

# AMERICAN STATE TRIALS

*A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to the Present Day.*

WITH NOTES AND ANNOTATIONS

JOHN D. LAWSON, LL.D.

EDITOR

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By JOHN D. LAWSON

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TO  
EVERETT PEPPERELL WHEELER  
OF NEW YORK CITY

JURIST: PUBLICIST: LAW REFORMER:

THIS VOLUME IS INSCRIBED IN GRATEFUL RECOGNITION  
OF MANY YEARS OF FRIENDSHIP.

## PREFACE TO VOLUME TEN

Though the trial of *Edward D. Worrell* (p. 1) is full of striking and interesting features, it is the great speeches to the jury, of Wright and Bay that entitles it to over 150 pages of this volume. And this suggests the question, how comes it that the speeches to the jury in great criminal trials are no longer given space in the columns of our daily newspapers or preserved to the public in some permanent form as soon as delivered? When Rufus Choate or Daniel Webster spoke in Massachusetts or Prentiss or Marshall in Kentucky or Wright in Missouri or Sampson or Brady in New York, they spoke not only to the crowd in the courtroom but to the American public. Their orations appeared almost verbatim in the press and were later reported in pamphlet form and were as eagerly purchased in the book-stores as the best selling works of fiction are today. When, for example, Daniel Webster made his great speech for the Commonwealth on the trial of the Knapps for murder in the little town of Salem (see 7 Am. St. Tr.), not only did it appear in full in the local papers, but it was reported in book form in Massachusetts and in New York by at least half a dozen different publishers. And this continued to be the practice until about the close of the civil war. It still exists in England; a speech to the jury by a leader of the bar in an important criminal trial will appear the next day in the newspapers almost word for word. What is the reason for this neglect by our press of the oratory of our bar? Is it that commercialism has killed eloquence and that it has become extinct like the dodo? that our modern advocate has



lost that gift of public speaking in the court-room which so attracted the public a generation ago? It might be worth while for some student in our newly-founded schools of journalism to make a study of this question and to give us the reason why the oratory of the court-room is today practically ignored by the press of the United States.

When *John Hodges* (p. 163) was indicted for treason in the year 1815, he found that in the opinion of the presiding judge, Mr. Justice Duvall, of the Supreme Court of the United States, "Giving aid and comfort to the enemy" was a very comprehensive phrase. But the jury understood that he was no traitor and fortunately the jury had the last word.

The last act of the case of *Leo M. Frank* (p. 182) was the final scene in a Tragedy of Errors in which Justice was the real victim. The murder of a young factory girl caused a great sensation in the community and the people and newspapers jumped to the conclusion that Frank—a northern Jew and college graduate and the last person who had seen her alive—was the murderer and demanded that he should be hanged. But Frank had his friends, too, and soon what looked like an organized campaign in his behalf, was started in the Eastern States and kept up with unceasing vigor after his conviction and while his case was pending before the Appellate Courts and the Governor of Georgia. People thousands of miles away wrote letters to the newspapers and signed petitions in which they maintained that Frank was not guilty—men and women who had not seen or heard a single witness and who had nothing but hearsay on which to found their opinions. Very naturally the people of Georgia resented this interference with their courts and this out-

side meddling served only to increase their determination that Frank should suffer death.

Here Justice received its first wound. Every civilized nation has determined that the guilt or innocence of one accused of crime and the punishment to be meted out to the criminal shall be decided by regular Courts of Justice presided over by trained jurists, assisted in most of them by twelve laymen—called a jury. This is the best that civilization has been able so far to evolve. These tribunals may sometimes err whereby innocent men are sent to the gallows and guilty men are set free, for no human system is perfect. But the agitation in the Frank case was a protest against this historical and well-ordered method. It was a clamor that questions of guilt or innocence should be decided not by the established tribunals but by popular vote. It was a demand that those tribunals should solve the problem, not according to the opinions of its judges founded upon the evidence, but upon the views of the multitude, founded upon sentiment and rhetoric. It is perfectly clear that this is a denial and negation of all law and of all authority. It is simply Lynch Law, exaggerated and popularized. We cannot try issues of this kind in this way; we cannot decide the guilt or innocence of an accused man or woman by a show of hands in a town meeting or by counting noses on the street. And the people of no state in the American Union are going to acquiesce in this kind of proceeding. No citizen of one state is willing to submit to the inhabitants of the other states the question whether the decisions of its own tribunals are right or wrong and should or should not be enforced. And this is what happened in Georgia.

From the citizens of Atlanta, indignant at the

crime and anxious to punish the criminal, twelve men were chosen to try the issue of Frank's guilt. They were ordinary men, shop-keepers and clerks, without any special education to fit them to follow logically the arguments pro and con and with no training at all in weighing evidence. After listening to the witnesses and the speeches of counsel for many days, and aware every moment, from the conduct of the audience in the court-room, that local opinion was practically unanimous against Frank, the jury found him guilty and the judge sentenced him to be hanged. Then the condemned man appealed to the higher courts where he contended that he was innocent and asked that those who sat in the high tribunals—because they were presumed to have all those qualifications which the twelve jurors lacked—should examine the evidence and pass upon the question of his guilt or innocence of the crime with which he was charged. But to this appeal judge after judge turned a deaf ear. The trial judge told him that he had listened to all the witnesses for many days, but was not convinced that he was guilty, but the jury had found him guilty and that was enough for him.<sup>1</sup>

The six judges of the State Supreme Court listened twice to long arguments and wrote several very learned judgments, but they were devoted solely to

<sup>1</sup> "Even after the jury had brought in its verdict, Judge L. S. Roan, the presiding judge, was not convinced of the defendant's guilt. In denying the motion for a new trial he made this remarkable statement: 'I have given this question long consideration. It has given me more concern than any other case I was ever in and I want to say here, that, although I heard the evidence and the arguments during these thirty days, I do not know this morning whether Leo Frank is innocent or guilty. But I was not the one to be convinced. The jury was convinced and I must approve the verdict and overrule the motion.'" Interview with Herbert Haas, one of the prisoner's counsel in the *New York Times*, March 2, 1914.

the question as to whether the judicial machinery had been run properly, whether any inadmissible evidence had been admitted, whether the jury had heard the cheers given to the prosecuting attorney by the crowd in the streets and so forth. And when finally the prisoner's lawyers were able to get the case before the most august tribunal in the world—the Supreme Court of the United States—that great Court forgot entirely the vital question of the guilt of the prisoner; the energy of its nine justices was expended on the question, should or should not the verdict of the jury be set aside because the counsel and judge had agreed that Frank should not be in court when the jury returned their verdict, and in accordance with this agreement he was in his cell in the jail at that time and received the news of it there instead of in court. And on this question, while the judges differed, a majority of them decided that it did not matter.

Here Justice received its second wound. The Supreme Court of the state learned that the trial judge was doubtful as to Frank's guilt, but it learned it in the wrong way. The trial judge expressed his doubt in the bill of exceptions, but failed to do so in his order, overruling the motion for a new trial. "Had he taken the latter mode of informing the Court of his doubt, the Supreme Court would certainly have granted a new trial. But since it was not put in that order under a technical rule of practice which is unbending in our Supreme Court, a new trial was denied, not because the doubt of the judge did not exist (for he certified to that himself in the bill of exceptions), but because he did not express that doubt in his written order rather than in the bill of exceptions."<sup>2</sup>

<sup>2</sup> 49 Am. Law Rev. 947.

Just think of this, O! shades of Bentham and Brougham, who more than half a century ago helped to wipe out these absurdities from the old English Procedure which, the work of churchmen in the middle ages, had lived unto the nineteenth century. Is there any other part of the civilized or uncivilized world where such things as Courts of Justice are known, that such a condition of things exists, outside of some of the American states? A man's life or liberty, the question of his guilt or innocence, depend not upon the evidence or upon the idea of justice, but upon whether or not somebody has put the necessary thing in the right document or in the wrong one. The people of Georgia, in establishing their Supreme Court, must have believed they were creating a high tribunal, where beyond the prejudice of particular localities, a convicted man would have justice administered in its highest form. Who made this limit to the court's jurisdiction? Did the people ever demand that the court should shut its eyes to what it could see and its ears to what it could hear? Or was it not the court itself which made this rule which denies justice unless it is asked in a particular form?

And the Supreme Court of the United States had not a word to say on the only question that either the prisoner or the people of the state cared a rap about, viz.: did Leo M. Frank murder Mary Phagan? Whether Frank was in the court-room when the verdict was returned had as little to do with the fairness of the trial or of his guilt, as would the question whether he wore a black or a grey coat or a red or a blue tie when the witnesses were examined and his counsel addressed the jury.\*

\* In Continental practice the prisoner is excluded from the room when the jury announce their verdict. The editor inquired of a

When will our appellate judges recognize that their duty is to do justice, not simply to see that the judicial machine is run according to rule? When will our tribunals arrive at that very different point of view of the English and Continental Courts? Not so long as in American courts, Procedure is King; for while the claims of this tyrant are respected, it matters not what may become of Justice.

Frank now made his last appeal to the Governor of the state in whom is vested the ancient prerogative of the King—the power to pardon one unjustly convicted or to mitigate a punishment which he finds too severe. And the Governor of Georgia, after a patient and exhaustive examination of all the evidence, was of opinion that there was a reasonable doubt of his guilt and that the jury had made a grievous mistake in convicting him. And it will be difficult to find an unprejudiced reader of the evidence as set out in this volume who will not agree with him. Conley's story seems a pure fabrication. Frank could not have committed the crime and disposed of the body in the time alleged by the negro; it is utterly inconceivable that the notes found near the body could have been dictated by a man of Frank's education; the Saturday afternoon was spent by him in making up a complicated financial sheet requiring hours of time, and Conley admitted he was so drunk on that day that he did not know where he was or what he did. The Gov-

Paris judge why this was so, and he replied it was on humanitarian grounds, to spare the feelings of the prisoner. And whoever has watched a man on trial for his life in an American court room and has seen the awful strain the prisoner is under while the jury is filing into court and the judge is preparing to put the question to them as to what their verdict is, will appreciate the delicacy of the French point of view, which thinks it more kind to convey the result through his friends or lawyers in the quiet of the prison.

ernor, however, did not set Frank free. He sentenced him to imprisonment for life. But if Frank murdered Mary Phagan was there one extenuating reason why he should escape the gallows? the evidence shows none; his friends, his counsel, he himself never suggested one. If, as may be the case, the Governor's intention was to keep him in prison until the public excitement had gone down and he could be safely released, then the state of Georgia was pledged to protect him against the mob. And when it was not strong enough to do this, Justice received its final wound and lay stricken to death.

The causes of the "Boston Massacre" which led to the trial of the British Soldiers, *Weems and seven others* (p. 415), *Captain Preston* (p. 509), and *Edward Manwaring and others* (p. 511) are set out in the narrative (p. 415.)

The funeral solemnities of those who were killed by the fire of the soldiers were conducted with great pomp and splendor. Crispus Attucks, a mulatto, and James Caldwell, who were strangers in Boston, were borne from Faneuil Hall, Samuel Maverick, a youth of seventeen, from his mother's house in Union Street and Samuel Gray from his brother's in Royal Exchange Lane. The other, Patrick Carr, was still alive, although mortally wounded and died a few days afterwards. The four hearses formed a junction in King Street at the place where the deceased fell and thence an immense procession marched in columns of six deep through the main street to the central (Granary) burying ground where the four bodies were deposited in one tomb, amidst the solemn tolling of all the bells in Boston and the neighboring towns.

As might be expected, this tragedy wrought the whole people of Massachusetts, and above all, the inhabitants of Boston, to the highest pitch of rage and indignation. The populace breathed only vengeance. Even minds better instructed and of higher principles than the multitude, in the excitement of the moment could not endure the doctrine that it was possible for an armed soldiery to fire upon and kill unarmed citizens and commit a crime less than murder. Political animosity and natural antipathy to troops stationed in the metropolis sharpened this vindictive spirit. The friends of the government were either silent or only expressed regret and lamentation at the event. The friends of freedom were loud in their indignation and clamorous for that justice which declares that blood shall be the penalty of blood.

Meanwhile there had been several meetings of the people and a committee was appointed which proceeded to the examination of witnesses "in order to show to the world and especially to the friends of the colonies in England that there were just grounds for insisting upon the removal of the troops." A narrative was also given of the transaction which was adopted by the town and was widely distributed, differing materially from the facts as subsequently proved and calculated to increase the excitement. Under such circumstances the British soldiers were to be tried for their lives and serious fears were entertained, not only by their friends but by the candid and moderate of all parties, that they would not be dealt with by even-handed justice.

But among the friends of freedom there were men who viewed this matter in the calm and rational light of truth and justice. Anxious for the honor of the



town, doubly anxious for the cause of humanity they felt an earnest desire that justice should not fall a sacrifice in her own temple. Of these John Adams and Josiah Quincy, junior, deserve most honorable mention. Sympathizing most deeply with the mass of their fellow-citizens in their hatred of the instruments of their oppressors, and in their detestation of the principles they had been sent hither to maintain, no men had more openly or pathetically appealed to their fellow-citizens or had more studiously excited their resentment both in the gazettes and in Faneuil Hall against the troops and their employers. What, then, must have been their surprise when Captain Preston solicited their professional services in his own behalf and in that of the soldiers. To understand the difficulty of their situation it is necessary to realize the exasperated state of public feeling. The spirit of revenge glowed with a fervor almost universal. On the one hand were the obligations of humanity, official duty and the strong desire that justice should be done; on the other the confidence of their political friends, their popularity and that general affection which their public course had attained for them in so remarkable a degree among their fellow-citizens, were to be hazarded. After deliberation and consultation with each other and their friends, both of these patriots yielded all personal considerations to the higher obligations of humanity and official duty. They braved the fury of the moment and interposed their learning, talents and well earned influence to that torrent of passion which for a time threatened to bear down the landmarks of justice.

In the midst of an excitement unparalleled in the history of our country and in a community where they

were regarded with abhorrence that they were only saved from summary punishment by the judicious efforts of the friends of law and order, the soldiers had a fair trial, the result of which has stood the test of time and the examination of impartial history.

The result of the trial gained for the friends of freedom the respect of the world and no single occurrence did more to advance the cause of truth and just principles than what was dominated in the language of that day the Boston Massacre. It caused the immediate withdrawal of the troops from the town of Boston and the people, feeling that something had been gained, received new confidence in the determination to resist the encroachments of arbitrary power and mistaken policy. It was determined by the town to celebrate the anniversary of the fifth of March, to the end that there might be an annual development of the "fatal effects of the policy of standing armies and the natural tendency of quartering regular troops in populous cities in times of peace." On the day of the first celebration the bells of the town of Boston were tolled from twelve to one o'clock, at noon, and from nine to ten in the evening and during this, figures to represent the murder of the inhabitants were exhibited from a window of a distinguished citizen of the town. On the recurrence of this anniversary until after the independence of the country was firmly established, the day was always observed in a solemn and striking manner. An oration was delivered by public request, when the orators took occasion to illustrate and enforce the great principles of civil and religious liberty, and the people of Boston were thus prepared for those acts of spirited and determined resistance to the encroachments of the Crown which placed them

in the foremost rank of the patriots of that day and covered the names of some of their number with imperishable fame.\*

That curious ancient privilege, viz. : benefit of clergy, of which the two soldiers (*Killroy* and *Montgomery*) convicted of manslaughter, had the advantage (p. 508) originated in a pious regard for the church by which the clergy of Catholic countries were either partially or wholly exempted from the jurisdiction of the ordinary legal tribunals. It extended in England only to the case of felony; and though it was intended to apply simply to clerical persons or clerks, yet as being able to read was, by the laws of England, considered as sufficient evidence of the clerical character, when the rudiments of learning came to be diffused, almost every man in the community became entitled to this privilege; a person entitled to the benefit of clergy was formerly handed over to the ecclesiastical tribunals for trial. But this giving rise to great abuses the secular judges ordered those who were entitled to the benefit of clergy to be detained in prison until they should be pardoned by the king. By a statute passed in the reign of Queen Elizabeth, persons convicted of felony and entitled to the benefit of clergy were to be discharged from prison, being first branded in the thumb; if laymen it was discretionary with the judge to detain them in prison, not exceeding one year. At the time of the trial of the British soldiers, manslaughter was within the benefit of clergy and the punishment was for the offender to be burnt in the hand and forfeit all his goods and chattels. It was abolished in England in the reign of George IV.

\* Chandler's American Criminal Trials.

The Leisler rebellion in New York (*Jacob Leisler*, p. 512) was the outgrowth of the anti-Catholic wave that swept over England and her colonies during the reign of James II, and Leisler's imagination greatly magnified the danger of a general religious war. He was no traitor to William of Orange; his effort was to hold the government for the Protestant cause. But he possessed none of the qualities of a leader—a simple New York merchant, his education did not fit him for the trying emergencies in which he was placed. He was wrong in seizing the government and this act made him many enemies, but his intentions were good, and his execution after the danger was passed was a judicial mistake. He perished a victim to party malignity. The first to raise the standard of William and Mary he was the first to suffer as a traitor. In later years his estate was restored to his family and an act of Parliament reversed his attainder. His violence and incompetency were forgotten in sympathy for the injustice of his death, and his friends became a successful party and one of his principal enemies was himself condemned as a rebel and a traitor.

The trial of *Nicholas Bayard* (p. 518) for High Treason in 1702, appropriately follows Jacob Leisler's case in 1691. They explain each other and are both singularly illustrative of the condition of the Province at the periods when they occurred, distracted as it was by two rival factions who carried their dissensions to an excess which has no parallel in this country. The account is derived from standard historical works and from a full report of the trial which appears to have been prepared by Bayard himself or some of his friends and which is contained in the fourteenth volume of Howell's State Trials. There

is no reason to doubt the general accuracy of that report although some of the statements in it should be received with much allowance. The trial as reported gives evidence of great learning, research and skill on the part of the prisoner's counsel, but some of the discussions which relate to mere questions of abstract law are here omitted.<sup>5</sup>

Judge Gerard, American Ambassador at Berlin from 1913 to 1917, is quoted as saying that it will be hard to find a punishment to fit the case of the kaiser and his pals who have been convicted in the Court of the World of the greatest crime in history. Perhaps the ancient sentence for High Treason which was passed upon Colonel Bayard (p. 539) might well be revived for their benefit, until something better is thought of.

For what small gain a man will commit murder, the trial of *Orrin DeWolf* (p. 540) shows. His victim was of even less value to society than he; and for this reason the Governor's Council thought he was not worth hanging. The case is reported here, not for its importance as a contribution to criminology, but to preserve the charge (which would otherwise be lost) of Massachusetts' great Chief Justice, Lemuel Shaw.

The case of the black coachman, *Alexander Whistelo* (p. 567) is a companion one to that of *Maurice v. Judd* where the grave question submitted to the same court was Is a whale a fish? See 3 Am. St. Tr. A more amusing trial is not to be found in the Judicial reports and again we meet our old friend Counselor Sampson<sup>6</sup> of New York, and with him again that great expert and fountain of knowledge, Dr. Mitchill.<sup>7</sup> The

<sup>5</sup> 2 Chandler's American Trials.

<sup>6</sup> 3 Am. St. Tr., 627.

<sup>7</sup> *Id.*, 613.

learned gentleman who had then contended that a whale under no circumstances was entitled to be called a fish was now no more successful in his view that a negro might be the father of a white child.

In passing the death sentence on *Robert McConaghy* (p. 601) the judge told him that for barbarity, treachery and depravity, his cruelty and wickedness had not been surpassed by the pirates of the West Indies or the savages of the wilderness. For on a summer day on a little farm, in Pennsylvania, he had murdered the whole Brown family, except the husband who was at the time away from home. George, aged 16, and David, aged 10, he had choked to death in the woods. Jacob of 14 years he had shot in the back; little Elizabeth, the only daughter, he had strangled, and then the mother's throat he had cut while she lay in bed and the eldest son John he had shot. The case finds no parallel in our criminal records. The pirates of the West Indies have long ago disappeared from the high seas, and the savages of the wilderness are no more. Only in the reports of the Bryce Commission on the Belgian invasion and in the report of the French government on the German atrocities in northern France, can one read of more awful crimes in scores of hamlets and country-sides in these devastated lands by a people who claim to be civilized and "cultured."

How many of our best citizens are every year paying tribute to adventurers like *W. J. Cook* (p. 624) and *Mrs. Hirsch* (p. 655) it would be difficult to say. The innocent victim, in nine cases out of ten, submits to blackmail rather than endure the publicity of the yellow press and the condition of mind of the ordinary American juror who will take any woman's word as against a man's. And our state legislatures who seem

to be sublimely ignorant of what the great dramatist has written of the comparative value of one's purse and good name, treat a blackmailer as a person to be dealt with most tenderly—witness the mild sentences given to Cook and Mrs. Hirsch. And our national legislature has made it still easier for this class of blackmailers by enacting a law under which, as construed by our highest Court, a notorious prostitute who induces a boy of 17 to pay her fare on a steamboat or railroad or street car, may, if the youth refuses to accede to her demands, actually pose in the courts as a White Slave and have him sent to the penitentiary for a longer term than the average sentence of a burglar, a foot-pad or an assassin.

The six Spanish pirates who were hanged in the city of Boston (*Pedro Gibert and others*, p. 699) had stopped on the high seas an American merchant vessel and had appropriated all the specie they found there. But the merchantman returned safely to its home port and no man or woman or child lost his life. What a trifling offense was this compared to the crimes of German pirates who have in the past four years sent to the bottom of the sea hundreds of peaceful vessels and murdered thousands of innocent sailors, passengers, women and little children. Tried for their lives by the admiralty law Gibert and his associates had no defense; and when after the war the German pirates are tried by the rules of International law what defense will they be able to set up? International law is simply the unwritten and written law of the nations. It is the sum of those usages which civilized people have decided to be binding on them in their intercourse one with another; and it has its rules for times of war as well as for times of peace. Just as the common law in England and America is

to be found in the customs of their people, in the writings of their jurists and in the decisions of their courts, so the unwritten International law is to be found in the customs of nations, in the works of International writers from Grotius down and in the decisions of civil, criminal and prize courts. And just as these principles have in the case of private law been written in statutes, so in the case of International law have they been embodied in treaties and in the declarations of International Congresses. Both private and international law justify the taking of human life in certain cases, but the submarine pirate will find no law to cover his murder of non-combatants. He will have but the plea that he was following the orders of a superman named the kaiser who is bound by no law human or divine and whose authority and will no living creature may deny or oppose. But will mankind bow to this?

As Dr. Wharton has put it, the conviction of *Dr. Cooper* (p. 774) after those that had gone before under the unpopular Sedition Law only added fresh pungency to invectives already pungent. Cooper shook his chains in the President's face and dared him to pardon him; and Lyon danced about his dungeon in agony, lest in a fit of clemency Mr. Adams should secure the presidential vote of Vermont. Under the Sedition Law the "seditious" became still more scurrilous; and the result was that the government found itself impudently bullied by those it attempted to chastise. It was reserved for later times to demonstrate that after all a press the most unfettered is a press the most restrained.

In a recent work of great interest to the lawyer\*

\* *Decisive Battles of the Law*, by Frederick Trevor Hill, New York and London, Harper Bros., publishers. 1907.



there is a striking picture of the personages—lawyers and judges—who clashed so strongly in the celebrated trial of *James Thompson Callender* (p. 813).

It was a picturesque gathering of Virginians that awaited the opening of the United States Circuit Court on that summer morning, for the ugly fashions of the French Revolution had not as yet found much favor in the Old Dominion, and knee-breeches, low shoes, buckles, buttons and queues tied with ribbons, were still in vogue. And yet it was not their dress but their faces and bearing which particularly distinguished these gentlemen as they stood talking with another under the wide-spreading trees at the edge of the public square. Many of them were clothed like English farmers, but they wore their dusty garments with an unmistakable air of distinction, and their clean-shaven, clear-cut features bespoke dignity and intelligence. The center of one group was especially noticeable, his strong and somewhat stern face indicating character in every line and the ease with which he held his auditors singled him out as a master of men. This was John Marshall, diplomat and jurist and soon to become the official chief of the hated Judge whose official program was summoning all the country-side. In another group near Marshall stood a handsome, neatly-dressed man about thirty years of age, tall, well formed and graceful, with a hearty laugh and a confident manner that seemed to fascinate those about him, particularly one keen, boyish-looking listener who hung upon his every word, for William Wirt was already the beau-ideal of the junior bar, and Philip Nicholas had reason to felicitate himself on being associated with such a rising young advocate. In this same group stood George Hay, soon to become one of the best known lawyers in the country, and beside him stood the distinguished leader of the Virginia bar, Edmund Randolph.

All these men were to meet again under very different conditions to conduct one of the most famous trials in American history,<sup>9</sup> but for the time being all professional and political differences were merged in their loyalty to the Virginia bar whose dignity and influence bade fair to be seriously affected in the trial of James Thompson Callender for seditious libel against the President of the United States.

That this was the first law passed by the national legislature against the freedom of the press and that its enforcement in Virginia threatened to provoke a conflict between the state and the Federal authorities, possibly involving the stability of the union, was quite sufficient to arouse unprecedented interest in Callender's case, for these facts indicated a cause of vital importance which bade fair to result in the first State trial upon record in the Common-

<sup>9</sup> Impeachment of Judge Samuel Chase, 11 Am. St. Trials.

wealth. Nevertheless, it was not these momentous issues that attracted the majority of the legal profession, but rather the personality of the judge who proposed to try the case, for His Honor was probably the most violent, the most feared and the best-hated partisan who ever sat upon the Federal bench.

Then follows this account of Judge Samuel Chase:

It was not in his judicial capacity alone that Samuel Chase had earned his reputation. In the stirring days preceding the Revolution he had been one of the "Sons of Liberty" who had attacked the public offices of Baltimore during the Stamp Act and later he and his band had actually compelled a group of old malcontents, including his own father, to take the oath of allegiance to the Continental Congress. Nor were these the only manifestations of such playfulness credited to his account, for when certain Pennsylvania Quakers had refused to illuminate their houses in honor of a Revolutionary success, he had swooped upon the offending citizens with his followers, bundled them into carts and deported them in the depth of winter to Virginia, where they were unceremoniously deposited and left to shift for themselves.

All this youthful boisterousness, however, would probably have been attributed to exuberant vitality and misdirected zeal had not his conduct as a member of the Maryland Colonial Legislature and the Continental Congress been almost equally turbulent and provocative of riot. The man was, however, an incorrigible bully, with a genius for offense and when at the close of the war he found himself a member of the Maryland House of Delegates, he straightway became involved in political broils which resulted in an attempt at his impeachment. But here his fighting qualities stood him in good stead, for he not only fought his enemies to a standstill, but he had himself rewarded, first with the Chief-Justiceship of the Criminal Court of Baltimore, and then with the Chief-Justiceship of the General Court, both of which offices he tenaciously held and administered in flagrant defiance of the law until his action was officially declared unconstitutional. Nevertheless, his name was writ large in the Declaration of Independence, his personal honesty, courage and patriotism were unquestioned, and although he had at first opposed the Constitution he had become in course of time the most ardent of Federal enthusiasts.

Such was the man whom Washington had appointed to the Federal bench in 1796 and there was to be nothing in his conduct of that office to belie his previous record. Domineering, fearless, vain, confident and honest, he had many of the qualities necessary to establish the authority of the new court, but no one did more than he to make his tribunal obnoxious to the bar. With a good classical

education and considerable experience and ability as a lawyer he had the majority of the attorneys who practiced before him at a distinct advantage, and those whom he could not unhorse with legal learning he cowed and silenced with jocular or brutal tyranny, as best suited his humor. But perhaps his gravest offense was political activity with which he never allowed his judicial duties to interfere, and he had not been long upon the circuit before angry outcries were raised against his aggressive Federal partisanship. Opposition of this character, however, merely excited his belligerency, and he never made the slightest effort to conceal his political opinions, either on or off the bench. Indeed, when the Sedition Act became a law, he had openly rejoiced at the opportunity it afforded for silencing critics of the administration and his actions were soon to speak louder than words. During the trial of Fries,<sup>10</sup> his arbitrary rulings practically forced the prisoner's counsel to retire from the case in disgust, and when Thomas Cooper, member of the Pennsylvania bar, convicted of libeling the President, was arraigned for sentence, he announced in open court that if he could discover that the Democratic party was behind the prisoner, he would inflict the severest penalties known to the law.<sup>11</sup>

Then we have a description of the people and the bar assembling at the old court house to hear and take part in the trial.

The threatened clash between the bench and bar was of course particularly interesting to lawyers, but there were many laymen among those gathered before the courthouse on the morning of the trial, for the country was thoroughly aroused over the attempt to enforce the Sedition Law within a state whose legislature had officially condemned it, and the conflict between the Federal and State authorities was far more important to the average Virginian than the settlement of any professional differences. Not all the horsemen who came trailing across the Common were present from choice, however, for the marshal had invaded the most distant plantations in his search for jurors and some of the victims had ridden ten, fifteen and even twenty miles in obedience to his summons, spreading the news of the impending event through the outlying districts, until the rapidly gathering crowd promised to surpass that of any previous court day in Richmond. Nevertheless, no one of the waiting throng seemed to be in any haste to move in-doors, and jurors, witnesses, spectators and lawyers remained clustered about the entrance or scattered along the edge of the Common discussing

<sup>10</sup> See 11 Am. St. Tr.

<sup>11</sup> *Post*, p. 774.

the case until nearly ten o'clock, when they slowly moved towards the scene of action, and a few minutes later filled the courtroom to overflowing.

At a table beside the judicial desk sat William Marshall, clerk of the court and brother of the future Chief-Justice, and near him stood Mr. Nelson, the District Attorney, with David Robertson the shorthand reporter, whose notes were to prove an invaluable exhibit in the subsequent impeachment of the judge. The attention of the audience, however, was mainly directed to the prisoner, his bondsman, Meriwether Jones and his counsel, Messrs. Hay, Wirt and Nicholas, a formidable array for any hostile judge, and a trio with whom the bar of Richmond were well content to trust their dignity and honor. Indeed, these champions had already given Chase a taste of their quality by virtually forcing him to grant adjournments on two previous occasions, and it was whispered that they intended to manoeuvre him out of the case altogether by continuing their dilatory tactics until the term expired. In fact the word passed from lip to lip across the crowded chamber that the judge had walked into a very neat trap at the last hearing by granting an adjournment to procure the attendance of a certain witness named Giles. This, it was claimed, was a fatal concession, for if the non-appearance of this witness justified a postponement on Monday, it equally demanded it on Tuesday, for he was still missing, and the case could not, therefore, be tried until he was produced, which would be the day after never. The audience chuckled approvingly as this story went the rounds, gleefully anticipating the discomfiture of the judge, and the general opinion was that, for once, at least, Chase had met his match—a result particularly agreeable to local pride. Judicial tyrants might bully and awe the Pennsylvania or Maryland bar, but the profession in Virginia knew a trick or two which would—

Now enter the judges;

The chatter and laughter suddenly ceased as the door opened, disclosing the not too heroic figure of the District Judge, Cyrus Griffin, a rather futile, colorless and timid personage who appeared to be propelled into the room by a burly, bustling, red-faced man who strode rapidly to the bench, nodding an ungracious salutation at the assemblage, while the court crier bellowed his familiar announcement. The individual whose arrival had had the effect of a school-master entering a noisy classroom, was a man of about sixty years of age, huge of bulk, coarse of feature, masterful in manner. On his massive head sat an ill-made wig and his garments were those of the ordinary citizen with no particular regard for appearances, but there was no mistaking his authoritative bearing as he loomed up behind the judicial desk and glowered at the silent audience. To

most of those who returned his scrutiny he was an entire stranger, for until the present term of the court he had never set foot in Richmond, and doubtless many of the spectators were prepared to find him a fiend in human shape. But though his expression was somewhat forbidding, his large, strong, clean-shaven face was not uncomely, and his giant frame suggested strength rather than brutality. Nevertheless his small, snappy, shifty eyes had a dangerous glint and there were ominous lines about the corners of his mouth, betraying possibilities of an ugly droop and other indications of a quarrelsome disposition were not wanting. The whole aspect of the man, however, suggested energy and determination rather than intellectual power, and contrasted with the group of lawyers who faced him, he appeared at a disadvantage. But the moment the proceedings opened this impression faded and as he leaned over the desk and listened to Mr. Hay's long and not too ingenious plea for an adjournment, his gaze was so uncomfortably intelligent that the speaker, obviously embarrassed, made poor work of his argument.

The trial of Judge Samuel Chase before the Senate of the United States—the first impeachment case reported in this series—for his unfair and partisan rulings and conduct, in the Callender and other trials, will be found in Vol. XI American State Trials.

**THE TRIAL OF LEO M. FRANK FOR THE MUR-  
DER OF MARY PHAGAN, ATLANTA,  
GEORGIA, 1913.**

**THE NARRATIVE.**

Saturday, April 26, 1913, was Memorial Day, a holiday, and there was no work going on in the National Pencil Company's factory at Atlanta. But Leo M. Frank, the superintendent, was in his office when, a little after noon, Mary Phagan, a white girl, fourteen years old, whose duty was to attach metal tips to pencils, and who had not been at work for a week, as the supply of metal had run out, called to get some pay which was due her. There was no one else in the building except two workmen on the top floor. Frank stated that he handed her an envelope containing \$1.20; that she asked if the metal had come and that he replied, "no"; that she left his office, and that he heard her footsteps as she went away. There was no evidence that she was ever seen alive by anyone after that.

Early next morning (Sunday) Newt Lee, the negro night-watchman, found in the basement the body of Mary Phagan, strangled to death by a cord. There was a cloth tied around her head which was torn from her underskirt. There were no external signs of rape. The body was not mutilated, but there were wounds on the head and elbow and below the knee. Newt Lee was arrested, but denied all knowledge of the crime; so did Frank, who expressed a strong desire to find the murderer, and placed everything he could in the hands of the detectives to aid their search. But on April 29, 1913, Frank was arrested, and on May 24 he was indicted for the murder of the little girl.

On the trial, Newt Lee<sup>1</sup> testified that Frank had told him to be back at the factory at four o'clock Saturday afternoon,

<sup>1</sup> *Post*, p. 190.

and when he came upstairs to report, Frank, rubbing his hands, met him and told him to go out and have a good time until six o'clock. When Lee returned Frank changed the slip in the time clock, manifesting nervousness and taking a longer time than usual. When Frank went out of the front door of the factory that afternoon, he met a man named Gantt whom he had discharged a short time before. Frank looked frightened. Gantt declared he wished to go upstairs and get some shoes he had left there which permission Frank finally granted, stating that he thought they had been swept out. About an hour after this occurrence Frank called up Lee over the telephone from his home, a thing he had never done before and asked him if everything was all right at the factory. Lee found the double inner doors locked which he had never found that way before. Subsequently when Lee was arrested and Frank was requested by the detectives to go in and talk to him and find out what he knew, Lee testified that Frank dropped his head and stated "If you keep that up we will both go to hell." On Sunday morning the police officers telephoned to Frank that the girl's body had been discovered and that they were coming to take him to the undertaker's where it was. When they came he was very nervous and trembled, and at the undertaker's showed a disinclination to look at the body and did not go into the room where it lay, but turned away at the door.<sup>2</sup> Another female employed at the factory swore that at the time when, the State contended, Mary Phagan and Frank were in the metal room she was in Frank's office and he was absent, although he had declared he had not left the office at all during that time.<sup>3</sup>

One witness swore that on Monday morning he found six or seven strands of hair in the lathe which he worked, and which were not there on Friday.<sup>4</sup> Several witnesses testified that the hair was like that of Mary Phagan, although Dr. Harris, comparing Mary Phagan's hair with that on the

<sup>2</sup> W. W. Rogers, *post*, p. 192.

<sup>3</sup> Monteen Stover, *post*, p. 197.

<sup>4</sup> R. P. Barrett, *post*, p. 197.

lathe under a microscope, gave his opinion that it was not her hair.<sup>5</sup> Other witnesses said they thought they saw blood on the floor near the dressing room, at which place Conley said he dragged the body, and that it was not there on Friday.<sup>6</sup> Other witnesses who examined the floor said the spots looked like blood stains, but they were not sure,<sup>7</sup> and there was testimony that there were frequent injuries at the factory, and blood was not infrequent. A part of what they thought to be blood was chipped from the floor and Dr. Claude Smith testified that on one of the chips, he found under a microscope, from three to five blood corpuscles, but he could not say that it was human blood.<sup>8</sup>

Near the body in the basement there were found two notes in a negro's handwriting, one written on brown paper and the other on a leaf of scratch pad. That written on white paper contained these words: "He said he would love me, laid down play like the night-witch, did it, but that long tall black negro did boy hisself." On the brown paper, which was the carbon sheet of an order blank, was written the following: "Mam that negro fire down here did this when i went to make water and he push me down a hole a long tall black negro did (had) it. i right while play with me."<sup>9</sup>

But the startling evidence, and that upon which the conviction of Frank was based was that given by a dissolute and good-for-nothing negro, Jim Conley, a man 27 years of age, and one who had frequently been in the chain-gang. Conley had worked at the factory for about two years, and in the basement about two months, and had run the elevator, also. The detectives learned, about the middle of May, that Conley could write, although at first he denied it. He made, before the trial, one statement and three affidavits about his connection with the matter.

<sup>5</sup> This opinion seems to have been given later on a motion for a new trial.

<sup>6</sup> R. P. Barrett, *ante*.

<sup>7</sup> J. N. Starnes, *post*, p. 192; J. L. Beavers, *post*, p. 199.

<sup>8</sup> *Post*, p. 200.

<sup>9</sup> *Post*, p. 244.



On the trial Conley testified that he was asked by Frank to come to the factory on Saturday and watch for him as he had previously done, which he explained meant that Frank expected to meet some woman and when Frank stamped his foot Conley was to lock the door leading into the factory, and when he whistled he was to open it. He said he occupied a dark place at the side of the elevator behind some boxes, where he would be invisible. He swore he saw several people, including male and female employees, go up the steps to the second floor where Frank's office was located; that Mary Phagan went up, that he heard in a few minutes footsteps going back to the metal room; that he heard a scream and then he dozed off. In a few minutes Frank stamped and he locked the door, and then Frank whistled, when he unlocked the door and went up the steps. Frank was shivering and trembling and told Conley, "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. Of course you know I ain't built like other men." Conley said that he found Mary Phagan in the metal room, some 200 feet from the office, with a cloth tied about her neck and under the head, as though to catch blood, although there was no blood at the place. Frank told him to get a piece of cloth and put the body in it, and Conley got a piece of striped bed-tick and tied the body in it and called on Frank for assistance in carrying it. Frank went to his office and got a key and unlocked the switchboard in order to operate the elevator to the basement, where Conley rolled the body off the cloth. They went back into Frank's private office and just at that time Frank said: "My God, here is Emma Clark and Corintha Hall," and Frank then put Conley into the wardrobe. After they left, Frank let Conley out and asked Conley if he could write, to which Conley said "yes". Frank then dictated the letters just referred to and then took out of his desk a roll of greenbacks and said, "Here is \$200," but after a while requested the money back and got it.<sup>10</sup>

<sup>10</sup> *Post*, p. 202.

Frank denied the truth of Conley's story *in toto* and said that Mary Phagan came into his office about noon, that he gave her the envelope and that she left him and he had never seen her since. He introduced nearly one hundred witnesses as to his good character, including citizens of Atlanta, college mates at Cornell, and professors of that college.

And the defense produced the statement and affidavits Conley had made before the trial to the officers of the law.<sup>11</sup> In the first, on May 13, he gave a minute detail of his actions on the 26th of April; the saloons he visited and the whiskey and beer he bought, and itemized the denomination of the money he had and what he spent for beer, whiskey and sausage. He said nothing about Frank or Mary Phagan. On May 24 he made an affidavit in which he said that on Friday before the Saturday on which the murder was committed Frank asked him if he could write, and he dictated to him practically the contents of one of the notes found by the body of Mary Phagan. Frank then took a brown scratch pad and wrote on that himself and then gave him a box of cigarettes in which was some money, and Frank said to him that he had some wealthy relatives in Brooklyn and "Why should I hang?" On May 28, 1913, Conley made for the detectives another affidavit in which he stated that on Saturday morning, after leaving home, he bought two beers for himself, and then went to a saloon and won 90 cents with dice; that he bought two more beers and a half pint of whiskey, some of which he drank; that he met Frank in the street and they went over to the factory and he told him to sit down on the step until he whistled. Conley mentioned various people whom he saw from his place of espionage going up the stairs to Mr. Frank's office. Then Frank whistled to him and he came up the stairs and Frank was trembling, and he and Frank went into the private office when Frank exclaimed that Miss Emma Clark and Corinthia Hall were coming, and concealed Conley in the wardrobe. Conley said that he stayed in the wardrobe a pretty good while, for the whiskey and the

<sup>11</sup> *Post*, pp. 244-250.

beer had gotten him to sweating. Then Frank asked him if he could write and Frank made him write at his dictation three times, and Frank told him he was going to take the note and send it in a letter to his people and recommend Conley to them. Frank said, "Why should I hang?" Frank took a cigarette from a box and gave the box to Conley and when Conley got across the street he found it had two paper dollars and two silver quarters in it, and Conley said "Good luck has done struck me." At the beer saloon he bought one-half pint of whiskey and then got a bucket and bought fifteen cents' worth of beer, ten cents' worth of stove wood and a nickel's worth of pan sausage, and gave his old woman \$3.50. He did not leave home until about 12 o'clock Sunday. On Tuesday morning Frank came up stairs and told him to be a good boy. On Wednesday, Conley washed his shirt at the factory, and hung it on the steam pipe to dry. The detectives took the shirt and, finding no blood on it, returned it. On the 29th of May, 1913, Conley made another affidavit in which he said that Frank told him that he picked up a girl and let her fall and Conley hollowed to him that the girl was dead, and told him to go to the cotton bag and get a piece of cloth, and he got a wide piece of cloth and took her on his right shoulder, when she got too heavy for him and she slipped off. He called Frank to help, and Frank got a key to the elevator and the two carried the body down stairs and Frank told him to take the body back to the sawdust piles, and Conley picked the girl up and put her on his shoulder, while Frank went back up the ladder. Conley then took the cloth from around her and took her hat and slipper, which he had picked up upstairs where her body was lying, and brought them down and untied the cloth and brought them back and "threwed them on the trash pile" in front of the furnace.

When Frank was arrested and indicted for the murder there was intense excitement and feeling in Atlanta—lynching was feared, and the Governor of the state had the military in readiness to protect the prisoner if the jail was attacked. And during the trial the spectators again and

again manifested their resentment towards the prisoner; they applauded the State counsel more than once, and the crowd in the streets cheered the prosecuting attorneys as they entered and left the court house. And when the jury was ready to deliver the verdict, the judge requested that both the prisoner and his counsel should be absent from the court room when the verdict was rendered, in order to avoid any possible demonstration in the event of an acquittal.

The jury returned a verdict of guilty, which was received with cheers by the waiting crowd in the streets, who carried the prosecuting attorney, when he left the court house, to his office on their shoulders. The next day Frank was sentenced to be hanged. Then began a long fight in the courts, from the trial court to the Supreme Court of the State and finally to the Supreme Court of the United States. But every court he appealed to refused to disturb the verdict of the jury. So did the State Board of Pardons. The Governor, however, after a long and careful study of the evidence, came to the conclusion that there was a reasonable doubt of his guilt, and commuted his sentence to imprisonment for life.

After he was taken to prison he was attacked by a fellow-convict who stabbed him in the neck, the wound being almost fatal. He had barely recovered from this when, on the night of August 16, 1915, a number of men broke into the prison, overpowered the guards, and carried him in an automobile a distance of 125 miles to Marietta, where little Mary Phagan was buried, and there in the early morning hanged him to a tree.

#### THE TRIAL.<sup>12</sup>

*In the Superior Court of Fulton County, Atlanta, Georgia,  
July, 1913.*

HON. LEONARD S. ROAN,<sup>13</sup> Judge.

