

Defendant's Exhibit 91, 92, 93

The purpose of Defendant's Exhibit 91, 92, 93 was to show that defense witness Detective Harry Scott was inconsistent about an important part of what Leo Frank said about Mary Phagan.

The owners of the National Pencil Company hired Detective Harry Scott immediately following the discovery of the dead body of Mary Phagan; his directive was to investigate thoroughly and ferret out the murderer. Leo Frank may have misjudged Harry Scott's role as being loyal to him and thus made a blunder, being overly trusting and a little bit too cavalier with what he told Harry Scott, because those things he said would later be used against Frank at the trial. It brought new meaning to the saying, "anything you say can and will be used against you in court." The Leo Frank legal team would call Detective Harry Scott to testify for the defense at the murder trial on behalf of Frank, and though it seemed in the beginning that Scott's testimony would benefit the defense, it turned out to be a total disaster for Frank.

Some of the damaging things that defense witness Detective Harry Scott revealed either during the investigation or at the trial included the following:

### **Mary Phagan? Who is Mary Phagan? I Don't Know Mary Phagan.**

1. Harry Scott's statements corroborated the prosecution contention that Leo Frank did actually know Mary **Phagan** and that **Frank lied about not knowing her**. Leo Frank confided in Harry Scott that he knew John M. Gantt was intimate with Mary Phagan. This statement would damage the credibility of Leo Frank, who claimed he didn't know Mary

Phagan, because the reasoning is that if Leo Frank didn't know Mary Phagan, then how did he know John M. Gantt was intimate with her? Also, if Phagan had worked on the same floor as Leo Frank for about a year and drew nearly fifty pay envelopes from him, and Frank had to walk by Mary Phagan's workstation each day to go to the bathroom, it seemed difficult to substantiate that Frank did not know one of his employees according to the prosecution. In sum, Harry Scott being a defense witness and revealing that Leo Frank told him Gantt was intimate with Mary Phagan was a bombshell for Frank, who would still maintain at the trial during his August 18, 1913, testimony that he did not know Mary Phagan. Frank testified well after Harry Scott, creating a situation where the jury had to decide who was more likely to be telling the truth and thus who was more credible.

**Mary asked Leo Frank, "Did the Metal Come in Yet?"**

**Frank said, "No" or "I Don't Know?"**

2. Detective Harry Scott made one of the most damaging statements at the murder trial when he said that, Leo Frank stated to Mary Phagan, "I don't know," when she asked him if the metal supplies had come in yet. The damage is because if Leo Frank had said, "No," Mary would have either asked, "Well, when is it going to come in?" or "Will I have a job next week, or should I look elsewhere?" or something along those possible lines. She might have just left and looked for a new job, but not likely, her position was important to her, as she had worked at the National Pencil Company for about a year, so she would not have been so dismissive. If Frank said, "I don't know," as Detective Harry Scott testified, it created a visual of motive and motion for Leo Frank and Mary Phagan to go to the metal room to find out if the metal had arrived or not. Scott said that he made an error in his notes when he wrote, "No," and that Leo Frank actually said, "I don't know."

This was a devastating setback for the defense, because a defense witness just created a picture in the minds of the jury of time, space, and motion toward the site where the prosecution contended the murder occurred, namely the metal room.

### **The Murder Occurred in the Metal Room, the Prosecution Contends**

The prosecution spent twenty-nine days bringing forward evidence, testimony, and witnesses to testify that the murderer evidence was in the second floor metal room, and therefore, defense witness Harry Scott created some of the most damaging evidence against Leo M. Frank. Moreover, the prosecution made sure to make Frank's credibility questionable by bringing forward as many witnesses and as much evidence as possible to show that Frank was inconsistent in his stories, not only whether or not he knew Mary Phagan, but also about what time she arrived.

Frank may have hurt himself unintentionally when made some conflicting statements about why he did not go to the ball game. One time he said it was because of the inclement weather and another because he had too much work to do. There were numerous other inconsistencies in the things Leo M. Frank said that were revealed at the trial and they are likely to have damaged his credibility on some level. While those inconsistencies may have possibly been harmless, they are more likely to have had a devastating effect on Frank's case because they made him seem unreliable.

