frank had not had a fair and impartial trial.

Governor Slaton was not satisfied and announced he would make a personal investigation. He visited the factory and went over the premises. He read and studied the record of the testimony, the briefs and arguments of counsel and the Courts' decisions in the various appeals. He announced he would hold public hearings at which any person with anything to offer for or against Frank might appear and be heard. A number of such hearings were held. More than 100 persons appeared and made statements, among them Solicitor General Dorsey and his assistant prosecutors. The proceedings were stenographically reported and published in full in the daily press. Judge Roan from his deathbed had written to the governor, urging clemency for Frank.

On July 21 Governor Slaton commuted Frank's sentence to life imprisonment. His statement, accompanying the official order, merits quotation. After an accurate and dispassionate summary of the evidence, the governor said:

In any event, the performance of my duty under the Constitution is a matter of my conscience. My 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 what 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 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 cer-

tainty for which the law provides in allowing life imprisonment instead of execution. This case has been marked by doubt. The trial judge doubted. Two judges of the Supreme Court of Georgia doubted. Two judges of the Supreme Court of the United States doubted. One of the three prison commissioners doubted. In my judgment, in granting a commutation in this case I am sustaining the jury, the judge and the appeals tribunals and at the same time I am discharging that duty which is placed upon me by the constitution of the state. Acting, therefore, in accordance with what I believe to be my duty under the circumstances in this case, it is ordered that the sentence in the case of Leo M. Frank is commuted from the death penalty to imprisonment for life.

The governor's action aroused a storm. There were anti-Frank demonstrations throughout the state. A regiment of the state militia was called out to guard the executive mansion. The Southern press generally denounced the action or remained silent. A few of the more responsible and influential papers, following the lead of the Atlanta Journal, called the governor's act one of high courage.

Despite the threatening signs no actual trouble eventuated, and Frank was safely removed to the state penitentiary at Milledgeville.

The case was now thought to be closed, but within a month and in circumstances never fully explained Frank was attacked while he slept by a fellow convict who cut a seven-inch gash in Frank's throat with a butcher knife and severed the jugular vein. Had the alarm not been instantly sounded and medical aid rushed to him, Frank would undoubtedly have bled to death. As it was he hovered for days between life and death.

Four weeks went by. Frank was still convalescing from his wound when a mob of probably not more than forty unmasked men forced their way into the prison, held the guards at bay with guns and dragged Frank from his bed. Handcuffed and with a rope tied around his ankles Frank was thrown into the rear of an automobile and, escorted by three other loaded cars, driven to Marietta, the birth and burial place of Mary Phagan. There in the early morning of August 16, 1915, he was hanged from a pine tree not far from her grave.

Governor Harris, who had succeeded Governor Slaton, denounced the lynching and promised a "thorough investigation." Three days later he issued a statement that the mobsters were unknown. They had cut all telephone and telegraph lines in and out of Milledgeville, said the governor, and entered the prison with drawn revolvers in such overwhelming numbers that resistance would have been foolhardy. He concluded the prison authorities were "absolutely blameless."

The Northern press condemned the lynching as the "work of lawless fanatics" and consistent with the lawlessness which had characterized the case from the beginning. Marietta's local newspaper declared it was not the act of lawless fanatics but of "a body of law-abiding citizens who had simply carried out a righteous sentence, the execution of which had been postponed by the unjustified and illegal interference of a misguided retiring governor." The Atlanta Journal and other leading dailies in the South denounced the lynching as "mob murder" which had "outraged and endangered a commonwealth" and "assassinated the character of a law-abiding state."

Was Frank guilty? After one has read the record and all of the available literature on the case, the most one can say is: He may have been guilty, and he may have been inno-

cent. One simply cannot, with evidence supporting reason, declare unequivocally that he was guilty or that he was not
17 About 150 miles from Milledgeville.

guilty. There is evidence and reasonable probability to support either conclusion.

It may be significant, as has been argued in support of the jury's verdict, that in the passage of nearly forty years since Frank's brutal execution not a single additional fact pointing to his innocence has come to light. Nevertheless, from the present perspective a conscientious reader of the record puts it down with the uncertain and troubled feeling that Frank's guilt was not proved beyond a reasonable doubt and that he may have been the victim of one of the most flagrant miscarriages of justice recorded in American criminal annals.