*July 28.*

*Leo M. Frank, having on May 24, 1913, been indicted by the grand jury of the County for the murder of Mary Pha-*

<sup>12</sup> *Bibliography.* \**"In the Supreme Court of Georgia, Fall Term, 1913. Leo M. Frank, Plaintiff in Error, vs. State of Georgia, De-*

gan, on April 26, 1913, and having been arraigned and pleaded not guilty the trial began today.

*Hugh M. Dorsey*,<sup>14</sup> Solicitor General; *Frank A. Hooper*,<sup>15</sup> and *E. A. Stephens*,<sup>16</sup> Assistant Solicitor, for the State.

*Reuben R. Arnold*,<sup>17</sup> *Luther Z. Rosser*<sup>18</sup> and *Herbert Haas*,<sup>19</sup> for the Prisoner.

defendant in Error. In Error from Fulton Superior Court at the July Term, 1913. Brief of the Evidence."

"Argument of Hugh M. Dorsey, Solicitor General, Atlanta Judicial Circuit, at the Trial of Leo M. Frank, Charged with the Murder of Mary Phagan. Published by N. Christophulos, 411 Third Street, Macon, Ga."

"The Trial of Leo Frank. Reuben R. Arnold's Address to the Court in His Behalf. Introduction by Alvin V. Sellers. Baxley, Ga., Classic Publishing Co. 1915."

The *Atlanta Constitution*, July 29, 1913, to August 27, 1913.

The *Atlanta Journal*, July 29, 1913, to August 27, 1913.

Hearst's *Atlanta American*, July 29, 1913, to August 27, 1913.

<sup>13</sup> ROAN, LEONARD STRICKLAND. (1849-1915.) Born Henry County, Ga. Admitted to the Bar, 1870; practiced law in Fairburn, Campbell County, Ga., until appointed Judge of the Superior Court of the Stone Mountain Circuit, 1900. Judge of the Court of Appeals of Georgia, 1913-15. He died February 23, 1915.

<sup>14</sup> DORSEY, HUGH MASON. Born Fayette County, Georgia, 1871; graduated University of Georgia, 1891; graduated in law University of Virginia, 1892; admitted to the Bar in Atlanta, where he practiced until 1910, when he was appointed Solicitor General of the Atlanta Circuit. He held this office until October, 1916, when he was elected Governor of Georgia, which office he now holds.

<sup>15</sup> HOOPER, FRANK ARTHUR. Born Floyd County, Georgia, 1866; graduated Mercer University, 1885; admitted to Bar, 1886; Solicitor General of the Southwestern Circuit, 1896-1908.

<sup>16</sup> See *post*, p. 628.

<sup>17</sup> ARNOLD, REUBEN ROSE. Born Atlanta, Ga., 1868; graduated High School, Atlanta, 1885; attended University of Georgia, 1885-1886; studied law in the office of his father, Reuben Arnold, a member of the Atlanta Bar, and was admitted to the Bar December, 1886. Has practiced law in Georgia and adjoining states from the date of his admission until the present time. Has never held any public office and has never been a candidate for any public office.

<sup>18</sup> ROSSEY, LUTHER ZEIGLER. Born Gordon County, Ga., 1859; graduated Emory College (Oxford), 1878; admitted to Bar (La Grange, Ga.), 1880; practiced law, Campbell County, until 1884, when he moved to Atlanta, and has practiced law in Atlanta since.

<sup>19</sup> HAAS, HERBERT JOSEPH. Born 1884; graduated Columbia University, 1903; Columbia Law School, 1905; practiced law in Atlanta since.

The following jurors were selected and sworn: F. E. Winburn (foreman), M. S. Woodward, D. Townsend, A. L. Wisbey, W. M. Jeffries, M. Johnning, J. T. Osborn, F. V. L. Smith, A. H. Henslee, W. F. Medcalf, C. J. Bosshardt, J. F. Higdon.

#### THE WITNESSES FOR THE STATE.

*Mrs. J. W. Coleman.* Am Mary Phagan's mother; last saw her alive the 26th April, 1913, at home. About 11:30 she ate some cabbage and bread. She left home at a quarter to 12 to go to the pencil factory for her pay. She would have been fourteen 1st of June, was fair complexioned, very pretty, extra large for her age. She had on a lavender dress, trimmed in lace, and a blue hat. She had dimples in her cheeks.

*Cross-examined.* George Epps was a friend of Mary's to a certain extent.

*Mr. Rosser.* Did you not tell a neighbor that she detested the Epps boy. (Question objected to and withdrawn.)

*George Epps.* Am fourteen years old; live around the corner from Mary Phagan's home; last time I saw her was Saturday morning coming to town on the English Avenue car; about 10 minutes to 12 she was going to the pencil factory to draw her money; left her about 7 minutes to 12, corner of Forsyth and Marietta streets; said she would meet me at the drug store to see the parade at 2; was there; she never showed up, so I went to the ball game.

*Cross-examined.* Knew the time because I looked at the clock just before I took the car; I can tell the time by the sun; Mary got on and off the car with me;

she went toward the Pencil Factory.

*Newt Lee.* Was night watchman at the pencil factory; on Friday, 25th April, Mr. Frank told me "Tomorrow is a holiday and I want you to come back at 4 o'clock, I want to get off a little earlier;" got to the factory on Saturday about 3 or 4 minutes before 4.

Mr. Frank came to the door, rubbing his hands and saying he was sorry I had come so early; told him I needed sleep, and was sorry, too. He said go out in town and have a good time, because I needed it; told him I could lie down in the packing room, but he said I needed a good time, to go down town and stay one hour and a half, and to be sure and be back at six o'clock; went out the door and stayed until about four minutes to six. When I came back the doors were unlocked just as I left them; Mr. Frank says, "What time is it?" I says, "It lacks two minutes of six." He says, "Don't punch yet, there is a few worked today and I want to change the slip." He took a long time to change it, he fumbled and was nervous. When Mr. Frank put the tape in I punched and went on down stairs. Mr. Gantt came from across the street from the beer saloon and says, "Newt, I got a pair of old shoes that I want to

get upstairs to have fixed." I says, "I ain't allowed to let anybody in here after six o'clock." Mr. Frank come busting out of the door and run into Gantt unexpected and he jumped back frightened. Gantt says, "I got a pair of old shoes upstairs, have you any objection to my getting them?" Frank says, "I don't think they are up there, I think I saw the boy sweep some up in the trash the other day." And he dropped his head down just so, then says, "Newt, go with him and stay with him and help him find them;" went up there with Mr. Gantt and found them in the shipping room. Mr. Frank phoned me that night about an hour after he left, sometime after seven o'clock. He says "How is everything?" and I says, "Everything is all right so far as I know, and he says, "Good-bye." That is the first time he ever phoned me on a Saturday night, or at all.

Made my rounds regularly every half hour Saturday night. About three next morning went down the basement and discovered the body there; found the body of the girl then. Got up the ladder and called up police station; carried the officers down where I found the body; tried to get Mr. Frank on the telephone when the officers came; saw Mr. Frank Sunday morning about 8; he looked down on the floor and never spoke to me.

On Tuesday night, April 29, I had a conversation at the station house with Mr. Frank. I said, Mr. Frank, it's mighty hard for me to be handcuffed here for something I don't know anything about. He said, "What's the difference, they have got me locked

up and a man guarding me." I said, Mr. Frank, do you believe I committed that crime, and he said, "No, Newt, I know you didn't, but I believe you know something about it." I said, Mr. Frank, I don't know a thing about it, no more than finding the body. He said, "We are not talking about that now, we will let that go. If you keep that up we will both go to hell," then the officers came in.

*Cross-examined.* Mr. Frank and Mr. Gantt had had a difficulty. Mr. Frank had told me, "Lee, I have discharged Mr. Gantt, I don't want him in here, keep him out of here." He didn't give me any different instructions on that Saturday, he didn't tell me not to go in the basement or in the metal department. When I was in the basement one of the policemen read the note that they found. They read these words, "The tall, black, slim negro did this, he will try to lay it on the night" and when they got to the word "night," I said, They must be trying to put it off on me. I didn't say, Boss, that's me.

*L. S. Dobbs.* Am a sergeant of police. On the morning of April 27th, about 3:25, a call came from the pencil factory that there was a murder there. The negro opened up the door and said there was a woman murdered in the basement. The girl was lying on her face; couldn't tell whether she was white or black, only by her golden colored hair. Her face was full of dirt and dust, and was swollen and black. The cord was around her neck; sunk into the flesh; she also had a piece of her underclothing around her

neck. The tongue was protruding. The scratch pad was also lying on the ground close to the body; found the notes under the sawdust, lying near the head. The body was that of Mary Phagan.

*Cross-examined.* Lee told us it was a white woman. We didn't know until the dust was removed from her face and we pulled up the clothes and looked at the skin. There was a pile of trash near the boiler. The hat was on the trash pile, so was the shoe. Everything was gone off of it, ribbons and all. It looked like she had been dragged by her feet on her face; thought she had been dragged in the basement, but couldn't be positive.

The blood was dry. The little trail where I thought showed the body was dragged went straight on down where the girl was found. The body was cold and stiff. Hands folded across the breast.

*J. N. Starnes.* Am a city officer; went to the pencil company's place between 5 and 6, April 27th. I called Mr. Frank on the telephone, and told him I wanted him to come to the pencil factory right away. He said he hadn't had any breakfast; he asked where the night watchman was; told him it was very necessary for him to come and if he would come I would send an automobile for him, and I asked Boots Rogers to go for him. Mr. Frank appeared to be nervous; he was in a trembling condition. I saw splotches that looked like blood about a foot and a half or two feet from the end of the dressing room; something had been thrown there and spread out and splattered;

looked as if something had been swept over it, some white substance; it looked like blood, but can't say that it was.

*W. W. Rogers.* Saturday night, April 26th, went to Mr. Frank's residence; Mr. Black was with me. Mrs. Frank opened the door. Mr. Frank stepped into the hall through the curtain. He was dressed for the street with the exception of his collar, tie, coat and hat. Mr. Frank asked Mr. Black if anything had happened at the factory, and then me if anything had happened at the factory. I didn't answer. Mr. Frank said, "Did the night watchman call up and report anything to you?" Mr. Black said, "Mr. Frank, you had better get your clothes on and let us go to the factory and see what has happened." Mr. Frank said that he thought he dreamt in the morning about 3 a. m. about hearing the telephone ring. Mr. Frank seemed to be extremely nervous. His questions were jumpy. He was rubbing his hands when he came through the curtains. He moved about briskly. He seemed to be excited. He asked questions in rapid succession. Mr. Frank and Mr. Black got on the rear seat and I took the front seat; one of us asked Mr. Frank if he knew a little girl by the name of Mary Phagan. Mr. Frank says: "Does she work at the factory?" I said, I think she does. Mr. Frank said, "I cannot tell whether or not she works there until I look on my pay roll book, I know very few of the girls that work there. I pay them off, but I very seldom go back in the factory." One of us suggested that we take Mr.



Frank by the undertaking establishment and let him see if he knew this young lady. Mr. Frank readily consented, so we got out and went in. The corpse was lying in a little kind of side room to the right of a large room. Didn't see Frank look at the corpse; don't remember that Mr. Frank ever followed me in this room. He may have stopped on the outside of the door, but my back was toward him; he could not have seen her face because it was lying over towards the wall. We asked Mr. Frank if he knew the girl, and he replied that he didn't know whether he did or not but that he could tell whether she worked at the factory by looking at his pay roll book. As we were leaving Mr. Frank's house, he asked Mrs. Frank to telephone Mr. Darley to come to the factory. From the undertaker's we went to the pencil factory; he opened the safe, took out his time book, ran his finger down until he came to the name Mary Phagan, and said, "Yes, Mary Phagan worked here, she was here yesterday to get her pay." He said, "I will tell you about the exact time she left there. My stenographer left about 12 o'clock, and a few minutes after she left the office boy left and Mary came in and got her money and left." He said she got \$1.20 and he asked whether anybody had found the envelope that the money was in. He then wanted to see where the girl was found. Mr. Frank went around by the elevator, where there was a switch box on the wall and Mr. Frank put the switch in. The box was not locked; the insurance company told him that he would have to leave it unlocked. In the base-

ment Mr. Frank made the remark that Mr. Darley had worked Newt Lee for sometime out at the Oakland plant and that if Lee knew anything about the murder that Darley would stand a better chance of getting it out of him than anybody else. After we came back from the basement, Mr. Frank says, "I had better put in a new slip, hadn't I, Darley?" Darley told him yes to put in a slip. Frank lifted out the slip and saw the slip was punched correctly. Mr. Frank then put in a new slip, closed the door, locked it and took his pencil and wrote on the slip that he had already taken out of the machine, "April 26, 1913." I looked at the slip that Mr. Frank took out, the first punch was 6:01, the second one was 6:32 or 6:33. He took the slip back in his office. I glanced all the way down and there was a punch for every number. The officers showed him where the body was found and he made the remark that it was too bad or something to that effect. When we left the factory, Newt Lee was under arrest; never considered Mr. Frank as being under arrest at that time.

*Cross-examined.* Never saw Mr. Frank until that morning. Mr. Frank readily consented to go to the undertaker's with us; at the undertaker's don't know that he didn't get a glance at the corpse, but no one but Mr. Gheesling and I at this moment stepped up and looked at the little girl's face. What Mr. Frank and Mr. Black saw behind my back, I can't say.

*Grace Hicks.* Knew Mary Phagan a year at the pencil factory; worked in the metal room. Mary's machine was right next

to the dressing room. In going to the office from the closets one would pass the dressing room and Mary's machine within two or three feet. Mr. Frank would pass through the metal department looking around every day.

*Cross-examined.* Standing at the time clock you can't see into Mr. Frank's private office. A person wouldn't see from Mr. Frank's office any one coming in or out of the building; worked at the factory five years. In that time Mr. Frank spoke to me three times. Never saw Mr. Frank speak to Mary Phagan or Mary Phagan speak to Mr. Frank. When Mr. Frank came through the metal department he never spoke to any of the girls; just went through and looked around.

*John R. Black.* Am a city policeman; went over to Frank's house with Boots Rogers. Mrs. Frank came to the door; stated that I would like to see Mr. Frank; Mr. Frank stepped out from behind a curtain. His voice was hoarse and trembling and nervous and excited; asked if something had happened at the pencil factory and if the night watchman had reported it; asked him if he knew Mary Phagan; told him she had been found dead in the basement of the pencil factory. He said he didn't know any girl by the name of Mary Phagan, that he knew very few of the employes; at the undertaker's Mr. Frank gave a casual glance at her and stepped aside; couldn't say whether he saw the face of the girl or not. He said as we left that he didn't know the girl but he believed he had paid her off on Saturday; thought he recognized her being at the factory on Saturday by

the dress that she wore but he could tell by going over to the factory and looking at his cash book. At the pencil factory he took the slip out, and said it had been punched correctly. Tuesday night Mr. Scott and myself suggested to Mr. Frank to talk to Newt Lee. Mr. Frank spoke well of the negro, said he had always found him trusty and honest. They went in a room and stayed from about 5 to 10 minutes alone. Mr. Frank stated that Newt still stuck to the story that he knew nothing about it. Mr. Frank stated that Mr. Gantt was there on Saturday evening and that he told Newt Lee to let him go and get the shoes but to watch him, as he knew the surroundings of the office. After this conversation Gantt was arrested. Frank made no objections to talking to Newt Lee. He was nervous on Monday. After his release he seemed very jovial.

*Cross-examined.* At the coroner's inquest Mr. Frank answered every question readily. At the pencil factory Mr. Frank went to the safe and unlocked it, got the book, ran his finger down until he came to the name of Mary Phagan, and says, "Yes, this little girl worked here and I paid her \$1.20 yesterday." We went all over the factory that day. Nobody saw that blood spot that morning; must have been thirty people there during that day. Mr. Starnes was there with me. He didn't call attention to any blood spots. Chief Lanford was there, and he didn't discover any blood spots; found a bloody shirt in the bottom of a clothes barrel at Newt Lee's on Tuesday morning.

*J. M. Gantt.* Was shipping clerk at National Pencil Com.

pany; was discharged April 7th by Mr. Frank for alleged shortage in pay roll; have known Mary Phagan when she was a little girl. One Saturday afternoon she came in the office to have her time corrected, and after I had gotten through Mr. Frank came in and said, "You seem to know Mary pretty well," I had not told him her name. On April 26th, about 6, saw Newt Lee sitting out in front of the factory, remembered I left a pair of shoes up there and asked Newt Lee about my getting them, and he said he couldn't let me up. Mr. Frank was coming down the stairway, when he saw me he kind of stepped back. I said Howdy, Mr. Frank, and he kind of jumped; told him I had a pair of shoes up there I would like to get and he said, "Do you want to go with me or will Newt Lee be all right? What kind of shoes were they?" I said, They were tan shoes, he said, "I think I saw a negro sweeping them up the other day." I said, Well, I have a pair of black ones there, too; he said "Newt, go ahead with him and stay with him until he gets his shoes." I went up there and found both pair where I had left them. Mr. Frank looked pale and nervous.

*Mrs. J. A. White.* Saw my husband at the pencil factory at 11:30; stayed there until about 10 minutes to 12. I left him there and came back about 12:30 and left again about 1 o'clock; at 11:30 saw Miss Hall, the stenographer, Mr. Frank and two men; asked Mr. Frank if I could see my husband. He said I could and sent word by Mrs. Emma Freeman; talked to him about 15 minutes and went on out; returned about 12:30; Mr.

Frank was in the outside office standing in front of the safe; asked him if Mr. White had gone back to work. He jumped like I surprised him and turned and said, "Yes;" went upstairs then to see Mr. White. When I came down Mr. Frank was sitting in the outside office writing at a table. As I was going on down the steps saw a negro sitting on a box close to the stairway on the first floor.

*Harry Scott.* Am Superintendent of the local Pinkerton Detective Agency; have worked on this case with John Black, city detective; was employed by Mr. Frank; saw Mr. Frank Monday afternoon, April 28th, at the factory. We went into Mr. Frank's private office. Mr. Frank said he had just come from police barracks and that Detective Black seemed to suspect him of the crime, and he then related to me his movements on Saturday, April 26th; that he arrived at the factory at 8 a. m., left between 9:30 and 10 with Mr. Darley for Montag Bros. for the mail; he returned at about 11 o'clock, and just before 12 o'clock Mrs. White came in and asked permission to go upstairs and see her husband; that Mary Phagan came into the factory at 12:10 p. m. to draw her pay; he paid her off in his inside office, and then she asked if the metal had come yet; replied he didn't know and that Mary Phagan then he thought reached the stairway, he heard voices; he could not distinguish whether they were men or girls talking, that about 12:50 he went up to the fourth floor and asked White and Denham when they would finish up their work and they replied they wouldn't finish up for

a couple of hours; Mrs. White was up there at the time and he informed her that he was going to lock up the factory, that she had better leave; Mrs. White preceded him down the stairway and went on out of the factory, but on the way out said she had seen a negro on the street floor of the building behind some boxes; that at 1:10 p. m. he left the factory for home; arrived at the factory again at 3 p. m., went to work on some financial work and at about 4 o'clock the night watchman reported for work, as per his instructions the previous day; that he allowed Newt Lee to go out and have a good time for a couple of hours and report again at 6 o'clock, which Newt did; that he left the factory at 6:04 p. m. and when he reached the street door found Lee talking to Gantt, an ex-bookkeeper who Frank had discharged for thieving; arrived home at about 6:25 p. m. and at 6:30 asked Lee over the telephone if Gantt had left the factory and if everything was all right, to which Lee replied "Yes;" that he went to bed around 9:30.

After that Mr. Frank and Mr. Darley accompanied me around the factory and showed me what the police had found. Mr. Frank seemed to be perfectly natural; saw no signs of nervousness. On Tuesday night, April 29th, Mr. Black told Mr. Frank that he believed Newt Lee was not telling all that he knew; we put them in a private room, they were together for about 10 minutes alone. When Mr. Black and I entered Lee hadn't finished his conversation with Frank and was saying, "Mr. Frank it is awful hard for me to remain hand-

cuffed to this chair," and Frank hung his head the entire time the negro was talking to him, and finally in about thirty seconds, he said, "Well, they have got me too." After that we asked Mr. Frank if he had gotten anything out of the negro and he said, "No, Lee still sticks to his original story," Mr. Frank was extremely nervous at that time. He was very squirmy in his chair, crossing one leg after the other and didn't know where to put his hands; he was moving them up and down his face, and he hung his head a great deal of the time while the negro was talking to him. He breathed very heavily and took deep swallows, and sighed and hesitated. That interview between Lee and Frank took place shortly after midnight, Wednesday, April 30th. On Monday afternoon, Frank said to me that the first punch on Newt Lee's slip was 6:33 p. m., and his last punch was 3 a. m. Sunday. He didn't say anything at that time about there being any error in Lee's punches. Mr. Black and I took Mr. Frank into custody about 11:30 a. m., Tuesday, April 29th. His hands were quivering very much, he was very pale. On Saturday, May 3rd, went to Frank's cell with Black and asked him if from the time he arrived at the factory from Montag Bros. up until 12:50 p. m., the time he went upstairs to the fourth floor, was he inside of his office the entire time, and he stated "Yes." Then asked him if he was inside his office every minute from 12 o'clock until 12:30 and he said "Yes."

*Cross-examined.* Am not sure whether I got a statement about Mary Phagan being familiar with

Gantt from Mr. Darley or Mr. Frank. Mr. Frank was present at the time. Mr. Frank told me when the little girl asked if the metal had come back that he said "I don't know." It may be true that I swore before the coroner that in answer to that question from Mary Phagan as to whether the metal had come yet that Frank said, "No," and it is possible that I so reported to you. If I said "No," I meant "I don't know."

*Miss Monteen Stover.* Worked at the National Pencil Company April 25th; was at the factory at 5 minutes after 12 on that day; left at 10 minutes after 12; went there to get my money; went in Mr. Frank's office; he was not there. I didn't see or hear anybody in the building. The door to the metal room was closed; had on tennis shoes, a yellow hat and a brown rain coat.

*Cross-examined.* Didn't notice the safe in Mr. Frank's office; walked right in and walked right out; am fourteen years old and I worked on the fourth floor; knew the paying-off time was 12 o'clock on Saturday and that is why I went there.

*R. P. Barrett.* Am a machinist for the National Pencil Company. On Monday morning between 6:30 and 7:00, April 28th, found some spots at the west end of the dressing room on the second floor of the factory. They were not there Friday. It was blood; looked like some white substance had been wiped over it. We kept potash and haskoline, both white substances, on this floor. I found some hair on the handle of a bench lathe; Mell Stanford saw

this hair; the hair was not there on Friday. There was a pan of haskoline about 8 feet from where the blood was found.

*Cross-examined.* Never searched for any blood spots before, until Miss Jefferson came in and said she understood Mary had been murdered in the metal department, then I started to search right away; could tell it was blood by looking at it; can tell the difference between blood and other substances; found the hair some few minutes afterward—about 6 or 8 strands of hair and pretty long.

*Mell Stanford.* Work at the National Pencil Company; swept the whole floor in the metal room on April 25th. On Monday after found a spot that had some white haskoline over it on second floor near dressing room. That wasn't there on Friday when I swept. I use a small broom in sweeping. The spot looked like it was blood, with dark spots scattered around; looked like the large broom had been used in putting the haskoline on the floor.

*Mrs. George W. Jefferson.* Worked at the National Pencil Company; saw blood on the second floor in front of the girls' dressing room on Monday; about as big as a fan, and something white over it; didn't see that blood there Friday; there are cords in the polishing room, used to tie pencils with.

*B. B. Haslett.* Went to Mr. Frank's house Monday morning after the murder about 7 and took him to the station house.

*E. F. Holloway.* Am day watchman at the National Pencil factory—worked there two years; was there April 26th from 6:30 a. m. till 11:45; look

after the elevator and freight that come in and out and people that come in and out. The elevator was locked Friday night when I left there; went off from there Saturday and forgot to lock it. Don't remember stating that I locked it Saturday; did say in an affidavit it is kept locked all the time. Left the factory at 11:45 on Saturday; about 9:30 Mr. Frank and Mr. Darley went over to Montag Bros.; have seen Gantt talking to Mary Phagan frequently.

*Cross-examined.* Never seen Mr. Frank speak to Mary Phagan.

*To Mr. Dorsey.* On May 12, 1913, I told you that the elevator was locked because I forgot to tell you I done some sawing; took the key out, left the elevator unlocked and took the key back and put it in the office.

*N. V. Darley.* Am manager of the Georgia Cedar Company, a branch of the National Pencil Company; was at the factory Saturday, April 26th; saw Mr. Frank. I was there Sunday morning at about 8:20; saw Mr. Frank; noticed his hands were trembling; observed that he seemed still nervous when he went to nail up the back door. He said that he had not had breakfast and didn't get any coffee and that they had rushed him by Bloomfields, carried him in a dark room and turned the light on and he saw the girl instantly and that was why he was nervous. Newt Lee seemed to be thoroughly composed. Heard him speak of the murder numerous times. When we started down the elevator Mr. Frank was nervous, shaking all over. I can't say positively as to whether

his whole body was shaking or not, but he was shaking.

Don't think a day passed at the factory that Mr. Frank did not get nervous. When anything went wrong he would wring his hands and I have seen him push his hands through his hair. When things went wrong it would upset him. If anything out of the ordinary happened I have seen him a thousand times, I suppose, rub his hands. Never saw Mr. Frank speak to Mary Phagan; don't know whether he knew her or not; didn't know we had a girl by that name in the factory until I found it out afterwards.

*W. F. Anderson.* Was at police headquarters April 26th; got a call from the night watchman at the pencil factory that a woman was dead at the factory; asked him if it was a white woman or a negro woman. He said it was a white woman; went there and Newt Lee came down from the second floor. I called up Mr. Frank on the telephone at 3:30 or 4 and got no answer.

*Cross-examined.* Newt Lee was asked the following questions and gave the following answers at the coroner's jury: "Q. Had you ever seen him change that before? A. Well, he put the tape in once before. Q. When was that? A. I don't know, sir, when it was, it was one night. Q. How long did it take him the first time you ever saw him put the tape on? A. I never paid any attention to him. Q. Well, about how long did it take him, five minutes? A. No, sir, it didn't take him that long. Q. Did it take him a minute? A. I couldn't tell exactly how long. Q. How long did it take the other night, on Saturday night? A. Well, it took him a pretty good

little bit, because he spoke about it. He said it's pretty hard, you know to get on."

*G. C. February.* Was present at Chief Lanford's office when Leo M. Frank and L. Z. Rosser were there; took down Mr. Frank's statement stenographically. This (see *post*, p. 242), is a correct report of what Mr. Frank said. It was made Monday, April 28th.

*Albert McKnight.* My wife is Minola McKnight. She cooks for Mrs. Selig. Between 1 and 2 Memorial Day was at the home of Mr. Frank to see my wife. He came in close to 1:30. He did not eat any dinner; went to the sideboard of the dining room, stayed there 10 or 15 minutes and then he goes out and catches a car.

*Cross-examined.* Mrs. Selig and Mrs. Frank were present when Mr. Frank came in. I was in the cook room. You can see from the kitchen into the dining room. You can look in the mirror in the corner and see all over the dining room. I looked in the mirror in the corner and saw him; was never in the dining room in my life. Minola went into the dining room, and stayed a minute or two; don't know whether the other folks ate dinner or not. Told about Mr. Frank not eating after I came back to Birmingham, I told it to Mr. Craven of the Beck & Gregg Company. It was before Minola went down to the jail. Mr. Starnes, Mr. Campbell, Mr. Morse, Mr. Martin and Mr. Dorsey all talked to me; didn't see Mrs. Frank or Mrs. Selig that Saturday through the mirror; couldn't tell who was in the dining room without looking in the mirror.

*Helen Ferguson.* Worked at the National Pencil Company, Friday, 25th; saw Mr. Frank Friday, April 25th, and asked for Mary Phagan's money. Mr. Frank said, "I can't let you have it;" had gotten Mary's money before, but I didn't get it from Mr. Frank.

*R. L. Waggoner.* Am a city detective; was in the automobile with Mr. Frank and Mr. Black and his leg was shaking; he was under arrest at the time.

*J. L. Beavers.* Am chief of police of Atlanta; was at the pencil factory on Tuesday, April 29th; saw what I took to be a splotch of blood on the floor near this dressing room on office floor; there was one spot and some others scattered around that.

*Cross-examined.* Don't know whether it was blood or not; it looked like it.

*R. M. Lassiter.* I am a city policeman; on April 27th found a parasol in the bottom of the elevator shaft; it was lying about the center of the shaft; also found a ball of rope twine, small wrapping twine, and also something that looked like a person's stool.

*Cross-examined.* Noticed evidence of dragging from the elevator in the basement; the umbrella was not crushed.

*L. O. Grice.* Was at the National Pencil Company's place on Sunday morning, April 27th; defendant here, attracted my attention, on account of his nervousness.

*Mell Stanford* (re-called). The door in the rear part of the factory on the second floor on Friday evening was barred; the area around the elevator shaft on

the first floor was cleaned up after the murder.

*W. H. Gheesling.* Am a funeral director and embalmer; moved the body of Mary Phagan at four o'clock, April 27th, in the morning; the cord was around the neck; the rag was around her hair and over her face; think she had been dead ten or fifteen hours, or longer; there were some dry blood splashes on her underclothes; the right leg of the drawers was split with a knife or torn right up the seam; her right eye looked like it was hit before death, it was very much swollen; I found a wound two and a quarter inches on the back of the head; it was made before death, because it bled a great deal; the hair was matted with blood, and very dry; the skull wasn't crushed; the scalp was broken; can't state whether the defendant ever looked at the body or not.

*Cross-examined.* Mr. Rogers and Mr. Black came with Mr. Frank and asked me to take him back to where the girl was. I took them back there, and pulled a light, pulled the sheet back, and moved the revolving table and walked out between them. Mr. Frank was near the right-hand going in. Mr. Black was at the left. I prepared the little girl properly for burial; there was no mutilation at all on the body; judged she died of strangulation because the rope was tight enough to choke her to death, and her tongue being an inch and a quarter out of the mouth, showed she died from strangulation.

*Dr. Claude Smith.* Am physician and City Bacteriologist and

Chemist; these chips the detectives brought to my office I examined; they had considerable dirt on them and some coloring stain; on one of them I found some blood corpuscles; do not know whether it was human blood; this shirt I examined and it showed blood stain; the blood on the chips was only four or five corpuscles.

*Dr. J. W. Hurt.* Am County Physician; saw the body of Mary Phagan on 27th of April; this cord was imbedded into the skin and in my opinion she died from strangulation; in my opinion the cord was put on before death; the wound on the back of the head seemed to have been made with a blunt-edged instrument, and the blow from down upward; the scalp wound was made before death; think the scratches on the face were made after death; examined the hymen; it was not intact; discovered no violence to the parts; the vagina was a little larger than the normal size of a girl of that age; it could have been produced by penetration immediately preceding death; she was not pregnant.

*Cross-examined.* The body looked as if it had been dragged through dirt and cinders; think she was dragged face downward. When I saw the body on April 27th I gave it as my opinion that she had been dead from 16 to 20 hours at 9 o'clock Sunday morning; have formed no opinion whether this little girl was raped or had ever had intercourse with anybody.

*Dr. H. F. Harris.* Am a practicing physician; made an examination of the body of Mary Phagan on May 5th; there was no actual break of the skull, the



blow was hard enough to have made the person unconscious, but not sufficient to have caused death; beyond question she came to her death from strangulation from this cord being wound around her neck. The bruise around the eye was caused by a soft instrument; the injury to the eye and scalp were caused before death; examined the contents of the stomach, finding 160 cubic centimeters of cabbage and biscuit, or wheaten bread; it had progressed very slightly towards digestion; impossible for one to say absolutely how long this cabbage had been in the stomach, but am confident she was either killed or received the blow on the back of the head within a half hour after she finished her meal; made an examination of the privates of Mary; found no spermatozoa. On the walls of the vagina there was evidences of violence; that injury had been made some little time before death; perhaps ten to fifteen minutes. It is my opinion that she lived from half to three-quarters of an hour after she ate her meal; that the child was strangled to death was indicated by the lividity, the blueness of the parts, the congestion of the tongue and mouth and the blueness of the hands and fingernails; the wound on the back of the head could not have been produced by this stick.

*Cross-examined.* It was impossible for any one to say absolutely how long the cabbage had been in the stomach of Mary Phagan before she met her death, not within a minute or five minutes, but I say it was somewhere between one-half an

hour and three-quarters; am certain it was somewhere between one-half an hour and three-quarters; am certain of that. The violence to the private parts might have been produced by the finger or by other means.

*C. B. Dalton.* Know Leo M. Frank, Daisy Hopkins, and Jim Conley; have been in the office of Frank two or three times; have been down in the basement; saw Conley there and the night watchman, and he was not Conley. There would be some ladies in Mr. Frank's office. Sometimes there would be two, and sometimes one. Maybe they didn't work in the mornings and they would be there in the evenings.

*Cross-examined.* Have been down there one time this year, one Saturday evening with Miss Daisy Hopkins. Every time I was in Mr. Frank's office was before Christmas. Miss Daisy Hopkins introduced me to him; saw Conley there one time this year and several times on Saturday evenings; Conley was sitting there at the front door; when I went down the ladder Miss Daisy went with me; we went back by the trash pile in the basement; gave Jim Conley a half dozen or more quarters; saw Mr. Frank in his office in the day time. Mr. Frank had Coca-Cola, lemon and lime and beer in the office; never saw the ladies in his office doing any writing; am the Dalton that went to the chain-gang for stealing in Walton County in 1894; stole a shop hammer. It has been 18 or 20 years since I have been in trouble.

*S. L. Rosser.* Am a city policeman. On Monday, April 28, went out to see Mrs. White; on

May 6th or 7th was the first time I knew Mrs. White claimed to have seen a negro at the factory on April 26th.

*James Conley.* Have been working for the pencil company for over two years. Friday evening about 3 Mr. Frank came to the 4th floor and said I was to come to the factory Saturday morning at 8:30; got to the factory about 8:30; Mr. Frank and I got to the door at the same time. I always stayed on the first floor and watched for Mr. Frank while he and a young lady would be upon the second floor chatting. He always told me that when the lady came he would stamp on the floor and I was to lock the door and when he whistled was to open it. He says, "What I want you to do is to watch for me today as you did other Saturdays," and I says, All right. Went out and came back about noon. Then Mr. Frank says, "Now, there will be a young lady up here after awhile, and me and her are going to chat a little; now, when the lady comes, I will stomp like I did before, that will be the lady, and you go and shut the door; when I whistle I will be through, so you can go and unlock the door and you come upstairs to my office then like you were going to borrow some money for me and that will give the young lady time to get out." I says, All right, I will do just as you say, and I did as he said. He says, "Now, whatever you do, don't let Mr. Darley see you." Then Mr. Frank went upstairs and he said, "Remember to keep your eyes open," and I says, All right, I will, Mr. Frank. The first person I saw come along

was a lady that worked on the fourth floor, don't know her name; the next person that came along was the negro drayman, he went upstairs. He was a peg-legged fellow, real dark; next I saw this negro and Mr. Holloway coming back down the steps. Mr. Darley came down and left, Mr. Holloway came down and left. This lady that worked on the fourth floor came down and left. The next person I saw coming there was Mr. Quinn; he went upstairs, stayed a little while and then came down; the next person that I saw was Miss Mary Perkins, that's what I call her, this lady that is dead; after she went upstairs I heard her footsteps going towards the office and after she went in the office, heard two people walking out of the office and going like they were coming down the steps, but they didn't come down the steps, they went back towards the metal department; after they went back there, heard the lady scream, then didn't hear no more, and the next person I saw coming in there was Miss Monteen Stover; she came back down the steps and left; heard somebody tiptoeing back towards the metal department; after that I kind of dozed off and went to sleep; next thing Mr. Frank was up over my head stamping and then I went and locked the door; next thing heard Mr. Frank whistling; went and unlocked the door just like he said, and went on up the steps. Mr. Frank was standing up at the top of the steps and shivering and trembling and rubbing his hands. He had a little rope in his hands; he asked me, "Did you see that little girl who passed here just

a while ago? she came into my office a while ago and I wanted to be with the little girl, and she refused me, and I struck her and I guess too hard and she fell and hit her head against something, and I don't know how bad she got hurt. Of course you know I ain't built like other men." Have seen him with women lying on the table in the factory room and in his office with women with their clothes up. He asked me to go back there and bring her up so that he could put her somewhere, and he said to hurry, that there would be money in it for me; came back there and found the lady lying flat on her back with a rope around her neck. The cloth was also tied around her neck and part of it was under her head like to catch blood; noticed the clock, it was four minutes to one; came back and told Mr. Frank the girl was dead and he said "Sh-Sh!" He told me to go back there by the cotton box, get a piece of cloth, put it around her and bring her up; saw her hat and a piece of ribbon laying down and her slippers and took them and put them all in the cloth; then I tried to carry her but she was heavy and I called to Mr. Frank to help me; he caught her by the feet and I laid hold of her by the shoulders. Then he got the key to the elevator and we took her to the basement where I left her; I opened the cloth and rolled her out on the floor. We both went up to his office; he looked out of the door and said, "My God, here is Emma Clarke and Corinthia Hall; come over here Jim;" he put me in the wardrobe and they came in there and I heard them go out, and

Mr. Frank came and said, "You are in a tight place, you done very well;" he takes a cigarette and a match and hands me the box of cigarettes and I lit one; then he said, "Can you write?" and I said, Yes, sir, a little bit, and he takes his pencil to fix up some notes; was willing to do anything to help Mr. Frank because he was a white man and my superintendent, and he sat down and I sat down at the table and Mr. Frank dictated the notes to me; then he pulled out a little roll of greenbacks, and said, "Here is \$200," I took the money. And after awhile Mr. Frank looked at me and said, "You go down there in the basement and you take a lot of trash and burn that package that's in front of the furnace," I told him all right. But I was afraid to go down there myself, and Mr. Frank wouldn't go down with me. He said, "There's no need of my going down there," and I said, Mr. Frank, you are a white man and you done it, and I am not going down there and burn that myself. He looked at me kind of frightened and said, "Let me see that money" and he took the money and put it back in his pocket, and said, "You keep your mouth shut, that is all right. Why should I hang? I have wealthy people in Brooklyn. I said, Mr. Frank what about me? and he said, "That's all right, don't worry, just come back to work Monday like you don't know anything, and keep your mouth shut, if you get caught I will get you out on bond and send you away. Can you come back this evening and do it?" I said, Yes, I was coming to get my money. He said,

"Well, I am going home to get dinner and you come back here in about forty minutes and I will fix the money." Went over to the beer saloon and took the cigarettes out of the box and there was some money there, two paper dollar bills and two silver quarters and I took a drink and laid across the bed and went to sleep; didn't get up until half-past 6 that night, that's the last I saw of Mr. Frank that Saturday; saw him next time on Tuesday on the fourth floor when I was sweeping. He said, "Now, remember, keep your mouth shut," and I said, All right, and he said, "If you'd come back on Saturday and done what I told you to do with it down there, there wouldn't have been no trouble." I was arrested on Thursday, May 1st, Mr. Frank told me just what to write on those notes there. That is the same pad he told me to write on. Met Mr. Frank Saturday morning, he had on his raincoat and his usual suit of clothes and an umbrella. Refused to write for the police the first time; told them I couldn't write.

*Cross-examined.* Am 27 years old; can't read and write good; can't read the newspapers good; can't get any sense out of them. There is some little letters like "dis" and "dat" that I can read; other things I don't understand; can spell "dog," and most simple little words like that; went to school about a year; can spell "day" but not "daylight;" can spell "beer" but not "whiskey;" can't figure except with my fingers; know the figures as far as twelve. Didn't know Newt Lee; heard them say there was a negro night watchman, but never

did know that he was a negro. The lady that was with Mr. Frank the time I watched for him last July was Miss Daisy Hopkins. Mr. Frank called me in his office. He said, "You go down there and see nobody don't come up and you will have a chance to make some money." The other lady had gone out to get that young man, Mr. Dalton. She came back after a while with Mr. Dalton. They went downstairs and stayed about an hour. Mr. Dalton gave me a quarter, and the ladies came down and left, and then Mr. Frank came down after they left. The next Saturday I watched was right near the same thing. After Mr. Holloway left, Miss Daisy Hopkins came on into the office, Mr. Frank came out of the office, popped his fingers and went back into the office; went down and stood by the door. He stayed there that time about half an hour and then the girl went out. He gave me half a dollar this time. The next time I watched for him and Mr. Dalton, too, somewhere the last part of August. The lady that came in that day was one who worked on the fourth floor; it was not Miss Daisy Hopkins. She went right to Mr. Frank's office, then I went and watched. She stayed about half an hour and come out. Next time I watched was Thanksgiving Day; met Mr. Frank that morning about 8. He said, "A lady will be here in a little while, me and her are going to chat, I don't want you to do no work, I just want you to watch." In about half an hour the lady came. I didn't know her, she didn't work at the factory. She was very tall, heavy built lady. After she came down, she said to Mr.

Frank, "Is that the nigger?" and Mr. Frank said, "Yes," and she said, "Well, does he talk much?" and he says, "No, he is the best nigger I have ever seen." Mr. Frank called me in the office and gave me \$1.25. Next time I watched was on a Saturday about the middle of January. A man and ladies came about half-past 2. They stayed there about 2 hours; didn't know either one of the ladies; can't describe what either one of them had on. The man was tall, slim built, a heavy man; have seen him at the factory talking to Holloway; he didn't work there; have been in prison three times since I have been with the pencil company. Seven or eight times within the last 4 or 5 years. Snowball and I drank beer together sometimes in the building. I never was drunk at the time Mr. Frank told me to watch for him. He talked to me before Snowball. There were eight niggers in all working in the factory. Snowball, the fireman and me did just plain manual labor, the rest of the negroes had better jobs. The time Mr. Frank told me about watching for him, he didn't know Snowball was in there. Snowball was standing right there by me. Miss Daisy Hopkins worked on the fourth floor in 1912. She was pretty, low, chunky kind of heavy weight. Looked to be about twenty-three. I was arrested on the 1st of May. Sent for Mr. Black to come down when I made my first statement on May 18. I denied I had been to the factory in that statement. Told Mr. Black on May 24, the time I made the second statement, that I helped tote the little girl; think I told them about

Mr. Frank getting me to watch for him, that he told me he struck a girl and for me to go back and get her; didn't give Mr. Frank clear away that time; kept some things back. I told the detectives about wanting me to watch for him when I got back to the factory; don't know why I didn't tell them that at the time I told them about moving the body. I told the officers I didn't see Mary Phagan go up at all; didn't tell them I heard any scream; told Mr. Starnes and Mr. Campbell. That was after I got out of jail. I said I heard the scream before I went to sleep, which I did; told Mr. Starnes and Mr. Campbell about somebody running back on tiptoes; don't know why I didn't tell it the day I told them I was going to tell the whole truth; didn't mean to keep back anything then. That day I told them everything I remembered. When I got to the top of the stairs, Mr. Frank had that cord in his hands; don't remember when I first told about that. If I didn't tell it that day when I said I was telling the whole truth, I just didn't remember it. The reason why I didn't tell Scott and Black before I wrote four notes instead of two, they didn't ask me how many I wrote. I wrote three notes on white and one on green paper. The reason I didn't tell Scott and Black about burning the body, because some one had done taken them off the case. Did not see a man named Mincey on the electric car that day; did not tell how I had just killed a girl and did not want to kill another. Saw Mary Phagan's pocketbook, or mesh bag, in Mr. Frank's office after he got back

from the basement. It was lying on his desk. He put it in the safe.

*Mrs. J. A. White* (recalled). I have seen this man before at police headquarters (indicating Conley) about a month after the murder. At that time did not identify him as being the man I saw sitting on the box. The man sitting on the box was about the same size as Jim Conley; couldn't state it was Jim Conley.

*C. W. Mangum*. Had a conversation with Mr. Frank at the jail about seeing Conley and confronting him; told him the men were there with Conley and wanted to talk with him if he wanted to see them. He said, "No, my attorney is not here and I have nobody to defend me."