## **Inconsistencies in the Time of Mary Phagan's Arrival**

On Sunday, April 27, 1913, Leo Frank told police Mary Phagan came into his office at 12:03 p.m. On Monday, April 28, 1913, Leo Frank told Police Chief of Detectives Newport Lanford in front of numerous officers and detectives (see State's Exhibit B) that **Mary Phagan came into his second floor office on April 26, 1913, between "12:05 and 12:10, maybe 12:07"**. Harry Scott, hired by the pencil factory owners, stated at the coroner's inquest that Leo Frank told him at one point that **Mary Phagan had arrived at his second floor office at 12:10 p.m. on April 26, 1913**. At the murder trial, when Leo Frank testified, making a statement to the jury on August 18, 1913, he told the court that Mary Phagan had arrived ten to fifteen minutes after Hattie Hall left his office. Miss Hall before the trial said she departed at high noon, and at the trial, she said it was 12:02 p.m. when she left Frank and thus **Leo Frank's trial testimony puts Mary Phagan coming into his office at 12:12 to 12:17 on April 26, 1913**. Our intuition tells us something is suspicious about Hattie Hall's newfangled two extra minutes added to when she claimed to have left Leo Frank because these minutes squeezed the time Mary Phagan could have arrived to 12:03 p.m.

## **DEFENDANT'S EXHIBIT 91**

Harry Scott's testimony before coroner's inquest was as follows:

"He just told me that he had been down at the police barracks Monday morning and he talked to John Black, and [Leo Frank said] 'John Black seemed to suspect me of the crime,' and he then Frank repeated to me his movements on the day of the murder, that is on Saturday he reported at the office, I believe

he said, at around eight o'clock in the morning, stayed there up until ten o'clock, then he went to Montag Brothers; Mr. Darley accompanied him down the street a little ways, and he continued on to Montag Brothers by himself and returned to the factory, I believe, at 10:30; that Arthur White and Harry Denham were employed on the 4th floor of the factory, working during the morning hours, **and about 12:10 this little girl, Mary Phagan, came into the office to draw her salary which he gave her (\$1.20). The denominations, which he thought, were two half dollars and two dimes, and that Mary Phagan, left his private office where he paid her off, and went into the bookkeeper's office, and when she got near the door, she returned to him, and said, 'Has the metal come yet?' And Mr. Frank replied, 'No. ' Then he stated that Mary Phagan went on out,** and it was about 12:50 that he went upstairs to the 4th floor, where Denham and White were working and saw Mrs. White up there talking to her husband. He made the remark that he intended closing and locking the doors, and asked Mrs. White if she would leave, and also asked the men up there how near they were through their work. They told him they didn't think they could finish up right soon at that time, and he came on downstairs, and told them he was going to lock the doors when he went out. He stated that he left the factory about 1:10 p.m., went home to his dinner [Southerners call their lunch as dinner), returned to the factory then about 3 o'clock, and White and Denham were still on the 4th floor. He did not meet anyone going out or coming in. About 3:10 both White and Denhan left the building; that Newt Lee reported to him about four o'clock, as Leo Frank had instructed him to do on the day previous, that it was his intention to go to the ball game that afternoon, and when Newt Lee came there, he told him that it would not be necessary for him to work just at that particular

hour, that he could go out on the street and enjoy himself for a few hours, and return about six o'clock. Frank stayed in the building from four to six and Newt Lee returned at 6 o'clock, went on duty and Frank left the building at about 6:15. On his way out he saw Newt Lee sitting on a packing box outside the door of the factory talking to a man by the name of Gantt. Lee told Frank what Gantt was staying there for, and after considering allowed Gantt to come upstairs for a pair of shoes, that is, go up inside of the factory, but he instructed Newt Lee to stay with Gantt while he was up inside of the factory, until he left, which he said that Lee did. Frank then continued on to his home, and said that he became worried about Gantt's presence in the building, knowing that he had discharged him for some kind of fault. He continued to worry about Gantt's presence in the building and therefore called up Newt Lee on the telephone at 7:30, as he knew it was that time for Lee to punch the clock at that hour, and he would hear the telephone ringing inside of the office while he was there at the clock; although I am not sure. I think he said he made an effort to get Lee at seven o'clock and failed and finally got him at 7:30. When he called Lee on the telephone, he inquired if Gantt had left the building. Lee replied, 'Yes;' Frank then asked him if everything else was all right, to which Lee replied, 'Yes,' and he hung up the receiver and at about 9 that night he retired to go to bed; and I believe now that that's the extent of my interview with Mr. Frank.