*N. V. Darley* (recalled). It was very dark around the elevator on the first floor on April 26th; never saw Jim Conley that day; never saw Mr. Frank talk to him or speak to him or come into contact with him in any way that day; was at the factory every Saturday afternoon; found Mr. Frank in his office on every occasion except one; saw Conley on Monday. He looked to be excited and when I spoke to him he failed to look up as he usually does; went around the factory that morning and looked at everybody to see if I could pick out a man that looked suspicious, and Jim Conley was the man I thought looked most suspicious. Have made no contribution toward the fund to defend Frank. If a body had been shot down the chute, behind those boxes, it would have been hidden more than where it was found; don't know anything about Con-

ley being there Saturday afternoons and watching. He wasn't there by my instructions.

*E. F. Holloway* (recalled). Am the day watchman and time keeper; look after the register to see that everybody registers; it was not a habit of Conley to register or not as he pleased and to get his pay anyhow; never saw Mr. Frank goose, pinch or joke with Conley. He surely was a good hand at borrowing, but Mr. Frank would never let him have a nickel but what he owed him. Up till 12 months ago the sweepers stayed at the factory until about 2:30, but then they made a rule that any sweeping that wasn't done by noon on Saturday would have to go over until Monday and since that time no negroes have been there since 12 o'clock. We never had any negro night watchman in July, August, September, or any time last fall. We never had a negro night watchman until we hired Lee about three weeks before the murder. Was at the factory every Saturday since last June. Have never known Mr. Frank to have any woman on Saturdays excepting his wife. Mr. Schiff helped Mr. Frank on his books on Saturdays. Conley never did watch the door down stairs; never did see him giving signals to Mr. Frank and Frank giving him signals from upstairs; would have seen them if he had watched the door. There was nobody practicing any immoralities in the building. If they did I would know it. Daisy Hopkins quit some time in May or June last spring. She has never been there since she quit. On Monday morning saw Conley, instead of being upstairs where

he ought to be sweeping, down in the shipping room watching the detectives, officers and reporters; caught him washing his shirt. Looked like he tried to hide it from me.

*Henry Scott* (recalled). Was present when Conley made his statement May 18. I wrote that myself. He positively denied that he was at the factory on Saturday or that he knew anything about the murder. We tried for hours to get him to confess. The next statement he

made on May 24, and we took him over to Mr. Dorsey's office, who went over it with him. He still denied seeing the little girl the day of the murder. On May 25 we talked to him five or six hours, showing him that Frank could not have written these notes on Friday. He still said he had told the truth. On May 28 he made another statement, the same as before. On May 29 he made his last statement. We told him what would fit and cussed him a good deal.

#### THE EVIDENCE FOR THE PRISONER

*W. W. Matthews*. Am a motorman; 26th April was running on English Avenue. Mary Phagan got on my car at Lindsey Street at 11:50. We got to Broad and Hunter about 12:10. Mary and some other little girl who was sitting with her, got off. The pencil factory is about a block and a half from Hunter and Broad. Nobody got on with Mary at Lindsey Street. Know the little Epps boy. He did not get on the car with her at Lindsey Street; saw Mary's body at the undertaker's. It was the same girl that got on my car.

*W. T. Hollis*. Am a street car conductor. On 26th April was on the English Avenue line. We ran on schedule that day. Mary Phagan got on at Lindsey Street at about 11:50. No one else got on with her. Epps did not get on with her; no one was sitting with her; do not recollect Epps getting on the car at all that morning.

*Herbert G. Schiff*. Am assistant superintendent of the National Pencil Co.; occupied the same office as Mr. Frank; the

company's money except the petty cash was kept at the general manager's office, Mr. Sig Montag. All mail of the company is received there. Mr. Frank's salary was \$150 a month. I usually leave the factory at 12:30 and return at 2 to 2:15. Frank would leave a little after 1 and return about 3; do not recall a single Saturday that Frank returned earlier than I did. We both worked together. The street doors were always open. Office boy would be in the outer office. Frequently we were interrupted by salesmen calling on us Saturday afternoon. The stenographers came back very seldom on Saturday afternoon; were liable to be interrupted at any time on Saturday afternoon by people on business. Newt Lee was the first negro night watchman we ever had. Frank and I usually left the factory at half-past 5 or a quarter to 6 on Saturdays; left together. Very often Mrs. Frank would come up to the office on Saturday; never saw Conley around the office on Saturday afternoon after 2

o'clock. We never had any women up in the office. Paid off the help on Friday, April 25th; remember paying Helen Ferguson that day. Nobody came up to ask for Mary Phagan's pay. We had posters all over the factory that Saturday would be a legal holiday and the factory would be closed; intended to come back to the factory Saturday morning, but overslept.

*Cross-examined.* Mr. Frank, when they telephoned him about the murder, asked had there been a fire at the factory; reason he was nervous, he said, he hadn't had any breakfast, he wanted a cup of coffee.

*Joel C. Hunter.* Am a public accountant. I have examined the financial sheet said to be made by Leo M. Frank; to find out how long it would take a person to make out these reports, I went through the calculations. I found them correct within a decimal. The quickest possible time to make out this report, balance the cash, make out the comparative statements and the copies of which they furnished me, is 150 minutes.

*Cross-examined.* A man's familiarity with a special class of work will aid materially in making it up. If he had had to get up the information which was furnished me it would take him a good deal longer than it did me, for the information was already furnished me; have allowed for his experience and familiarity with the business, in the way of saving time, in making my estimate; have tried to make my figures sufficiently conservative to make allowance for a man in charge of the work; think it will be wonderful to

make it in less than that. A man who could make it out and verify it as he went along would take the whole afternoon.

*C. E. Pollard.* Am an expert accountant; was called in for the purpose of seeing the length of time it would take to gather these figures and get the result on the financial sheet and other papers that were furnished me. The minimum time that I could do that work in I found to be 3 hours and 11 minutes.

*Hattie Hall.* Am a stenographer for the National Pencil Company in the office of Montag Bros. Whenever it is necessary I go down to the National Pencil factory and do work there; saw Mr. Frank about 10, April 26th, at Montag Bros., when he asked me to come over and assist him at his office. I went over to the factory between 10:30 and 11. Several people came in while we were working, two men, one whose son worked there came in and spoke to Mr. Frank about the boy's being in some trouble in the police court. They went into the inner office to talk to him and he came out to the outer office with them. Miss Corinthia Hall and Mrs. White also came in there in Mr. Frank's office and I talked with him. These eight letters were dictated to me Saturday morning by Mr. Frank and I typewrote them there in the outer office. I did not see any little girl come along about that time.

*Corinthia Hall.* Work in the finishing up department of the pencil factory; am a forelady; was at the factory on April 26th; got there about 25 minutes to 12; Mrs. Freeman was with me; we went after her coat and to tele-



phone. It was about 15 minutes to 12 when we left the factory. Mr. Frank was writing when we came in his office. When we left the factory, the following people were still there: Arthur White, Mrs. White, May Barrett, her daughter, Harry Denham, the stenographer and Mr. Frank.

*Cross-examined.* We met Mr. Holloway as he came out of the factory as we went in. We met Lemmie Quinn afterwards at the Greek Cafe. It took us about 5 minutes to go there and come back to Greek Cafe. We got a cup of coffee and sandwich and were getting the change when Quinn came in.

*Mrs. Emma Clarke Freeman.* Worked at the pencil factory; on 26th reached the factory with Miss Hall about 25 minutes to 12; saw Mr. Frank at his office. He was talking to two men. Mrs. White and Mr. Frank's stenographer were also in the office; left about a quarter to 12; met Lemmie Quinn afterwards in a cafe. He said he had just been up to see Mr. Frank.

*Miss Magnolia Kennedy.* Am in the metal department; drew my pay Friday, April 25th, from Mr. Schiff at the pay window. Helen Ferguson was there when I went up there. Mr. Frank was not there, Mr. Schiff gave Helen Ferguson her pay envelope. Helen Ferguson did not ask Mr. Schiff for Mary Phagan's money.

*Cross-examined.* On Monday, Mr. Barrett called my attention to the hair which was found on the machine. It looked like Mary's hair.

Helen did not have any business going to Mr. Frank when Mr. Schiff was paying off. She did not go in and ask Mr. Frank

for Mary's money; left with her. Mr. Frank was not paying off that day.

*Wade Campbell.* Work for the pencil factory; had a conversation with my sister, Mrs. Arthur White, on Monday, April 28th. She told me that she had seen a negro sitting at the elevator shaft when she went in the factory at 12 o'clock on Saturday and that she came out at 12:30, she heard low voices, but couldn't see anybody. On April 26th, got to the factory about 9:30. Mr. Frank was in his outer office. He was laughing and joking with people there, and joked with me. I have never seen Mr. Frank talk to Mary Phagan.

*Lemmie Quinn.* Am foreman of the metal department. The floor of the metal room is very dirty. You could not tell at the alleged blood spots whether they were varnish or oil. We have blood spots quite frequently when people get their hands cut; remember a man by the name of Gilbert was hurt in that room. He bled freely. About 8 months ago a boy cut his hand pretty badly and was carried by the ladies' dressing room to the main office, right over the place where Barrett found the blood spots. His hand was bleeding. About a hundred women work in the factory. Haskoline is scattered all over the floor of the metal room. That floor has never been scrubbed since I have been to the factory; could not tell what color hair it was Barrett found. There were only a half dozen strands in it. Chief Lanford took it. Last time I saw Mary Phagan before the murder was Monday. She left about 2 o'clock because

we were out of material and she was laid off for the rest of the week; have never seen Mr. Frank speak to her; went to the factory on April 26th, to see Mr. Schiff. He was not there. The street doors were open when I got there; did not see Mary Phagan nor Jim Conley, nor Monteen Stover. The doors to Mr. Frank's inner and outer office were open. The time I reached Mr. Frank's office was about 12:20. There was no blood spots under the machine where Barrett claims to have found the hair. There was no blood at the spot where Conley claims the body of the girl was found.

*Harry Denham.* Work on the fourth floor of the pencil factory. I was paid off Friday, April 25th; came back Saturday to do some work on the machinery when it was not running. We worked until 10 minutes after 3. It took a good deal of hammering; we were making a racket up there. May Barrett was the first person to come upstairs that day, about quarter past 11. Stayed about three-quarters of an hour. It was after 12 when she left. Mrs. Freeman and Miss Hall were the next to come upstairs and stayed about 15 minutes. Mrs. White came upstairs about 12:30 to see her husband. She had a good long talk with him. She was still upstairs when Mr. Frank came up. He told Mr. and Mrs. White that he was going to dinner and would like to close the doors. Mrs. White went right down behind Mr. Frank; never heard the elevator run that day; can see wheels turning on that floor. There were no noises in the factory that day, excepting street noises. When we came out

we saw Mr. Frank at his desk in his office writing. Mr. White borrowed \$2.00 from him. He did not look nervous or unusual. White and I on the fourth floor could have gone anywhere in the building that day. It was open to us.

*Cross-examined.* The first time Mr. Frank came upstairs it was about 10 minutes to 1. The second time was about 3 o'clock.

*Minola McKnight.* Work for Mrs. Selig. I cook for her. Mr. and Mrs. Frank live with Mr. and Mrs. Selig. His wife is Mrs. Selig's daughter; cooked breakfast for the family on April 26th. Mr. Frank finished breakfast a little after 7 o'clock. Mr. Frank came to dinner about 20 minutes after 1 that day. Mrs. Frank and Mrs. Selig were already eating when Mr. Frank came in. My husband, Albert McKnight, wasn't in the kitchen that day between 1 and 2 o'clock. Standing in the kitchen door you cannot see the mirror in the dining room. If you move where you can see the mirror, you can't see the dining room table. My husband wasn't there all that day. Mr. Frank left that day some time after 2 o'clock; next saw him at half-past 6 at supper. I left about 8 o'clock. Mr. Frank was still at home when I left. He took supper with the rest of the family. After this happened the detectives came out and arrested me and took me to Mr. Dorsey's office, where Mr. Dorsey, my husband and another man were there. They tried to get me to say that Mr. Frank would not allow his wife to sleep that night and that he told her to get up and get his gun and let him kill himself, and that he

made her get out of bed. They had my husband there to bulldoze me, claiming that I had told him that; had never told him anything of the kind; told them right there in Mr. Dorsey's office that it was a lie; they carried me down to the station house in the patrol wagon. They came to me for another statement about half-past 11 or 12 o'clock that night and made me sign something before they turned me loose, but it wasn't true. I signed it to get out of jail, because they said they would not let me out. It was all written out for me before they made me sign it.

*Cross-examined.* Signed that statement (see *post*, p. 244), but didn't tell you some of the things you got in there; didn't say he left home about 3 o'clock; said somewhere about 2. I did not say he was not there at 1 o'clock. Mr. Graves and Mr. Pickett, of Beck & Gregg Hardware Co., came down to see me. A detective took me to your (Mr. Dorsey's) office. My husband was there and told me that I had told him certain things. I denied it; wept and cried and stuck to it. That man there (Mr. Campbell) and a whole lot of men wanted me to tell lies. My husband tried, too. They made me sign that statement, but it was a lie. If Mr. Frank didn't eat any dinner that day I ain't sitting in this chair. Mrs. Selig never gave me no money. The statement that I signed is not the truth. They told me if I didn't sign it they were going to keep me locked up.

*Emil Selig.* Am Mr. Frank's father-in-law and live with him. The sideboard in the dining room is in the same position now, as

it has always been. Mr. Frank on April 26th left the house before I breakfasted. I got back home to dinner about 1:15. Mr. Frank came in about 1:20. There was nothing unusual about him. No scratches or bruises about him. Noticed nothing unusual about him at supper. After supper Mr. Frank sat in the hall and read. A party of our friends came to the house and played cards after supper. Frank and his wife did not play. He came in one time while we were playing and said he read a story about a baseball umpire's decision and he was laughing.

*Cross-examined.* Have never seen the servants move that sideboard.

*Mrs. Emil Selig.* Am Mrs. Frank's mother. Mr. and Mrs. Frank have been living with us two years. The sideboard is in the same position it always has been except when we sweep under it. We had lunch on April 26th after 1 o'clock, about 10 minutes past 1. Mr. Frank came about 20 minutes past 1 while we were eating. He sat down with us and ate. Mrs. Frank and I left before he did, about half-past 1. He was still eating at the table. After the opera, while we were on the street car, saw Mr. Frank at 6:10. Mr. Frank was home when we got there; saw nothing unusual about him. No scratches, bruises, wounds or marks. We got home about half-past 6; sat down to supper about a quarter to 7. Mr. Frank ate with us; played cards that night in the dining room with a party of friends. He went to bed between 10 and 10:30; saw Mr. Frank next day about 11; saw no blood spots or marks

or bruises or cuts about him.

*Cross-examined.* Mr. Frank got home about 11 o'clock Sunday. He told us he had been sent for to come to town. He spoke of a crime having been committed; asked him what had happened; don't remember that he told me about the crime. He did not seem unconcerned about it. I said at coroner's that I thought he seemed unconcerned about it; don't remember his remarking about the youth of the girl or the brutality of the crime. Don't think Mr. Frank mentioned the name of the girl that was killed on Sunday.

*Helen Kerns.* At 10 minutes after 1 on April 26 saw Mr. Frank standing up against the building at the corner of Alabama and Broad Streets.

*Mrs. A. P. Levy.* Saw Mr. Frank get off a car on Memorial Day between 1 and 2 o'clock and cross the street to his home.

*Mrs. M. G. Michael.* Was visiting my sister, Mrs. Wolfsheimer; saw Mr. Frank about two o'clock on April 26th, going up Washington Street towards town. I was on the front porch when he came up and asked me about my people at home; noticed nothing unusual about him; no scratches or marks or any nervousness about him.

*Jerome Michael.* Saw Mr. Frank on April 26th between 5 minutes to 2 and 2; called him and when he saw my mother standing on the porch he came over and spoke to her; noticed absolutely nothing unusual about him. No scratches, bruises, marks and no nervousness.

*Mrs. Hennie Wolfsheimer.* Am the aunt of Mrs. Frank. On April 26th, I saw Mr. Frank in

front of my house about 2 o'clock. I walked out on the porch after he came. I saw nothing unusual about him. No nervousness or bruises or scratches. I saw no stains on his clothes, no marks or tears of any kind.

*Julian Loeb.* Live across the street from the Wolfsheimer residence; am a cousin of Mrs. Frank; saw Mr. Frank on April 26th in front of the Wolfsheimer residence. It was between 1:50 and 2 o'clock.

*Cohen Loeb.* Was on the car with Mr. Frank going back to town on April 26th after lunch. That was about 2 o'clock. The car was blockaded by the crowd. There was nothing unusual about him. No marks, or scratches or spots on him. He had on a brown suit and a derby.

*H. J. Hinchey.* Saw Mr. Frank on April 26th opposite the main entrance to the Capitol. He was on the street car going to town. It was between 2 and 2:15.

*Miss Rebecca Carson.* Work at the National Pencil Co. on the fourth floor; am forelady of the sorting department; have from thirteen to fifteen girls under me; have heard the elevator running when the machinery in the factory was not running. On April 26th saw Mr. Frank looking at the parade in front of Rich's between 2:20 and 2:25. He spoke to me; saw him again at 10 minutes to 3 going into Jacob's Pharmacy. On Monday morning I said to Jim Conley, Where were you on Saturday? Were you in the factory? He said, "I was so drunk I don't know where I was or what I did." And Snowball, who was standing

there, said, "I can prove where I was."

*Mrs. E. M. Carson.* Worked at the pencil factory. Rebecca Carson is my daughter; have seen blood spots around the ladies' dressing room three or four times; saw Jim Conley on Tuesday after the murder. He was sweeping around my table, said, Well, Jim, they haven't got you yet, and he says, "No." I said, Jim, you know Mr. Frank never did that, and he says, "No, Mr. Frank is as innocent as you is, and I know you is."

*Cross-examined.* Have seen blood in the dressing room around the lockers and some around the mirror; have seen girls up there mash their fingers on the machines; have seen blood in the sink in the toilet room and on the machines; have seen spots about as big as my finger, different spots up on the fourth floor.

*Miss Mary Pirk.* Work at the National Pencil Co.; talked with Jim Conley Monday morning after the murder; accused him of the murder. He took his broom and walked right out of the office and I have never seen him since. His character for truth and for veracity is bad; would not believe him on oath.

*Cross-examined.* Suspected Jim because he looked and acted so different. Jim acted very peculiar. I mentioned it to several of the girls standing around, Miss Denham, Miss McCord, Mrs. Johns and several others; accused Jim before I saw the blood at the Ladies' dressing room. It was all smeared. Mr. Frank is a perfect gentleman; always found him to be one in my dealings with him; have never heard

any of the girls say anything about him; have never heard of a single thing immoral that he did do in those five years; have never heard of his going in the girls' dressing room. I have never heard of his slapping them as he would go by; have never heard Mr. Frank talk to Mary.

*Mrs. Iora Small.* Worked on the fourth floor of the pencil factory; saw Jim Conley on Tuesday. He was worrying me to get money from me to buy a newspaper and then he would come and ask me for copies of the paper before I would get through reading them. He told me Mr. Frank is just as innocent as I am and he says, "God knows I was noways around this factory on Saturday;" didn't see Mr. Frank talking to Jim anywhere in the factory on Tuesday; have never seen him talk to that nigger in my life; have known Conley for two years; general reputation for truth and veracity is bad; don't know of any nigger on earth that I would believe on oath.

*Cross-examined.* Did not see Mrs. Carson talk to Jim on Tuesday or Wednesday; saw Mr. Frank and Miss Carson talking on business between 8 and 9 o'clock on Tuesday. They stopped right in front of my machine. Mr. Frank went down stairs and Miss Carson went on back to her work.

*Julia Fuss.* Work on the fourth floor of the pencil factory; have never know anything wrong or immoral to be going on in Mr. Frank's office; talked with Jim Conley Wednesday morning after the murder. He was sweeping around there and asked me to see the newspaper.

As he read it he kinder grinned. He told me he believed Mr. Frank was just as innocent as the angels from Heaven. He was never known to tell the truth; would not believe him on oath.

*Cross-examined.* Have never heard Mr. Frank accused of any act of immorality or familiarity with the girls in the factory. Jim Conley got two papers from me on Tuesday and Wednesday. I bought them. Jim always seemed to be kind of nervous or half drunk or something. He aroused my suspicions after he began to read the papers and grin about them and comment on them.

*Emma Beard.* Am Mr. Schiff's servant. On April 26th somebody called Mr. Schiff on the telephone about half-past 10. It said, "Tell Mr. Schiff Mr. Frank wanted him at the office." The same voice called up Mr. Schiff again about 11 o'clock. I told him he would be there as soon as he could get dressed.

*Annie Hixon.* Am Mrs. Ursebach's servant. Mr. Frank called up on the telephone about half-past one on April 26th. "Tell Mr. Charlie I can't go to the ball game this afternoon."

*J. C. Matthews.* Was at Montag Bros. on April 26th; saw Mr. Frank in the office of Montag Bros., in the morning of that day.

*Alonso Mann.* Am office boy at the National Pencil Company. I left the factory at half-past 11 on April 26th. When I left there Miss Hall, the stenographer from Montag's, was in the office with Mr. Frank; never saw him bring any women into the factory and drink with them; have never seen Dalton there. On April 26th, saw Holloway, Irby,

McCrary and Darley at the factory; didn't see Quinn. I don't remember seeing Corintha Hall, Mrs. Freeman, Mrs. White, Graham, Tillander or Wade Campbell.

*M. O. Nix.* Am credit man for Montag Bros. and bookkeeper; have charge of the bookkeeping and documents and papers of the National Pencil Company; am familiar with Mr. Frank's handwriting. These financial sheets are in Mr. Frank's handwriting; so are these eleven requisition sheets; saw Mr. Frank on the morning of April 26th, at Montag's. He asked me to allow Miss Hattie Hall, my stenographer, to go over to the factory, to assist him as his stenographer was away.

Have never seen a letter written by Mr. Frank. The only writing of his that I am familiar with are figures and things like pay rolls.

*Harry Gottheimer.* Am a traveling salesman for the National Pencil Company; Was at Montag Bros. at 10 o'clock on April 26th. Mr. Frank came in. I asked him about two orders and he replied that he couldn't tell, but that if I would return to the factory with him he would tell me, or if you can't come now, come this afternoon. Saw Frank in his office one Saturday afternoon in the early part of April about 3 o'clock. His wife was there doing some stenographic work for him. I am sure of that conversation. I had been in his office on previous Saturday afternoons. I never found any of the doors locked. He was always working.

*Mrs. Rae Frank.* Am the mother of Leo Frank; live in

Brooklyn. Mr. Moses Frank of Atlanta is my husband's brother; saw him at Hotel McAlpin in New York City on April 27th and April 28th. The letter you hand me (see *post*, p. 250) is my son's handwriting. The word "Yondef" in the letter is Hebrew, meaning "Holiday."

*Cross-examined.* Mr. Frank has no rich relatives in Brooklyn. My brother-in-law, Mr. Bennett, is a clerk at \$18 a week. My son-in-law, Mr. Stearns, is in the retail cigar business. As to what my means of support are we have about \$20,000 out at interest, my husband and I, at six per cent. We own the house we live in. We have a \$6,000 mortgage on it. The house is worth about \$10,000. My husband is doing nothing. He is not in good health. Up to a year ago he was a traveling salesman. These are the only relatives my son has in Brooklyn. Mr. Moses Frank, my brother-in-law, is supposed to be very wealthy. My husband is 67 years old. He is broken down from hard work and in very poor health.

*Oscar Pappenheimer.* Am a stockholder of the National Pencil Company; have been getting comparative sheets from Frank since March, 1910; have here the report for the week ending April 24, 1913. I got that on Monday morning, April 28th.

*C. F. Ursenbach.* Married a sister of Mrs. Leo Frank. On Saturday, about 20 minutes to 2, my cook told me that Mr. Frank had phoned and told me that he wasn't going to the game; saw him on Sunday, after the murder, at my house; saw no scratches, marks or bruises on him. He seemed to be a little disturbed

in mind; saw him again that afternoon. He told us about the tragedy that evening. He gave me my rain coat, which he had borrowed previously.

*Cross-examined.* He and his wife and my wife and myself generally played cards Saturday evening. Mr. and Mrs. Selig's family usually played poker Saturday night. Mr. Frank borrowed my rain coat at 4:30 Sunday when it was raining, and I met him about 6 o'clock on Washington Street, and he returned it. He never had that rain coat until Sunday afternoon; am positive that he did not have it on Saturday.

*Mrs. C. F. Ursenbach.* Am Mrs. Leo Frank's sister. I saw no scratches, bruises, or marks on Mr. Frank on Sunday. He was nervous as one would have been under the circumstances. He borrowed a rain coat from my husband that afternoon. The rain coat was at our house on Saturday. Mr. Frank did not have it on Saturday.

*Cross-examined.* On Sunday Mr. Frank, when he was at the house, told us he had been called down town and that this little girl was murdered, and he told what a horrible crime it was; did not say who committed it; said nothing about employing a lawyer; said he had thought he heard the telephone ringing in his sleep, the night before; said when he saw the corpse it was a grewsome sight; said nothing about suspecting Newt Lee as being the guilty party; said he was sorry he let Gantt in the factory Saturday afternoon, because he mistrusted him, because he had not been honest; did not say he thought Newt Lee or Gantt had

committed the crime; said nothing about the clock having been improperly punched.

*Mrs. A. E. Marcus.* Am a sister of Mrs. Leo Frank; played cards Saturday night at Mrs. Selig's. Mr. Frank was there sitting out in the hall reading. Mr. Frank went to bed after 10 o'clock; noticed nothing unusual about him, no bruises, marks or signs.

*Mrs. M. Marcus.* Saw Mr. Frank at half-past 8 in the evening April 26th, at Mrs. Selig's residence. We played cards there. He stayed in the hall reading. He appeared as natural as usual.

*M. J. Goldstein.* Played cards Saturday night, April 26th, at Mrs. Selig's house; got there about 8:15; Mr. Frank was sitting in the hall; there was nothing unusual about him, no nervousness or anxiety.

*Cross-examined.* He came in while we were playing to tell us of some joke he had read, and we asked him to desist as it was distracting us from the game. Frank was reading a magazine which caused him considerable merriment and laughter.

*I. Strauss.* Was at the home of Mrs. Selig, Saturday night, playing cards; while we played he was sitting in the hall reading.

*Mrs. Emil Selig* (recalled). Deny categorically that any of the contents of Minola McKnight's affidavit are true; have never raised Minola's wages one penny since she has been with me.

*Cross-examined.* Didn't see Albert McKnight at my house on Saturday; Minola was paid \$3.50 a week; advanced her a

week's wages; the first week I gave her \$5.00 and told her to give me the change. She brought \$1.00 the next morning, and told me she kept 50 cents which I deducted the next week; think Mrs. Frank gave her a hat; Mrs. Frank has never given her any money to my knowledge.

*Sigmund Montag.* Am treasurer of the National Pencil Company; my office is two blocks from the pencil factory. Frank came to my office April 26th, about ten and stayed an hour; he talked to me, my stenographer, Miss Hattie Hall, and Mr. Gottheimer, one of the salesmen; went to the factory almost every Saturday afternoon; Mr. Frank would always be working at his desk on the financial sheet. Sunday morning was asked by phone if I could identify a girl that was killed in the basement of the pencil factory; referred him to Mr. Darley. After breakfast Mr. Frank came to my house; he was no more nervous than we were; saw no marks, scratches or discolorations of any sort on his face, and there were no spots on his clothing. Monday afternoon about three Mr. Schiff called me over the telephone and asked me if I would sanction the employment of the Pinkertons to ferret out this crime; told Mr. Schiff to go ahead.

*Cross-examined.* Mr. Frank when he was at my house Sunday morning had already been to the undertaker's; he told me they had taken him into a dark room and flashed on a light, and he said he saw the little girl there; he described how she looked; he said her face was scratched and her eye was dis-



colored, and she seemed to have a gash in her head; her mouth was full of sawdust and he described her in a general way; he did not say anything to me about an attorney or having been to police headquarters. I had not then employed counsel; my sending Mr. Herbert Haas to see Mr. Frank was not employing counsel; made no trade with Mr. Haas; don't know who is paying his fee; have not contributed anything towards it, nor has the Pencil Company.

*Truman McCrary.* Am a drayman; work for the National Pencil Company; would work on Saturday afternoons until half past three and sometimes as late as five; have never found the front door locked on a Saturday afternoon; have never seen Jim Conley watching there Saturday afternoon; have never seen him guarding the door; have never seen him around the factory at all Saturday afternoon; have never found the doors to Mr. Frank's inner or outer office locked; both doors have glass windows in them; anybody could see through them; have sometimes found Mr. Schiff working there with Mr. Frank on Saturday afternoon; did not see Jim Conley at the factory April 26th; did not tell him to go down in the elevator shaft and ease his bowels; went into Mr. Frank's office about twelve o'clock on April 26th; Mr. Frank was there.

*D. J. Nix.* Was office boy at the pencil factory; on Saturday afternoons, Mr. Frank and Mr. Schiff would be there working; would stay in the outer office; never left the factory on Saturday afternoon; have never

known Mr. Frank to have any women in his office drinking or doing anything else.

*Frank Payne.* Was office boy last Thanksgiving day at the pencil factory; Mr. Schiff and Mr. Frank were working there in the office that day. Have never known him to have any women in there, or see any drinking going on.

*Phillip Chambers.* December 12, 1912, was office boy at the pencil factory until March 29, 1913; stayed in the outer office; on Saturdays I stayed until 4:30 and sometimes until 5 o'clock; Mr. Frank never did have any women in there; never saw any drinking there; never seen Dalton come in there; have seen Jim Conley sweeping there Saturday afternoon; Snowball would be in there once in a while; never known the front door to be locked Saturday afternoon; never seen anybody watching the door on any Saturday; have seen Mr. Frank's wife come to his office; Mr. Schiff would be helping him some of the Saturdays; never seen Mr. Frank familiar with any of the women in the factory; never seen him talk to Mary Phagan.

*Godfrey Weinkauf.* Am superintendent of the Pencil Company's lead plant; visited the office of the factory every other Saturday, between 3 and 5 o'clock; would find Mr. Holloway, Mr. Frank and Mr. Schiff there; never saw any women in the office there; never saw Jim Conley there Saturday afternoons.

*Charlie Lee.* Am a machinist at the pencil factory; Duffy's finger was hurt on the eyelet machine October 4, 1912; the blood

spouted out; there was a lot of the blood on the floor.

*Cross-examined.* Duffy was hurt in the metal room on the machine opposite Mary Phagan's machine; the pencil company took a written statement from me, signed by me, to keep the fellow from suing the company; saw my signature this morning; have never told you I signed that statement.

*Arthur Pride.* Worked on the second floor of the factory; on Saturdays I work all over the factory, doing anything that is necessary, until about half past four; have never seen any women come up there and see Mr. Frank, or any drinking going on there, or seen Jim Conley sitting and watching the door; Jim Conley's general character for truth and veracity, it is bad; would not believe him on oath.

*Cross-examined.* No, I ain't a high-class, nigger, but I am a different grade from him.

*Daisy Hopkins.* Am a married woman; worked in the factory; Mr. Frank never spoke to me when he would pass; never did speak to him; never been in his office drinking beer, coca-cola, or anything else; know Dalton; never visited the factory with him; never have been to the factory on Saturday; never introduced him to Mr. Frank; there isn't a word of truth in that; have never gone down in the basement with Dalton.

*Cross-examined.* Mr. Smith got me out of jail. Somebody told a tale on me, that's why I was put in jail; they accused me of fornication; never was tried.

*Laura Atkinson.* Have been

in Mr. Dalton's company three times; never met him at the Busy Bee Cafe; have never walked with him to or from the pencil company.

*Mrs. Minnie Smith.* Work at the pencil factory; never met Dalton or walked home with him; don't know him; know Mr. Frank; have spoken to him six times in the four years I worked there.

*V. S. Cooper, W. T. Mitchell, O. A. Nix, Samuel Craig, B. L. Patterson, Robert Craig, Ed Craig, T. L. Ambrose, J. P. Bird, J. H. Patrick and I. M. Hamilton* testified that they lived in Gwinnett or Walton county; that they used to know C. B. Dalton before he left Monroe in Walton county; that his general character for truth and veracity is bad, and that they would not believe him on oath.

*R. L. Bauer.* Summers of 1909-1910, I worked at the National Pencil Co. Saturdays; since have worked off and on at the factory on Saturdays; was up at the office on the Saturday afternoon before Mr. Schiff went away; Mr. Holloway, Mr. Schiff, Mr. Frank and the office boy were there; never seen any women in Mr. Frank's office on Saturdays.

*Cross-examined.* Have always found Mr. Schiff there on Saturday afternoons, except when he was off on his trip; saw Mr. Frank in his office on the fourth Saturday in January.

*Gordon Bailey.* Work at the factory; am called "Snowball"; never saw Jim Conley talk to Mr. Frank Friday before the murder; have never heard Mr. Frank ask Conley to come back on any Saturday; never seen

Mr. Frank bring any women into the factory; never seen Jim Conley guarding or watching the door; have seen Jim take newspapers and look at it, but don't know if he read them or not.

*Henry Smith.* Work at the pencil factory in the metal department with Barrett; he talked to me about the reward; said it was \$4,300, and he thought if anybody got it, he ought, for he found the blood and hair; said he ought to get the first hook at it.

*Milton Klein.* Saw Mr. Frank last Thanksgiving evening at a dance given by the B'nai B'rith at the Hebrew Orphans' Home. Mr. Frank helped Mr. Coplan and myself give the dance; we were the committee in charge.

*Cross-examined.* Was at the jail to see Mr. Frank when the detectives brought Conley down there; sent word down that Mr. Frank didn't care to see Conley; Mr. Frank said that he would see Conley only with the consent of his attorney, Mr. Rosser; Mr. Frank looked very much disappointed because the grand jury had just indicted him when he had expected to be cleared. Mr. Frank has a great many friends who constantly visited him in jail.

*Nathan Coplan.* Remember last Thanksgiving Day was a very disagreeable one; The B'nai B'rith gave a dance; Mr. Frank had charge of it; Mr. Frank and his wife were there.

*Joe Stelker.* Have got charge of the varnishing department at the pencil factory; saw the spot that Mr. Barrett claimed he had found in front of the young ladies' dressing room; it looked like some one had some coloring

in a bottle and splashed it on the floor; saw the white stuff on it; it looked like a composition they use on the eyelet machine or face powder; the alleged blood spots could have been made with a transparent red varnish. Jim Conley's character for truth and veracity is very bad; would not believe him on oath.

*Harlee Branch.* Work for the Atlanta Journal; on May 31st Jim Conley told me he didn't see the purse of this little girl; said it took him thirty-five minutes after going upstairs until he left the factory; was at the jail where the detectives were making him go through his story. It took him nearly fifty minutes to go through the motions. He said he finished about 1:30 and then went out; that Lemmie Quinn got into the factory about 12 and remained about 8 or 9 minutes.

*John M. Minar.* Am a newspaper reporter; visited George Epps Sunday night, April 27th; he said he knew the girl, that he had ridden to town with her in the mornings occasionally when she went to work. He said nothing as to having seen the girl on Saturday and coming in on the car with her.

*W. D. McWorth.* Am a Pinkerton detective; worked on the Frank case; found near the front door on the ground floor, stains that might or might not have been blood. All the radiators in the factory had trash, dirt and rubbish behind them; sticking my hand around the dust and dirt, discovered a pay envelope also a club; the stains on the club were either paint or blood.

*John Finley.* Was formerly master machinist and assistant

superintendent of the pencil factory. Mr. Frank's character was good.

*A. D. Greenfield.* I am one of the owners of the building occupied by the Pencil Company. I have known Mr. Frank four or five years. His character is good.

*Dr. Wm. Owens.* Am a physician; at the request of the defense went through certain experiments in the pencil factory to ascertain how long it would take to go through Jim Conley's movements relative to moving the body of Mary Phagan; kept the time while the other men were going through with the performance. Mr. Wilson of the Atlanta Baggage Co. also kept time with me. Mr. Brent and Mr. Fleming enacted the performance. It took us eighteen and a half minutes to go through the movements and conversation which Conley says took place between him and Frank on Saturday, April 26th; the eighteen and a half minutes did not include the eight minutes that Conley said he was in the wardrobe and also the time it took him to write the notes. Including that the whole performance would have taken 36½ minutes.

*Cross-examined.* Yes, I wrote that letter at the instance of myself and of Mr. Leonard Haas, my attorney, as a matter of conscience. It is partly as follows: "To the Grand Jury of Fulton County, W. D. Beattie, foreman. Gentlemen: Among a number of people with whom I have discussed the unfortunate Phagan affair, I have found very few who now believe in the guilt of Leo M. Frank, and I have felt a deep conviction growing in my

heart that a terrible injustice might be inflicted upon an innocent man."

*Isaac Haas.* Know Leo M. Frank; his character is very good.

*A. N. Anderson.* Am clerk at Atlanta Bank. The pass book of Leo M. Frank shows a balance to his credit of \$16 on April 18, don't know that that's the only bank account that he had.

*R. P. Butler.* Am the shipping clerk for the Pencil Company; the doors leading into the metal room are wooden doors with glass windows; there is no trouble looking through them into the metal room, even when the doors are closed.

*I. U. Kauffman.* Made a drawing of the Selig residence on Georgia avenue, in this city. Standing in the back door of the kitchen room against the north side of the door, I could not see that mirror, because of the partition between the passageway and the dining room.

*J. Q. Adams.* Am a photographer; took photographs of the Selig home from the inside; one photograph was taken standing directly in the door; you could not see the mirror with the naked eye or in the picture; took views also of the pencil factory; standing in the door you could not see any part of Mr. Frank's desk, or a telephone or a window.

*Prof. Geo. Bachman.* Am professor of physiology and physiological chemistry. Bomar says it takes four hours and a half to digest cabbage. If the cabbage is not well chewed it would take considerably longer.

*Dr. Thomas Hancock.* Have practiced for twenty-two years;

engaged in hospital work six or seven years; have treated about 14,000 cases of surgery; have examined the private parts of Leo M. Frank and found nothing abnormal; he is a normal man, sexually. Neither I nor anybody else could give an intelligent opinion of how long that cabbage and wheat bread had been in the stomach before death. Finding the epithelium missing in several places or separated from the wall of the vagina would not indicate any violence done to the subject in life. The condition of the blood vessels as described I would expect to result from other causes than violence. Even if violence caused them, you could not tell how long before death that violence had been inflicted, or that it had been inflicted within from five to fifteen minutes before death.

*Dr. Willis F. Westmoreland.* Am a practicing physician for twenty-eight years, general practice and surgery. A professor of surgery for twenty years, and formerly president of the State Board of Health. From the evidence I have heard it would be impossible to tell whether or not that would have produced unconsciousness before death; skull may be fractured without producing unconsciousness; death may be produced by a blow on the head that leaves very little outward signs. From looking at such a wound without any knowledge of the amount of blood lost, one could not tell whether it was inflicted before or after death; one could not tell from looking at a wound of that sort from which direction it was inflicted. Have no personal feeling against Dr. Harris; preferred charges

with State Board of Health charging Dr. Harris with professional dishonesty. It would be impossible to form a reliable opinion that cabbage and bread had been in that stomach before death, on that data or any other data, that could be found by looking at the stomach nine or ten days after death. Many things retard digestion. Much depends upon the particular stomach and its affinity for particular foods. Food that is not thoroughly emulsified will remain in the stomach indefinitely. Cabbage like that, and wheat bread, might remain in the stomach until the process of digestion is complete, which ordinarily would be from three and a half to four hours. Any epithelium can be very easily stripped after death. The digital examination could have stripped it. So could the removal for purposes of post mortem examination. If the subject had had a menstrual period a day or two before death and she was found in the act of menstruating at the time of death, this would account for the congested blood vessels, and it would also make the epithelium much easier to strip. Even if an opinion could be expressed as to violence before death, it would be impossible to say that it occurred from five to fifteen minutes before death. From an examination of the private parts of Leo M. Frank he appears to be a perfectly normal man. A black eye could be inflicted after death.

*Cross-examined.* There are sexual inverts who are absolutely normal in physical appearance. A doctor could not look at cabbage in various stages of diges-

tion and venture an opinion as to how long it had been in a woman's stomach. The human tongue could not produce any signs of violence in the vagina.

*Dr. J. C. Olmstead.* Practicing physician for 36 years. Given the facts on this case it would not be possible for a physician to determine whether or not that wound produced unconsciousness before death. Such a wound could have been made within a short while after death. Cabbage like that is liable to obstruct the opening of the pylorus and to delay digestion. That a microscope shows on parts of the vagina removed from the body that the blood vessels are congested may be due to menstruation or the natural gravitation of blood to those parts and is not necessarily indicative of violence. The use of embalming fluid would make a diagnosis of violence utterly unreliable. It would be impossible for a doctor finding those conditions in the vagina by means of a microscope 9 or 10 days after death to tell that violence had been inflicted from 5 to 15 minutes before death.

*Dr. W. S. Kendrick.* Have been a practicing physician for 35 years. Don't think that the finding of the epithelium stripped from the wall would indicate anything unusual; don't think that would indicate any act of violence. A female's menstrual periods brings about congestion and hemorrhages of the blood vessels every time. The body described nine or ten days after death one could have no way of telling whether that wound would produce unconsciousness or not; would be a pure conjecture. Skulls are sometimes fractured

without unconsciousness. Some stomachs will digest different substances quicker than others; don't think there is an expert in the world who could form any definite idea by either chemical analysis of the liquids of the stomach or by the condition of the cabbage lodged in the stomach as to how long it had been in the stomach.

*John Ashley Jones.* Have known Mr. Frank a year; his general character is good; am resident agent for the New York Life Insurance Company; have never heard any talk of Mr. Frank's practices and relations with the girls down there. Mr. Frank has a policy of insurance with us. It is our custom to seek a very thorough report on the moral hazard on all risks. The report on him showed up first class, physically as well as morally; have never seen any nude pictures hanging in his office, although I have been there a number of times; have never heard that he smiled and winked at young girls.

*Dr. Leroy Childs.* Am a surgeon; cabbage is the hardest food to digest among carbohydrates, because it has so much cellulose which is a woody fibre. Cabbage gets its digestion in the mouth. That cabbage has not been masticated thoroughly. They have been swallowed almost whole. Raw cabbage is easier digested than cooked cabbage. The shortest time for boiled cabbage to pass into the small intestines is 4 and a half hours after it is eaten. The stomach does not digest the cabbage. Physic influences will retard digestion as excitement, fear, anger, also physical or mental exercise. If a human body is

disinterred at the end of 9 days and the stomach is taken out and among the contents you find cabbage like that and fragments of wheat bread slightly digested, you could not by looking at the cabbage hazard an opinion as to how long before death that had been taken into the stomach.

*Alfred Loring Lane.* Am a resident of Brooklyn, N. Y. Knew Leo Frank 4 years at Pratt Institute which we both attended. His general character is good.

*Philip Nash.* Knew Leo Frank 4 years at Pratt Institute. His general character is good.

*Richard A. Wright.* Live in Brooklyn, N. Y. Knew Leo Frank 4 years at Pratt Institute, also 3 years at Cornell. His general character is good.

*Harry Lewis.* Live in Brooklyn, N. Y.; am a lawyer; have known Leo Frank about 12 years; have been a neighbor of his until he came South. His general character is good.

*Herbert Lasher.* Knew Leo Frank at Cornell University; was in his class, and we roomed together for 2 years. His general character was very good.

*John W. Todd, Prof. C. D. Albert, Prof. J. E. Vanderhoff, V. H. Kriegshaber, M. F. Goldstein, Dr. David Marx,* Jewish Rabbi, and *R. A. Sonn,* Superintendent of the Hebrew Orphans' Home, testified that his character was good.

*Arthur Heyman, Mrs. H. Glogowski, Mrs. Adolph Montag, Mrs. J. O. Parmelee, Ida Hays, Eula May Flowers, Opie Dickerson* testified to the same effect.

*Mrs. Emma Clark Freeman.* Have worked at the pencil factory over 4 years. Mr. Frank's general character is good; am a

married woman; have known Conley ever since he has been at the factory. His general character for truth and veracity is bad; would not believe him on oath.

*Cross-examined.* Have never heard any suggestion of any wrongdoing on the part of Mr. Frank, either in or out of the factory; was forelady at the factory for about 3 years.

*Sarah Barnes.* Worked at the pencil factory over 4 years; his character is good. He has been the best of men.

*Irene Jackson.* Worked at the pencil factory for 3 years. Mr. Frank's character was very well. He never said anything to me; never met Mr. Frank at any time for any immoral purpose.

*Cross-examined.* The girls seemed to be afraid of him; heard some remarks two or three times about Mr. Frank's going to the dressing room on different occasions; never heard any talk about Mr. Frank going around putting his hands on girls; never heard of his going out with any of the girls.

*Miss Bessie Fleming.* Worked as stenographer for Mr. Frank; his character was unusually good.

*Cross-examined.* Am just talking about my personal relations with him; have never seen him do anything wrong there in the factory. He never made any advances to me or anyone else.

*Mrs. Mattie Thompson.* Work at the pencil factory. Mr. Frank's character is good. I have never heard anything against him; have never met Mr. Frank anywhere or at any time for any immoral purpose.

*Miss Irene Carson.* Worked

at the pencil factory; have never met Mr. Frank at any time or place for any immoral purpose.

*Mrs. J. J. Wardlaw.* Worked at the pencil factory; Mr. Frank's character is good; have never heard of any improper re-

lation of Mr. Frank with any of the girls at the factory. I have never heard of his putting his arm around any girls on the street car, or going to the woods with them.

#### THE PRISONER'S STATEMENT.

*Leo M. Frank.* Gentlemen of the jury: In the year 1884, on the 17th day of April, I was born in Quero, Texas. At the age of three months, my parents took me to Brooklyn, New York, and I remained in my home until I came South, to Atlanta, to make my home here. I attended the public schools of Brooklyn, and prepared for college, in Pratt Institute, Brooklyn, New York. In the fall of 1902, I entered Cornell University, where I took the course in mechanical engineering, and graduated after four years, in June, 1906. I then accepted a position as draftsman with the B. F. Sturtevant Company, of Hyde Park, Massachusetts. After remaining with this firm about six months, I returned once more to my home in Brooklyn, where I accepted a position as testing engineer and draftsman with the National Meter Company of Brooklyn, New York. I remained in this position until about the middle of October, 1907, when, at the invitation of some citizens of Atlanta, I came South to confer with them in reference to the starting and operation of a pencil factory, to be located in Atlanta. After remaining here for about two weeks, I returned once more to New York, where I engaged passage and went to Europe. I remained in Europe nine months. During my sojourn abroad, I studied the pencil business, and looked after the erection and testing of the machinery which had been previously contracted for. The first part of August, 1908, I returned once more to America, and immediately came South to Atlanta, which has remained my home ever since. I married in Atlanta, an Atlanta girl, Miss Lucile Selig. The major portion of my married life has been spent at the home of my parents in law, Mr. and Mrs. Selig, at 68 East Georgia Avenue. My married life has been exceptionally happy—indeed, it has been the happiest days of my life. My duties as superintendent of the National Pencil Company were in general as follows: I had charge of the technical and mechanical end of the factory, looking after the operations and seeing that the product was turned out in quality equal to the standard which is set by our competitors. I looked after the installation of new machinery and the purchase of new machinery. In addition to that, I had charge of the office work at the Forsyth Street plant, and general supervision of the lead plant, which is situated on Bell Street. I looked after the purchase of the raw materials which are used in the manufacture of pencils, kept up with the market of those materials, where the prices fluctuated, so that the purchases could be made to the best possible advantage. (After describing what he did on Friday.) On Sat-



urday, April 26th, arrived at the factory at about 8:30 a. m. I found Mr. Holloway, the day watchman, at his usual place and Alonzo Mann, the office boy, in the outer office. (After describing at length the work he did in his office that morning.)

About 9 o'clock Mr. Darley and Mr. Wade Campbell, the inspector of the factory, came into the outer office, and I stopped what work I was doing that day on this work, and went to the outer office and chatted with Mr. Darley and Mr. Campbell for 10 or 15 minutes, and conversed with them, and joked with them, and while I was talking to them, about 9:15, Miss Mattie Smith came in and asked me for her pay envelope, and for that of her sister-in-law, and I went to the safe and unlocked it and got out the package of envelopes that Mr. Schiff had given me the evening before, and gave her the required two envelopes, and placed the remaining envelopes that I got out, that were left over from the day previous, in my cash box, where I would have them handy in case others might come in. I continued to work on those invoices, when I was interrupted by Mr. Lyons, Superintendent of Montag Brothers. I told him if he would wait for a minute I would go over to Montag Brothers with him, as I was going over there; and he stepped out to the outer office, and as soon as I came to a convenient stopping place in the work, I put the papers I had made out to take with me in a folder, and put on my hat and coat and went to the outer office, when I found that Mr. Lyons had already left. Mr. Darley left with me about 9:35 or 9:40, and we passed out of the factory, and stopped at the corner of Hunter and Forsyth Streets, where we each had a drink at Cruickshank's soda water fount, where I bought a package of Favorite cigarettes, and after we had our drink I lighted a cigarette and went on my way to Montag Brothers, where I arrived at 10 o'clock. Chatted with Mr. Montag, and spoke to Mr. Matthews, and Mr. Cross, of the Montag Brothers, and to Miss Hattie Hall, the Pencil Company's stenographer, and asked her to come over and help me that morning; that I had enough work to keep her busy that whole afternoon, but she said she didn't want to do that, she wanted to have at least half a holiday on Memorial Day. I then spoke to several of the Montag Brothers' force on business matters and other matters, and after that I saw Harry Gottheimer, the sales manager of the National Pencil Company, and I spoke at some length with him in reference to several of his orders that were in work at the factory, there were two of his orders especially that he laid special stress on, as he said he desired to ship them right away. Returned to the factory alone. On arrival there I went to second or office floor, and I noticed the clock, it indicated 5 minutes after 11. I saw Mr. Holloway there, and I told him he could go as soon as he got ready, and he told me he had some work to do for Harry Denham and Arthur White, who were doing some repair work up on the top floor, and he would do the work first. I then went into the office and found Miss Hattie Hall, who had preceded me over from Montag's, and another lady who introduced herself to me as Mrs. Arthur White, and the

office boy; Mrs. Arthur White wanted to see her husband. I told Alonzo Mann, the office boy, to call up Mr. Schiff, and find out when he was coming down. The answer was that Mr. Schiff would be right down. About this time Mrs. Emma Clarke Freeman and Miss Corinthia Hall, two of the girls who worked on the fourth floor, came in, and asked permission to go upstairs and get Mrs. Freeman's coat, which I readily gave, and I told them at the same time to tell Arthur White that his wife was downstairs. A short time after, two gentlemen came in, one of them a Mr. Graham, and the other the father of a boy by the name of Earle Burdette; these two boys had gotten into some sort of trouble during the noon recess the day before, and were taken down to police headquarters, and of course didn't get their envelopes the night before, and I gave the required pay envelopes to the two fathers, and chatted with them at some length in reference to the trouble their boys had gotten into the day previous. Just before they left the office, Mrs. Emma Freeman and Miss Corinthia Hall came into my office and asked permission to use the telephone. Miss Clark and Miss Hall left the office, as near as may be, at a quarter to 12, and went out, and I started to work reading over the letters and signing the mail and transacting orders.

There were in the building then Arthur White and Harry Denham and Arthur White's wife on the top floor. From 10 to 15 minutes after Miss Hall left my office, this little girl, whom I afterwards found to be Mary Phagan, entered my office and asked for her pay envelope. I asked for her number and she told me; I went to the cash box and took her envelope out and handed it to her, identifying the envelope by the number. She left my office and apparently had gotten as far as the door from my office leading to the outer office, when she evidently stopped and asked me if the metal had arrived, and I told her no. She continued on her way out, and I heard the sound of her footsteps as she went away. It was a few moments after she asked me this question that I had an impression of a female voice saying something; I don't know which way it came from; just passed away and I had that impression. This little girl had evidently worked in the metal department by her question and had been laid off owing to the fact that some metal that had been ordered had not arrived at the factory; hence, her question. I only recognized this little girl from having seen her around the plant and did not know her name, simply identifying her envelope from her having called her number to me.

She had left the plant hardly five minutes when Lemmie Quinn, the foreman of the plant, came in and told me that I could not keep him away from the factory, even though it was a holiday; at which I smiled and kept on working. He asked me if Mr. Schiff had come down and I told him he had not and he turned around and left. I continued work until I finished this work and these requisitions and I looked at my watch and noticed that it was a quarter to 1. I called my home up on the telephone, for I knew that my wife and my mother-in-law were going to a matinee and I

wanted to know when they would have lunch. Minola answered the phone that they would have lunch immediately and for me to come right on home. I gathered my papers together and went upstairs to see the boys on the top floor. I saw Arthur White and Harry Denham who had been working up there and Mr. White's wife. I asked them if they were ready to go and they said they had enough work to keep them several hours. I noticed that they had laid out some work and I had to see what work they had done and were going to do. I asked Mr. White's wife if she was going or would stay there as I would be obliged to lock up the factory, and Mrs. White said, no, she would go then. I went down and gathered up my papers and locked my desk and went around and washed my hands and put on my hat and coat and locked the inner door to my office and locked the doors to the street and started to go home.

Now, gentlemen, to the best of my recollection from the time the whistle blew for 12 o'clock until after a quarter to 1 when I went up stairs and spoke to Arthur White and Harry Denham, to the best of my recollection, I did not stir out of the inner office; but it is possible that in order to answer a call of nature or to urinate I may have gone to the toilet. Those are things that a man does unconsciously and cannot tell how many times nor when he does it. Now, sitting in my office at my desk, it is impossible for me to see out into the outer hall when the safe door is open, as it was that morning, and not only is it impossible for me to see out, but it is impossible for people to see in and see me there.

Arrived home about 1:20. I found that my wife and my mother-in-law were eating their dinner, and my father-in-law had just sat down and started his dinner. Called up my brother-in-law to tell him that on account of some work I had to do at the factory, I would be unable to go with him, he having invited me to go with him out to the ball game. After a few minutes my wife and mother-in-law finished their dinner and left and told me good-bye. My father-in-law and myself continued eating our dinner, Minola McKnight serving us. After finishing dinner, I lighted a cigarette and laid down. After a few minutes I got up and walked up Georgia Avenue to get a car. I saw the Washington Street car coming and I ran up and got on the car and talked to Mr. Loeb on the way to town. About the intersection of Washington Street and Hunter Street and the fire engine house there was a couple of cars stalled up ahead of us, the cars were waiting there to see the memorial parade. After it stood there a few minutes, I told Mr. Loeb that I was going to get out and go on as I had work to do. I went on down Hunter Street, when I got down to the corner of Whitehall and Hunter, the parade had started to come around and I had to stay there 15 or 20 minutes and see the parade. I stood there between half-past 2 and a few minutes to 3 o'clock until the parade passed; then I went on down to Jacobs and purchased twenty-five cents worth of cigars; then down Forsyth Street to the factory; unlocked the street door and the inner door and left it open and went on upstairs to tell the boys that I had come

back and wanted to know if they were ready to go, and at that time they were preparing to leave. I went immediately down to my office and opened the safe and my desk and hung up my coat and hat and started to work on the financial report. Mr. Schiff had not come down and there was additional work for me to do.

I heard the bell ring on the time clock and Arthur White and Harry Denham came into the office and Arthur White borrowed \$2.00 from me in advance on his wages. I had gotten to work on the financial sheet, figuring it out, when I happened to go out to the lavatory and on returning to the office, I noticed Newt Lee, the watchman, coming from towards the head of the stairs, coming towards me. I looked at the clock and told him the night before to come back at 4 o'clock for I expected to go to the base ball game. Newt Lee came along and greeted me and offered me a banana; I declined the banana and told him that I had no way of letting him know sooner that I was to be there at work and that I changed my mind about going to the ball game. I told him that he could go if he wanted to or he could amuse himself in any way he saw fit for an hour and a half, but to be sure and be back by half-past 6 o'clock. He went off down the stair case leading out and I returned to my office.

(After describing at length his work on the financial sheet and orders.)

I finished this work that I have just outlined at about 5 minutes to 6, and I proceeded to take out the clock strips from the clock which were used that day and replace them. The slips I put in that night were stamped with a blue ink, with a rubber dating stamp, "April 28th." Saturday night we put the slips into the clock dated with the date on which the help were coming into the factory to go about their regular duties and register on the Monday following, which was April 28th. As I was putting these slips into the clock, I saw Newt Lee coming up the stairs, and looking at the clocks, it was as near as may be 6 o'clock. I finished putting the slip in and as I was washing, heard Newt Lee ring the bell on the clock when he registered his first punch for the night, and he went down stairs to the front door to await my departure. After washing, I went down stairs to the front door. I saw outside on the street Newt Lee in conversation with Mr. J. M. Gantt, a man that I had let go from the office two weeks previous. Newt Lee told me that Mr. Gantt wanted to go back up into the factory, and he had refused him admission, because his instructions were for no one to go back into the factory after he went out, unless he got contrary instructions from Mr. Darley or myself. I asked him what he wanted, he said he had a couple of pairs of shoes, black pair and tan pair, in the shipping room; told Newt Lee it would be all right to pass Gantt in, and Gantt went in, Newt Lee closed the door locking it after him. I then walked up Forsyth Street, posted two letters, got a drink at soda fount, and bought my wife a box of candy. Arrived home about 6:25; sat looking at the paper until about 6:30 when I called up at the factory to find out if Mr. Gantt had left. Couldn't get Newt Lee then. At 7 I again called the fac-

tory, got Newt Lee and asked him if Mr. Gantt had gone again, he says, "Yes." I asked if everything else was all right at the factory; it was, and then I hung up and had supper, and phoned to my brother-in-law, Mr. Ursenbach if he would be at home that evening, but he said he had another engagement, so I stayed home reading a newspaper or magazine. About 8 I saw Minola pass out on her way home. That evening, my parents in law, Mr. and Mrs. Emil Selig, had company, and among those present were Mr. and Mrs. Morris Goldstein, Mr. and Mrs. M. Marcus, Mrs. A. E. Marcus and Mrs. Ike Strauss. Sat reading in the hall until 10:30 when I turned out the gas, went into the dining room, bade them all good night, and went upstairs to take my bath, a few minutes later my wife followed me upstairs.

Sunday, April 27th, I was awakened before 7 o'clock by the telephone. The man that spoke was City Detective Starnes; he said, "Is this Mr. Frank, superintendent of the National Pencil Company?" I says, "Yes, sir," he says, "I want you to come down to the factory right away," I says, "What's the trouble, has there been a fire?" He says, "No, a tragedy, I want you to come down right away;" I says, "All right," he says, "I'll send an automobile for you," I says, "All right," and hung up and went upstairs to dress; was in the midst of dressing when the automobile drove up, the bell rang and my wife went down stairs to answer the door. She had on a night dress with a robe over it. I followed my wife in a minute or two. I asked them what the trouble was, and the man who I afterwards found out was detective Black, hung his head and didn't say anything. They asked me did I know Mary Phagan, and I told them I didn't, they then said to me, didn't a little girl with long hair hanging down her back come up to your office yesterday some time for her money. I says, "Yes, I do remember such a girl coming up to my office that worked in the tipping room, but I didn't know her name was Mary Phagan." "Well, we want you to come down right away with us to the factory." I didn't have breakfast, but went right on with them in the automobile. They took me to the undertaker's, as they wanted me to see the body and see if I could identify the little girl. One of the two men asked the attendant to show us the way into where the body was, and the attendant went down a long, dark pasageway with Mr. Rogers following, then I came, and Black brought up the rear until we got to a place that was apparently the door to a small room—very dark—the attendant went in and suddenly switched on the electric light, and I saw the body of the little girl. Mr. Rogers stood to my right, inside of the room, I stood right in the door, leaning up against the right facing of the door, and Mr. Black was to the left, leaning on the left facing, but a little to my rear, and the attendant, whose name I have since learned was Mr. Gheesling, was on the opposite side of the little cooling table to where I stood. He removed the sheet which was covering the body, and took the head in his hands, turned it over, put his finger exactly where wound in the left side of the head was located. I noticed the hands and arms of the little girl were very dirty—blue and ground with dirt and cinders, the

nostrils and mouth just full of sawdust and swollen, and there was a deep scratch over the left eye on the forehead; about the neck there was twine—a piece of cord similar to that which is used at the pencil factory and also a piece of white rag. After looking at the body, I identified that little girl as the one that had been up shortly after noon the day previous and got her money from me. We then left the undertaking establishment, got in the automobile and rode over to the pencil factory. Just as we arrived, I saw Mr. Darley going into the front door with another man. We went up to the second floor, the office floor, I went into the inner office, hung up my hat, and in the inner office I saw the night watchman, Newt Lee, in the custody of an officer, who I think was detective Starnes—the man who had phoned me. I unlocked the safe and took out the pay roll book and found that it was true that a little girl by the name of Mary Phagan did work in the metal plant, and that she was due to draw \$1.20, the pay roll book showed that, and as the detective had told me that some one had identified the body of that little girl as that of Mary Phagan, there could be no question but what it was one and the same girl. The detectives told me then they wanted to take me down in the basement and show me exactly where the girl's body was found, and the other paraphernalia that they found strewed about; and I went to the elevator box—the switch box, so that I could turn on the current, and found it open. I got on the elevator and started to pull the rope to start it going, and it seemed to be caught, and I couldn't move it. However, Mr. Darley was successful in getting it loose, and it started up.

In the basement, the officers showed us just where the body was found, and in behind the door to the dust bin, they showed us where they found the hat and slipper on the trash pile, and they showed us where the back door, where the door to the rear was opened about 18 inches. We all went back upstairs and Mr. Darley and myself got some cords and some nails and a hammer and went down the basement again to lock up the back door, so that we could seal the factory from the back and nobody would enter. After returning upstairs, Mr. Darley and myself accompanied Chief Lanford on a tour of inspection through the three upper floors of the factory. We did not notice anything peculiar.

We removed the clock slip. After putting a new slip in the clock, we all went out of the factory and went downstairs and locked the door and we went to the police headquarters.

Now, gentlemen, I have heard a great deal, and so have you, in this trial, about how nervous I was that morning. I was nervous, completely unstrung; imagine, awakened out of my sound sleep, and a morning run down in the cool of the morning in an automobile driven at top speed, without any food or breakfast, rushing into a dark passageway, coming into a darkened room, and then suddenly an electric light flashed on, and to see the sight that was presented by that poor little child; why, it was a sight that was enough to drive a man to distraction. Of course I was nervous; any man would be nervous if he was a man. We rode to headquarters very quickly and Mr. Darley and I went up to Chief Lanford's

office where I sat and talked and answered every one of their questions freely and frankly, trying to aid and to help them in any way that I could. After staying there a few minutes, Mr. Darley and myself went over to Bloomfield's; they told us somebody was busy with the body at that time and we couldn't see it. So we went over to Montag Brothers and found that nobody was down there. After that I caught a Georgia Avenue car and rode to the house of Mr. Sig Montag, our General Manager, and discussed with him at length and in detail what I had seen that morning and what the detectives had to say. I returned to my home at about a quarter to 11; washed up and had my breakfast in company with my wife. I told her of the experience I had had that morning. I left the house and went to Mrs. Wolfsheimer's house; found quite a company of people, and the conversation turned largely on what I had seen that morning. The conversation was about the little girl that had been killed in the pencil factory that morning, although it was at that time as much a puzzle to me as it was apparently to everybody else. Returned with my wife to my home, where we took our lunch together with my parents-in-law, with Minola McKnight serving. After dinner, read a little while, and then went down town; went into the undertaker Bloomfield's, where I saw a large crowd of people nearby on the outside; on entering I found quite a number of people who were working at the pencil factory; stood in line and went into the room again and stayed a few minutes in the mortuary chamber. Then Mr. Darley and Mr. Schiff and myself went down to police headquarters and into Chief Lanford's office, and the three of us answered all sorts of questions that not only Chief Lanford, but the other detectives would shoot at us. Mr. Darley said he would like to talk to Newt Lee and went into another room. The detectives showed us the two notes and the pad back with still a few unused leaves to it, and the pencil that they claimed they had found down in the basement near the body. One of these notes was written on a sheet of pencil pad paper, the other was written on a sheet of yellow paper, apparently a yellow sheet from the regulation order pad or order book of the National Pencil Company. These are the two notes. Mr. Schiff and myself left police headquarters down to Jacobs' Alabama and Whitehall Street store, and each of us had a drink, and I bought a cigar for each of us at the cigar counter. I returned to my home about a quarter to 4. Went out again. Reached home about 7 or a little after for supper. After supper had callers. About 10 o'clock, all the company left, and I went upstairs with my wife and retired about 10 o'clock.

Next morning, arose about 7 and washed and shaved and dressed, and while I was dressing the door bell rang, and my wife again answered the door, and there were two detectives down there, one was John Black, and the other, Mr. Haslett, of the city detectives. They told me they wanted me to step down to headquarters with them. On the way down, I asked Detective Haslett what the trouble down at the station house was, and he said: "Well, Newt Lee has been saying something, and Chief Lanford wanted to ask you

a few questions about it;" and I said, What did Newt Lee say; "Well, Chief Lanford will tell you when you get down there." When I got down to police headquarters, Chief Lanford hadn't come down yet. I waited around the office possibly an hour, chatting and talking to the officers. Later Chief Lanford came in and says: "Come here," and beckoned to me; and I went with him and went into his room, in his office, and while I was in there, to the best of my recollection, anyhow it is my impression now, that this very time slip, on which at that time that "taken out at 8:26," with the two lines under it, had not been erased, was shown to me, and in looking over it and studying it carefully, I found where the interval of an hour had occurred three times during the time that Newt Lee had been punching on that Saturday night, April 26th. When I had first looked at it, I only noticed that every line had a punch on it, but I didn't notice what time the punch marks themselves were on; this time I studied the slip carefully, it was the same slip I had taken out of the clock, Chief Lanford or one of the officers handed it to me at police headquarters, which I absolutely identified with the writing which was on it, which you can readily see if you look now, even though it has been erased. There seemed to be some altercation about Mr. Rosser coming in that room, and I heard Mr. Rosser say: "I am going into that room, that man is my client;" that was the first intimation I had that Mr. Rosser was going to look after my interests in this matter. Chief Beavers stated that he wanted me to give him a statement, and he said: "Mr. Frank, will you give us a statement?" And I said: Certainly. After I had given the statement, I overheard Mr. Rosser say: "Why, it is preposterous, a man who would have done such a deed must be full of scratches and marks and his clothing must be bloody." I turned and jumped up and showed them my underclothing and my top shirt and my body, I bared it to them all that came within the range of their vision. I had everything open to them, and all they had to do was to look and see it. After that, Mr. Rosser insisted that two of the detectives, Mr. Black and another detective, accompany Mr. Haas, Mr. Herbert Haas, and myself to my home and look over my soiled clothing for the past week, which I anticipated had not been given to the washwoman. They complied with this request. The detectives immediately went upstairs to my room with Mr. Haas and myself, and I took the laundry bag in which my soiled laundry is always kept and emptied it out on the bed, and they examined each and every article of clothing that I had discarded that past week, and I again opened the clothing which I was then wearing, and which was the brown suit I have here, this brown suit is the same suit I wore that Saturday, April 26th, and Monday, April 28th, and I have worn that suit continuously since then until the weather became so hot, and it has neither been pressed nor cleaned since then. The detectives were evidently perfectly well satisfied with what they had seen there, and they left without any further remarks with Mr. Haas. After dinner, I telephoned down to the office and to Mr. Schiff, and told him to get Mr. Montag's permission for the Pencil Company to put



on a detective, preferably a Pinkerton detective, to work with and assist the city detectives in ferreting out the crime. Then I went down town to the pencil factory, and on going into the office, I saw the following men there: Mr. Herbert Schiff, Mr. Wade Campbell, Mr. Darley—Mr. Holloway was out in his place in the hall, and Mr. Stelker and Mr. Quinn and Mr. Ziganke, these foremen were sitting around there because we had shut down there, as they told me, due to the fact that the plant was wholly demoralized, the girls were running into hysterics, they couldn't stick at their work, they were crying and going on over what had happened there. Mr. Quinn said he would like to take me back to the metal department on the office floor where the newspapers had said that Mr. Barrett of the metal department had claimed he had found blood spots, and where he had found some hair. They then took me over to the place in front of the dressing room where it was claimed the blood spots were found. I examined those spots; took a strong electric flash lamp that he had around there and looked at them and examined them carefully. With reference to those spots that are claimed to be blood that Mr. Barrett found, I don't claim they are not blood, they may have been, they are right close to the ladies' dressing room, and we have had accidents there. Where people just cut their fingers and they go back to work, we don't make any record of that, and we have people there cutting their fingers there very often, and when they cut their fingers, their line of travel is right by that place where Mr. Barrett found those spots, right to the office. While I don't say that this is not blood, it may be, but it could also have been paint. When I got down and looked at it, you could have scratched away from the top of those dark stains an accumulation of dirt that was the accumulation of at least three months, from off the top of those spots, without touching the spot itself. That white stuff, in my opinion, was haskoline compound.

I returned after making this examination to my office and gathered up what papers I had to take over to Montag Brothers, and I took the financial report which I had made out the Saturday afternoon previous, and I talked it over with Mr. Sig Montag.

I returned from Montag Brothers to the pencil factory, being accompanied by one of the traveling men, Mr. Sol Hein, and on my arrival I went up into the office and distributed the various papers all over the factory to be acted on the next day. In a few minutes Mr. Harry Scott of the Pinkerton detectives came in and I took him aside into my office, my private office, and spoke to him in the presence of Mr. N. V. Darley and Mr. Herbert Schiff. I told him that I expected that he had seen what had happened at the pencil factory by reading the newspapers and knew all the details. He said he didn't read the newspapers and didn't know the details, so I sat down and gave him all the details that I could; took him around the building, took him first back to the metal room and showed him the place where the hair had been found; showed him the spot in front of the dressing room and took him to the fourth floor; took him down into the basement and made a thorough search, and that included an examination of the elevator well which was at bottom

of elevator shaft; then went back and I showed him where the officer said the slipper had been found, the hat had been found and the little girl's body was located. I showed him, in fact, everything that the officers had showed us.

On Friday I arrived at the pencil factory about 8:30; immediately entered upon my routine work sending the various orders to the various places in the factory where they were due to go; a little later detectives Scott and Black came up to the factory and said: "Mr. Frank, we want you to go down to headquarters with us," and I went with them. We went down to headquarters and I have been incarcerated ever since. Detective Scott and detective Black showed me a little piece of material of some shirt and asked me if I had a shirt of that material; told them I didn't think I ever had a shirt of that description; they brought in Newt Lee, the nightwatchman from a cell and showed him the sample; he said he had a shirt like that but didn't remember having worn it for two years. Detectives Scott and Black then opened a package they had and disclosed the full shirt of that material that had all the appearance of being freshly stained with blood, and had a very distinct odor. Newt Lee was taken back to the cell. After a time Chief Langford came over to me and began an examination of my face and of my head and my hands and my arms. Detective Starnes took me down to the desk sergeant where they searched me and entered my name on the book under a charge of suspicion. Detectives Scott and Black came in at midnight, Tuesday, April 29th, and said: "Mr. Frank, we would like to talk to you a little bit." They stressed the possibility of couples having been let into the factory at night by the night watchman, Newt Lee. I told them that I didn't know anything about it, that if I had, I certainly would have put a stop to it long ago. They said: "Mr. Frank, you have never talked alone with Newt Lee. You are his boss and he respects you. See what you can do with him. We can't get anything more out of him, see if you can." I says: "All right, I understand what you mean; I will do my best," because I was only too willing to help. Black says: "Now put it strong to him, put it strong to him, and tell him to cough up and tell all he knows. Tell him that you are here and that he is here and that he better open up and tell all he knows about happenings at the pencil factory that Saturday night, or you will both go to hell."

In a few minutes detective Starnes brought up Newt Lee from the cell room and handcuffed him to a chair. I spoke to him at some length in there, but I couldn't get anything additional out of him. He said he knew nothing about couples coming in there at night, and remembering the instructions Mr. Black had given me I said: "Now, Newt, you are here and I am here, and you had better open up and tell all you know, and tell the truth and tell the full truth, because you will get us both into lots of trouble if you don't tell all you know," and he answered me like an old negro: "Before God, Mr. Frank, I am telling you the truth and I have told you all I know." And the conversation ended right there. Within a minute or two afterwards the detectives came back into the room, that

is, detective Scott and detective Black, and then began questioning Newt Lee, and then it was that I had my first initiation into the third degree of the Atlanta police department. The way that fellow Black cursed at that poor old negro, Newt Lee, was something awful. He shrieked at him, he hollered at him, he cursed him, and did everything but beat him. Then they took Newt Lee down to a cell and I went to my cot in the outer room.

Before closing my statement, I wish to touch upon a couple of insinuations and accusations other than the one on the bill of indictment, that have been leveled against me so far during the trial. The first is this, the fact that I would not talk to the detectives; that I would not see Jim Conley.

On Sunday morning I went to headquarters twice, willingly, without anybody coming for me; I answered frankly and unreservedly, giving them the benefit of the best of my knowledge. On Monday they came for me; I went down and answered any and all of their questions and gave them a statement which they took down in writing. Tuesday I was at police station again, and answered every question; talked to anybody who wanted to talk with me about it, and I have even talked with them at midnight when I was just about to go to bed. I spoke to Newt Lee alone, but what was the result? They commenced and they grilled that poor negro and put words into his mouth that I never said, and twisted not alone the English, but distorted my meaning. I decided then and there that if that was the line of conduct they were going to pursue, I would wash my hands of them. On May 1st, was taken to the Fulton County Tower. On May 3rd detectives Black and Scott came up to my cell; wanted to speak to me alone without any of my friends around. Black said: "Mr. Frank, we are suspicious of that man Darley. We are watching him; we have been shadowing him. Now open up and tell us what you know about him." I said: "Gentlemen, you have come to the wrong man, because Mr. Darley is the soul of honor and as true as steel. He would not do a crime like that, he couldn't do it." And Black said: "Come on, Scott, nothing doing," and off they go. That showed me how much reliance could be placed in either the city detective or our own Pinkerton detectives, and it was for this reason that I didn't see Conley, surrounded with a bevy of city detectives and Mr. Scott, because I knew that there would not be an action so trifling, that there was not an action so natural but that they would distort and twist it to be used against me, and that there was not a word that I could utter that they would not deform and twist and distort to be used against me, but I told them through Mr. Klein that if they got the permission of Mr. Rosser to come, I would speak to them; would speak to Conley and face him or anything they wanted—if they got that permission or brought Mr. Rosser. Now, that is the reason that I have kept my silence, not because I didn't want to, but because I didn't want to have things twisted.

Then that other implication, the one of knowing that Conley could write, and didn't tell the authorities.

On May 1st I was taken to the tower. On the same date the

negro Conley was arrested. I didn't know anybody had any suspicions about him. His name was not in the papers; I had no inkling that he ever said he couldn't write. I was sitting in that cell in the Fulton County jail, about April 12th or 14th, Mr. Leo Gottheimer, a salesman for the National Pencil Company, came running over, and says, "Leo, the Pinkerton detectives have suspicions of Conley. He keeps saying he can't write; these fellows over at the factory know well enough that he can write, can't he?" I said: "Sure he can write." "We can prove it; the nigger says he can't write and we feel that he can write." I said: "I know he can write. I have received many notes from him asking me to loan him money. In other words, I have received notes signed with his name, purporting to have been written by him, though I have never seen him to this date use a pencil. If you will look into a drawer in the safe you will find the card of a jeweler from whom Conley bought a watch on the installment. If you go to that jeweler you may find some sort of a receipt that Conley had to give." Gottheimer took that information to the Pinkertons; they did just as I said; they got the contract with Conley's name on it; Scott then told the negro to write. The man who found out or paved the way to find out that Jim Conley could write is sitting right here in this chair. That is the truth about it.

Then that other insinuation, so dastardly that it is beyond the appreciation of a human being, that my wife didn't visit me; the truth is, that on April 29th, when I was taken in custody at headquarters, my wife was there to see me; was downstairs on the first floor; I was up on the top floor. She was there almost in hysterics, having been brought there by her two brothers-in-law, and her father. Rabbi Marx was with me at the time. I consulted with him as to the advisability of allowing my dear wife to come up to the top floor to see me in those surroundings with city detectives, reporters and snapshooters; I thought I would save her that humiliation, because I expected any day to be returned once more to her side at home. Gentlemen, we did all we could do to restrain her in the first days when I was down at the jail from coming on alone down to the jail, but she was perfectly willing to even be locked up with me and share my incarceration.

Gentlemen, I know nothing whatever of the death of little Mary Phagan. I had no part in causing her death nor do I know how she came to her death after she took her money and left my office. I never even saw Conley in the factory or anywhere else on April 26, 1913.

The statement of the witness Dalton is utterly false as to coming to my office and being introduced to me by the woman Daisy Hopkins. If Dalton was ever in the factory building with any woman, I didn't know it. I never say Dalton in my life to know him until this crime.

Miss Irene Jackson is wholly mistaken in supposing that I ever went to a ladies' dressing room for the purpose of making improper gaze into the girls' room. I have no recollection of occasions of which she speaks. There was no bath or toilet in that room, and it

had windows opening onto the street. There was no lock on the door, and I know I never went into that room at any hour when the girls were dressing. Occasionally I have had reports that the girls were flirting from this dressing room through the windows with men; sometimes the girls would loiter in this room when they ought to have been doing their work. It is possible that on some occasions I looked into this room to see if the girls were doing their duty and were not using this room as a place for loitering and for flirting.

The statement of Conley is a tissue of lies from first to last. I know nothing whatever of the cause of the death of Mary Phagan, and Conley's statement as to his coming up and helping me dispose of the body, or that I had anything to do with her or to do with him that day is a monstrous lie.

The story as to women coming into the factory with me for immoral purposes is a base lie and the few occasions that he claims to have seen me in indecent positions with women is a lie so vile that I have no language with which to fitly denounce it.

I have no rich relatives in Brooklyn, N. Y. My father is an invalid. My father and mother together are people of very limited means, who have barely enough upon which to live. My father is not able to work. I have no relative who has any means at all, except Mr. M. Frank who lives in Atlanta, Ga. Nobody has raised a fund to pay the fees of my attorneys. These fees have been paid by the sacrifice in part of the small property which my parents possess.

Gentlemen, some newspaper men have called me "the silent man in the tower," and I kept my silence and my counsel advisedly, until the proper time and place. The time is now; the place is here; and I have told you the truth, the whole truth.

*Miss Emily Mayfield.* Worked at the pencil factory last year; have never been in the dressing room when Mr. Frank would come in and look at anybody that was undressing.

*Cross-examined.* Don't remember any occasion when Mr. Frank came in the dressing room door while Miss Irene Jackson and her sister were there.

*Annie Osborne, Rebecca Carson, Maude Wright and Mrs. Ella Thomas* said they were employees of the National Pencil Company. Mr. Frank's general character was good; that Conley's general character for truth and veracity was bad and that they would not believe him on oath.

*Mollie Blair, Ethel Stewart, Cora Cowan, B. D. Smith, Lissie Word, Bessie White, Grace Atherton and Mrs. Barnes,* employees of the pencil company, said that the character of Leo M. Frank was good; that they have never gone with him at any time or place for any immoral purpose, and that they have never heard of his doing anything wrong.

*Corinthia Hall, Annie Howell, Lillie M. Goodman, Velma Hayes, Jennie Mayfield, Ida Holmes, Willie Hatchett, Mary Hatchett, Minnie Smith, Marjorie McCord, Lena McMurty, Mrs. W. R. Johnson, Mrs. S. A. Wilson, Mrs. Georgia Denham, Mrs.*

*O. Jones, Miss Zilla Spivey, Charles Lee, N. V. Darley, F. Ziganki, A. C. Holloway and Minnie Foster,* testified that they were employees of the pencil company and knew Leo M. Frank, and that his general character was good.

*D. I. MacIntyre, B. Wildauer, Mrs. Dan Klein, Alex Dittler, Dr. J. E. Sommerfeld, F. G. Schiff, Al Guthman, Joseph Gershon, P. D. McCarley, Mrs. M. W. Meyer, Mrs. David Marx, Mrs. A. I. Harris, M. S. Rice, L. H. Moss, Mrs. L. H. Moss, Mrs. Joseph Brown, E. E. Fitzpatrick, Emil Dittler, Wm. Bauer, Miss Helen Loeb, Al Fox, Mrs. Martin May, Julian V. Boehm,*

*Mrs. Mollie Rosenberg, M. H. Silverman, Mrs. L. Sterne, Chas. Adler, Mrs. R. A. Sonn, Miss Ray Klein, A. J. Jones, L. Einstein, J. Bernard, J. Fox, Marcus Loeb, Fred Heilbron, Milton Klein, Nathan Coplan, Mrs. J. E. Sommerfeld,* all residents of Atlanta, have known Leo M. Frank ever since he has lived in Atlanta; his general character is good.

*Mrs. M. W. Carson, Mary Pirk, Mrs. Dora Small, Julia Fuss, R. P. Butler, Joe Stelker,* testified that they were employees of the pencil company; that they knew Leo M. Frank, and that his general character is good.

#### EVIDENCE IN REBUTTAL FOR STATE

*J. R. Floyd, R. M. Goddard, A. L. Goddard, N. J. Ballard, Henry Carr, J. S. Rice, Lem Smith* testified that they knew Daisy Hopkins; that her general character for truth and veracity was bad, and that they would not believe her on oath.

*J. R. Floyd.* Heard Daisy Hopkins talk about Frank and said there was a cot in the basement.

*J. T. Hearn.* Have known C. B. Dalton from 1890 to 1904; at first his general character was bad, but the last I knowed of him it was good; would believe him on oath.

*R. V. Johnson.* Have known C. B. Dalton for about 20 years. His character for truth and veracity is good; would believe him on oath.

*W. M. Cook, W. J. Elder, A. B. Houston, J. T. Born, W. M. Wright, C. B. McGinnis, F. P. Hefner, W. C. Hale, Leon Boyce, M. G. Caldwell, A. W. Hunt, W.*

*C. Patrick* knew C. B. Dalton; his general character for truth and veracity was good; they would believe him on oath.

*Myrtle Cato, Maggie Griffin, Mrs. C. D. Donegan, Mrs. H. R. Johnson, Miss Marie Carst, Miss Nellie Pettis, Mary Davis, Mrs. Mary E. Wallace, Estelle Winkle, Carrie Smith* were formerly employed at the pencil company and worked at the factory; Leo M. Frank's character for lasciviousness was bad.

*Mamie Kitchens.* Have worked at the National Pencil Company two years; am on the fourth floor; was in the dressing room with Miss Irene Jackson when she was undressed. Mr. Frank opened the door, stuck his head inside; he did not knock; he just stood there and laughed; Miss Jackson said: "Well, we are dressing, blame it," and then he shut the door.

*Cross-examined.* He asked us if we didn't have any work to

do it was during business hours; have never met Mr. Frank anywhere, or any time for immoral purposes.

*Ruth Robinson.* Have seen Leo M. Frank talking to Mary Phagan. He would stand just close enough to her to tell her about her work; would show her how to put rubbers in the pencils; would just take up the pencil and show her how to do it; he called her Mary.

*Dewey Hewell.* Stay in the Home of the Good Shepherd in Cincinnati; I worked at the pencil factory four months; have seen Mr. Frank talk to Mary Phagan two or three times a day in the metal department; have seen him hold his hand on her shoulder. He called her Mary; he would stand pretty close to her; would lean over in her face.

*Cross-examined.* All the rest of the girls were there when he talked to her; don't know what he was talking to her about.

*Myrtice Cato and Maggie Griffin* had seen Miss Rebecca Carson go into the ladies' dressing room on the fourth floor with Leo M. Frank two or three times during working hours; there were other ladies working on the fourth floor at the time this happened.

*J. E. Duffy.* Worked at the National Pencil Company; cut a forefinger on the left hand; went to the office to have it dressed; a few drops of blood dropped on the floor at the machine where I was hurt; nowhere else except at that machine; none near the ladies' dressing room or the water cooler; had a large piece of cotton wrapped around my finger.

*Cross-examined.* Never saw

any blood anywhere except at the machine; went from the office to the Atlanta Hospital to have my finger attended to.

*W. E. Turner.* Worked at the National Pencil Company; saw Leo Frank talking to Mary Phagan on the second floor, about the middle of March; there was nobody else in the room; she was going to work and he stopped to talk to her; she told him she had to go to work; he told her that he was the superintendent of the factory, and that he wanted to talk to her, and she said she had to go to work; she backed off and he went on towards her talking to her.

*Cross-examined.* Can't describe Mary Phagan; don't know any of the other little girls in there; don't remember who called her Mary Phagan, a young man on the fourth floor told me her name was Mary Phagan; I don't know who he was; didn't know anybody in the factory; can't describe any of the girls.

*W. P. Merk.* Know Daisy Hopkins; met her at 2:30 or 3:30 on a Saturday; she said she was going to pencil factory; made an engagement with her to go to her room to see her that Saturday; was in a room with her at the corner of Walker and Peters street about 8:30 o'clock; she told me she had been to the pencil factory that afternoon; her general character for truth and veracity is bad; would not believe her on oath.

*George Gordon.* Am a lawyer; was at police station part of the time when Minola McKnight was making her statement; went down there with habeas corpus proceedings to have her sign the affidavit; I sat down and waited

outside for her two hours, then went in and found Mr. February reading over to her some stenographic statement he had taken. As to whether Minola McKnight did not sign this paper freely and voluntarily, it was signed in my absence while I was at police station. That paper is substantially the notes that Mr. February read over to her.

*Albert McKnight.* This sideboard sets more this way than it was at the time I was there.

*Cross-examined.* Don't know if the sideboard was changed, but it wasn't setting like that is in the corner.

*R. L. Craven.* Am connected with the Beck and Gregg Hardware Co. Albert McKnight also works there. He asked me to go down and see if I could get Minola McKnight out when she was arrested. I was present when she signed that affidavit. They brought Minola McKnight in and we questioned her as to the statements Albert had given me; at first she would not talk, she said she didn't know anything about it. I told her that Albert made the statement that he was there Saturday when Mr. Frank came home, and he said Mr. Frank came in the dining room and stayed about ten minutes and went to the sideboard and caught a car in about ten minutes after he first arrived there, and that Albert had said that Minola had overheard Mrs. Frank tell Mrs. Selig that Mr. Frank didn't rest well and he came home drinking and made Mrs. Frank get out of bed and sleep on a rug by the side of the bed and wanted her to give him his pistol to shoot his head off and that he had murdered some-

body, or something like that. Minola at first hesitated, but finally she told everything that was in that affidavit. When she did that Mr. Starnes, Mr. Campbell, Mr. February, Albert McKnight, Mr. Pickett, and Mr. Gordon were there.

*E. H. Pickett.* Work at Beck & Gregg Hdw. Co.; was present when the affidavit was signed by Minola McKnight. We questioned her about the statement Albert had made, and she denied it all at first. She said she had been cautioned not to talk about this affair by Mrs. Frank or Mrs. Selig. She stated that Albert had lied in what he told us. She finally began to weaken on one or two points and admitted that she had been paid a little more money than was ordinarily due her. Nobody threatened her when she was there.

*M. E. McCoy.* Knew Mary Phagan. I saw her April 26th, in front of 12 Forsyth street. She was going towards the pencil company. It was near 12 o'clock. Know the time as I looked at my watch.

*George Kendley.* Am with the Georgia R. & P. Co.; saw Mary Phagan about noon on April 26. She was going to the pencil factory from Marietta Street.

*Cross-examined.* Was on the front end of the Hapeville car when I saw her. It is due in town at 12 o'clock. I told several people about seeing her the next day; didn't testify at the Coroner's inquest because nobody came to ask me; have not abused and villified Frank since this tragedy; know Mr. Brent; didn't tell him that Mr. Frank's children said he was guilty. As to whether I abused and villified



him in the presence of Miss Haas and other passengers, there has been so much talk that I don't know what has been said; don't remember saying that I would join a party to help lynch him if he got out.