'Yes, I am working in the interest of the National Pencil Co. to ferret out who is responsible for the murder. Mr. Black and I requested Mr. Frank that he go into this private room with Lee, and endeavor to get any information that he might be withholding from either of us or the detective department, and told Mr. Frank to impress upon Lee the importance of telling the whole truth in the matter, and do whatever he could to

persuade Lee to tell the absolute truth in the matter. Mr. Frank said he understood, and we sent him in to talk to Lee. I have no way of knowing what Frank said; they were both together privately in the room there, and we had no way of knowing except what Lee told us afterwards.”

## **DEFENDANT’S EXHIBIT 92**

Harry Scott’s report to the Pinkerton Agency, as follows:

“Mr. Frank stated that on Saturday, April 26th, 1913, the factory of the National Pencil Company was closed down, and that only two of the employees reported for work the entire day, and these men were Harry Denham and J. A. White, who are employed on the 4th floor of the building. Mr. Frank stated that he was in the office up until about 1 p.m., and that at 12:10 p.m., a girl employee of the factory, named Mary Phagan, called at the office of Mr. Frank for her wages, and she received \$1.20, either in one dollar bill and two dimes, or two half dollars and two dimes. Mr. Frank personally handed this girl her wages, after which the Phagan girl left Mr. Frank’s office and walked towards the door of the office adjoining Mr. Frank’s office, which door leads into the factory. Miss Phagan turned to Mr. Frank and asked him if the metal had arrived yet, to which Mr. Frank replied ‘No,’ and the girl then went on away out of the factory, as far as Mr. Frank knows, as he did not see anything of her during the afternoon. About 12 o’clock, noon, Mrs. J. A. White entered the factory and went to the top floor where her husband, J. A. White was working, and at 12:45 p.m., Mr. Frank went to the 4th floor and in the presence of Mrs. White told Denham and White that he was going to lock the doors, and Mrs. White then left the factory, but White and Denham informed Mr. Frank that they had not finished their work and Mr. Frank then told them to remain

until they had gotten through. Mr. Frank left the factory about 1 p.m. Saturday, while White and Denham were still on the top floor. Mr. Frank then went to his home, to his dinner, returning to the factory at 3 p.m., and he saw that White and Denham were about through with their work, and both of them left the factory at about 3:09 p.m. As far as Mr. Frank knows he was the only person left in the factory after that hour. On Friday, Mr. Frank had instructed his negro night watchman, Newt Lee, to report at the factory on Saturday at 4:00 p.m. on account of it being a holiday, and none of the employees working. At 4 p.m. the negro Newt Lee arrived at the factory reporting for work to Mr. Frank, who told him that it was not necessary for him to go to work at that time, but that he could go out in the street and have a good time until about 6 p.m., and that in the meantime Mr. Frank would stay at the factory. The negro left the factory, returning again at 6 p.m., and at 6:05 p.m. Mr. Frank left the factory for his home and on his way out of the factory by the Forsyth Street door he saw the negro night watchman, Newt Lee, talking to a bookkeeper named John M. Gantt, who had recently been discharged by Mr. Frank. It developed that Gantt was asking the negro watchman, Newt Lee, to allow him to go to the second floor of the factory and secure a pair of shoes that he had left there, as he wanted to go to his home in Marietta, Georgia, and do some plowing and the negro, Newt Lee, then asked Mr. Frank if he would allow Gantt to enter the building. Mr. Frank knowing that he had discharged Gantt for thievery, hesitated about allowing Gantt to enter the building, but finally told the nightman to let Gantt in, but to stay with him until he secured the shoes, and then see that Gantt left the building without taking anything that belonged to him. About 7:30 p.m. Mr. Frank states he called up the factory, as he knew that Newt Lee, the night watchman, was about to punch the clock at the



hour and could hear the telephone bell ringing inside the office, and Newt Lee answered the telephone. Mr. Frank states that he inquired of Lee if Gantt had left the building, to which he replied in the affirmative. Mr. Frank then asked Lee if everything else was all right, to which Lee replied 'Yes.' Mr. Frank states that this was the extent of his telephone conversation with Lee.”

### **DEFENDANT’S EXHIBIT 93**

Testimony of Policeman Anderson before Coroner’s inquest, as follows:

“The watchman told me where he was standing. He came out of the closet to fasten or button up his pants, and had his lantern sitting down right in front of him, where he had left it when he went into the closet. While he was standing up there he saw that woman. He saw it from the closet, about twenty-five feet, to where the object was. I could not see that far with the lantern that he had. With the lantern that he had I could see about ten or twelve feet, something like that.”

See: [Defense: Georgia Supreme Court Files\(1,800 images, Volumes 1 & 2\).](#)