*N. Kelly.* Am motorman of the Power Co. On April 26th was at the corner of Forsyth and Marietta Street about three minutes after 12; saw the English Avenue car of Matthews and Mr. Hollis arrive at Forsyth and Marietta about 12:03; knew Mary Phagan; she was not on that car.

*W. B. Owens.* Rode on the White City line of the Georgia Railway Co. We got to town on April 26th, at 12:05; don't remember seeing the English Avenue car that day.

*O. Tillander.* Mr. Graham and I went to the pencil factory April 26th, about 20 minutes to 12; saw Conley this morning; am not positive that he is the man I saw there; he looked to be about the same size.

*E. K. Graham.* Was at the pencil factory April 26th, with Mr. Tillander, about 20 minutes to 12. We met a negro on the ground floor. I don't know whether it was Jim Conley or not. He was about the same size. If he was drunk I couldn't notice it.

*Ivy Jones.* Saw Jim Conley at the corner of Hunter and Forsyth Streets on April 26th. He came in the saloon while I was there, between 1 and 2 o'clock. He was not drunk; left him a little after 2 o'clock.

*Harry Scott.* Picked up a cord in the basement when I went through there with Mr. Frank. Lee's shirt had no color on it, excepting that of blood; got the

information as to Conley's being able to write from McWorth when I returned to Atlanta.

*L. T. Kendrick.* Was night watchman at the pencil factory. I punched the clocks for a whole night's work in two or three minutes; don't think you could have heard the elevator on the top floor if the machinery was running or any one was knocking on any of the floors.

*C. J. Maynard.* Have seen Burtus Dalton go in the factory with a woman in June or July, 1912. It was between 1:30 and 2 o'clock in the afternoon on Saturday.

*W. T. Hollis.* Have always said, that if Epps was on the car I did not see him.

*J. D. Reed.* Mr. Hollis told me Monday, April 28th, that Epps had gotten on the car and taken his seat next to Mary, and that the two talked to each other all the way as though they were little sweethearts.

*Dr. Clarence Johnson.* Am a specialist on diseases of the stomach and intestines; am a physiologist. A physiologist makes his searches on the living body; the pathologist makes his on a dead body. In the case before me my opinion is that the digestion of bread and cabbage was stopped within an hour after they were eaten.

*Dr. George M. Niles.* Confine my work to diseases of digestion. Every healthy stomach has a certain definite and orderly relation to every other healthy stomach. Assuming a young lady between 13 and 14 years of age at 11:30, April 26, 1913, eats a meal of cabbage and bread, that the next morning about 3 o'clock her dead body is found, with the other ev-

idence I have listened to. I would say that indicated that digestion had been progressing less than an hour.

*Cross-examined.* Couldn't presume to say how long that cabbage lay in Mary Phagan's stomach; if it had been a live, healthy stomach and the process of digestion was going on ordinarily, it would be pulverized in four or five hours. It would be more broken up and triculated than it is.

*Dr. John Funk.* Am professor of pathology and bacteriologist; was shown by Dr. Harris sections from the vaginal wall of Mary Phagan. They showed that the epithelium wall was torn off at points immediately beneath

that covering in the tissues below, and there was infiltrated pressure of blood. They were engorged, and the white blood cells in those blood vessels were more numerous than you will find in a normal blood vessel. Those conditions must have been produced prior to death, because the blood could not invade the tissues after death. I would say that under those conditions that the epithelium was torn off before death; would not express an opinion as to how long cabbage had been in the stomach, from the appearance of the cabbage itself. It is reasonable to assume that the digestion had progressed probably an hour.

#### EVIDENCE FOR PRISONER IN SUR-REBUTTAL

*T. Y. Brent.* Have heard Geo. Kendley on several occasions express himself very bitterly towards Leo Frank. He said Frank was nothing but an old Jew and they ought to take him out and hang him anyhow.

*M. E. Stahl.* Have heard Geo. Kendley, the conductor, express his feelings toward Leo Frank. He said that Frank was as guilty as a snake, and should be hung,

and that if the court didn't convict him that he would be one of five or seven that would get him.

*Miss C. S. Haas.* Heard Kendley two weeks ago talk about the Frank case so loud that the entire street car heard it. He said that 90 per cent of the best people in the city, including himself, thought that Frank was guilty and ought to hang.

The State offered in evidence the following:

Frank's statement made before Lanford, Chief of Detectives, on Monday morning, April 28:

Am general superintendent and director of the National Pencil Company. Saturday, April 26th, was a holiday with our company, and the factory was shut down. There were several people who came in during the morning. The office boy and the stenographer were in the office with me until noon. They left about 12 or a little after. We have a day watchman there. He left shortly before 12 o'clock. After the office boy and the stenographer left, this little girl, Mary Phagan, came in, but at the time I didn't know that was her name. She came in between 12:05 and 12:10, to get her pay envelope, her salary. I paid her, and she went out of the office. I was in the inner

office. It was impossible to see the direction she went in when she left. I didn't keep the door locked downstairs that morning because the mail was coming in. I locked it at 1:10 when I went to dinner. Arthur White and Harry Denham were also in the building. They were working on the machinery, doing repair work; and Mrs. White was also in the building. I went up there and told them I was going to dinner and they had to get out, and they said they had not finished, then I said, "Mrs. White, you will have to go, for I am going to lock these boys in here." You can go in the basement from the front. I got back at 3 o'clock; went upstairs to tell those boys I was back; told them to "ring out when you go down to let me know when you go out," and they rang out, and Arthur White came in the office and said, "Mr. Frank, loan me \$2.00," and I give him \$2.00, and he walked away. I locked the outer door behind them. The night watchman got there at twenty minutes to 4. On Friday night I told him, "You had better come around early tomorrow, because I may go to the ball game. I told him he could go out; he got there so early and I was going to be there. He come back about four minutes to 6; the reason I know that I was putting the clock slips in and the clock was right in front of me. I said, "I will be ready in a minute," and he went downstairs and I came to the office and put on my coat and hat and followed him and went out. When I went out, talking to Newt Lee was J. M. Gantt, a man I had fired about two weeks previous. Newt told me he wanted to go up to get a pair of shoes he left while he was working there, and I said, "That's all right, go with him, Newt"; and I went on home, and got there about 6:25. I tried to telephone Newt when I got home; didn't get an answer, and at 7 o'clock I called him and asked him if Gantt got his shoes, and he said, "Yes; he got them," and I said, "Is everything all right," and he said, "Yes"; and the next thing I knew they called me at 7:30 the next morning; don't know that our watchman has been in the habit of letting people in the factory at any time. I took a bath Saturday night at my home. I changed my clothes. The clothes that I changed are at home, and this is the suit of clothes I was wearing Saturday. After I left the shop I went to Jacob's Pharmacy and bought a box of candy for my wife and got home about 6:25.

The State also introduced the following exhibits:

A piece of cord found around Mary Phagan's neck, about the size of a heavy twine, with a knot in it.

A rag that was found around Mary Phagan's neck, with blood on it. White piece of cloth, soiled. Looked as if it was a piece torn off from petticoat.

Four or five chips of wood, with red splotches on them, chipped up from the second floor of the National Pencil Company factory in front of ladies' dressing room.

A shirt found by detectives in trash barrel at Newt Lee's home. Shirt was very bloody; blood was on both sides of shirt and high up on armpits on the inside.

A scratch pad that Conley wrote on; an ordinary white scratch pad.

The following affidavit executed by Minola McKnight:

Saturday morning, April 26th, Mr. Frank left home about eight. Albert, my husband, got there about a quarter after one, and he was there when Mr. Frank came for dinner, which was about half-past one. Mr. Frank did not eat any dinner, and he left in about ten minutes. Mr. Frank come back to the house at seven o'clock that night, and Albert was there when he got there.

Tuesday, Mr. Frank says to me, "It is mighty bad, Minola, I might have to go to jail about this girl, and I don't know anything about it."

Sunday, Miss Lucile said to Mrs. Selig that Mr. Frank didn't rest so good Saturday night; she said he was drunk and wouldn't let her sleep with him, and she said she slept on the floor on the rug by the bad because Mr. Frank was drinking. Miss Lucile said Sunday that Mr. Frank told her Saturday night that he was in trouble, and that he didn't know the reason why he would murder, and he told his wife to get his pistol and let him kill himself.

When I left home to go to the solicitor general's office, they told me to mind how I talked. They pay me \$3.50 a week, but last week they paid me \$4.00, and one week she paid me \$6.50. They would tell me to mind how I talked, and Miss Lucile gave me a hat.

Notes found by policemen in sawdust beside body of Mary Phagan, written on white and yellow paper.

(He said he would love me, laid down play like the night witch did it but that long tall black negro did boy hisself.)

[Mam that negro fire down here did this when i went to make water and he push me down a hole a long tall negro black that did (had) it. i right while play with me.]

*The Prisoner's Counsel* introduced in evidence the following statements made by the witness Conley before the trial:

#### STATEMENT OF JAMES CONLEY, MAY 18, 1913.

My full name is James Conley; reside 172 Rhodes Street, with Lorine Jones. This woman is not my wife, and I have been living with her a little over two years. I have been having intercourse with Lorine Jones. I have been employed as elevator man and roustabout at the National Pencil Co. factory in Atlanta for the past two years. Before going there, I was employed by Dr. L. Palmer and others as a driver. Previous to that time I worked for Adam Woodward, as a stable hand. I am 27 years of age.

On Saturday, April 26, at 10:30, left my house, and visited a number of saloons between Fair and Peters and Haynes and Peters Street. I arrived home at 2:30 p. m., and found L. Jones there and she asked me if I had any money. Gave her \$3.50. At 3:30 p. m. or 4:00 p. m., Saturday, I purchased 15 cents worth of beer and then returned to the

house. I had also bought a pint of rye and some pan sausage. I remained at home all Saturday night, and at 12 o'clock noon, Sunday, walked up on Mitchell Street and got a cigarette, remaining there until 12:45 p. m., and returned home, remaining until 6:30 p. m., when I went to my mother's house, and got my lunch, and then returned home and remained at home until Monday, April 28th. On April 28th, reported for work at the pencil factory at 7:05 a. m.

STATEMENT OF JAMES CONLEY, MAY 24, 1913.

On Friday evening before the holiday, about one o'clock, Mr. Frank come up the aisle in the factory and asked me to come to his office. He asked me, could I write, and I told him yes, I could write a little bit, and he gave me a scratch pad and told me what to put on it, and told me to put on there, "dear mother," "a long, tall, black negro did this by himself," and he told me to write it two or three times on there. I wrote it on a white scratch pad, single ruled. He pulled out a box of cigarettes, and in that box he had \$2.50, two paper dollars and two quarters, and I taken one of the cigarettes and handed him the box, and I told him he had some money in the box, and he said that was all right, I was welcome to that for I was a good working negro around there, and then he asked me where Gordon Bailey (Snowball, they call him) was, and I told him on the elevator, and he asked me if I knew the night watchman, and I told him no, and he asked me if I ever saw him in the basement, and I told him no, and I asked him not to take out any money for that watch man I owed, for I didn't have any to spare, and he told me he wouldn't, but he would see to me getting some money a little bit later. He told me he had some wealthy people in Brooklyn, and then he held his head up and looking out of the corner of his eyes and said, "Why should I hang?" and that's all I remember him saying to me. When I asked him not to take out any money for the watch, he said you ought not to buy any watch, for that big fat wife of mine wants me to buy her an automobile, but he wouldn't do it; I never did see his wife. On Tuesday morning after the holiday on Saturday, before Mr. Frank got in jail, he come up the aisle where I was sweeping and held his head over to me and whispered to me to be a good boy and that was all he said to me.

STATEMENT OF CONLEY, MAY 28, 1913.

I make this statement, my second statement, in regard to the murder of Mary Phagan. I made the statement that I went to the pencil factory on Friday, April 25, 1913, and went to Frank's office at four minutes to 1, which is a mistake. I made this statement in order that I might not be accused of knowing anything of this murder, for I thought that if I put myself there on Saturday, they might accuse me of having a hand in it; I now make my second and last statement, freely and voluntarily, after thinking over the situation,

and I have made up my mind to tell the whole truth, without the promise of any reward or from force or fear of punishment in any way.

I got up Saturday morning, April 26th, between 9 and half-past 9. I went to Peters Street, and stopped at the beer saloon, and bought two beers there for myself and give another fellow a beer, I don't know what his name was, but they call him Bob. Then I walks up to the Butt-In saloon and shoots dice and won 90 cents. Then I went to Earley's beer saloon, and bought two glasses of beer, and come out and bought a half pint of whiskey; I drank some of the whiskey, then I started to the Capitol City Laundry, and on my way there met Mr. Frank, going to Montags; he told me to wait a few minutes. He come back and told me to come to the factory, that he wanted to see me, and I went to the factory with him; and after we got to the factory, Mr. Frank took the box and put it there at the trash barrel, which was just to the right of the steps as you go in, for me to sit on. He told me to sit down there until I heard him whistle. Then he told me not to let Mr. Darley see me, and after Mr. Frank went up the steps, in a few minutes here comes a young lady down-stairs, that was Miss Mattie. Then come Mr. Darley down, and he stopped Miss Mattie at the front door. I heard Mr. Darley say to her, "Don't worry, I will see that you get that next week." Then comes Mr. Holloway down, about five minutes after Mr. Darley had gone. Then come another colored fellow, a pegged-legged one, and he went up the steps, he had some bills in his hands, and Mr. Holloway come back down with the pegged-legged one and went out on the sidewalk and looked at the fellow's wagon, but what he said to him I don't know. Then Mr. Holloway went back upstairs and come back down and was gone for good. Then there comes another lady into the factory, and she had on a green looking dress; she works on the fourth floor. She stayed up there seven or eight minutes, and then she come back down with her money in her hand, and counted it, and went out the door; the next thing, Mr. Frank whistled for me twice; I went on up the stairs and the double doors on the stairway were closed, and I opened them and they shut themselves, and Mr. Frank was standing at the top of the steps, and he said, "You heard me, did you?" and I said, "Yes, sir," and Mr. Frank grabbed me by my arm so tight his hand was trembling. He carried me into his private office, then he saw two ladies coming, and he said to me, "Gee, here comes Miss Emma Clark and Miss Corinthia Hall," and he come back in there to me; he was walking fast and seemed to be excited, and he said to me, "Come right in here, Jim." Mr. Frank grabbed me and gave me a shove and put me in the wardrobe and he shut the doors and told me to stay there until after they had gone. Mr. Frank come and let me out of the wardrobe. I don't remember Miss Hall and Miss Clark using the telephone. I stayed in the wardrobe a pretty good while, for the whiskey and beer I had drank got me to sweating. I couldn't hear them talking, only I heard Miss Emma say, "Good morning." I said, "I got too hot in there," and he said, "Yes, I see you are sweating." He said, "Jim, can you

write?" I said, "Yes, sir, I can write a little bit," and then he gave me a pencil that he got off the top of his desk, and told me to put on there, "dear mother, a long tall black negro did this by hisself," and when I went to put down "negro" I put it "n-e-g-r-o-s" and he said don't put no "s" there, he said that means negros and he said now rub the "s" off, and I rubbed the "s" out, and he said "It means just one person like yourself," and he told me to write it again, and I written it, and he looked at it and slapped me on the back and said, "That's all right, old boy," and he said "write it again," and I written it for him three times. Then Mr. Frank takes out a cigarette for himself and handed me the box, and I taken out a cigarette and lit it, and saw some money in the box, and he said that was all right, I could have that. Then Mr. Frank looked around at me and held up his head towards the top of the house and said, "Why should I hang, I have wealthy people in Brooklyn." I didn't know what he was talking about, I didn't have any idea in the world what he was talking about, and he was winking and rubbing his hands together and touching me on the shank with his foot and took a deep breath, he said, "Why should I hang?" and shook his head and rubbed his hands together. Then he asked me where was Snowball, and I told him I didn't know, and he asked me, did I know the night watchman, and I told him no, sir, I just knew him by passing him, and he asked me if I had seen him in the basement at any time, and I told him no, sir, that he would have to ask the fireman about that, for he was down in the basement more than any of us was, and when I told Mr. Frank that he stuck one finger in his mouth and said, "S-s-s-h, that's all right," and then Mr. Frank told me he was going to take that note I had written and send it off in a letter to his people when he wrote, and recommend me to them, because I was a good working negro around there, and he liked me, and when Mr. Frank said that I said "Don't take out another dollar for that watch man," and he said "All right, I won't," and he said, "I don't see why you want to buy a watch, because that big fat wife of mine wanted me to buy her an automobile, but I won't do it." Then he reached in his pocket and pulled out his watch and said, "It is nearly time for me to be going to dinner." Then I asked Mr. Frank if that was all he wanted with me right now, and he said, yes; but all the time, though, he was talking and jollyng and going on with me, and I began to think it was something, for a white man to be playing with a negro, and during the time he cast his eyes up to the top of the house and said, "Why should I hang, I have wealthy people in Brooklyn." Then Mr. Frank said, "I will see you Monday, if I live and nothing happens, James," and I said, "Well, is that all you want for good Mr. Frank?" and he said, "Yes," and I saw him go to his desk and take out a brownish-looking scratch pad, and he took his pencil and made a mark on it. I took it to be an "M," but he shut the tablet up and looked at me and told me that was all he wanted with me. I pulled the front doors to as I went out, and I went to the beer saloon across the street and opened the cigarette box, and it had two paper dollars in there and two silver quarters, and I

laughed and said, "Good luck has done struck me," and I bought a ten-cent double-header and then went back to Peters Street, and hadn't none of the boys got there that I run with and I walks up there to the moving picture show and looked at the pictures. I got home about half-past 2 o'clock, and I took the bucket and went and got fifteen cents' worth of beer in it and come back home and sent the little girl to get a dime's worth of stove wood and a nickel's worth of pan sausage, and I eat half the pan sausage up raw, and I give my old lady \$3.50, and the other little change I kept it, and I layed down across the bed and didn't leave home no more until 12 o'clock Sunday, in the day time. Next morning I got to the factory four or five minutes after 7 o'clock, and when I got there went upstairs to the dressing room, and in comes Gordon Bailey, and Joe Williams, and Mr. Wade Campbell, the lead inspector, and he says, "Wasn't it bad about that girl being killed," and we asked him, "which girl," and it seemed like he said "Mary Puckett," and we asked him whereabouts, and he said, "in the basement," and we asked him "if it was a white or colored girl," and he said, "it was a white girl," and we asked him how she got killed, and he said he didn't know, and I stayed down the aisle until about 9 o'clock, and went to the fourth floor, and then I said I would go to the basement and see who that was that got killed; when I got there there was such a crowd of white people there I couldn't go back there. Tuesday morning I got through with my work and went down stairs about half-past 9, and there was such a crowd down there I didn't stay long. About half-past 10 Mr. Frank came back up the aisle and leaned over to me and said, "Jim, be a good boy," and I said, "Yes, sir, I am, Mr. Frank," and when I heard from Mr. Frank again he was arrested. I come to work Wednesday morning, and works all that day, and Thursday morning I come to work, and went downstairs, and the fireman and another colored fellow was down there, and I asked the fireman where it was that they say the young lady got killed at, and he told me right around there, and I took a little piece of paper and went around there to see if I could see, but I couldn't see where anybody had been laying at, and I went upstairs, and stayed there until 12, and the detectives were giving us all subpoenas and got my subpoena and started to cleaning up at half-past 12, and got through cleaning at half-past 1. I went down to wash my shirt so I could have a clean one to wear to court, for I had been wearing this one for three weeks. Some of them saw me back there washing my shirt and called up the detectives, and when the detectives come up there I had done put on my shirt, and they asked me where was the shirt I was washing, and I told them this here was the shirt. They brought me down here and found there was no blood on the shirt, and give me my shirt back, and that's all I know.

#### CONLEY'S STATEMENT MAY 29, 1913.

On Saturday, April 26, 1913, when I come back to the pencil factory with Mr. Frank, I waited for him downstairs like he told me,



and when he whistled for me I went upstairs, and he asked me if I wanted to make some money right quick, and I told him, "Yes, sir," and he told me that he had picked up a girl back there and had let her fall, and that her head hit against something, he didn't know what it was, and for me to move her; I hollered and told him the girl was dead, and he told me to pick her up and bring her to the elevator, and I told him I didn't have nothing to pick her up with, and he told me to go and look by the cotton box there and get a piece of cloth, and I got a wide piece of cloth and tied her up in it. I carried her on my right shoulder, and she got too heavy for me and she slipped off and fell on the floor at the dressing room. I hollered for Mr. Frank to come there and help me, that she was too heavy for me, and Mr. Frank come down there and told me to pick her up, damn fool, and he run down there to me, and he was excited, and he picked her up by the feet, her head and feet were sticking out of the cloth, and then we brought her on to the elevator, Mr. Frank carrying her by the feet and me by the shoulders, and we brought her to the elevator, and then Mr. Frank says, "Wait, let me get the key," and he went into the office and got the key and come back and unlocked the elevator door and started the elevator down. We went on down to the basement, and Mr. Frank helped me take it off the elevator, and he told me to take it back there to the sawdust pile, and I picked it up and put it on my shoulder again, and Mr. Frank, he went up the ladder and watched the trap door to see if anybody was coming, and I took her back there and taken the cloth from around her and taken her hat and shoe which I had picked up upstairs right where her body was lying, and brought them down and untied the cloth and brought them back and throwed them on the trash pile in front of the furnace, and Mr. Frank was standing at the trap door at the head of the ladder. He didn't tell me where to put the things. I layed her body down with her head towards the elevator, lying on her stomach. Mr. Frank joined me back on the first floor. He said, "Gee, that was a tiresome job," and I told him his job was not as tiresome as mine was, because I had to tote it all the way from where she was lying to the dressing room, and in the basement from the elevator to where I left her. Then we went on into the office, and Mr. Frank he couldn't hardly keep still; he was all the time moving about from one office to the other, then he come back into the stenographer's office and come back, and he told me, "Here comes Emma Clark and Corinthia Hall," and he opened the wardrobe and told me to get in there. Mr. Frank come back and I said, "Goodness alive, you kept me in there a mighty long time," and he said, "Yes, I see I did, you are sweating," and then me and Mr. Frank set down in a chair. Mr. Frank then took out a cigarette, and he gave me the box and asked me did I want to smoke. I handed him the cigarette box, and he told me that was all right, I could keep that, and I told him he had some money in it, and he told me that was all right, I could keep that; Mr. Frank then asked me to write a few lines on that paper, a white scratch pad he had there, and he told me what to put on there. After I got through writing, Mr.

Frank looked at it and said it was all right, and Mr. Frank looked up at the top of the house and said, "Why should I hang, I have wealthy people in Brooklyn"; I asked him what about me, and he told me that was all right about me, for me to keep my mouth shut, and he would make everything all right, and then I asked him where was the money he said he was going to give me, and Mr. Frank said, "Here, here is two hundred dollars," and he handed me a big roll of greenback money and I didn't count it; I stood there a little while, looking at it in my hand, and I told Mr. Frank not to take another dollar for that watch man I owed and he said he wouldn't—and the rest is just like I have told it before.

The reason I have not told this before is I thought Mr. Frank would get out and help me out, but it seems that he is not going to get out, and I have decided to tell the whole truth about this matter.

While I was looking at the money in my hands, Mr. Frank said, "Let me have that and I will make it all right with you Monday if I live and nothing happens," and he took the money back and I asked him if that was the way he done, and he said he would give it back Monday.

*The Prisoner's Counsel* put in evidence this letter, written by Leo M. Frank to Mr. Moses Frank, not typewritten but in long hand:

Atlanta, Ga., April 26, 1913.

Dear Uncle:

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

It is too short a time since you left for anything startling to have developed down here. The opera has Atlanta in its grip, but that ends today. I've heard a rumor that opera will not be given again in a hurry here.

Today was "Yondef" here, and the thin gray line of veterans, smaller each year, braved the rather chilly weather to do honor to their fallen comrades.

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

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

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

Your affectionate nephew,

Leo M. Frank.

## THE SPEECHES TO THE JURY.

MR. HOOPER FOR THE STATE.

*August 21.*

*Mr. Hooper.* Gentlemen of the Jury: The object of this trial, as well as all other trials, is the ascertainment of truth and the attainment of justice. In the beginning, I want to have it understood that we are not seeking a verdict of guilty against the defendant unless he is guilty.

The burden of guilt is upon our shoulders—we confront the undertaking of putting it upon his. We recognize that it must be done beyond a reasonable doubt, and that it must be done purely by the evidence which we have produced before you.

We have cheerfully assumed this burden. We have cheerfully undertaken the task, but, there is not a single man on the prosecution who would harm a hair of the defendant's head wrongfully. We want him given the same measure of justice that should be meted to all classes of defendants. He is entitled, though, to the same degree of law as any other prisoner. But, he is not entitled to any more because of his wealth or social position. The arm of the law is strong enough to reach to the highest pinnacle of position and drag down the guilty, and strong enough to probe into the gutter and drag up the lowest.

There is not a case in the history of Georgia that has been as long and as important as this. With this importance, there arises a great degree of responsibility that rests upon your shoulders. I call your attention to the facts and law as they will be given you in the charge—your only instructions, the orders by which you will be guided in the end.

There is one thing I want to say, and that is this: This man should not be convicted purely because the law is seeking a victim. The law doesn't demand it. It demands only that you seek the truth, the absolute truth, the showing of

which is required by us, the prosecution. We are not looking for blood indiscriminately. We are only seeking the slayer of Mary Phagan, and in seeking him, I try as much as possible to feel as though I were one of you twelve.

Now, let's see what was the situation on April 26 in the pencil factory. This factory was being run by Sig Montag as its boss, Frank as its superintendent, assisted by the handsome Mr. Darley and the able Mr. Schiff.

As a citizen of Atlanta, I am not proud of conditions that existed in that factory! What was its moral atmosphere? The character of it appeals wonderfully to us as we seek the truth.

The defense has produced numbers of girl workers who told us of his character. They say it is good. That is only negative because he has never harmed them. They do not know him. But, while we are considering their stories, there are the stories of others—girls who left his factory because of his character and his conduct toward them. They say his character is bad. You have from the two your choice of either. Those who still are there—those who have never been harmed—and those who have left because of him and his character.

The law is a peculiar thing. We named over our plans with the first witnesses put on the stand. We showed at first just exactly what we had in view, exposed our hand, so to speak, and even went so far as to put the stories before you in so far as they were allowed to be told. They could have gone into detail were we permitted to have allowed them. They could have told of incidents that would have been convincing. We have adopted the only legal manner in which the matter could be sifted. It's on this principle: If fifty men were asked of the character of a certain place or man, and twenty-five or more say it is good, while as few as ten say it's bad, what is the character of this place or person, considering, of course, that all have an equal opportunity to observe? Would you say it was good? This question of character was one into which we were not permitted to go.

But the defense, on the other hand, were allowed to let down the bars and walk in.

That pencil factory was a great place for a man without a conscience. It was a great place for Frank, his handsome assistant, Mr. Darley, and the able Mr. Schiff. We find that Frank had coupled himself up for nightly meeting with Dalton, who now has, it seems, turned respectable. My friends, no doubt, will argue that it was strange a man of such business and social position should consort with such a character. It will be a good argument, likely, but probe a little deeper and see if Dalton was not the kind of man required by a dual personality such as possessed by Frank?

We all have dual personalities. There is not a man so good without evil, and no man so bad without good. But when the evil is predominant the man is bad. Vice versa with the good. A man may mingle with his varnished class by day, but when the shades of night are falling and the evil dominate, he doesn't go and get good men who can tell of his good character. He goes for his Dalton. We all are Dr. Jekyls and Mr. Hydes. There are two sides to each of us.

Dalton seems to have overcome this evil. He is apparently making good, as many substantial folks have told us on the witness stand. You can't blame Dalton so much.

This factory was under the control of this man Frank. It is a house of bad reputation. You find other acts of this sort committed therein. It is unsavory. Frank is its head. He contends he did not know Mary Phagan. Why, every day as he walked through the floor on which his office was situated, he passed by her at her machine. You find, gentlemen, that he often stopped at her place of duty to show her this or to show her that, to help her in her work. Not only that, but he followed her out of her beaten path—following like some wild animal, telling her of his superiority, coaxing, persuading, all the while she strove to return to her work at her machine. You will notice on this diagram that every time he crossed the floor he passed this beautiful girl, looking upon her with the eye of lust. The first indication of his attitude

toward his victim is in the tall, good-natured Jim Gantt, friend of Mary. He asks Gantt: "You're pretty thick with Mary, aren't you?" It shows that he knew her and that he had his eye on her. What next? He wants to get rid of Gantt. How does he go about it? You have seen that previously he was bragging on Gantt, on Gantt's ability as a workman. But, just as soon as his eye is set upon the pretty little friend of Gantt, he sets plans to get rid of him. And, it comes up about a dollar. He says it was something about money, hoping to lead you, gentlemen, to believe that Gantt was a thief. He would not let Gantt go into the building because he was a thief. Didn't he know that this long-legged mountaineer was coming back at him? Sure, he knew it. And, they parted company at once. Gantt was fired. What was he accomplishing by this? He was getting rid of the only man on either floor—in the whole factory—who knew Mary Phagan, and who would raise a hand to protect her.

Then he sets about laying plans. And those plans!

You will notice that the defense has pitched its every effort entirely on Jim Conley. I don't blame them. He was like Stone Mountain is to some highways in its vicinity. They couldn't get by him. We could have left him out and have had an excellent chain of circumstantial evidence. Without Jim, though, the defense couldn't move—they couldn't budge. You have sat and seen the biggest legal battle ever fought in a court house between skillful intellect and a witness negro. You have seen brainy eloquence pitted against the slow, incomprehensible dialect of a negro. You have seen a trained and speedy mind battling with blunt ignorance. And, what was the result? At the end of three and a half days it came. That negro was asked questions about everything Rosser could conceive. His answers were hurried from the stenographer's notes and transcribed on typewriter. Then, they were hurled back into Conley's face. But, it was like water poured onto a mill wheel. They received the same answers, the same story.

It was because, gentlemen, the negro was telling the truth.

Truth is stronger than all the brains and ingenuity that can be collected in this whole town—this state, the world. How they did hate to give up the fight. They lost, and with the loss went the loss of their theory in whole.

When all was through, they were forced to sit and leave Jim's truth unscathed. How unfortunate! All they could say was that Jim had been a big liar. That is true. In his first two stories, he lied. But, if I had any comment on Jim Conley, it would be that if they had bored me as they bored him at police headquarters, they could have muddled me even more.

Suppose Frank's conduct in this case is shown as it has been. He is a smart man. There is no disputing that fact. He needn't have told you all the details on the stand of the amount of work he did that day. You can tell that he is smart, clever, ingenious.

Now, Jim, he comes back that Saturday morning by order of the brilliant Frank, his boss. There's no denial of this, so far. Other people tell you they have seen women enter the factory with men at suspicious hours. Jim tells you of watching for these folks. And there is this to reckon with: Providence has a way of revealing the truth at the final minute. At the eleventh hour we found two men yesterday who had been to the pencil factory at the noon Mary Phagan was murdered. They saw Jim Conley just as he tells you, sitting on the first floor, near the door where he watched for Frank. Mrs. White saw him, although she doesn't identify him perfectly. One thing true, she saw a negro in the position Jim tells us he was in. Now, for what purpose was he there? Waiting to do the same thing he had done before—to watch for his boss. They say he was drunk. Very well. But, did you notice how clearly he recited incidents and told the names of people he saw at the times they claim he was so drunk?

We are brought up to the time of the tragedy. Jim is still there. Everybody has gone, leaving him and Frank in the building. Frank knew that Mary Phagan was coming that

day, and he knew the hour. On the previous afternoon little Helen Ferguson, Mary's chum, had called for Mary's pay, and Frank had told her that Mary should come and get her own pay, breaking a rule of the plant in doing so. He arranges with Jim to hang around and make himself convenient. Jim takes his accustomed seat in the hallway. Parties come and go. Jim observes all that happens, he says nothing. Finally, Mary Phagen arrives, beautiful, innocent, coming in her blue frock and new hat and a ribbon around her hair. Without any thought of evil or foreboding of tragedy, she tripped into the building and up the stairs, going for \$1.20. No explanation can come from Mary. The dead have no stories to tell. She went in a little after 12. She found Frank. He tells us that much from his own lips. He was there from 12 to 1. It's his own statement. What a statement!

There was Mary. Then, there was another little girl, Monteen Stover. He never knew Monteen was there, and he said he stayed in his office from 12 until after 1—never left. Monteen waited around for five minutes. Then she left. The result? There comes for the first time from the lips of Frank, the defendant, the admission that he might have gone to some other part of the building during this time—he didn't remember clearly.

Jim Conley, sitting faithfully downstairs, heard footsteps going toward the metal room. Then there came the sound of other footsteps, footsteps that pursued. There was no return of the first footsteps, and the footsteps that pursued tiptoed back from the metal room. Then Leo stamped a signal on the office floor.

I will be fair with Frank. When he followed the child back into the metal room, he didn't know that it would necessitate force to accomplish his purpose. I don't believe he originally had murder in his heart.

There was a scream. Jim Conley heard it. Just for the sake of knowing how harrowing it was, I wish you jurymen could hear a similar scream. It was poorly described by the



negro. He said it sounded as if a laugh was broken off into a shriek. He heard it break through the stillness of the hushed building. It was uncanny, but he sat faithfully on. He was under orders. He was to come on signal. That scream was no signal. Later, Frank would stamp on the the office floor.

This negro tells you that the white man killed the little girl. But, no! Frank was in his office, busy with his wonderful financial sheet. I will show you how he could have sat at his desk and heard this negro attack the little child who had come to draw her pay.

[*Mr. Hooper* turned to the diagram, showing the jury the nearness of the metal room to Frank's office, explaining his theory that nothing could have happened on the floor without being heard or seen by Frank.]

Mr. Frank, I will give you the benefit of all you deserve. When all is summed up, you were sitting only a few feet from the spot where a murder was committed, and you never raised a finger. Let me show you something else. When this thing was over there were two men and a woman upstairs who had to get out the building before the body was moved. It would be dangerous to leave it lying back in the metal room, staring hideously from unseeing eyes. Frank went upstairs and told the trio up there that if they were going, it was time for them to leave, as he was going to lock up the factory. He was in a hurry and told them so. Mrs. Arthur White, perceiving his evident hurry, hastened downstairs. When she reached the office, Frank, the man-in-a-hurry, was in his shirt sleeves, writing at his desk.

Why should I hang? What does that show? In the first place, his appreciation of a little girl of 14. Did it hurt him to knot the rope of cord around her neck, did it hurt him as he drew it tighter and tighter around the tender throat until the dim spark of life was choked extinct? To the contrary. It only excited him enough to ask himself the question "Why should I hang?" There come times when we all speak our true thoughts and sentiments. That was such a time.

Now, which is the more probable—that Jim heard this expression, or that he imagined the story? Did Jim know Frank had relatives in Brooklyn? Did Jim know there was such a thing as Brooklyn? Did he know they were rich? And Jim says, with the typical soul of Africa: “What’s goin’ to become of me?” Frank says, “I’ll take care of you, for I’ll write my mother a letter, so that she can help you.” He asks Jim if he can write, and Jim tells him a little bit. He wasn’t on his guard. He should have detected Frank’s purpose. Frank was smart, Jim was dull. Frank dictated, Jim wrote.

Now, gentlemen, I suppose most of you are southern men, men who know the characteristics of the negro. Will you please tell me what idea this negro would have had to write these notes accusing a negro, and, just the same as saying, this was done by a negro who is a fool and who cannot write? It was foolish enough for the mighty brain of Frank to put the notes beside the body. The truth of the business is, that this looks like the only time the brainy Frank ever lost his head. Then, next comes the money. Frank pulls out his roll of bills, and says, “Jim, here’s that \$200.” Jim is so overwhelmed that he doesn’t notice the amount, but puts the roll in his pocket. Frank reflects. He need not waste the \$200. Jim is as deep in the mire as he is in the mud. He recovers the money. “Let’s see, Jim, if everything comes out all right, I’ll return this money.” He tells Jim that Jim has the goods to deliver. The body must be disposed of. That will be left to Jim. He depends on Jim’s lust for the \$200 to bring him back to the factory to burn the corpse of little Mary, the victim! Nobody else was expected by him that afternoon but Jim Conley and Newt Lee.

It makes no difference to me about how long it took Frank to go to lunch, the minute he put in here and the minute he put in there, about which there has been such a squabble in the evidence. That is aside from the point. The fact remains that at or about 3 o’clock he came back to the pencil factory to await the arrival of Jim Conley to burn that body! He

was expecting Jim Conley, and he also knew that Newt Lee was coming. Aye, there was the rub! He expected them both, and it depended upon which one arrived first as to how things would go. If Jim got there first and disposed of that body, all right; but suppose Newt Lee got there first! Then was the defendant in the position of Napoleon at the battle of Waterloo, when he wondered which army would arrive first, and knew that upon this question depended victory or defeat. The wrong army arrived, and Napoleon went down!

Newt Lee arrived at the pencil factory that afternoon, but where was Jim Conley? Yes, that's what the defendant asked himself, "Where is Jim Conley?" Jim Conley was getting that much-needed sleep after the exciting events he had gone through with. That's where Jim Conley was. Then was the defendant lost.

He sent Newt Lee away, with the last hope that Jim might yet turn up and burn the body as had been agreed upon. "Go out and have a good time, Newt," that's what the defendant told good old honest Newt Lee. He said, "It is not Newt Lee I want, it is Jim Conley. Go away, Newt, and stay until 6 o'clock. Give me two hours more." Two hours passed, and Jim Conley did not show up. He was taking that much-needed nap. Newt came back, and the game was up. He talked to Newt Lee about the night's work and started home.

Now, gentlemen of the jury, I want to call your attention to a very peculiar thing: As the defendant passed out of the factory door, he met Gantt, old long-legged Gantt, who was looking for his shoes. Witnesses testified that the defendant jumped back startled. Why? Think why? He wasn't afraid of Gantt. Gantt wouldn't hurt a flea. That wasn't the reason. He knew that Gantt knew Mary Phagan and had lived close to the family, and Frank thought that Gantt was looking for little Mary, who was missing from home and should have been back long ago. That's why he jumped back when he saw Gantt. He had called Gantt down about "setting up" to Mary, and had fired him over an argument about

who was going to pay a dollar or so. He didn't think that Gantt stole that paltry dollar. He expected him to ask where Mary Phagan was. That, gentlemen of the jury, is why he jumped back when he saw Gantt. But Gantt spoke to the defendant. He just said, "Howdy, Mr. Frank," The defendant felt relieved then. Gantt told him that he had left a pair of shoes in the factory and wanted to get them. But it won't do to let him go in that building now, thought the defendant. Suppose he should find out? He musn't go in there. So the defendant said that he thought he had seen a nigger sweeping Gantt's shoes out of the building. Then Gantt said he had two pairs of shoes in there, and that maybe the other pair wasn't swept out.

This was the last hope. What could he say to that? He had said that he saw the nigger sweeping out only one pair. In a few days this murder must be out, anyway. To keep Gantt out would arouse his suspicions. And this is what went on in the defendant's mind: "I'll let him in, but I'll guard him like a thief." And he said, "Newt, go with him." Strange to say, Gantt found both pairs of shoes, just where he said he had left them. Gentlemen, does that look like the defendant had seen a nigger sweeping them out? Does that look like the truth?

After he had let Gantt in the factory, what did he do? He called up the factory by phone, a thing that he never had done before. Why? Why did he do that thing? Gantt! Gantt! That's why! He wanted to know if Gantt had gone, and whether he was any the wiser. He couldn't rest until he knew this. This Banquo's ghost of a Gantt was haunting him. But when he knew that Gantt was safely gone and everything was all right, he was in a fine humor then. He could laugh and talk. He could sit down in the house with his wife and read baseball in the newspaper. He could laugh and try playfully to break up a card game. He felt fine and relieved. As glad and free as a school boy! Old long-legged Gannt was gone, and everything was all right!

Now, about Newt Lee. I don't want to thresh out all the

details in this respect. You remember the evidence about honest old Newt Lee's finding the body. That's all we need to know about him. No suspicion attaches to Newt. He notified the police, and tried to notify Frank. The police came and took the body of little Mary Phagan to the undertakers.

The police called up Frank then and told him they wanted him. Detective Starnes got mixed up when he told about this on the stand, but he never forgot that when he called Frank up, Frank did not ask him what the trouble was. He didn't ask him whether anybody had been killed at the factory. He didn't ask them if everything at the factory was all right. They took Frank to the undertaker's. He was nervous then. But have you seen a quiver of a muscle since he has been these weeks in the court room? He is facing the fight now, and his nerves are set. But that morning he was as nervous as a cat. He said, "I think it's a girl I paid off yesterday. I'll have to look at my books and see." That's what he said about the body of the girl he saw every day and talked to. He offered no consolation, or anything. He got away from there.

Another thing, when they carried him to the basement and brought him back upstairs, what was going on in his mind then? He thought he must look at that time slip. So he got the key and unlocked the clock and took out the slip. He examined it while others were looking over his shoulder, and said it was correctly punched, that it was all right, and others agreed to it. "Here's the slip." He said, "That's all right. That clears you, Newt."

What next occurred to him? He saw he was getting into a fix, and he had better take a shot at Newt. What happens? Another slip turns up. He says he was mistaken at first. There were lapses in the punches on the slip, showing time enough unaccounted for to allow Newt to go home.

Policeman Black had suspicions. He goes to Newt Lee's home. He unlocks the door with his keys, and looks in the house and on the trash pile, and in the bottom of the barrel,

with a lot of things piled on top of it, he found a bloody shirt! How did it get there? Newt Lee accounts for his time Sunday. No suspicion attaches to Newt Lee. He is a free man. How did that bloody shirt get there? It had to be planted. Gentlemen, it was planted! Here are the two propositions, gentlemen. If Newt Lee was to be made the goat, suspicion had to be directed to him. Somebody had to plant that suspicion.

He would sacrifice Newt Lee that he might live!

The Bible says, "What will not a man give for his life?" He was willing to give the life of Newt Lee that his own life might be spared. He was willing to give the life of Gantt that he might live. Was not Gantt arrested a few days after?

But not once at that time did he think of giving the life of Jim Conley. But somebody found Jim Conley washing a shirt to go to the trial, and there was where Jim got into trouble.

But Frank didn't try to fix it on Jim then. He waited until Newt had failed, and all else had failed, except the suspicion which rested upon himself. Then he turned on Jim Conley.

I call your attention, gentlemen of the jury, to another peculiar thing: Weeks after the murder, and after the factory had been searched, a big, bloody stick was found by shrewd Pinkerton detectives, who can find anything—even an elephant, if it gets in the way. They also found a piece of envelope. But, fortunately, they showed this to Mr. Coleman, who said that Mary had received but \$1.20 and that the figure "5" on the envelope had no business there. And so, it was rubbed out. Besides the shirt, then, we find the club and the pay envelope. Another very peculiar thing is about this man named Mincey. Conley was asked, "Didn't you confess to Mincey that you were the man that killed the girl?" Conley said, "No." That question was asked, gentlemen, as a foundation upon which to introduce Mincey. Where is Mincey? He is the man who could clear it all up.

He is the man about whom it appeared that the whole fight would center. If he could convince you that Jim confessed the murder to him, that would let Frank out! Yet where is Mincey? Gentlemen, this has been a long testimony which you have had to sit through, and I do not wish to take up any more of your time than necessary.

Gentlemen, the only belief required of you is the same sort of belief that you would have upon the street, at your places of business, or in your homes, and on this belief you are to act. Simply use your common sense in the jury box. I thank you.

MR. ARNOLD, FOR THE PRISONER.

*Mr. Arnold.* Gentlemen of the Jury: We are all to be congratulated that this case is drawing to a close. We have all suffered here from trying a long and complicated case at the heated term of the year. It has been a case that has taken so much effort and so much concentration and so much time, and the quarters here are so poor, that it has been particularly hard on you members of the jury who are practically in custody while the case is going on. I know it's hard on a jury, to be kept confined this way, but it is necessary that they be segregated and set apart where they will get no impression at home nor on the street. The members of the jury are in a sense set apart on a mountain, where, far removed from the passion and heat of the plain, calmness rules them and they can judge a case on its merits.

My friend Hooper said a funny thing here a while ago. I don't think he meant what he said, however. Mr. Hooper said that the men in the jury box are not different from the men on the street. Your Honor, I'm learning something every day, and I certainly learned something today, if that's true.

*Mr. Hooper.* Mr. Arnold evidently mistakes my meaning, which I thought I made clear. I stated that the men in the jury box were like they would be on the street in the fact that in making up their minds about the guilt or innocence of the accused they must use the same common sense that they would if they were not part of the court.

[*Mr. Arnold* next described the horrible crime that had been committed that afternoon or night in the National Pencil Company's dark basement. He dwelt on the effect of the crime upon the people of Atlanta and of how high feeling ran and still runs, and of the omnipresent desire for the death of the man who committed the crime.]

There are fellows like that street car man, *Kendley*, the one who villified this defendant here and cried for him to be lynched, and shouted that he was guilty until he made himself a nuisance on the cars he ran. Why, I can hardly realize that a man holding a position as responsible as that of a motorman and a man with certain police powers and the discretion necessary to guide a car through the crowded city streets would give way to passion and prejudice like that. It was a type of man like *Kendley* who said he did not know for sure whether those negroes hanged in Decatur for the shooting of the street car men were guilty, but he was glad they were hung, as some negroes ought to be hanged for the crime. He's the same sort of a man who believes that there ought to be a hanging because that innocent little girl was murdered, and who would like to see this Jew here hang because somebody ought to hang for it.

I'll tell you right now, if *Frank* hadn't been a Jew there would never have been any prosecution against him. I'm asking my own people to turn him loose, asking them to do justice to a Jew, and I'm not a Jew, but I would rather die before doing injustice to a Jew.

This case has just been built up by degrees; they have a monstrous perjurer here in the form of this *Jim Conley* against *Frank*. You know what sort of a man *Conley* is, and you know that up to the time the murder was committed no one ever heard a word against *Frank*. Villainy like this charged to him does not crop out in a day. There are long mutterings of it for years before. There are only a few who have ever said anything against *Frank*. I want to call your attention later to the class of their witnesses and the class of ours. A few floaters around the factory, out of the hundreds



who have worked there in the plant three or four years, have been induced to come up here and swear that Frank has not a good character, but the decent employees down there have sworn to his good character. Look at the jail birds they brought up here, the very dregs of humanity, men and women who have disgraced themselves and who now have come and tried to swear away the life of an innocent man.

I know that you members of the jury are impartial. That's the only reason why you are here, and I'm going to strip the state's case bare for you, if I have the strength to last to do it. They have got to show Frank guilty of one thing before you can convict him; they've got to show that he is guilty of the murder, no matter what else they show about him. You are trying him solely for the murder, and there must be no chance that anyone else could just as likely be guilty. If the jury sees that there is just as good a chance that Conley can be guilty, then they must turn Frank loose

Now, you can see how in this case the detectives were put to it to lay the crime on somebody. First, it was Lee, and then it was Gantt, and various people came in and declared they had seen the girl alive late Saturday night and at other times, and no one knew what to do. Well, suspicion turned away from Gantt, and in a little while it turned away from Lee. Now, I don't believe that Lee is guilty of the crime, but I do believe that he knows a lot more about the crime than he told. He knows about those letters and he found that body a lot sooner than he said he did.

Oh, well, the whole case is a mystery, a deep mystery, but there is one thing pretty plain, and that is that whoever wrote those notes committed the crime. Those notes certainly had some connection with the murder, and whoever wrote those notes committed the crime.

Well, they put Newt Lee through the third degree and the fourth degree, and maybe a few others. That's the way, you know, they got this affidavit from the poor negro woman, Minola McKnight. Why, just the other day the supreme court handed down a decision in which it referred to the third

degree methods of the police and detectives in words that burned.

Well, they used those methods with Jim Conley. My friend, Hooper, said nothing held Conley to the witness chair here but the truth, but I tell you that the fear of a broken neck held him there. I think this decision about the third degree was handed down with Conley's case in mind. I'm going to show this Conley business up before I get through. I'm going to show that this entire case is the greatest frame-up in the history of the state.

My friend Hooper remarked something about circumstantial evidence, and how powerful it frequently was. He forgot to say that the circumstances, in every case, must invariably be proved by witnesses. History contains a long record of circumstantial evidence, and I once had a book on the subject which dwelt on such cases, most all of which sickens the man who reads them. Horrible mistakes have been made by circumstantial evidence—more so than by any other kind.<sup>1</sup>

Hooper says, "Suppose Frank didn't kill the girl, and Jim Conley did, wasn't it Frank's duty to protect her" He was taking the position that if Jim went back there and killed her, Frank could not help but know about the murder. Which position, I think, is quite absurd. Take this hypothesis, then, of Mr. Hooper's. If Jim saw the girl go up and went back and killed her, would he have taken the body down the elevator at that time? Wouldn't he have waited until Frank and White and Denham, and Mrs. White and all others were out of the building? I think so. But there's not a possibility of the girl having been killed on the second floor. Hooper smells a plot, and says Frank has his eye on the little girl who was killed. The crime isn't an act of a civilized

<sup>1</sup> Here Mr. Arnold cited the Durant case in San Francisco, the Hampton case in England, and the Dreyfus case in France as instances of mistakes of circumstantial evidence. In the Dreyfus case he declared it was purely persecution of the Jew. The hideousness of the murder itself was not as savage, he asserted, as the feeling to convict this man. But the savagery and venom is there just the same, and it is a case very much on the order of Dreyfus.

man—it's the crime of a cannibal, a man-eater. Hooper is hard-pressed and wants to get up a plot—he sees he has to get up something. He forms his plot from Jim Conley's story.

They say that on Friday, Frank knew he was going to make an attack of some sort on Mary Phagan. The plot thickens. Of all the wild things I have ever heard, that is the wildest. It is ridiculous. Mary Phagan worked in the pencil factory for months, and all the evidence they have produced that Frank ever associated with her—ever knew her—is the story of weasley little Willie Turner, who can't even describe the little girl who was killed.

A little further on in his story, Jim is beginning the plot. They used him to corroborate everything as they advised. Jim is laying the foundation for the plot. What is it—this plot? Only that on Friday Frank was planning to commit some kind of assault upon Mary Phagan. Jim was their tool. Even Scott swears that when he told Jim that Jim's story didn't fit, Jim very obligingly adapted it to suit his defense. He was scrupulous about things like that. He was quite considerate. Certainly. He had his own neck to save.

Jim undertook to show that Frank had an engagement with some woman at the pencil factory that Saturday morning. There is no pretense that another woman is mixed up in the case. No one would argue that he planned to meet and assault this innocent little girl who was killed. Who but God would know whether she was coming for her pay that Friday afternoon or the next Saturday? Are we stark idiots? Can't we divine some things?

They's got a girl named Ferguson, who says she went for Mary Phagan's pay on the Friday before she was killed, and that Frank wouldn't give it to her. It is the wildest theory on earth, and it fits nothing. It is a strained conspiracy. Frank, to show you I am correct, had nothing whatever to do with paying off on Friday. Schiff did it all. And little Magnolia Kennedy, Helen Ferguson's best friend, says she was with Helen when Helen went to draw her pay, and that Helen

never said a word about Mary's envelope. There's your conspiracy, with Jim Conley's story as its foundation. It's too thin. It's preposterous.

Then my friend Hooper says Frank discharged Gantt because he saw Gantt talking to Mary Phagan. If you convict men on such distorted evidence as this, why you'd be hanging men perpetually. Gantt, in the first place, doesn't come into this case in any good light. It is ridiculously absurd to bring his discharge into this plot of the defense. Why, even Grace Hicks, who worked with Mary Phagan, and who is a sister-in-law of Boots Rogers, says that Frank did not know the little girl.

Hooper also says that bad things are going on in the pencil factory, and that it is natural for men to cast about for girls in such environments. We are not trying this case on whether you or I or Frank had been perfect in the past. This is a case of murder. Let him who is without sin cast the first stone. I say this much, and that is that there has been as little evidence of such conditions in this plant as any other of its kind you can find in the city. They have produced some, of course, but it is an easy matter to locate some ten or twelve disgruntled ex-employees who are vengeful enough to swear against their former superintendent, even though they don't know him except by sight.

I want to ask this much: Could Frank have remained at the head of this concern if he had been as loose morally as the state has striven to show? If he had carried on with the girls of the place as my friend alleged, wouldn't the entire working force have been demoralized, ruined? He may have looked into this dressing room, as the little Jackson girl says, but, if he did, it was done to see that the girls weren't loitering. There were no lavatories, no toilets, no baths in these dressing rooms. The girls only changed their top garments. He wouldn't have seen much if he had peered into the place. You can go to Piedmont park any day and see girls and women with a whole lot less on their persons. And to the shows any night you can see the actresses with almost nothing

on. Everything brought against Frank was some act he did openly and in broad daylight, and an act against which no kick was made.

The trouble with Hooper is that he sees a bear in every bush. He sees a plot in this because Frank told Jim Conley to come back Saturday morning. The office that day was filled with persons throughout the day. How could he know when Mary Phagan was coming or how many persons would be in the place when she arrived?

This crime is the hideous act of a negro who would ravish a ten-year-old girl the same as he would ravish a woman of years. It isn't a white man's crime. It's the crime of a beast—a low, savage beast!

Now, back to the case. There is an explorer in the pencil factory by the name of Barrett—I call him Christopher Columbus Barrett purely for his penchant for finding things. Mr. Barrett discovered the blood spots in the place where Chief Beavers, Chief Lanford and Mr. Black and Mr. Starnes had searched on the Sunday of the discovery. They found nothing of the sort. Barrett discovered the stains after he had proclaimed to the whole second floor that he was going to get the \$4,000 reward if Mr. Frank was convicted. Now, you talk about plants! If this doesn't look mighty funny that a man expecting a reward would find blood spots in a place that has been scoured by detectives, I don't know what does. Four chips of this flooring were chiseled from this flooring where these spots were found. The floor was an inch deep in dirt and grease. Victims of accidents had passed by the spot with bleeding fingers and hands. If a drop of blood had ever fallen there, a chemist could find it four years later. Their contention is that all the big spots were undiluted blood. Yet, let's see how much blood Dr. Claude Smith found on the chips. Probably five corpuscles, that's all, and that's what he testified here at the trial. My recollection is that one single drop of blood contains 8,000 corpuscles. And, he found these corpuscles on only one chip. I say that half of the blood had been on the floor two or three years. The stain on

all chips but one were not blood. Dorsey's own doctors have put him where he can't wriggle—his own evidence hampers him! They found blood spots on a certain spot and then had Jim adapt his story accordingly. They had him put the finding of the body near the blood spots, and had him drop it right where the spots were found.

It stands to reason that if a girl had been wounded on the lathing machine, there would have been blood in the vicinity of the machine. Yet, there was no blood in that place, and neither was there any where the body was said to have been found by Conley. The case doesn't fit. It's flimsy. And, this white machine oil that they've raised such a rumpus over. It was put on the floor as a cheap, common plant to make it appear as though someone had put it there in an effort to hide the blood spots. The two spots of blood and the strands of hair are the only evidence that the prosecution has that the girl was killed on the second floor.

Now, about these strands of hair. Barrett, the explorer, says he found four or five strands on the lathing machine. I don't know whether he did or not. They've never been produced. I've never seen them. But, it's probable, for just beyond the lathing machine, right in the path of a draft that blows in from the window, is a gas jet used by the girls in curling and primping their hair. It's very probable that strands of hair have been blown from this jet to the lathing machine.

The detectives say that Frank is a crafty, cunning criminal, when deep down in their heart of hearts they know good and well that their case is built against him purely because he was honest enough to admit having seen her that day. Had he been a criminal, he never would have told about seeing her and would have replaced her envelope in the desk, saying she had never called for her pay.

I believe that a majority of women are good. The state jumped on poor Daisy Hopkins. I don't contend, now, mind you, that she is a paragon of virtue. But there are men who were put up by the state who are no better than she. For in-

stance, this Dalton, who says openly that he went into the basement with Daisy. I don't believe he ever did, but, in such a case, he slipped in. There are some fallen women who can tell the truth. They have characteristics like all other types. We put her on the stand to prove Dalton a liar, and she did it. Now, gentlemen, don't you think the prosecution is hard pressed when they put up such a character as Dalton? They say he has reformed. A man with thievery in his soul never reforms. Drunkards do, and men with bad habits, but thieves? No. Would you convict a man like Frank on the word of a perjurer like Dalton?

Now, I'm coming back to Jim Conley. The whole case centers around him. Mr. Hooper argues well on that part. At the outset of the case, the suspicion pointed to Frank merely because he was the only man in the building. It never cropped out for weeks that anyone else was on the first floor. The detectives put their efforts on Frank because he admitted having seen the girl. They have let their zeal run away with them in this case, and it is tragic. They are proud whenever they get a prisoner who will tell something. The humbler the victim the worse is the case. Such evidence comes with the stamp of untruth on its face.

Jim Conley was telling his story to save his neck, and the detectives were happy listeners. If there is one thing for which a negro is capable it is for telling a story in detail. It is the same with children. Both have vivid imaginations. And a negro is also the best mimic in the world. He can imitate anybody. Jim Conley, as he lay in his cell and read the papers and talked with the detectives, conjured up his wonderful story, and laid the crime on Frank, because the detectives had laid it there and were helping him do the same.

Now, Brother Hooper waves the bloody shirt in our face. It was found, Monday or Tuesday, in Newt Lee's house, while Detectives Black and Scott were giving Cain to poor old man Newt Lee. I don't doubt for a minute that they knew it was out there when they started out after it. I can't say

they planted it, but it does look suspicious. Don't ask us about a planted shirt. Ask Scott and Black.

The first thing that points to Conley's guilt is his original denial that he could write. Why did he deny it? Why? I don't suppose much was thought of it when Jim said he couldn't write, because there are plenty of negroes who are in the same fix. But later, when they found he could, and found that his script compared perfectly with the murder notes, they went right on accusing Frank. Not in criminal annals was there a better chance to lay at the door of another man a crime than Jim Conley had.

You see, there is a reason to all things. The detective department had many reasons to push the case against Frank. He was a man of position and culture. They were afraid that someone, unless they pushed the case to the jumping off place, would accuse them of trying to shield him. They are afraid of public and sentiment, and do not want to combat it, so, in such cases, they invariably follow the line of least resistance.

[Reading Conley's statement, *Mr. Arnold* pointed out the use of words, which he declared no negro would naturally have used. These were long words with many syllables in them. They said that Conley used so much detail in his statements that he could not have been lying! He then read parts of statements which Conley had repudiated as willful lies and pointed out the wealth of detail with which they were filled. And yet they say he couldn't fabricate so much detail! Oh, he is smart! He then read the statement of May 24, in which Conley admitted writing the notes. In this he shows three different times at which Conley stated he wrote the notes, these being early in the morning, at 12:04 and at 3 p. m.]

The statements were not genuinely Conley's. Take the word "negro." The first word that a nigger learns to spell correctly is negro, and he always takes particular pains to spell it n-e-g-r-o. He knows how to spell it. Listen to the statement. He says that at first he spelled the word "negros," but that Frank did not want the "s" on it and told him to rub it out, which he did. Then he says that he wrote the word over.

Look at the notes. He was treed about those notes, and he



had to tell a lie and put upon someone the burden of instructing him to write them. The first statement about them was a blunt lie—a lie in its incipency. He said he wrote the notes on Friday. This was untrue, and unreasonable and he saw it. Frank could not have known anything of an intended murder on Friday from any viewpoint you might take, and therefore he could not have made Conley write them on Friday. Ah, gentlemen of the jury, I tell you these people had a great find when they got this admission from Conley! If Conley had stayed over there in the Tower with Uncle Wheeler Mangum he would have told the truth long ago. There's where he should have stayed, with Wheeler Mangum.

My good friend, Dorsey, is all right. I like him. But he should not have walked hand in glove with the detectives. There's where he went wrong. My good old friend, Charlie Hill would not have done that. He would have let the nigger stay in the jail with Uncle Wheeler. I like Dorsey. He simply made a mistake by joining in the hunt, in becoming a part of the chase. The solicitor should be little short of as fair as the judge himself. But he's young and lacks the experience. He will probably know better in the future. Dorsey did this: He went to the judge and got the nigger moved from the jail to the police station. The judge simply said, "Whatever you say is all right."

Now, I'm going to show you how John Black got the statement of Conley changed. I am going to give you a demonstration. I have learned some things in this case about getting evidence!

They say that Frank cut Conley loose and he decided to tell the truth. Conley is a wretch with a long criminal record. Gentlemen, how can they expect what he says to be believed against the statement of Leo M. Frank? They say Conley can't lie about detail. Here are four pages, all of which he himself admits are lies. They are about every saloon on Peters street, saloons to which he went, his shooting craps, his buying beer and all the ways in which he spent

a morning. There is detail enough, and he admits that they are lies. Now, in his third statement, that of May 28, he changes the time of writing the letters from Friday to Saturday. Here are two pages of what he said, all of which he afterwards said were lies. He says that he made the statement that he wrote the notes on Friday in order to divert suspicion from his being connected with the murder which happened on Saturday. He also says that this is his final and true statement. God only knows how many statements he will make. He said he made the statement voluntarily and truthfully without promise of reward, and that he is telling the truth and the whole truth. He said in his statement that he never went to the building on Saturday. Yet we know that he was lurking in the building all the morning on the day of the murder. We know that he watched every girl that walked into that building so closely that he could tell you the spots on their dresses. We know that he was drunk, or had enough liquor in him to fire his blood.

I know why he wouldn't admit being in that building on Saturday. He had guilt on his soul, and he didn't want it to be known that he was here on Saturday. That's why!

When they pinned him down, what did he do? He says that he was watching for Frank. My God, wasn't he a watchman! He said that he heard Frank and Mary Phagan walking upstairs, and that he heard Mary Phagan scream, and that immediately after hearing the scream he let Monteen Stover into the building.

Why, they even have him saying that he watched for Frank, when another concern was using the very floor space in which Frank's office was located, and you know they wouldn't submit to anything like that. Look again! He says that Mr. Frank said, "Jim, can you write?" What a lie! He admitted that he had been writing for Frank for two years. It's awful to have to argue about a thing like this, gentlemen! You will remember Hooper said, "How foolish of Conley to write these notes!" How much more foolish, I say, of Frank to do it!

I don't think that Newt killed the girl, but I believe he discovered the body some time before he notified the police. Newt's a good nigger.

Scott said that it took Conley six minutes to write a part of one note. Conley said that he wrote the notes three times.

They say that nigger couldn't lie. Gentlemen, if there is any one thing that nigger can do, it is to lie. As my good old friend, Charlie Hill, would say, "Put him in a hopper and he'll drip lye!"

He was trying to prove an alibi for himself when he said that he was not in the factory on Saturday and told all the things that he did elsewhere on that day. But we know that the wretch was lurking in the factory all of Saturday morning. Further, he swore that while he was in Frank's office he heard someone approaching, and Mr. Frank cried out, "Gee! Here come Corinthia Hall and Emma Clarke!" and that Frank shut him up in a wardrobe until they left. According to Conley, they came into the factory between 12 and 1 o'clock, when as a matter of fact, we know that they came between 11 and 12. And as for his being able to fabricate the details of his statement—why, he knew every inch of that building from top to bottom! Hadn't he been sweeping and cleaning it for a long time? With this knowledge of the building, he naturally had no trouble in his pantomime after he had formed his story. The miserable wretch has Frank hiding him in the wardrobe when Emma Clarke came in after the murder, when it has been proved that she came there and left before Mary Phagan ever entered the building on that day.

They saw where they were wrong in that statement, and they made Conley change it on the stand. They made him say, "I thought it was them." They knew that that story wouldn't fit.

Do you remember, how eagerly Conley took the papers from the girls at the factory? And do you remember how for four or five days the papers were full of the fact that Frank's home was in Brooklyn, and that his relatives were reported to be wealthy? Conley didn't have to go far to get material

for that statement he put in Frank's mouth. It so happened, though, that Frank really did not have rich relatives in Brooklyn. His mother testified that his father was in ill health, and had but moderate means and that his sister worked in New York for her living.

Gentlemen, am I living or dreaming, that I have to argue such points as these? This is what you've got to do: You've got to swallow every word that Conley has said—feathers and all, or you've got to believe none of it. How are you going to pick out of such a pack of lies as these what you will believe and what you will not? Yet, this is what the prosecution has based the case upon. If this fails, all fails.

And do you remember about the watch, where Conley said that Frank asked him, "Why do you want to buy a watch for your wife? My big, fat wife wanted me to buy her an automobile, but I wouldn't do it!" Do you believe that, gentlemen of the jury?

I tell you that they have mistreated this poor woman terribly. They have insinuated that she would not come to the tower to see Frank—had deserted him. When we know that she stayed away from the jail at Frank's own request because he did not want to submit her to the humiliation of seeing him locked up and to the vulgar gaze of the morbid and to the cameras of the newspaper men. The most awful thing in the whole case is the way this family has been mistreated! The way they invaded Frank's home and manipulated his servants. I deny that the people who did this are representative of the 175,000 people of Fulton county! We are a fair people, and we are a chivalrous people. Such acts as these are not in our natures.

Conley next changes the time of the writing of the notes to Saturday, but denies knowledge of the murder. That, of course, did not satisfy these gentlemen, and they went back to him. They knew he was dodging incrimination. So they had him to change the statement again. Scott and other detectives spent six hours at the time with Conley on occasions,

and used profanity and worried him to get a confession. Hooper thinks that we have to break down Conley's testimony on the stand, but there is no such ruling. You can't tell when to believe him, he has lied so much. Scott says the detectives went over the testimony with Dorsey. There is where my friend got into it. They grilled Conley for six hours, trying to impress on him the fact that Frank would not have written the notes on Friday. They wanted another statement. He insisted that he had no other statement to make, but he did change the time of the writing of the notes from Friday to Saturday. This shows, gentlemen, as clearly as anything can show, how they got Conley's statements. In the statement of May 29, they had nothing from Jim Conley about his knowledge of the killing of the little girl, and the negro merely said that Frank had told him something about the girl having received a fall and about his helping Frank to hide the body.

Oh, Conley, we are going to have you tell enough to have you convict Frank and yet keep yourself clear. That's a smart negro, that Conley. And you notice how the state bragged on him because he stood up under the cross-examination of Colonel Rosser. Well, that negro's been well versed in law. Scott and Black and Starnes drilled him; they gave him the broad hints.

We came here to go to trial, and knew nothing of the negro's claim to seeing the cord around the little girl's neck, or of his claim of seeing Lemmie Quinn go into the factory, or of a score of other things. Yet, Conley was then telling the truth, he said, and he had thrown Frank aside. Oh, he was no longer shielding Frank, and yet he didn't tell it all when he said he was telling the whole truth. Well, Conley had a revelation, you know. My friend Dorsey visited with him seven times. And my friend, Jim Starnes, and my Irish friend, Patrick Campbell, they visited him, and on each visit Conley saw new light. Well, I guess they showed him things and other things. Does Jim tell a thing because it's the truth, gentlemen of the jury, or because it fits into something that another witness has told? Scott says they told him things

that fitted. And Conley changed things every time he had a visit from Dorsey and the detectives. Are you going to hang a man on that? Gentlemen, it's foolish for me to have to argue such a thing.

The man that wrote those murder notes is the man who killed that girl. Prove that man was there and that he wrote the notes and you know who killed the girl. Well, Conley acknowledges he wrote the notes and witnesses have proved he was there and he admits that, too. That negro was in the building near the elevator shaft; it took but two steps for him to grab that little girl's mesh bag. She probably held on to it and struggled with him. A moment later he had struck her in the eye and she had fallen. It is the work of a moment for Conley to throw her down the elevator shaft.

Isn't it more probable that the story I have outlined is true than the one that Conley tells on Frank? Suppose Conley were now under indictment and Frank out, how long would such a story against Frank stand the pressure?

In the statement of May 29 there are any number of things that are not told of which later were told on the stand. In the May 29 statement Conley never told of seeing Mary Phagan enter; he never told of seeing Monteen Stover enter, nor of seeing Lemmie Quinn enter; now he tells of having seen all of them enter. Don't you see how they just made it to fit witnesses and what the witnesses would swear? It was, "Here, Conley, swear that Quinn came up, swear that the dead girl came up, and swear that Miss Stover came up; they all did, and it's true, swear to it!" And Conley would say, "All right, boss, Ah reckon they did." And it was "Conley, how did you fail to hear that girl go into the metal room? We know she went there, because by our blood and hair we have proved she was killed there," and the poor negro thought a minute, and then he said, "Yes, boss, I heard her go in." The state's representatives had put it into the negro's head to swear he heard Frank go in with her, and that he heard Frank come tiptoeing out later, and that by that method they made Conley swear that Frank was a moral pervert. Now, I don't know

that they told Conley to swear to this and to swear to that, but they made the suggestions, and Conley knew whom he had to please. He knew that when he pleased the detectives that the rope knot around his neck grew looser. In the same way they made Conley swear about Dalton, and in the same way about Daisy Hopkins. They didn't ask him about the mesh bag. They forgot that until Conley got on the stand. That mesh bag and that pay envelope furnish the true motive for this crime, too, and if the girl was ravished, Conley did it after he had robbed her and thrown her body into the basement. Well, they got Conley on the stand, and my friend Dorsey here asked Conley about the mesh bag, and he said, yes, Frank had put it in his safe. That was the crowning lie of all!

Well, they've gone on this way, adding one thing and another thing. They wouldn't let Conley out of jail; they had their own reasons for that, and yet I never heard that old man over there (pointing to the sheriff) called dishonest. He runs his jail in a way to protect the innocent and not to convict them in this jail.

Gentlemen, right here a little girl was murdered, and it's a terrible crime. The Phagan tragedy, the crime that stirred Atlanta as none other ever did.

We have already got in court the man who wrote those notes, and the man who by his own confession was there; the man who robbed her, and, gentlemen, why go further in seeking the murderer than the black brute who sat there by the elevator shaft? The man who sat by that elevator shaft is the man who committed the crime. He was full of passion and lust; he had drunk of mean whiskey, and he wanted money at first to buy more whiskey.

[*Mr. Arnold* asked the sheriff to unwrap a chart which had previously been brought into court. It proved to be a chronological chart of Frank's alleged movements on Saturday, April 26, the day of the crime, and *Mr. Arnold* announced to the jury that he would prove by the chart that it was a physical impossibility for Frank to have committed the crime.]

Every word on that chart is taken from the evidence, and it will show you that Frank did not have time to commit the crime charged to him. The state has wriggled a lot in this affair; they put up little George Epps, and he swore that he and Mary Phagan got to town about seven after twelve, and then they used other witnesses, and my friend Dorsey tried to boot the Epps boy's evidence aside as though it were nothing. The two street car men, Hollis and Mathews, say that Mary Phagan got to Forsyth and Marietta at five or six minutes after twelve, and they stuck to it, despite every attempt to bulldoze them, and then Mathews, who rode on the car to Whitehall and Mitchell, says that Mary Phagan rode around with him to Broad and Hunter streets before she got off.

Well, the state put up McCoy, the man who never got his watch out of soak until about the time he was called as a witness, and they had him swear that he looked at his watch at Walton and Forsyth (and he never had any watch), and it was 12 o'clock exactly, and then he walked down the street and saw Mary Phagan on her way to the factory. Now, I don't believe McCoy ever saw Mary Phagan. Epps may have seen her, but the State apparently calls him a liar, when they introduce other testimony to show a change of time to what he swore to. It's certain those two street car men who knew the girl, saw her, but the state comes in with the watchless McCoy and Kendley, the Jew-hater, and try to advance new theories about the time and different ones from what their own witness had sworn to. Well, we have enough to prove the time, all right; we have the street car schedule, the statement of Hollis and Mathews and of George Epps, the state's own witness.

The next thing is, how long did it take Conley to go through with what he claims happened from the time he went into Frank's office and was told to get the body until he left the factory. According to Conley's own statement, he started at four minutes to 1 o'clock and got through at 1:30 o'clock, making 34 minutes in all.



Harlee Branch says that he was there when the detectives made Conley go through with what he claimed took place, and that he started then at 12:17, and by Mr. Branch's figures, it took Conley 50 minutes to complete the motions. Well, the state has attacked nearly everybody we have brought into this case, but they didn't attack Dr. William Owen, and he showed by his experiments that Conley could not have gone through those motions in 34 minutes.

Jim Conley declared that he started at 4 minutes to 1 o'clock to get the body, and that he and Frank left at 1:30. If we ever pinned the negro down to anything, we did to that, and we have shown that he could not have done all that in 34 minutes.

Away with your filth and your dirty, shameful evidence of perversion; your low street gossip, and come back to the time—the time-element in the case.

Now, I don't believe the little Stover girl ever went into the inner office. She was a sweet, innocent, timid little girl, and she just peeped into the office from the outer one, and if Frank was in there, the safe door hid him from her view, or if he was not there, he might have stepped out for just a moment.

Oh, my friend, Dorsey, he stops clocks and he changes schedules, and he even changes a man's whole physical make-up, and he's almost changed the course of time in an effort to get Frank convicted.

Oh, I hate to think of little Mary Phagan in this. I hate to think that such a sweet, pure, good little girl as she was, with never a breath of anything wrong whispered against her, should have her memory polluted with such rotten evidence against an innocent man. Well, Mary Phagan entered the factory at approximately 12 minutes after 12, and did you ever stop to think that it was Frank who told them that the girl entered the office when she entered it? If he had killed her he would have just slipped her pay envelope back in the safe and declared that he never saw her that day at all, and then no one could have ever explained how she got into that

basement. But Frank couldn't know that there was hatred enough left in this country against his race to bring such a hideous charge against him. Well, the little girl entered, and she got her pay and asked about the metal and then she left, but, there was a black spider waiting down there near the elevator shaft, a great passionate, lustful animal, full of mean whiskey and wanting money with which to buy more whiskey. He was as full of vile lust as he was of the passion for more whiskey, and the negro (and there are a thousand of them in Atlanta who would assault a white woman if they had the chance and knew they wouldn't get caught) robbed her and struck her and threw her body down the shaft, and later he carried it back, and maybe, if she was alive, when he came back, he committed a worse crime, and then he put the cord around her neck and left the body there.

Do you suppose Frank would have gone out at 1:20 o'clock and left that body in the basement and those two men, White and Denham, at work upstairs? Do you suppose an intelligent man like Frank would have risked running that elevator, like Conley says he did, with the rest of the machinery of the factory shut off and nothing to prevent those men up there hearing him?

Well, Frank says he left the factory at 1 o'clock, and Conley says he left there at 1:30. Now, there's a little girl, who tried the week before to get a job as stenographer in Frank's office, who was standing at Whitehall and Alabama streets, and saw Frank at ten minutes after 1. Did she lie? Well, Dorsey didn't try to show it, and according to Dorsey, everybody lied except Conley and Dalton and Albert McKnight. This little girl says she knows it was Frank, because Professor Briscoe had introduced her to him the week before, and she knows the time of day because she had looked at a clock, as she had an engagement to meet another little girl. That stamps your Conley story a lie blacker than hell! Then, Mrs. Levy, she's a Jew, but she's telling the truth; she was looking for her son to come home, and she saw Frank get off the car at his home corner, and she looked at her clock and saw it was

1:20. Then, Mrs. Selig and Mr. Selig swore on the stand that they knew he came in at 1:20.

Oh, of course, Dorsey says they are Frank's parents and wretched liars when they say they saw him come in at 1:20. There's no one in this case that can tell the truth but Conley, Dalton and Albert McKnight. They are the lowest dogs and jail-birds, and all that, but they are the only ones who know how to tell the truth! Well, now Albert says he was there at the Selig home when Frank came in; of course he is lying, for his wife and the Seligs prove that, but he's the state's witness and he says Frank got there at 1:30, and thus he brands Conley's story about Frank's leaving the factory at 1:30 a lie. Well, along the same lines, Albert says Frank didn't eat and that he was nervous, and Albert says he learned all this by looking into a mirror in the dining room, and seeing Frank's reflection. Then Albert caps the climax to his series of lies by having Frank board the car for town at Pulliam street and Glenn.

Now as to the affidavit signed by Minola McKnight, the cook for Mr. and Mrs. Emil Selig. How would you feel, gentlemen of the jury, if your cook, who had done no wrong and for whom no warrant had been issued, and from whom the solicitor had already got a statement, was to be locked up? Well, they got that wretched husband of Minola's by means of Craven and Pickett, two men seeking a reward, and then they got Minola, and they said to her, "Oh, Minola, why don't you tell the truth like Albert's telling it?"

They had no warrant when they locked this woman up. Starnes was guilty of a crime when he locked that woman up without a warrant, and Dorsey was, too, if he had anything to do with it. Now, George Gordon, Minola's lawyer, says that he asked Dorsey about getting the woman out, and Dorsey replied, "I'm afraid to give my consent to turning her loose; I might get in bad with the detective department." That's the way you men got evidence, was it?

Miss Rebecca Carson, a forewoman of the National Pencil factory, swore Frank had a good character. The state had

introduced witnesses who swore that the woman and Frank had gone into the woman's dressing room when no one was around. I brand it a culmination of all lies when this woman was attacked. Frank had declared her to be a perfect lady with no shadow of suspicion against her.

Well, Frank went on back to the factory that afternoon when he had eaten his lunch, and he started in and made out the financial sheet. I don't reckon he could have done that if he had just committed a murder, particularly when the state says he was so nervous the next morning that he shook and trembled.

Then, the state says Frank wouldn't look at the corpse. But who said he didn't? Nobody. Why, Gheesling and Black didn't swear to that.

Now, gentlemen, I've about finished this chapter, and I know it's been long and hard on you and I know it's been hard on me, too; I'm almost broken down, but it means a lot to that man over there. It means a lot to him, and don't forget that. This case has been made up of just two things—prejudice and perjury. I've never seen such malice, such personal hatred in all my life, and I don't think anyone ever has. The crime itself is dreadful, too horrible to talk about, and God grant that the murderer may be found out, and I think he has. I think we can point to Jim Conley and say there is the man.

But, above all, gentlemen, let's follow the law in this matter. In circumstantial cases you can't convict a man as long as there's any other possible theory for the crime of which he is accused, and you can't find Frank guilty if there's a chance that Conley is the murderer. The state has nothing on which to base their case but Conley, and we've shown Conley a liar. Write your verdict of not guilty and your consciences will give your approval.

MR. ROSSER, FOR THE PRISONER.

*August 22.*

*Mr. Rosser:* Gentlemen of the jury. All things come to an end. With the end of this case has almost come the end

of the speakers, and but for the masterly effort of my brother, Arnold, I almost wish it had ended with no speaking. My condition is such that I can say but little; my voice is husky and my throat almost gone. But for my interest in this case and my profound conviction of the innocence of this man, I would not undertake to speak at all.

I want to repeat what my friend, Arnold, said so simply. He said this jury is no mob. The attitude of the juror's mind is not that of the mind of the man who carelessly walks the streets. My friend, Hooper, must have brought that doctrine with him when he came to Atlanta. We walk the street carelessly and we meet our friends and do not recognize them; we are too much absorbed in our own interests. Our minds wander in flights of fancy or in fits of reverence; we may mean no harm to ourselves, nor to our friends, but we are careless. No oath binds us when we walk the streets.

Men, you are different; you are set aside; you ceased when you took your juror's oath to be one of the rollicking men of the streets; you were purged by your oath. In old pagan Rome the women laughed and chattered on the streets as they went to and fro, but there were a few—the Vestal Virgins—they cared not for the gladiatorial games, nor the strife of the day. So it is with you men, set apart; you care not for the chatter and laughter of the rabble; you are unprejudiced and it is your duty to pass on a man's life with no passion and no cruelty, but as men purged by an oath from the careless people of the streets. You are to decide from the evidence, with no fear of a hostile mob and no thought of favor to anyone.

What suggestion comes into a man's mind when he thinks of a crime like this? And what crime could be more horrible than this one? What punishment too great for the brute in human form who committed it and who excited this community to a high pitch?

Since 1908 the National Pencil factory has employed hundreds of girls and women, and also of men, and not all of the girls and women, not all of the men have been perfect, but

you can find good men and women in all strata of life, and yet the detectives, working with microscopes and with the aid of my friend, Dorsey, excited almost beyond peradventure, found only two to swear against Frank. They found Dalton and they found Conley. Well, I'll take up Conley at a more fitting time, but Dalton, who is Dalton? God Almighty writes on a man's face and he don't always write a pretty hand, but he writes a legible one. When you see Dalton you put your hand on your pocketbook.

When Dalton took the stand Mr. Arnold and I had never had the pleasure of seeing his sweet countenance before, but Mr. Arnold leaned over and whispered in my ear, "There's a thief if there ever was one." I smelt about him the odor of the chaingang, and I began to feel him out. I asked him if he had ever been away from home for any length of time, and he knew at once what I meant and he began to dodge and to wriggle, and before he left the stand I was sure he was a thief.

Dalton was on, three times in Walton county and then in another county where he probably went to escape further trouble in Walton, he got into trouble again. It wasn't just the going wrong of a young man who falls once and tries to get over it, but it was the steady thievery of a man at heart a thief. Of course, Dalton comes here to Atlanta and reforms. Yes, he joined a Godly congregation and persuaded them that he had quit his evil ways. That's an old trick of thieves and they use it to help their trade along.

I believe in the divine power of regeneration; I believe that you can reform, that there's always time to turn back and do right, but there's one kind of man whom I don't believe can ever reform. Once a thief, always a thief.

Our Master knew it. He recognized the qualities of a thief. You remember when they crucified Him and He hung on the cross there on the hill. Well, He had a thief hanging beside Him, and He said to that thief, "This day thou shalt be with Me in Paradise." He didn't dare say tomorrow. He knew He'd better say today, because by tomorrow that thief would be stealing again in Jerusalem. Dalton disgraced the name

of his race, and he was a thief and worse, if there can be, and yet he joined the church. He joined the church and he's now a decent, believable man. Well, you remember how brazenly he sat here on the stand and bragged of his "peach," how indecently he bragged of his fall; how he gloated over his vice. He was asked if he ever went to that miserable, dirty factory basement with a woman for immoral purposes, and he was proud to say that he had.

Gentlemen, it was the first time Dalton had ever been in the limelight; it was the first time decent, respectable white men and women had ever listened to him with respect, let alone attention.

When he was asked about that, if he was guilty, if he had fallen, he might have declined to answer, he might have hung his head in shame, as any decent, respectable man would have done, but instead, he bragged and boasted of it.

When Conley was asked what sort of a woman Frank had, he brazenly and braggingly said he did not know, that he himself had such a peach there that he could not take his eyes off her to look at Frank's woman. Well, you have seen Dalton's peach; you all have seen Daisy.

Conley tells a different story. He says Frank took the peach (that lemon) for himself and that Dalton had to get him another woman.

I'm not saying that we are all free of passion, that we are all moral and perfect, but at least the decent man don't brag of having a peach. Well, if you believe Dalton's story, and let's presume it true now. If you believe it he went into that scuttle hole there at the factory with Daisy. Dalton took that woman into the factory, into a dirty, nasty, fetid hole where the slime oozed and where no decent dog or cat would go, and there he satisfied his passion. That's what he told us. Well, Dalton told us he went there about 2 o'clock one Saturday afternoon last year, and of course, at that time the Clarke Wooden Ware company occupied the lower floor and used the same entrance that the National Pencil Company did, and Frank was at lunch and knew nothing of Dalton's visit. Of

course, Dalton left an oozy trail behind him; wherever he went he did that. You can still feel it in this court room. Of course, too, Dalton may have gone into the pencil factory that day and left his oozy, slimy trail there, but otherwise there's nothing against the factory, and you know there's not, for our great quartet—Starnes and Campbell and Black (oh, how I love Black; I always want to put my arms around him whenever I think of him), and Scott, for he was with that crowd; they tried their very best to find something that would show that factory up as a vile hole.

Well, there's another reason that proves conclusively that it was not the assignation place Dalton and Conley name it. It has always been wrong for men and women to commit fornication and adultery, but it's always been done and the world, as long as it was done decently and quietly and not bragged about and blazoned forth in public places, has rather allowed it to go unchecked, but it's not so now.

You know, I know the working people of this state and this city. I've always worked with my head and it's never been my good fortune to be one of the working people, but there are no silken ladies in my ancestry, nor are there any dudish men. I know the working men and the working women, because that blood runs in my veins, and if any man in Atlanta knows them I do, and I tell you that there are no 100 working girls and women in Atlanta who could be got together by raking with a fine-tooth comb who'd stay there at that factory with conditions as bad as they have been painted, and there are no 100 working men here so thin blooded as to allow such conditions there.

Frank's statement to the jury, it was Frank's handiwork only, and neither he nor Mr. Arnold knew what Frank was going to say when he got on the stand. Look at the statement this man made to you, and it was his statement, not mine. I can prove that by the simple reason that I haven't got brains enough to have made it up, and Mr. Arnold (though he's got far more brains than I), he could not have made it. Mr. Arnold might have given it the same weight and thickness, but not the living ring of truth.



Now, another thing. We didn't have to put Frank's character up. If we hadn't the judge would have told you Frank must be presumed to have a good character, and that you did not have the right to ask that question about him, but we thought you were, and we put it up and see what a character the man has. There's not a man in the sound of my voice who could prove a better character. Of course, I mean from the credible evidence, not that stuff of Conley's and Dalton's. But you say, some people, some former employes swore he had a bad character. You know that when you want to, you can always get someone to swear against anybody's character. Put me in his place and let my friend, Arnold, be foolish enough to put my character up and there'd be plenty of those I have maybe hurt or offended as I have gone through life, would swear it was wrong, and I believe I've got an ordinarily good character. Why, you could bring twenty men here in Fulton county to swear that Judge Roan, there on the bench, has a bad character. You know that he's had to judge men and sometimes to be what they thought was severe on them, and he's naturally made men hate him and they'd gladly come and swear his character away. But if the men and women who live near him, the good and decent men and women, who lived near him and knew, came up and said his character was good, you'd believe them, wouldn't you?

Well, gentlemen, the older I get the gentler I get and I wouldn't think or say anything wrong about those misleading little girls who swore Frank was a bad man. I guess they thought they were telling the truth. Well, did Miss Maggie Griffin really think Frank was a vicious man and yet work there three years with him? Don't you think she heard things against him after the crime was committed and that when she got up here and looked through the heated atmosphere of this trial, she did not see the real truth? And Miss Maggie Griffin, she was there two months. I wonder what she could know about Frank in that time. There was Mrs. Donegan and Miss Johnson and another girl there about two months, and Nellie Potts, who never worked there at all, and

Mary Wallace, there three days, and Estelle Wallace, there a week and Carrie Smith, who like Miss Cato, worked there three years. These are the only ones in the hundreds who have worked there since 1908 who will say that Frank has a bad character. Why, you could find more people to say that the Bishop of Atlanta, I believe, had a bad character, than have been brought against Frank.

You noticed they were not able to get any men to come from the factory and swear against Frank. Men are harder to wheedle than are little girls. Does anybody doubt that if that factory had been the bed of vice that they call it, that the long-legged Gantt would have know of it? They had Gantt on the stand twice, and, well, you know Gantt was discharged from the factory, of course you weren't told why in plain words, but you all know why. Well, Frank is not liked by Gantt and Gantt would have loved to tell something against his former employer, but he couldn't.

If they have any further suspicions against this man, they haven't given them, either because they are afraid or are unable to prove their suspicions, if they have such suspicions, though, and are doing you a worse injustice.

What are these suspicions that they have advanced thus far? First, Miss Robinson is said to have said that she saw Frank teaching Mary Phagan how to work. Dorsey reached for it on the instant, scenting something improper as is quite characteristic of him. But Miss Robinson denies it. There's nothing in it, absolutely nothing. Then they say he called her Mary. Well, what about it? What if he did? We all have bad memories. If you met me on the street six months ago, can you recall right now whether you called me Luther or Rosser? The next is Willie Turner—poor little Willie! I have nohing against Willie. He seems to be a right clever sort of a boy. But just think of the methods the detectives used against him—think of the way they handled him, and think of the way Dorsey treated him on the witness stand. He says—Willie does—that he saw Frank talking to Mary Phagan in the metal room. What does it show if he did see

such a scene? I can't see for the life of me where it indicates any sign of lascivious lust. Does what Willie Turner saw, taking for granted he saw it, show that Frank was planning to ruin little Mary Phagan? Does it uphold this plot my friend Hooper had so much to say about? Even with that—considering Willie Turner did see such a thing, there's one fact that takes the sting out of it. He saw it in broad daylight. Frank was with the little girl right in front of Lemmie Quinn's office in an open factory where there were a lot of people and where the girls were quitting their work and getting ready to go home to dinner. It wasn't so, though, and Frank never made any improper advances to this little girl. Let me tell you why. Mary Phagan was a good girl, as pure as God makes them and as innocent. She was all that, and more. But, she would have known a lascivious advance or an ogling eye the minute she saw it, and the minute this man made any sort of a move to her, she would have fled instantly to home to tell this good father and mother of hers.

Then next, they bring Dewey Hewell, who says she saw Frank with his hand on Mary's shoulder. That's all right, but there is Grace Hix and Helen Ferguson and Magnolia Kennedy who contradict her and say Frank never knew Mary Phagan. You can say all you please about such as that, but there is one fact that stands out indisputable. If that little girl had ever received mistreatment at the pencil factory, no deer would have bounded more quickly from the brush at the bay of dogs than she would have fled home to tell her father and mother.

Now, my friend from the Wiregrass says Gantt was a victim of his "plot" by Frank against Mary Phagan. I don't doubt that this "plot" has been framed in the hearing of every detective in the sound of my voice. Hooper says Frank plotted to get the girl there on the Saturday she was killed—says he plotted with Jim Conley. Jim says Frank told him at four o'clock Friday afternoon to return on the next morning. How could Frank have known she was coming back Saturday. He couldn't have known. He's no seer, no mind-reader, al-

though he's a mighty bright man. It is true that some of the pay envelopes were left over on Friday, but he didn't know whose they were. Helen Ferguson says that on Friday she asked for Mary Phagan's pay and that Frank refused to give it to her, saying Mary would come next day and get it herself. Magnolia Kennedy swears to the contrary. You have one or the other to believe. Consider, though, that this be true! How would Frank know who would be in the factory when Mary Phagan came? How did he know she was coming Saturday? Some envelopes went over to Monday and Tuesday. How would he know whether she would come on Saturday or either of these latter days?

Now, what else have they put up against this man? They say he was nervous. We admit he was. Black says it, Darley says it, Sig. Montag says it—others say it! The handsome Mr. Darley was nervous and our friend Schiff was nervous. Why not hang them if you're hanging men for nervousness! Isaac Haas—old man Isaac—openly admits he was nervous. The girls—why don't you hang them, these sweet little girls in the factory—all of whom were so nervous they couldn't work on the following day?

If you had seen this little child, crushed, mangled, mutilated, with the sawdust crumbled in her eyes and her tongue protruding; staring up from that stinking, smelling basement, you'd have been nervous, too, every mother's son of you. Gentlemen, I don't profess to be chicken-hearted. I can see grown men hurt and suffering and I can stand a lot of things without growing hysterical, but I never walked along the street and heard the pitiful cry of a girl or woman without becoming nervous. God grant I will always be so. Frank looked at the mangled form and crushed virginity of Mary Phagan and his nerves fluttered. Hang him! Hang him!

Another suspicious circumstance. He didn't wake up when they telephoned him that morning the body was found. That might depend on what he ate that night; it might depend on a lot of other things. Some of us wake with the

birds, while others slumber even through the tempting call of the breakfast bell. Would you hang us for that!

Then, they say he hired a lawyer, and they call it suspicious—mighty suspicious. They wouldn't have kicked if he had hired Rube Arnold, because Rube has a good character. But they hired me and they kicked and yelled "suspicious" so loudly you could hear it all the way from here to Jesup's cut. I don't know that I had ever met Frank before that morning, but I had represented the pencil factory previously. And as to their employing me, it's this way:

There's no telling what was floating around in John Black's head that morning. They sent men after Frank and there was no telling what was likely to happen to him. They were forced to do something in his own defense. And, as a result, the state's worst suspicion is the fact that they employed me and Herbert Haas. Now, gentlemen, let's see what there is in it; I have told you that twice on that Sunday he had been to police headquarters without counsel, without friends. The next day they adopted new methods of getting him there and sent two detectives for him. Black had said he had been watching Frank, and woe to him who is haunted by the eagle eye of dear old John. They took him to police station Monday—took him I say. The police idea was to show their fangs. He was under arrest, that's an undisputed fact. They had him at police station, Lanford, in his wonted dignity, sitting around doing nothing, letting Frank soak. Beavers, the handsome one, was doing the same. Frank didn't call for friends or lawyer. He didn't call for anything. If he had known what he was up against, though, in this police department of ours, he'd probably have called for two lawyers—or even more. But old man Sig Montag, who has been here a long time, knew this old police crowd and he knew their tactics. He was well on to their curves. He knew what danger there was to Frank. He called up Haas. Haas didn't want to come to police station—he had a good reason. Sig went to police station and was refused permission to see Frank. Now, I want you to get that in your mind. A citizen—not under

arrest, as they say—held without the privilege of seeing friends, relatives or counsel. It was a deplorable state of affairs. What happened?

Haas went to the phone and called an older and more experienced head to battle with this police iniquity; Why shouldn't he? Dorsey sees in this harmless message a chance. He snaps at it like a snake. Dorsey is a good man—in his way. He'll be a better man, though, when he gets older and loses some of his present spirit and venom. There are things he has done in this trial that will never be done again. Gentlemen, I assure you of that.

Did Frank do anything else suspicious? Yes! Two others, according to Hooper from the Wiregrass. One of which was the employment of a detective agency to ferret out this horrible murder that had been committed in his factory building. Why? Under what circumstances? I'll tell you. Frank had been to the police station and had given his statement. Haas was the man who telephoned me and who employed me—not Frank. I went to police headquarters and was very much unwelcomed. There was a frigid atmosphere as I walked in. I saw Frank for the first time in my life. I said: "What's the matter, boys?" Somebody answered that Mr. Frank was under arrest. Black was there, Lanford was there. Neither took the pains to deny that he was under arrest. Somebody said they wanted Mr. Frank to make a statement, and I advised him to go ahead and make it. When he went into the office, I followed. They said: "We don't want you." I replied that whether they wanted me or not, I was coming, anyhow. I had a good reason, too, for coming. I wanted to hear what he said so they couldn't distort his words. While we were in the room a peculiar thing happened. Frank exposed his person. There were no marks. I said that it was preposterous to think that a man could commit such a crime and not bear some marks. Lanford's face fell. Why didn't Lanford get on the stand and deny it? Was it because he didn't want to get into a loving conflict with me? Or did he want to keep from reopening the dark and nasty history of

the Conley story and the Minola McKnight story that are hidden in the still darker recesses of police headquarters?

Frank makes his statement and is released. He goes back to the pencil factory, assuming that suspicion has been diverted from him. He thinks of the horrible murder that has been committed in his plant. He telephones Sig Montag about hiring a detective agency to solve the crime. Sig advises him to do it. I don't believe there is any detective living who can consort with crooks and criminals and felons, scheme with them, mingle with them and spy on the homes of good people and bad who can then exalt his character as a result. He absorbs some of the atmosphere and the traits. It is logical that he should. But, even at that they've got some good men in the detective and police department. Old man Sig Montag said hire a detective and Frank hired the Pinkertons. Scott came and took Frank's statement and said: "We work in co-operation with the city police department." Now, isn't that a horrible situation—going hand in glove with the police department? But, it's a fact. Just as soon as Scott left Frank, he walked down, arm in arm with John Black, to the nasty, smelly basement of the pencil factory. What did that mean? It meant a complete line-up with the police. It meant if the police turn you loose, I turn you loose. If the police hang you, I hang you!

Gentlemen, take a look at this spectacle, if you can. Here is a Jewish boy from the north. He is unacquainted with the south. He came here alone and without friends and he stood alone. This murder happened in his place of business. He told the Pinkertons to find the man, trusting to them entirely, no matter where or what they found might strike. He is defenseless and helpless. He knows his innocence and is willing to find the murderer. They try to place the murder on him. God, all merciful and all powerful, look upon a scene like this!

Anything else? Yes. Look at this. I do not believe my friend who preceded me intended to do this. I refer to the incident about the time slip. I have to use harsh words here,

but I don't want to. This seems to me the most unkindest cut of all. They say that that time slip was planted. They say the shirt was planted. Gentlemen, is there any evidence of this? Let's see about this statement. Black and somebody else, I believe, went out to Newt's house on Tuesday morning and found the shirt in the bottom of a barrel. They brought the shirt back to the police station and Newt said the shirt was his—or it looked like his shirt. Newt Lee had been hired at the factory but three weeks, yet they want you to believe that they found a shirt like the old man had and went out to his house and put it in a barrel.

One thing is wrong. The newspapers and others, I am afraid, think this is a contest between lawyers. It is not. God forbid that I should let any such thing enter into this case when this boy's life is at stake.

There are several things I don't understand about this case, and never will. Why old man Lee didn't find the body sooner; why he found it lying on its face; how he saw it from a place he could not have seen it from. I was raised with niggers and know something about them. I do not know them as well as the police, perhaps, for they know them like no one else. But I know something about them.

There must have been a nigger in the crime who knew about it before Newt or anyone else. I am afraid Newt knew. Yet, if he did, he is one of the most remarkable niggers I ever saw and I wish I had his nerve. There were things you detectives did to him for which you will never be forgiven. You persecuted the old nigger, and all you got was "Fo' God I don't know." I don't believe he killed her, but I believe he knows more than he told.

But they say now that he jumped back. Suppose he did jump back. Look at the boy (Frank). If you put a girl the size of Mary Phagan in a room with him she could make him jump out of the window. Suddenly this boy stepped out in front of this giant of a Gantt, and he jumped back. Dorsey would have done the same thing; Newt Lee would; Jim Conley would, and I would, as big as I am.



Here is another suspicious thing. Newt Lee came to the factory at four o'clock and Frank sent the old man away. It was suggested that he was afraid the nigger would find the body, yet when he came back at 6, Frank let him stay at the factory when he knew that in 30 minutes Newt was on the job he must go into the basement where they say Frank knew the body was.

They say he was laughing at his home. If he had known of the crime of which he would be accused, that laugh would have been the laugh of a maniac to be ended by the discovery of the body.

Another suspicious thing. You know that he was in the factory, but it turns out that he was not the only one. If the corpse was found in the basement and he was the only one in the building, then there might be some basis. But he was in an open room and there were workmen upstairs. My friend tried to dispute that. That wasn't all. Conley was also there, and it came out yesterday that there was also another nigger—a lighter nigger than Conley—there. What scoundrels in white skin were in the building and had opportunity to commit the crime, God only knows.

The thing that arises in this case to fatigue my indignation is that men born of such parents should believe the statement of Conley against the statement of Frank. Who is Conley? Who was Conley as he used to be and as you have seen him? He was a dirty, filthy, black, drunken, lying nigger. Black knows that. Starnes knows that. Chief Beavers knows it. Who was it that made this dirty nigger come up here looking so slick? Why didn't they let you see him as he was? They shaved him, washed him and dressed him up. Gentlemen of the jury, the charge of moral perversion against a man is a terrible thing for him, but it is even more so when that man has a wife and mother to be affected by it. Dalton, even Dalton did not say this against Frank. It was just Conley. Dalton, you remember, did not even say that Frank was guilty of wrong-doing as far as he knew. There never was any proof of Frank's alleged moral perversion, unless you call Jim

Conley proof. None of these niggers ever came up and said Conley was there and that they were with him. Starnes—and Starnes could find a needle in a haystack, but the Lord only knows what he'd do in an acre—he could not find any of these niggers.

Then there was that old negro drayman, old McCrary, the old peg-leg negro drayman, and thank God he was an old-timer, "fo" de war nigger. You know Conley, wishing to add a few finishing trimmings to his lines, said that old McCrary sent him down in the basement that Saturday morning and when the old darkey was put on the stand he said simply, "No, boss, I never sent him down thar." Everywhere you go you find that Conley lied. He says he watched there one Saturday last year between 2 and 3 o'clock. Well, Schiff says he didn't and so does Darley and Holloway, the latter guaranteed by the state, and the little office boys, nice looking little chaps from nice families, they all say he didn't. Cut out Conley and you strip the case to nothing.

Did you hear the way Conley told his story? Have you ever heard an actor, who knew his Shakespearean plays, his "Merchant of Venice" or his "Hamlet"? He can wake up at any time of the night and say those lines, but he can't say any lines of a play he has never learned. So it was with Conley. He could tell the story of the disposition of the girl's body, and he knew it so well he could reel it off backward or forward, any old way, but when you got to asking him about other things, he always had one phrase, "Boss, ah can't 'member dat."

They say Conley could not have made up that story. Well, I don't know about that. There is something queer in the whole thing, you know. I couldn't climb that post over there, gentlemen. I mean I couldn't go very far up it, but if I had Professor Starnes, and Professor Black, and Professor Campbell, and Professor Rosser, and then Dean Lanford to help me, I'd go quite a way up. Well, they took a notion Mrs. White had seen the negro, and they carried Mrs. White there

to see him, and he twisted up his features so that she couldn't recognize him.

Next, they learned Conley could write. Frank told them that, you know. Well, I don't mean to be severe, but they took that negro and they gave him the third degree. Black and Scott cursed him. "You black scoundrel," they yelled at him. "You know that man never had you come there and write those notes on Friday!" And the poor negro, understanding and trying to please, said, "Yes, boss, zat's right, ah was dere on Saturday." And so they went on and got first one affidavit and then another out of him. Well, Scott and Black had him there, and Conley was only in high school. I don't know whether to call Scott and Black "professors" or not. Scott says, "We told him what would fit and what would not." And it was "stand up, James Conley and recite, when did you fix those notes, James?" and James would answer that he fixed them on Friday, and then the teachers would tell James it was surely wrong, that he must have fixed them on Saturday, and James would know what was wanted and would acknowledge his error. Then it would be, "That's a good lesson, James, you are excused, James." I'm not guessing in this thing. Scott told it on the stand, only in not so plain words. So it was that when this negro had told the whole truth they had another recitation.

Was it fair for two skilled white men to train that negro by the hour and by the day and to teach him and then get a statement from him and call it the truth? Well, Professors Black and Scott finished with him, and they thought Conley's education was through, but that nigger had to have a university course!

Scott, you and Black milked him dry; you thought you did, anyhow, but you got no moral perversion and no watching. In the university they gave a slightly different course. It was given by Professors Starnes and Campbell. Oh, I wish I could look as pious as Starnes does. And Professor Dorsey helped out, I suppose. I don't know what Professor

Dorsey did, only he gave him several lessons, and they must have been just sort of finishing touches before he got his degree. Well, in the university course they didn't dare put the steps in writing, as they had done in the high school; it would have been too easy to trace from step to step, the suggestions made, the additions and subtractions here and there.

Professor Dorsey had him seven times, I know that, but God alone knows how many times the detectives had him. Was it fair to take this weak, pliable negro and have these white men teach him, one after another? Who knows what is the final story that Conley will tell? He added the mesh-bag when he was on the stand.

Mary Phagan had reached the factory at approximately twelve minutes after 12, and it must have been after Monteen Stover had gone. See the statements of W. M. Mathews and W. T. Hollis, street car men called by the defense, and George Epps, the little newsie, called by the state, and also the street car schedule.

But, supposing that she was there at 12:05, as I believe the state claims, then Monteen Stover must have seen her. I don't see how they could have helped meeting. But suppose she got there a moment after Monteen Stover left, then Lemmie Quinn was there at 12:20, and he found Frank at work. Could Frank have murdered a girl and hid her body and then got back to work with no blood stains on him in less than fifteen minutes? If Frank is guilty, he must have, according to Conley, disposed of the body in the time between four minutes to 1 and 1:30. There can be no dispute about this; it's Conley's last revelation. If Frank is guilty, he was at his office between four minutes to 1 and 1:30, but who believes that story?

Little Miss Kerns saw him at Alabama and Whitehall at 1:10, and at 1:20 Mrs. Levy, honest woman that she is, saw him get off the car at his home corner, and his wife's parents saw, and they all swear he was there at 1:20, and then, if you are going to call them all perjurers and believe Jim Conley, think what you must do; think what a horrible thing you

must do—you must make Minola's husband a perjurer, and that would be terrible.

You know about that Minola McKnight affair. It is the blackest of all. A negro woman locked up from the solicitor's office, not because she would talk—she's given a statement—but because she would not talk to suit Starnes and Campbell, and two white men, and shame to them, got her into it. Where was Chief Beavers? What was he doing that he became a party to this crime? Beavers, who would enforce the law; Beavers, the immaculate!

Believe Frank was in the factory if you can at 1:30; throw aside all the respectable people and swear by Conley. Well, I know the American jury is supreme, that it is the sovereign over lives; that sometimes you can sway it by passion and prejudice, but you can't make it believe anything like this.

Neither prejudice, nor passion, wrought by monsters so vile they ought not to be in the court room, could make them believe it. They said that there was a certain man, named Mincey, whom we called as a witness but did not use. Well, the only use we would have had for Mincey was to contradict Conley, and as soon as Conley got on the stand he contradicted himself enough without our having to go to the trouble of calling on witnesses to do it. If we had put Mincey up there would have been a day's row about his probity, and what would have been the use—Conley said time and again that he had lied time and again.

Gentlemen, I want only the straight truth here, and I have yet to believe that the truth has to be watched and cultivated by these detectives and by seven visits of the solicitor general. I don't believe any man, no matter what his rate, ought to be tried under such testimony. If I was raising sheep and feared for my lambs, I might hang a yellow dog on it. I might do it in the daytime, but when things got quiet at night and I got to thinking, I'd be ashamed of myself. You have been overly kind to me, gentlemen. True, you have been up against a situation like that old Sol Russell used to describe when he would say, "Well, I've lectured off and on for forty years, and

the benches always stuck it out, but they was screwed to the floor." You gentlemen have been practically in that fix, but I feel, nevertheless, that you have been peculiarly kind, and I thank you.

#### THE SOLICITOR GENERAL FOR THE STATE.

*Mr. Dorsey.* Gentlemen of the Jury: This case is not only, as His Honor has told you, important, but it is extraordinary. It is extraordinary as a crime—a most heinous crime, a crime of a demoniac, a crime that has demanded vigorous, earnest and conscientious effort on the part of your detectives, and which demands honest, earnest, conscientious consideration on your part. It is extraordinary because of the prominence, learning, ability, standing of counsel pitted against me. It is extraordinary because of the defendant—it is extraordinary in the manner in which the gentlemen argue it, in the methods they have pursued in its management. They have had two of the ablest lawyers in the country. They have had Rosser, the rider of the winds and the stirrer of the storm, and Arnold (and I can say it because I love him), as mild a man as ever cut a throat or scuttled a ship. They have abused me; they have abused the detective department; they have heaped so much calumny on me that the mother of the defendant was constrained to arise in their presence and denounce me as a dog. Well, there's an old adage, and it's true, that says, "When did any thief ever feel the halter draw with any good opinion of the law?"

Oh, prejudice and perjury! They say that is what this case is built on, and they use that stereotyped phrase until it fatigues the mind to think about it. Don't let this purchased indignation disturb you. Oh, they ought to have been indignant; they were paid to play the part. Gentlemen, do you think that these detectives and I were controlled by prejudice in this case? Would we, the sworn officers of the law, have sought to hang this man on account of his race and pass over the negro, Jim Conley? Was it prejudice when

we arrested Gantt, when we arrested Lee, when we arrested others? No, the prejudice came when we arrested this man, and never until he was arrested was there a cry of prejudice.

Those gentlemen over there were disappointed when we did not pitch our case along that line, but not a word emanated from this side, showing any prejudice on our part, showing any feeling against Jew or Gentile.

We would not have dared to come into this presence and ask the conviction of a man because he was a Gentile, a Jew or a negro. Oh, no two men ever had any greater pleasure shown on their faces than did Mr. Arnold and Mr. Rosser when they started to question Kendley and began to get before the court something about prejudice against the Jews. They seized with avidity the suggestion that Frank was a Jew.

Remember, they put it before this court, and we did not; the word Jew never escaped our lips. I say that the race this man comes from is as good as ours; his forefathers were civilized and living in cities and following laws when ours were roaming at large in the forest and eating human flesh. I say his race is just as good as ours, but no better. I honor the race that produced Disraeli, the greatest of British statesmen; that produced Judah P. Benjamin, as great a lawyer as England or America ever saw; I honor the Strauss brothers; I roomed with one of his race at college; one of my partners is is of his race. I served on the board of trustees of Grady hospital with Mr. Hirsch, and I know others, too many to count, but when Lieutenant Becker wished to make away with his enemies, he sought men of this man's race.

Then, you will recall Abe Hummell, the rascally lawyer, and Reuff, another scoundrel, and Schwartz, who killed a little girl in New York, and scores of others, and you will find that this great race is as amenable to the same laws as any others of the white race or as the black race is.

They rise to heights sublime, but they also sink to the lowest depths of degradation!

We don't ask a conviction of this man except in conformity with the law which His Honor will give you in charge. His

Honor will charge you that you should not convict this man unless you think he is guilty beyond a reasonable doubt.

A great many jurors, gentlemen, and the people generally get an idea that there is something mysterious and unfathomable about this reasonable doubt proposition. It's as plain as the nose on your face. The text writers and lawyers and judges go around in a circle when they undertake to define it; it's a thing that speaks for itself, and every man of common sense knows what it is, and it isn't susceptible of any definition. One text writer says a man who undertakes to define it uses tautology—the same words over again. Just remember, gentlemen of the jury, that it is no abstruse proposition, it is not a proposition way over and above your head—it's just a common sense, ordinary, everyday practical question. In the 83rd Georgia, one of our judges defines it thus:

"A reasonable doubt is one that is opposed to an unreasonable doubt; it is one for which a reason can be given, and it is one that is based on reason, and it is such a doubt that leaves the mind in an uncertain and wavering condition, where it is impossible to say with reason nor certainty that the accused is guilty."

If you have a doubt, it must be such a doubt as to control and decide your conduct in the highest and most important affairs of life. It isn't, gentlemen, as is said in the case of *John vs. State*, in 33d Georgia, "a vague, conjectural doubt or a mere guess that possibly the accused may not be guilty"; it isn't that; "it must be such a doubt as a sensible, honest-minded man would reasonably entertain in an honest investigation after truth." It must not be, as they say, in the case of *Butler vs. State*, 92 Georgia, "A doubt conjured up"; or as they say in the 83 Georgia, "A doubt which might be conjured up to acquit a friend." "It must not be," as they say in the 63 Georgia, "a fanciful doubt, a trivial supposition, a bare possibility of innocence,"—that won't do, that won't do; "it doesn't mean the doubt," they say in 90 Georgia, "of a crank or a man with an over-sensitive nature, but practical, common sense is the standard."

Conviction can be established as well upon circumstantial



evidence as upon direct evidence. Eminent authority shows that in many cases circumstantial evidence is more certain than direct evidence. Conviction can be established better by a large number of witnesses giving circumstantial evidence and incidents pointing to guilt than by the testimony of a few witnesses who may have been eye-witnesses to the actual deed.

In this case, we have both circumstantial evidence and admission. Hence, with reasonable doubt as a basis, the evidence shows such a consistency that a reasonable conclusion is all that is needed.

This thing of a reasonable doubt originated long ago, when the accused was not allowed to be represented by counsel to defend him. In time the reasonable doubt will drop out. Our people are getting better and better about this all the time. The state is handicapped in all sorts of ways by this reasonable doubt proposition, and has to more than prove a man's guilt often before a conviction can result.

You can't get at a verdict by mathematics, but you can get at it by a moral certainty.

People sometimes say that they will not convict on circumstantial evidence. That is the merest bosh. Authorities show that circumstantial evidence is the best evidence. People are improving about this. Yet juries are often reticent upon this point. But juries should not hesitate at lack of positive evidence. The almost unerring indication of circumstantial evidence should control. Otherwise society is exposed to freedom in the commission of all sorts of the most horrible crimes. Circumstances which would warrant a mere conjecture of guilt are not warranted as the basis for a conviction, but when the evidence is consistent with all the facts in the case only a conviction can result.<sup>1</sup>

Now, let's examine this question of good character. I grant you, good character spells a whole lot, but first, let's establish

<sup>1</sup> Mr. Dorsey here told the graphic story of how W. H. T. Durant, upon circumstantial evidence, was convicted of the murder of Blanche Lamont in Emmanuel Baptist church in San Francisco.

good character. It is presumed—had he not put his character in issue, it would have been presumed—and the State would have been absolutely helpless—that this man was as good a man as lived in the City of Atlanta. It's a mighty easy thing, if a man is worth anything, if a man attains to any degree of respectability, it's a mighty easy thing to get some one to sustain his character but it's the hardest thing known to a lawyer to get people to impeach the character of another. In the Durant case, his character was unimpeached. The defendant here put his character in issue and we accepted the challenge, and we met it, I submit to you. Now, if we concede that this defendant in this case was a man of good character—a thing we don't concede—still, under your oath and under the law that His Honor will give you in charge, as is laid down in the 88 Georgia, page 92, "Proof of good character will not hinder conviction, if the guilt of the defendant is plainly proved to the satisfaction of the jury."

First, you have got to have the good character, before it weighs a feather in the balance, and remember, that the hardest burden, so far as proof is concerned, that ever rests on anybody, is to break down the character of a man who really has character and I ask you if this defendant stands before you a man of good character?

Mr. Arnold, as though he had not realized the force of the evidence here against the man who, on April 26th, snuffed out the life of little Mary Phagan, in his desperation stood up in this presence and called nineteen or twenty of these reputable, high-toned girls, though they be working girls, "crack-brain fanatics and liars," and they have hurled that word around here a good deal, too, they have hurled that word around here a good deal. If that's an attribute of great men and great lawyers, I here and now proclaim to you I have no aspirations to attain them. Not once will I say that anybody has lied, but I'll put it up to you as twelve honest, conscientious men by your verdict to say where the truth lies and who has lied. I'm going to be satisfied with your verdict, too—I know this

case and I know the conscience that abides in the breast of honest, courageous men.

Now, the book says that if a man has good character, nevertheless it will not hinder conviction, if the guilt of the defendant is plainly proved to the satisfaction of the jury—as it was in the Durant case, and I submit that, character or no character, this evidence demands a conviction. And I'm not asking you for it either because of prejudice—I'm coming to the perjury after a bit. Have I so forgotten myself that I would ask you to convict that man if the evidence demanded that Jim Conley's neck be broken?

Now, Mr. Arnold said yesterday, and I noticed it, though it wasn't in evidence, that Jim Conley wasn't indicted. No, he will never be, for this crime, because there is no evidence—he's an accessory after the fact, according to his own admission, and he's guilty of that and nothing more. And I'm here to tell you that, unless there's some other evidence besides that which has been shown here or heretofore, you've got to get you another Solicitor General before I'll ask any jury to hang him, lousy negro though he may be; and if that be treason, make the most of it. I have got my own conscience to keep, and I wouldn't rest quite so well to feel that I had been instrumental in putting a rope around the neck of Jim Conley for a crime that Leo M. Frank committed. You'll do it, too.

I want you to bear in mind, now, we haven't touched the body of this case, we have been just clearing up the underbrush—we'll get to the big timber after awhile. "Where character is put in issue"—and the State can't do it, it rests with him—"Where character is put in issue, the direct examination must relate to the general reputation, good or bad;" that is, whoever puts character in issue, can ask the question with reference to the general reputation, good or bad, as the case may be, "but on cross-examination particular transactions or statements of single individuals may be brought into the inquiry in testing the extent and foundation of the witnesses' knowledge, and the correctness of his testimony on direct examination."

We did exercise that right in the examination of one witness, but knowing that we couldn't put specific instances in unless they drew it out, I didn't want even to do this man the injustice, so we suspended, and we put it before this jury in this kind of position—you put his character in, we put up witnesses to disprove it, you could cross examine every one of them and ask them what they knew and what they had heard and what they had seen; we had already given them enough instances, but they didn't dare, they didn't dare to do it. Mark you, now, here's the law:

"Where character is put in issue, the direct examination must relate to the general reputation;" we couldn't go further, but on cross examination, when we put up these little girls, sweet and tender, ah, but "particular instances or statements of single individuals, you could have brought into the inquiry," but you dared not do it. You tell me that the testimony of these good people living out on Washington Street, the good people connected with the Hebrew Orphans' Home, Doctor Marx, Doctor Sonn, you tell me that they know the character of Leo M. Frank as these girls do, who have worked there but are not now under the influence of the National Pencil Company and its employees? Do you tell me that if you are accused of a crime, or I am accused of a crime, and your character or my character is put in issue, that if I were mean enough to do it, or if Messrs. Starnes and Campbell were corrupt enough to do it, that you could get others who would do your bidding? I tell you, in principle and common sense, it is a dastardly suggestion. You know it, and I know you know it, and you listen to your conscience and it will tell you you know it, and you have got no doubt about it. The trouble about this business is, throughout the length and breadth of our land, there's too much shenanigane and too little honest, plain dealings; let's be fair, let's be honest, let's be courageous! Tell me that old Pat Campbell or John Starnes or Mr. Rosser—in whose veins, he says, there flows the same blood as flows in the attorney's veins—that they could go and get nineteen or twenty of them, through preju-

dice and passion to come up here and swear that that man's character is bad and it not be true? I tell you it can't be done, and you know it.

Ah, but, on the other hand, Doctor Marx, Doctor Sonn, all these other people, as Mr. Hooper said, who run with Doctor Jekyll, don't know the character of Mr. Hyde. And he didn't call Doctor Marx down to the factory on Saturday evenings to show what he was going to do with those girls, but the girls know.

Now, gentlemen, put yourself in this man's place. If you are a man of good character, and twenty people come in here and state that you are of bad character, your counsel have got the right to ask them who they ever heard talking about you and what they ever heard said and what they ever saw. Is it possible, I'll ask you in the name of common sense, that you would permit your counsel to sit mute? You wouldn't do it, would you? If a man says that I am a person of bad character, I want to know, curiosity makes me want to know, and if it's proclaimed, published to the world and it's a lie, I want to nail the lie—to show that he never saw it, and never heard it and knows nothing about it. And yet, three able counsel and an innocent man, and twenty or more girls all of whom had worked in the factory but none of whom work there at this time, except one on the fourth floor, tell you that that man had a bad character, and had a bad character for lasciviousness—the uncontrolled and uncontrollable passion that led him on to kill poor Mary Phagan. This book says it is allowable to cross-examine a witness, to see and find out what he knows, who told him those things—and I'm here to tell you that this thing of itself is pregnant, pregnant, pregnant with significance, and does not comport with innocence on the part of any man. We furnished him the names of some. Well, even by their own witnesses, it looks to me there was a leak, and little Miss Jackson dropped it out just as easy. Now, what business did this man have going in up there, peering in on those little girls—the head of the factory, the man that wanted flirting forbidden? What business did

he have going up into those dressing rooms? You tell me to go up there to the girls' dressing room, shove open the door and walk in is a part of his duty, when he has foreladies to stop it? No, indeed. And old Jim Conley may not have been so far wrong as you may think. He says that somebody went up there that worked on the fourth floor, he didn't know who. This man, according to the evidence of people that I submit you will believe, notwithstanding the fact that Mr. Reuben R. Arnold said it was a lie and called them hair-brained fanatics—according to the testimony even of a lady who works there now and yet is brave enough and courageous enough to come down here and tell you that that man had been in a room with a lady that works on the fourth floor; and it may have been that he was then, when he went in there on this little Jackson girl and the Mayfield girl and Miss Kitchens, looking out to see if the way was clear to take her in again—and Miss Jackson, their witness, says she heard about his going in there three or four times more than she ever saw it, and they complained to the foreladies—it may have been right then and there he went to see some woman on the fourth floor that old Jim Conley says he saw go up there to meet him Saturday evening, when all these good people were out on Washington Street and Montags, and the pencil factory employees, even, didn't know of the occurrence of these things.

*August 23.*

*Mr. Dorsey.* I was just about concluding, yesterday, what I had to say in reference to the matter of character, and I think that I demonstrated by the law, to any fair-minded man, that this defendant has not a good character. The conduct of counsel in this case, as I stated, in failing to cross-examine, in refusing to cross-examine these twenty young ladies, refutes effectively and absolutely the claims of this defendant that he has good character. As I said, if this man had had a good character, no power on earth could have kept him and his counsel from asking those girls where they got their information, and why it was they said that this defendant was a man of bad character. I have already shown you that under the

law, they had the right to go into that character, and you saw that on cross-examination they dared not do it. I have here an authority that puts it right squarely, that "whenever any one has evidence (83 Ga., 581) in their possession, and they fail to produce it, the strongest presumption arises that it would be hurtful if they had, and their failure to produce evidence is a circumstance against them."

You don't need any law book to make you know that that's true, because your common sense tells you that whenever a man can bring evidence, and you know that he has got it and don't do it, the strongest presumption arises against him. And you know, as twelve honest men seeking to get at the truth, that the reason these able counsel didn't ask those "hair-brained fanatics," as Mr. Arnold called them, before they had ever gone on the stand—girls whose appearance is as good as any they brought, girls that you know by their manner on the stand spoke the truth, girls who are unimpeached and unimpeachable, was because they dared not do it. You know it; if it had never been put in a law book you'd know it. And then you tell me that because these good people from Washington Street come down here and say that they never heard anything, that he is a man of good character.

Many a man has gone through life and even his wife and his best friends never knew his character; and some one has said that it takes the valet to really know the character of a man. And I had rather believe that these poor, unprotected working girls, who have no interest in this case and are not under the influence of the pencil company or Montag or anybody else, know that man, as many a man has been heretofore, is of bad character, than to believe the Rabbi of his church and the members of the Hebrew Orphans' Home.

Sometimes, you know, a man of bad character uses charitable and religious organizations to cover up the defects, and sometimes a consciousness in the heart of a man will make him over-active in some other line, in order to cover up and mislead the public generally. Many a man has been a wolf in sheep's clothing; many a man has walked in high society and

appeared on the outside as a whited sepulcher, who was as rotten on the inside as it was possible to be.

So he has got no good character, I submit, never had it; he has got a reputation—that's what people say and think about you—and he has got a reputation for good conduct only among those people that don't know his character. But suppose that he had a good character; that would amount to nothing. David of old was a great character until he put old Uriah in the fore-front of battle in order that he might be killed—that Uriah might be killed, and David take his wife. Judas Iscariot was a good character, and one of the Twelve, until he took the thirty pieces of silver and betrayed our Lord Jesus Christ. Benedict Arnold was brave, enjoyed the confidence of all the people and those in charge of the management of the Revolutionary War until he betrayed his country. Since that day his name has been a synonym for infamy. Oscar Wilde, an Irish Knight, a literary man, brilliant, the author of works that will go down the ages—*Lady Windermere's Fan*, *De Profundis*—which he wrote while confined in jail; a man who had the effrontery and the boldness, when the Marquis of Queensbury saw that there was something wrong between this intellectual giant and his son, sought to break up their companionship, he sued the Marquis for damages, which brought retaliation on the part of the Marquis for criminal practices on the part of Wilde, this intellectual giant; and wherever the English language is read, the effrontery, the boldness, the coolness of this man, Oscar Wilde, as he stood the cross-examination of the ablest lawyers of England—an effrontery that is characteristic of the man of his type—that examination will remain the subject matter of study for lawyers and for people who are interested in the type of pervert like this man. Not even Oscar Wilde's wife—for he was married and had two children—suspected that he was guilty of such immoral practices, and, as I say, it never would have been brought to light probably, because committed in secret, had not this man had the effrontery and the boldness and the impudence himself to start the proceeding which



culminated in sending him to prison for three long years. He's the man who led the aesthetic movement; he was a scholar, a literary man, cool, calm and cultured, and as I say, his cross examination is a thing to be read with admiration by all lawyers, but he was convicted, and in his old age, went tottering to the grave, a confessed pervert. Good character? Why, he came to America, after having launched what is known as the "Aesthetic movement," in England, and throughout this country lectured to large audiences, and it is he who raised the sunflower from a weed to the dignity of a flower. Handsome, not lacking in physical or moral courage, and yet a pervert, but a man of previous good character. Abe Reuf, of San Francisco, a man of his race and religion, was the boss of the town, respected and honored, but he corrupted Schmitt, and he corrupted everything that he put his hands on, and just as a life of immorality, a life of sin, a life in which he fooled the good people when debauching the poor girls with whom he came in contact has brought this man before this jury, so did eventually Reuf's career terminate in the penitentiary. I have already referred to Durant. Look at McCue, the mayor of Charlottesville; a man of such reputation that the people elevated him to the head of that municipality, but notwithstanding that good reputation, he didn't have rock bed character, and, becoming tired of his wife, he shot her in the bath tub, and the jury of gallant and noble and courageous Virginia gentlemen, notwithstanding his good character, sent him to a felon's grave. Richardson, of Boston, was a preacher, who enjoyed the confidence of his flock. He was engaged to one of the wealthiest and most fascinating women in Boston, but an entanglement with a poor little girl, of whom he wished to rid himself, caused this man Richardson to so far forget his character and reputation and his career as to put her to death. And all these are cases of circumstantial evidence. And after conviction, after he had fought, he at last admitted it, in the hope that the Governor would at least save his life, but he didn't do it; and the Massachusetts jury and the Massachusetts Governor were cour-

ageous enough to let that man who had taken that poor girl's life to save his reputation as the pastor of his flock, go, and it is an illustration that will encourage and stimulate every right-thinking man to do his duty. Then, there's Beattie. Henry Clay Beattie, of Richmond, of splendid family, a wealthy family, proved good character, though he didn't possess it, took his wife, the mother of a twelve-months-old baby, out automobiling, and shot her; yet that man, looking at the blood in the automobile, joked! joked! joked! He was cool and calm, but he joked too much; and although the detectives were abused and maligned, and slush funds to save him from the gallows were used, in his defense, a courageous jury, an honest jury, a Virginia jury measured up to the requirements of the hour and sent him to his death; thus putting old Virginia and her citizenship on a high plane. And he never did confess, but left a note to be read after he was dead, saying that he was guilty. Crippen, of England, a doctor, a man of high standing, recognized ability and good reputation, killed his wife because of infatuation for another woman, and put her remains away where he thought, as this man thought, that it would never be discovered; but murder will out, and he was discovered, and he was tried, and he it said to the glory of old England, he was executed.

But you say, you've got an alibi. Now, let's examine that proposition a little bit. An alibi—Section 1018 defines what an alibi is. "An alibi, as a defense, involves the impossibility"—mark that—"of the prisoner's presence at the scene of the offense at the time of its commission." "An alibi involves the impossibility, and the range of evidence must be such as reasonably to exclude the possibility of guilt"—and the burden of carrying that alibi is on this defendant. "It involves the impossibility"—they must show to you that it was impossible for this man to have been at the scene of that crime. The burden is on them; an alibi, gentlemen of the jury, while the very best kind of defense if properly sustained, is absolutely worthless—I'm going to show you in a minute that this alibi is worse than no defense at all. I want

to read you a definition that an old darkey gave of an alibi, which I think illustrates the idea. Rastus asked his companion, "What's this here alibi you hear so much talk about?" And old Sam says, "An alibi is proving that you was at the prayer meeting, where you wasn't, to show that you wasn't at the crap game, where you was."

Now, right here, let me interpolate, this man never made an admission, from the beginning until the end of this case, except he knew that some one could fasten it on him—wherever he knew that people knew he was in the factory, he admitted it. All right; but you prove an alibi by that little Kerens girl, do you? She swore that she saw you at Alabama and Broad at 1:10, and yet here is the paper containing your admission made in the presence of your attorney, Monday morning, April 28, that you didn't leave the factory until 1:10.

Gentlemen, talk to me about sad spectacles, but of all the sad spectacles that I have witnessed throughout this case—I don't know who did it, I don't know who's responsible, and I hope that I'll go to my grave in ignorance of who it was that brought this little Kerens girl, the daughter of a man that works for Montag, into this case, to prove this alibi for this red-handed murderer, who killed that little girl to protect his reputation among the people of his own race and religion. Jurors are sworn, and His Honor will charge you, you have got the right to take into consideration the deportment, the manner, the bearing, the reasonableness of what any witness swears to, and if any man in this court house, any honest man, seeking to get at the truth, looked at that little girl, her manner, her bearing, her attitude, her actions, her connections with Montag, and don't know that she, like that little Bauer boy, had been riding in Montag's automobile, I am at a loss to understand your mental operations.

But if Frank locked the factory door at ten minutes past one, if that be true, how in the name of goodness did she ever see him at Alabama and Broad at 1:10? Mark you, she had never seen him but one time; had never seen him but one time, and with the people up there on the street, to see the parade,

waiting for her companions, this daughter of an employee of Montag comes into this presence and tells you the unreasonable, absurd story, the story that's in contradiction to the story made by Frank, which has been introduced in evidence and will be out with you, that she saw that fellow up there at Jacobs'.

On this time proposition, I want to read you this—it made a wonderful impression on me when I read it—it's the wonderful speech of a wonderful man, a lawyer to whom even such men as Messrs. Arnold and Rosser, as good as the country affords, as good men and as good lawyers as they are, had they stood in his presence, would have pulled off their hats in admiration for his intellect and his character—I refer to Daniel Webster, and I quote from Webster's great speech in the Knapp case:

"Time is identical, its subdivisions are all alike, no man knows one day from another, or one hour from another, but by some fact, connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished by understanding. He who speaks of the date, the minute and the hour of occurrences with nothing to guide his recollection, speaks at random."

That's put better than I could have put it. That's put tersely, concisely, logically, and it's the truth. Now, what else about this alibi, this chronological table here, moved up and down to save a few minutes? The evidence, as old Sig Montag warned me not to do, twisted, yea, I'll say contorted, warped, in order to sustain this man in his claim of an alibi. For instance, they got it down here "Frank arrived at the factory, according to Holloway, Alonzo Mann, Roy Irby, at 8:25." That's getting it down some, ain't it? Frank says he arrived at 8:30. Old Jim Conley, perjured, lousy and dirty, says that he arrived there at 8:30, and he arrived, carrying a rain coat. And they tried mightily to make it appear that Frank didn't have a rain coat, that he borrowed one from his brother-in-law, but Mrs. Ursenback says that Frank had one; and if the truth were known, I venture the assertion that the reason Frank borrowed Ursenback's rain coat on Sunday was because, after

the murder of this girl on Saturday, he forgot to get the rain coat that old Jim saw him have. Miss Mattie Smith leaves building, you say, at 9:20 A. M. She said—or Frank says—at 9:15. You have it on this chart here that's turned to the wall that Frank telephoned Schiff to come to his office at 10 o'clock, and yet this man Frank, coolly, composedly, with his great capacity for figures and data, in his own statement says that he gets to Montag's at that hour. And you've got the records, trot them out, if I'm wrong. At 11 A. M. Frank returns to the pencil factory; Holloway and Mann come to the office; Frank dictates mail and acknowledges letters. Frank, in his statement, says 11:05. Any way, oh Lord, any hour, any minute, move them up and move them down, we've got to have the alibi—like old Uncle Remus' rabbit, we're just 'bleeged to climb. "12:12, approximate time Mary Phagan arrives." Frank says that Mary Phagan arrived ten or fifteen minutes after Miss Hall left; and with mathematical accuracy, you've got Miss Hall leaving the factory at 12:03. Why, I never saw so many watches, so many clocks or so many people who seem to have had their minds centered on time as in this case. Why, if people in real life were really as accurate as you gentlemen seek to have us believe, I tell you this would be a glorious old world, and no person and no train would ever be behind time. It doesn't happen that way, though. But to crown it all, in this table which is now turned to the wall, you have Lemmie Quinn arriving, not on the minute, but, to serve your purposes, from 12:20 to 12:22; but that, gentlemen, conflicts with the evidence of Freeman and the other young lady, who placed Quinn by their evidence, in the factory before that time.

*Mr. Arnold.* There isn't a word of evidence to that effect; those ladies were there at 11:35 and left at 11:45, Corinthia Hall and Miss Freeman, they left there at 11:45, and it was after they had eaten lunch and about to pay their fare before they ever saw Quinn, at the little cafe, the Busy Bee. He says that they saw Quinn over at the factory before 12, as I understood it.

*Mr. Dorsey.* Yes, sir, by his evidence.

*Mr. Arnold.* That's absolutely incorrect, they never saw Quinn there then and never swore they did.

*Mr. Dorsey.* No, they didn't see him there, I doubt if anybody else saw him there either.

*Mr. Arnold.* If a crowd of people here laugh every time we say anything, how are we to hear the Court? He has made a whole lot of little mis-statements, but I let those pass, but I'm going to interrupt him on every substantial one he makes.

*Mr. Dorsey.* He says those ladies saw Quinn—says they “saw Quinn was there before 12, and before I left there at 1 o'clock.” “You saw him at that, did you?” “Yes, sir.” “Now, you are sure he did that?” “Yes, sir.” “You are positive he did that?” “Yes, sir”; and then Mr. Arnold comes in with his suggestion, and she takes the bait and runs under the bank—he saw how it cut. Then I came back at her again—now, just to show how she turned turtle, “You did see Frank working Saturday morning on the financial sheet?” “No, he didn't work on the financial sheet.” “Why did you state a moment ago you saw him working on it?” “No, sir, I didn't.”

My Lord! Gentlemen, are you going to take that kind of stuff? I know she is a woman, and I'd hesitate except I had the paper here in my hand, to make this charge, but if you, as honest men, are going to let the people of Georgia and Fulton County and of Atlanta suffer one of its innocent girls to go to her death at the hands of a man like this and then turn him loose on such evidence as this, then I say, it's time to quit going through the farce of summoning a jury to try him. If I had the standing, the ability and the power of either Messrs. Arnold or Rosser, to ring that into your ears and drive it home, you would almost write a verdict of guilty before you left your box.

Perjury! Perjury! When did old John Starnes and Pat Campbell, from the Emerald Isle, or Rosser ever fall so low that, when they could convict a negro—easy, because he wouldn't have Arnold and Rosser, but just my friend Bill Smith. And for what reason do they want to let Jim go and go after this man Frank? Why didn't they take Newt Lee? Why didn't they take Gantt? The best reason in the world

is that they had only cob-webs, cob-webs, weak and flimsy circumstances against those men, and the circumstances were inconsistent with the theory of guilt and consistent with some other hypothesis.

But as to this man, you have got cables, strong, so strong that even the ability, the combined ability of the erudite Arnold and the dynamic Rosser couldn't break them or disturb them.

Circumstantial evidence is just as good as any other kind, when it's the right kind. It's a poor case of circumstantial evidence against Newt Lee; it's no case against that long-legged Gantt from the hills of Cobb. But against this man, oh, a perfect, a perfect case. And you stood up here and dealt in generalities as to perjury and corruption; it isn't worth a cent unless you put your finger on the specific instances, and here it is in black and white, committed in the presence of this jury, after he had already said that he wrote the financial sheet Saturday morning, and at your suggestion, he turned around and swore to the contrary.

Yet my friend Schiff says—no, I take that back—Schiff says, with the stenographer gone, with Frank behind in his work, that he went home and slept all day, and didn't get up what he called the "dahta"—well, he's a Joe Darter, that's what Schiff is. It never happened, it never happened, with that financial sheet that Saturday morning, but if it did, it wouldn't prove anything. He may have the nerve of an Oscar Wilde, he may have been cool, when nobody was there to accuse him, and it isn't at all improbable, if he didn't have the "dahta" in the morning, for him to have sat there and deliberately written that financial sheet.

Do you tell me that Frank, when the factory closed at twelve o'clock Saturdays, with as charming a wife as he possesses, with baseball—the college graduate, the head of the B'nai Brith, the man who loved to play cards and mix with friends, would spend his Saturday afternoons using this "data" that Schiff got up for him, when he could do it Saturday morning? No, sir. Miss Fleming told the truth up un-

til that time—"I didn't stay there very often on Saturday afternoon;" Miss Fleming didn't stay there all afternoon. Now, gentlemen, I submit this man made that financial sheet Saturday morning. He could have fixed up that financial sheet Saturday afternoon, but he wouldn't have done it without Schiff having furnished the data if he hadn't been suspecting an accusation of murdering that little girl. A man of Frank's type could easily have fixed that financial sheet—a thing he did fifty-two times a year for five or six years—and could have betrayed no nervousness, he might easily—as he did when he wrote for the police—in the handwriting, a thing that he was accustomed to do—even in the presence of the police—you'll have it out with you—he may have written so as not to betray his nervousness.

And speaking about perjury: There's a writing that his mother said anybody who knew his writing ought to be able to identify and yet, that man you put up there to prove Frank's writing, was so afraid that he would do this man some injury, that he wouldn't identify the writing that his mother says that anybody that knows it at all, could recognize. I grant you that he didn't betray nervousness, probably, in the bosom of his family; I grant you that he could fix up a financial sheet that he had been fixing up fifty-two times a year for five or six years and not betray nervousness; I grant you that he could unlock the safe, a thing that he did every day for three hundred and sixty-five days in the year, without betraying nervousness; but when he went to run the elevator, when he went to nail up the door, when he talked to the police, when he rode to the station, then he showed nervousness.

And he could sit in a hall and read and joke about the baseball umpire, but his frivolty, that annoyed the people Saturday night that they had the card game, was the same kind of frivolity that Beattie betrayed when he stood at the automobile that contained the blood of his wife that he had shot. And certainly it is before this jury that he went in laughing and joking and trying to read a story that resulted only in annoyance to the people that were in that card game.



But whether or not he made out that financial sheet, I'll tell you something that he did do Saturday afternoon, when he was waiting up there for old Jim to come back to burn that body, I'll tell you something that he did do—and don't forget the envelope and don't forget the way that that paper was folded, either, don't forget it. Listen to this: "I trust this finds you and dear tont (that's the German for aunt) well after arriving safe in New York. I hope you found all the dear ones well, in Brooklyn."

Didn't have any wealthy people in Brooklyn, eh? This uncle of his was mighty near Brooklyn, the very time old Jim says he looked up and said, "I have wealthy people in Brooklyn." And I would really like to know, I would like to see how much that brother-in-law that runs that cigar business has invested in that store, and how much he has got. The very letter that you wrote on Saturday, the 26th, shows that you anticipated that this old gentleman, whom everybody says has got money, was then, you supposed, in Brooklyn, because here you say that "I hope you have found all the dear ones well"—but I'm coming back to what Frank said to old Jim—"and I await a letter from you telling me how you found things there in Brooklyn. Lucile and I are well."

Now, here is a sentence that is pregnant with significance, which bears the ear-marks of the guilty conscience; tremulous as he wrote it? No, he could shut his eyes and write and make up a financial sheet—he's capable and smart, wonderfully endowed intellectually, but here's a sentence that, if I know human nature and know the conduct of the guilty conscience, and whatever you may say about whether or not he prepared the financial sheet on Saturday morning, here's a document I'll concede was written when he knew that the body of little Mary Phagan, who died for virtue's sake, lay in the dark recesses of that basement. "It is too short a time," he says, "since you left for anything startling to have developed down here." Too short! Too short! Startling! But "Too short a time," and that itself shows that the dastardly deed was done in an incredibly short time. And do you tell me, honest men,

fair men, courageous men, true Georgians, seeking to do your duty, that that phrase, penned by that man to his uncle on Saturday afternoon, didn't come from a conscience that was its own accuser? "It is too short a time since you left for anything startling to have developed down here." What do you think of that? And then listen at this—as if that old gentleman, his uncle, cared anything for this proposition, this old millionaire traveling abroad to Germany for his health, this man from Brooklyn—an eminent authority says that unusual, unnecessary, unexpected and extravagant expressions are always earmarks of fraud; and do you tell me that this old gentleman, expecting to sail for Europe, the man who wanted the price list and financial sheet, cared anything for those old heroes in gray? And isn't this sentence itself significant: "Today was yontiff (holiday) here, and the thin gray lines of veterans here braved the rather chilly weather to do honor to their fallen comrades"; and this from Leo M. Frank, the statistician, to the old man, the millionaire, or nearly so, who cared so little about the thin gray line of veterans, but who cared all for how much money had been gotten in by the pencil factory.

"Too short a time for anything startling to have happened down here since you left"; but there was something startling, and it happened within the space of thirty minutes. "There is nothing new in the factory to report." Ah! there was something new, and there was something startling, and the time was not too short. You can take that letter and read it for yourself. You tell me that letter was written in the morning, do you believe it? I tell you that that letter shows on its face that something startling had happened, and that there was something new in the factory, and I tell you that that rich uncle, then supposed to be with his kindred in Brooklyn, didn't care a flip of his finger about the thin gray line of veterans. His people lived in Brooklyn, that's one thing dead sure and certain, and old Jim never would have known it except Leo M. Frank had told him, and they had at least \$20,000 in cold cash out on interest, and the brother-in-law the owner

of a store employing two or three people, and we don't know how many more; and if the uncle wasn't in Brooklyn, he was so near thereto that even Frank himself thought he was at the very moment he claimed he was there, because he says, "you have seen or are with the people in Brooklyn."

All right; let's go a step further. On April 28th, he wired Adolph Montag in care of the Imperial Hotel—listen, now, to what he says—"You may have read in Atlanta papers of factory girl found dead Sunday morning." In factory? In factory? No, "in cellar." Cellar where? "Cellar of pencil factory." There's where he placed her, there's where he expected her to be found; and the thing welled up in his mind to such an extent that, Monday morning, April 28th, before he had ever been arrested, he wires Montag forestalling what he knew would surely and certainly come unless the Atlanta detectives were corrupted and should suppress it.

"You have read in Atlanta papers of factory girl found dead Sunday morning in cellar of pencil factory. Police will eventually solve it,"—he didn't have any doubt about it—"Police will eventually solve it"—and be it said to their credit, they did,—"*Assure my uncle*"—he says, Monday morning—"I am all right in case he asks. Our company has case well in hand." "*Girl found dead in pencil factory cellar,*" he says in the telegram, "*the police will eventually solve it,*" he says, before he was arrested, "*I am all right, in case my uncle asks,*" and "*our company has the case well in hand.*"

Well, maybe he did think that when he got that fellow Scott, that he had it well in hand. I'll tell you, there's an honest man. If there was a slush fund in this case,—these witnesses here say they don't know anything about it, but if there was a slush fund in this case, Scott could have got it, because, at first, he never heard any words that sounded better to him than when Scott said "*we travel arm in arm with the police,*" that's exactly what Frank wanted them to do at that time, he wanted somebody that would run with Black and Starnes and Rosser, and it sounded good to him, and

he said all right. He didn't want him to run anywhere else, because he wanted him to work hand in glove with these men, and he wanted to know what they did and what they said and what they thought. But Haas—and he's nobody's fool—when he saw that they were getting hot on the trail, opened up the conversation with the suggestion that “now you let us have what you get, first,” and if Scott had fallen for that suggestion, then there would have been something else. You know it. You tell me that letter and that telegram are not significant? I tell you that this evidence shows, notwithstanding what “Joe Darter” Schiff swore, when he saw the necessity to meet this evidence of Miss Fleming, which Mr. Arnold tried so hard, because he saw the force of it, to turn into another channel, that Frank didn't fix that financial sheet Saturday morning. I say that, with the stenographer gone and Frank behind (and Schiff had never done such a thing before, he had always stuck to him in getting it up before), that what Gantt told you is the truth.

This man, expert, brilliant—talk about this expert accountant, Joel Hunter! Why, he isn't near as smart as this man Frank, to begin on, and besides, the idea of his going up there and taking up those things and trying to institute a comparison as to how long it would take him, even if he had the capacity of Frank—he hasn't got it—to go up there and do those things—why, it's worse than ridiculous.

And Frank himself wasn't satisfied with all this showing about what he had done, he got up on the stand,—he saw the weakness of his case, and he's as smart as either one of his lawyers, too, let me tell you, and I'll bet you he wrote that statement, too, they may have read it, but he wrote it—Frank realized that he must go over and beyond what the evidence was, and through his statement he sought to lug into this case something that they didn't have any evidence for. Why? Because he knew in his heart that all this talk about the length of time it took to fix that financial sheet was mere buncombe. Then he seeks to put in here through that statement—and if we hadn't stopped him he would have done it—

a whole raft of other stuff that Schiff, as willing as he was, as anxious as he was, couldn't stultify himself to such an extent as to tell you that Frank did that work Saturday morning. But if he did write that financial sheet Saturday afternoon, a thing I submit he didn't do,—I'm willing to admit he wrote that letter,—I ask you, as fair men and honest men and disinterested jurors representing the people of this community in seeing that justice is done and that the man who committed that dastardly deed has meted out to him that which he meted out to this poor little girl, if this documentary evidence, these papers, don't have the impress of a guilty man? You know it.

All right; but you say there's perjury. Where is it? I'll tell you another case—I have already referred to it—it's when that man, put up there to identify Frank's writing, failed to identify a writing that Frank's own mother swore that anybody that knew anything about his writing could have identified. There's perjury there when Roy Bauer swore with such minute particularity as to his visits to that factory. There's perjury when this man Lee says that Duffy held his finger out and just let that blood spurt. But that ain't all. Here's the evidence of Mrs. Carson. Mrs. Carson says she has worked in that factory three years; and Mr. Arnold, in that suave manner of his, without any evidence to support it, not under oath, says "Mrs. Carson, I'll ask you a question I wouldn't ask a younger woman, have you ever at any time around the ladies' dressing room seen any blood spots?" and she said "I certainly have." That's a ridiculous proposition on its face. "Have you seen that on several occasions or not?" "I seen it three or four times"—not in three years; but now, "Did you ever have any conversation with Jim Conley?" and she says, "Yes, on Tuesday he came around to sweep around my table"—that's exactly where Jim says he was Tuesday morning before this man was arrested; "What floor do you work on?" "Fourth." "What floor do your daughters work on?" "On the fourth." "Did you see him up there Monday morning?" "No sir"—that's

Frank. "Tuesday morning?" "I saw him Tuesday morning"—he was up there on the fourth floor after the murder, on Tuesday, "sometime between nine and eleven o'clock." I said, "between nine and eleven, somewhere along there?" "Sometime between nine and eleven thirty." "Now, Jim Conley and Leo M. Frank were both on your floor between the same hours?" "I saw Mr. Frank and I saw Jim Conley."

"You know it because you had a conversation with Mr. Frank, and you had a conversation with Jim Conley?" "Yes, I saw them both." And Conley says—and surely Conley couldn't have been put up to it by these men, even if they had wanted to suborn perjury—that when Frank came up there Tuesday morning before he was arrested, it was then that he came to him and leaned over and said "Jim, be a good boy," and then Jim, remembering the money and remembering the wealthy people in Brooklyn and the promises that Frank made, says, "Yes, I is."

Tuesday morning, says Mrs. Carson, your witness, Jim Conley and Frank both were on that floor, and Jim was doing exactly what he said he was doing, sweeping. Now, let's see. This old lady was very much interested. "Now, did you go on the office floor to see that blood"—listen at this "What blood?" "The blood right there by the dressing room?" "What dressing room, what blood are you talking about?" "She had seen it three or four times all over the factory. "On the second floor?" "No sir," she says, "I never did see that spot." "Never saw it at all?" "No, I didn't care to look at nothing like that." "You don't care to look at nothing like that?" "No sir, I don't."

Now, that's Mrs. Carson, the mother of Miss Rebecca, that's what she told you under oath when she was on the stand.

Now, let's see about perjury. Now, mark you, I'm not getting up here and saying this generally, without putting my finger on the specific instances, and I'm not nearly exhausting the record,—you can follow it up,—but I am just picking out a few instances. Here's what Mrs. Small says

about Jim Conley reading the newspapers. Well, if Jim had committed that crime and he hadn't felt that he had the power and influence of Leo Frank back of him to protect him, he never would have gone back there to that factory or sat around and read newspapers, and you know it, if you know anything about the character of the negro. Why was he so anxious to get the newspapers? It was because Jim knew some of the facts that he wanted to see, negro-like,—that's what made him so anxious about it. Here Mr. Arnold comes,—“You are a lady that works on the fourth floor, and I'm going to ask you a question that we are going to ask every lady that works on that fourth floor;” and we caught them out on that proposition, too, didn't we? And you don't know right now how many women that worked on that floor were put up and how many weren't. You've got the books and the records and you could have called the names, and you didn't dare do it, and after you had gone ahead and four-flushed before this jury as to what you were going to do, we picked out Miss Kitchens and brought her here and she corroborated your own witness, Miss Jackson, as to the misconduct of this superintendent, Frank.

Now, let's see what Mrs. Small says—Mrs. Small is the lady that got the raise, you remember, and couldn't tell what date it was, thought it had been about four months ago, she got a five cent raise; about four months ago would make it since this murder, and when I got to quizzing her about it she didn't know when she got the raise, and she's not the only one that got the raise, and it wasn't only in the factory that they raised them, either. Even Minola McKnight got some raise, and after she saw the import of it, “You don't remember the exact date.” “No sir, I don't,” when she had already placed the date subsequent to this murder; and this woman, Mrs. Small, also corroborates Jim Conley about being up there Tuesday.

“Did you see Mr. Frank up there any of those days?” “I saw Mr. Frank up there Tuesday after that time.” “What

time Tuesday?" "I couldn't tell you, I guess it was between eight and nine o'clock." The other one saw him somewhere between nine and eleven or eleven thirty. This lady, their witness, says that he was up there between eight and nine.

Why was Frank so anxious to go up there on that floor? Why? It was because he wanted to see this man Jim Conley that he thought was going to protect him. Mr. Rosser characterized my suggestion that this man Frank called upon and expected Jim Conley to conceal the crime as a dirty suggestion, and I accept it as absolutely true, and I go a step further, and say it was not only dirty, it was infamous. And he would today sit here in this court house and see a jury of honest men put a rope around Jim Conley's neck, the man that was brought into it by him; and he didn't mean to bring Jim Conley in unless he had to—and he had to. Jim says the first question he asked him when he saw him down there after this dastardly crime had been committed was, "Have you seen anybody go up?" "Yes," says Jim, "I have seen two girls go up but I haven't seen but one come down." And then it was that this man saw the absolute necessity of taking Jim into his confidence, because he knew that Jim was on the lookout for him, and Starnes and Campbell and Black, combined, together, and even if you make a composite intellect and add the brilliance of Messrs. Rosser and Arnold to that of these detectives, could never have fitted that piece of mosaic into the situation; it isn't to be done.

"Jim, have you seen anybody go up?" "Yes," said Jim, "I see two girls go up but only one came down." And you told Jim to protect you, and Jim tried to do it, and the suggestion was dirty, and worse than that, it is infamous, to be willing to see Jim Conley hung for a crime that Leo Frank committed.

But I'm coming to that after a while, I haven't got to the State's case yet, I'm just cutting away some of the underbrush that you have tried to plant in this forest of gigantic oaks to smother up their growth, but you can't do it, the



facts are too firmly and too deeply rooted. Oh, yes, says Mrs. Small, I saw Frank up there on that fourth floor between eight and nine o'clock Tuesday morning, and the other lady saw him up there between nine and eleven, she wouldn't be sure the day he was arrested—I say arrested, according to Frank's own statement himself, they got him and just detained him, and even then, red-handed murderer as he was, his standing and influence, and the standing and influence of his attorney, somehow or other—and that's the only thing to the discredit of the police department throughout the whole thing, say what you may—they were intimidated and afraid because of the influence that was back of him, to consign him to a cell like they did Lee and Conley, and it took them a little time to arrive at the point where they had the nerve and courage to face the situation and put him where he ought to be.

Now, I'll tell you another thing, too, if old John Black—and Mr. Rosser didn't get such a great triumph out of him as he would have us believe, either. Black's methods are somewhat like Rosser's methods, and if Black had Rosser where Rosser had Black, or if Black had Rosser down at police station, Black would get Rosser; and if Black had been given an opportunity to go after this man, Leo M. Frank, like he went after that poor defenseless negro, Newt Lee, towards whom you would have directed suspicion, this trial might have been obviated, and a confession might have been obtained. You didn't get your lawyer to sustain you and support you a moment too soon. You called for Darley, and you called for Haas, and you called for Rosser, and you called for Arnold, and it took the combined efforts of all of them to keep up your nerve. And I don't want to misquote and I won't misquote, but I want to drive it home with all the power that I possibly can or that I possess. The only thing in this case that can be said to the discredit of the police department of the City of Atlanta is that you treated this man, who snuffed out that little girl's life on the second floor of that pencil factory, with too much consideration, and you

let able counsel and the glamour that surrounds wealth and influence, deter you. I honor—but I honor the way they went after Minola McKnight. I don't know whether they want me to apologize for them or not, but if you think that finding the red-handed murderer of a little girl like this is a ladies' tea party, and that the detectives should have the manners of a dancing master and apologize and palaver, you don't know anything about the business. You have seen these dogs that hunt the 'possum bark up a tree or in a stump, and when they once get the scent of the 'possum, you can do what you like but they'll bark up that tree and they'll bark in that stump until they run him out, and so with old John Starnes and Campbell. They knew and you know that Albert McKnight would never have told Craven this tale about what he saw and what his wife had told him except for the fact that it be true, and if you had been Starnes, you would have been barking up that tree or barking in that stump until you ran out what you knew was in there. That's all there is to it.

You have got the writ of habeas corpus that's guaranteed to you, go and get it; and if Mr. Haas had come to me Tuesday morning and said "You direct the police"—on Monday morning, when Frank was taken down into custody, and said to me, "You direct the police to turn this man Frank loose, he's innocent," I would have said "It's none of my business, I run my office, they run their office," and the next time the police department, in an effort to serve the people of this community, take a negro that they know and you know and lock her up or what not, I'll not usurp the functions of the judge of these courts, who can turn her loose on a habeas corpus, and direct them to turn her loose or interfere in any way in their business; I don't run the police department of the City of Atlanta, I run the office of Solicitor General for the term that the people have elected me, and I'm taken to task because I went in at the beginning of this thing and didn't stand back.

I honor Mr. Hill. I am as proud of having succeeded him

as I am that I was elected to the position by the people of this community, to the office of Solicitor General, but I have never yet seen the man that I would take as my model or pattern; I follow the dictates of my own conscience. And if there is one act since I have been Solicitor General of which I am proud, it is the fact that I joined hand and glove with the detectives in the effort to seek the murderer of Mary Phagan, and when your influence poured letters in to the Grand Jury, in an effort to hang an innocent man, negro though he be, that I stood firmly up against it. If that be treason, make the best of it. And if you don't want me to do it, then get somebody else to fill the job, and the quicker you do it the better it will suit me. I will not pattern myself after anybody or anybody's method, not even Mr. Hill, and, bless his old soul, he was grand and great, and I have wished a hundred times that he was here today to make the speech that I'm now making. There wouldn't be hair or hide left on you,—he was as noble as any Roman that ever lived, as courageous as Julius Caesar, and as eloquent as Demosthenes. Such talk as that don't scare me, don't terrify me, don't disturb the serenity of my conscience, which approves of everything that I have done in the prosecution of this man.

Now, let's come back here and discuss this thing of perjury, let's talk about that a little, let's not get up here and say that everybody is a liar without citing any instances and that they are crack-brain fanatics, let's knuckle down and get specific instances. So this Mrs. Small says she saw Jim Conley,—“Did you see Mr. Frank up there on any of those days?” “I saw Mr. Frank after that crime on Tuesday.” “What time Tuesday?” “I couldn't tell you, I guess between eight and nine o'clock, he and Miss Carson were coming up from the back end of the factory (Miss Rebecca, I presume).” “He and Mrs. Carson were coming up from the back end of the factory, and I stepped up in front of him and I said ‘Here, Mr. Frank, wait a moment, O. K. this ticket,’ he says ‘are you going to put me to work as soon as I get here?’ and I says ‘Yes it's good for your health.’ He

O. K.'d the ticket and I went on with my work." So Frank was up there Tuesday morning.

"Now, speaking about Mrs. Carson, how far towards the elevator did Mrs. Carson go with Frank? A.—"Mrs. Carson wasn't up there, it was Miss Carson, Miss Rebecca." The old lady says she was; I said, "Oh, the old lady wasn't up there at all?" No, sir; she wasn't there Tuesday at all." "You saw Miss Rebecca Carson walking up towards the elevator?" "Yes sir." "What was Conley doing?" "Standing there by the elevator." And yet Jim has lied about Frank! Frank was up there twice, Jim was sweeping, Jim was there by the elevator. "At the time you saw Frank, the negro was standing there at the elevator?" "Yes, sir; he wasn't sweeping, he was standing there with his hand on the truck looking around." "Did he see you and Frank?" "I guess he must have seen us." "Where was Conley when he went down the steps?" "Standing in front of the elevator." "How close did Frank pass Conley?" "As close as from here to that table, about four feet." "Conley was still standing there with his hand on that thing, is that true?" "Yes sir."

"That's exactly like Conley says." And here's another thing: This woman, Mrs. Small, testifies about that elevator,—it shakes the whole building, I said, anybody in the world could tell it if the machinery wasn't running? She says, "No, anybody in the world could tell it if the machinery wasn't running, but you can't notice it unless you are close to the elevator." I asked "If there was hammering and knocking, would you still hear the elevator?" She said, "You could if you get close to it." Well, of course, you could, nobody disputes that. "If the elevator was up here, and you were back in the rear and there was hammering and knocking going on, you couldn't?" "No sir." And that disposes of that point, that's the truth on that.

Now, Mrs. Carson had already sworn here positively that she didn't go down to see that blood, hasn't she? There were too many of these people over there at the factory who had

seen that blood,—that blood that at first wasn't blood, it was paint, and then wasn't paint but was cat's blood or blood from somebody that was injured, and then wasn't fresh blood but was stale blood—too many of them had seen it. "On Wednesday I had no business back there, I was there one day but can't remember." "What did you go back there for?" "A crowd of us went at noon to see if we could see any blood spots." "Were you successful?" "No sir." "Who went with you?" And lo and behold, Mrs. Carson, the mother of Rebecca, had already stated that she didn't go about it, the very first person that this Mrs. Small refers to—"Well, Mrs. Carson." "Mrs. Carson went with you," I said. "Yes sir, she saw the places where the blood was said to be." "You know she was there, you are pretty sure she was there?" Mrs. Small said "Yes sir." "It looked like what?" "Looked like powder." "How much of it down there?" "A small amount, just a little, looked like some of the girls had been powdering their face and spilled powder." You know better than that. I came back to the subject, "What makes you say Mrs. Carson went down there with you?" Answer—"Because curiosity sent us down there." "Did curiosity send her down there too?" "We went back afterwards."

Now, gentlemen, somebody swore,—and I put it up to you, too,—somebody committed perjury! "You were going back yourself and went to get her?" "Yes sir." "She didn't make any objection to going down, did she?" "No sir." "Don't you know she didn't go?" "I know," she says, "that she did."

All right; if this case is founded on perjury, it's the kettle calling the pot black, and I haven't dealt in glittering generalities, I have set forth specific cases. But that isn't intended to be exhaustive, that's a mere summary of a few of these instances, they are too numerous to mention. The truth is that there is no phase of this case, where evidence was needed to bolster it up that somebody hasn't come in, you say, willingly and without pay, because, you say there is

no slush fund back of this case. Now, let's pass on here a little bit.

They tried mighty hard to break down this man Albert McKnight with Minola—and I believe I'll leave that for a little later and come now to this statement of Frank's. Gentlemen, I wish I could travel faster over this. I'm doing the very best I can, I have a difficult task and I wish I didn't have it to do at all.

Now, gentlemen, I want to discuss briefly right here these letters, and if these letters weren't "the order of an all-ruling Providence I should agree with my friends that they are the silliest pieces of stuff ever practiced; but these letters have intrinsic marks of a knowledge of this transaction," these pads, that pad,—things usually found in his office,—this man Frank, by the language of these notes, in attempting to fasten the crime upon another, "has indelibly fixed it upon himself." I repeat it, these notes, which were intended to fix the crime upon another, "have indelibly fixed it upon this defendant," Leo M. Frank. The pad, the paper, the fact that he wanted a note,—you tell me that ever a negro lived on the face of the earth who, after having killed and robbed, or ravished and murdered a girl down in that dark basement, or down there in that area, would have taken up the time to have written these notes, and written them on a scratch pad which is a thing that usually stays in the office, or written them on paper like this, found right outside of the office of Frank, as shown on that diagram, which is introduced in evidence and which you will have out with you? You tell me that that man, Jim Conley, sober, as Tillander and Graham tell you, when they went there, would have ravished this girl with a knowledge of the fact that Frank was in that house? I tell you no. Do you tell me that this man, Jim Conley, "drunk as a fiddler's bitch," if you want it that way, would, or could have taken time to have written these notes to put beside the body of that dead girl? I tell you no, and you don't need me to tell you, you know it. The fact, gentlemen of the jury, that these notes were written—ah, but you say

that it's foolish. You say it's foolish. It's ridiculous. It was a silly piece of business, it was a great folly; but murder will out, and Providence directs things in a mysterious way, and not only that, as Judge Bleckley says, "Crime, whenever committed, is a mistake in itself; and what kind of logic is it that will say that a man committed a crime, which is a great big mistake and then in an effort to cover it up, won't make a smaller mistake?" There's no logic in that position. The man who commits a crime makes a mistake, and the man who seeks to cover it up nearly always makes also a little mistake. And this man here, by these notes, purporting to have been written by little Mary Phagan, by the verbiage and the language and the context, in trying to fasten it on another, as sure as you are sitting in this jury box "has indelibly fastened it on himself." These gentlemen saw the significance of the difference between Scott's evidence, when he was before the Coroner,—and he wasn't quizzed there particularly about it,—"I told her no," and "I told her I didn't know;" to tell that little girl "No," would have given her no excuse, according to their way of thinking, to go back to see whether that metal had come or not, but to tell her "I didn't know," would lure her back into the snare where she met her death. And your own detective, Scott, says, after he gave the thing mature deliberation, that this man on the Monday evening,—and he was so anxious about getting a detective that he had that man Schiff telephone three times, three times, three times, three times,—remember that,—so anxious was he. Scott says, after thinking over the matter, that Leo M. Frank told that girl that he didn't know whether the metal had come or not, and she went back there to see about the metal, and he followed her back there.

I'll tell you another thing, that old Starnes and Campbell and Rosser, and even Newport Lanford, if he had been called in, and even if I had been called in, to save my life, could not have known that the very word that Leo M. Frank used, according to Jim Conley when Conley says Frank told him "I'm going to chat with a girl," would have been used ex-

actly four times, as I'll show you when I come to read this statement by Leo M. Frank, for he chatted, and he chatted, and he chatted, and he chatted, according to his own statement. This letter that I hold in my hand says that this negro "did it." Old Jim Conley in his statement here, which I hold in my hand, every time he opened his mouth says "I done it." Old Jim Conley, if he had written these notes, never would have said "this negro did it by his self" but Frank wanted it understood that the man that did do it, "did it by his self." Jim Conley says that Frank says he wanted to chat, and four times in this statement before they suspended to go out and let you refresh yourself, this man Frank had said that somebody came in the office "to chat," and Mr. Arnold, in making his argument to the jury, realized, because he is as keen and as smart as they ever get to be, the force of that word and endeavored to parry the blow which I now seek to give this defendant.

And you tell me that old Jim Conley, after he had robbed and murdered, or after he had ravished and murdered this girl, when he would have had no occasion in the world to have cared whether her dead body was found right there at that chute, was such a fool as to take the time to take her body way back there in the basement and hide it behind the corner of that room? I tell you that it never occurred. That body was taken down there and put in the place where it was. Why? Because she was murdered on the second floor, where the blood spots are found, and because Leo M. Frank, the superintendent of the plant, saw and felt the necessity that that girl's body should not be found on the second floor of the pencil factory, but, to use the language which he put in the letter or telegram which he sent to Adolph Montag in New York, "in the cellar." My! My! "That negro fireman down here did this."

Now, let's see how many times Jim says "done it": "I locked the door like he done told me, I remembers that because the man what was with the baby looked at me like he thought I done it." That's when they ran into the man that



Jim says looked at him like he thought "I done it." It's the difference between ignorance and education, and these notes that you had that man prepare in your office on this paper that stayed on that floor and on that pad that came from your office, bear the marks of your diction, and Starnes and Campbell, with all their ingenuity, couldn't have anticipated that old Jim would get up here and state that "this man looked at me when he ran into that baby, like I done it;" and couldn't have made him say "I locked the door like he done told me;" and couldn't have said "I went on and walked up to Mr. Frank and told him that girl was done dead, he done just like this and said sh-h-h." I could go on with other instances.

And there's your word "chat," "chat," "chat," "chat," four times, I'm going to read it to you, it's here in black and white, and you can't get around it. This girl went down there in that scuttle hole? Listen at this,—you didn't want to say that she went back there to see about the metal, but you knew that the ladies' water closet was back there, and you make this poor girl say "I went to make water," "I went to make water, he pushed me down that hole, a long, tall, black negro"—"long, slim, tall, negro, I write while he play with me." And this note says "that long, tall, black negro did it by his self." Make water? Where did she go to make water? Right back there in the same direction that she would have gone to see about the metal. You tell me, except providentially, that that would have crept in here? You tell me that old Jim Conley, negro, after he had struck that girl with that big stick,—which is a plant as sure as you are living here and as sure as Newt Lee's shirt was a plant,—you tell me that negro felt any inducement or necessity for leaving that girl's form anywhere except where he hit her and knocked her down? You tell me that he had the ingenuity,—and mark you, Starnes and these other men weren't there then to dictate and map out,—you tell me that he would write a note that she went back to make water when there's no place and her usual place was up there on the second floor?

I tell you, gentlemen of the jury, that a smarter man than Starnes, or a smarter man than Campbell, a smarter man than Black, a smarter man than Rosser, in the person of Leo M. Frank, felt impelled to put there these letters, which he thought would exculpate him, but which incriminate and damn him in the minds of every man seeking to get at the truth. Yet you tell me there's nothing in circumstantial evidence, when here's a pad and there's the pad and there's the notes, which you must admit, or which you don't deny, old Jim Conley wrote, because you say in your statement you had got numerous notes from him, and yet, the very day, at the police station, according to your own statement, when you wrote that, you saw the original of these, and you didn't open your mouth, you didn't say a word, you didn't direct the finger of suspicion against this man Jim Conley, who had been infamously directed to keep quiet to protect you. Things don't happen that way, gentlemen, and you know it. There isn't an honest man on that jury, unbiased, unprejudiced, seeking to get at the truth, but what knows that these letters,—silly? Yes, silly, except you see the hand of Providence in it all—that don't know that the language and the context and the material out of which they are written were written for the protection of Leo M. Frank, the superintendent of this factory, who wired Montag to tell his uncle "if my uncle inquires about me state that I am all right, the police have the thing well in hand and will eventually solve the problem," and the girl was found dead, not in the factory, but in the cellar. The man who wrote the note, "nothing startling has happened in so short a time," wrote it with a knowledge and conscious of the fact that this poor girl's life had been snuffed out even at the time he penned the words.

You'll have this out with you, you look at them, if you can get anything else out of them you do it, and as honest men, I don't want you to convict this man unless you are satisfied of his guilt beyond a reasonable doubt, but don't let that doubt be the doubt of a crank, don't let it be the doubt of a

man who has conjured it up simply to acquit a friend, or a man that has been the friend of a friend; let it be the doubt of an honest, conscientious, upright juror, the noblest work of Almighty God.

Now this statement. I tell you, gentlemen of the jury, that when this statement you heard Frank make is scanned, it is susceptible of but one construction, and that is, that it is the statement of a guilty man, made to fit in these general circumstances, as they would have you believe—these gentlemen here harped a great deal, gentlemen of the jury, “are you going to convict him on this, are you going to convict him on that.” It isn’t the law that circumstantial evidence is inferior to direct and positive evidence, and it is correct to instruct the jury that there is nothing in the nature of circumstantial evidence that renders it less reliable than other classes of evidence. The illustration that they would seek, gentlemen of the jury, not by direct language did they do it in their argument to you, because we had already read them this authority, but they would bring up this isolated fact and that isolated fact and they would say “are you going to convict him on that?” I don’t ask your conviction on that. Two illustrations, first, each of the incidental facts surrounding the main fact in issue, is a link in a chain, and that the chain is not stronger than its weakest link, this authority says is generally rejected as an incorrect metaphor and liable to misconstruction. The second illustration and the one that is approved is, each of the incidental facts surrounding the main facts in issue are compared to the strands in a rope, where none of them may be sufficient in itself, but all taken together may be strong enough to establish the guilt of the accused beyond a reasonable doubt.

And so they took isolated instance after isolated instance and then said “are you going to convict him on that?” I say no. But I do say that these instances each constitute a chain, or a cord,—a strand in a cable, and that, when you get them all, all together, you have a cable that ought to hang anybody. That’s the proposition. Not on this isolated in-

stance or that one, but upon all, taken together and bound together, which make a cable as strong as it is possible for the ingenuity of man to weave around anybody.

Now, listen at this statement and let's analyze that as we go on a little. I don't know whether this man's statement to the jury will rank along with the cross-examination of that celebrated pervert, Oscar Wilde, or not, but it was a brilliant statement, when unanalyzed, and if you just simply shut your eyes and mind to reason and take this statement, then, of course, you are not going to convict. But listen to what our Courts say about these statements—I have already read it to you, but I want to read it again. "Evidence given by a witness has inherent strength which even a jury cannot under all circumstances disregard; a statement has none." No cross-examination, no oath, merely a statement adroitly prepared to meet the exigencies of the case.

Now, listen at this. This man Frank says "I sat in my office checking over the amount of money which had been left over"—not the cash, not cash, but the amount of money which had been left over—"from the pay-roll"—from the \$1,100.00 that they had drawn Friday, and to this day, we don't know how much was left over, and we don't know whether what was left over coupled with the cash left on hand would make this bundle of bills that old Jim says was shown to him and taken back, when Frank wanted to get him to go down into the dark cellar and burn that body by himself, and old Jim says "I'll go if you go, but if I go down there and burn that body, somebody might come along and catch me and then what kind of a fix will I be in?" And I'll tell you right now, if Jim Conley had gone down in that cellar and had undertaken to have burned that body, as sure as the smoke would have curled upward out of that funnel towards Heaven, just so certain would Leo M. Frank have been down there with these same detectives, and Jim Conley would have been without a shadow of a defense. But old Jim, drunk or sober, ignorant or smart, vile or pure, had too much sense, and while he was willing to write the notes to

be put by the dead body, and was willing to help this man take the body from the second floor, where the blood was found, into the basement and keep his mouth shut and to protect him, until the combined efforts of Scott and Black and Starnes and all these detectives beat him down and made him admit a little now and a little then, he wasn't willing, and he had too much sense, to go down into that basement to do that dirty job by himself and cremate the remains of this little girl that that man in his passionate lust had put to death. You don't show that he didn't have the money, and the truth of the business is, I expect, that out of that \$1,100.00 for the pay-roll, and \$30.00 in cash which you had, if the truth were known, you offered old Jim Conley and bought him with that \$200.00 just as surely as Judas Iscariot implanted the kiss for the thirty shekels.

He says that "No one came into my office who asked for a pay envelope or for the pay envelope of another." This running-mate and friend of the dead girl tells you under oath that she went there on Friday evening when they were paid, with the knowledge that little Mary wasn't there, and as she had done on previous occasions, sought to get the money to take to her. And I'll show you when I get to the State's case later on that this diabolical plot, of which you have made so much fun, is founded in reason and really did exist, and that this man really, goaded on by passion, had been expecting some time before to ultimately, not murder this little girl, but cause her to yield to his blandishments and deflower here without her resistance. Let me do it right now.

Way back yonder in March, as far back as March, little Willie Turner, an ignorant country boy, saw Frank trying to force his attentions on this little girl in the metal room; he is unimpeached, he is unimpeachable. She backed off and told him she must go to her work, and Frank said "I am superintendent of this factory,"—a species of coercion—"and I want to talk to you." You tell me that that little girl that worked up there and upon the same floor with you in the metal department, and you had passed right by her machine,

this pretty, attractive little girl, twelve months, and a man of your brilliant parts didn't even know her, and do you tell me that you had made up the pay-roll with Schiff fifty-two times during the year that Mary Phagan was there and still you didn't know her name or number? You tell me that this little country boy who comes from Oak Grove, near Sandy Springs in the northern part of this county, was lying when he got on that stand? I'll tell you no. Do you tell me that little Dewey Hewell, a little girl now from the Home of the Good Shepherd in Cincinnati, who used to work at the National Pencil Company, who probably has lost her virtue though she is of such tender years, was lying when she tells you that she heard him talking to her frequently,—talked to Mary frequently, placed his hands on her shoulder and called her Mary? You tell me that that long-legged man, Gantt, the man you tried to direct suspicion towards, the man Schiff was so anxious to have arrested that he accompanied the police, that you said in your telegram to your uncle, had the case in hand and would eventually solve the mystery,—do you tell me that Gantt has lied when he tells you that this man Frank noticed that he knew little Mary and said to him, "I see that you know Mary pretty well?"

I am prepared to believe, knowing this man's character as shown by this evidence, that way back yonder in March, old passion had seized him. Yesterday Mr. Rosser quoted from Burns, and said it's human to err; and I quote you from the same poem, in which old Burns says that "there's no telling what a man will do when he has the lassie, when convenience snug, and he has a treacherous, passionate inclination." There's no telling what he will do when he's normal, there's no telling what he will do when he's like other men, but oh! gentlemen, there's no telling what a pervert will do when he's goaded on by the unusual, extraordinary passion that goaded on this man, Leo M. Frank, when he saw his opportunity with this little girl in that pencil factory, when she went back to find out if the metal had come.

You tell me that all of these people have lied,—Willie Tur-

ner has lied? Dewey Hewell has lied? That Gantt has lied? That Miss Ruth Robinson has lied? And even Frank, in his statement, admits that he knew Mary well enough to know that Gantt was familiar with her, because Chief Detective Harry Scott was told on Monday, April 28th, that this man Gantt was familiar with little Mary. And yet you expect an honest jury of twelve men—although out of your own mouth you told these detectives, whom you wired your uncle would eventually solve the problem, you told them that this man Gantt was so familiar with her that you directed suspicion towards him. How did you know it if you didn't know little Mary? And in addition, as I have stated, you tell me that this brilliant man had helped to make out the pay-roll for fifty-two times and seen little Mary's name there, and he didn't even know her name and had to go and get his book to tell whether she worked there or not? And I wouldn't be at all surprised, gentlemen of the jury—it's your man Frank's own statement,—that shortages occurred in the cash even after this man Gantt left,—I wouldn't be at all surprised if the truth of the business is that this man coveted that little girl away back yonder in March, I wouldn't be at all surprised, gentlemen, and, indeed, I submit that it's the truth, that every one of these girls has told the truth when they swore to you on the stand that back yonder in March, after this little girl had come down to work on the office floor in the metal department, that they observed this man, Leo M. Frank, making advances towards her and using his position as superintendent to force her to talk with him. I wouldn't be at all surprised if he didn't hang around, I wouldn't be at all surprised if he didn't try to get little Mary to yield. I wouldn't be surprised if he didn't look upon this man Gantt, who was raised on an adjoining farm in Cobb County, as an obstacle to the accomplishment of the evil purpose which he had in hand, and I wouldn't be at all surprised if, instead of discharging Gantt for a one dollar shortage, which Gantt says "I'll give up my job rather than pay," that you put him out of that factory because you thought he stood

in the way of the consummation of your diabolical and evil plans.

And you say that you and Schiff made up the pay-roll Friday, and I wouldn't be at all surprised that, after little Mary had gone and while you and Schiff were making up the pay-roll Friday afternoon, you saw little Mary's name and you knew that she hadn't been notified to come there and get her money Friday afternoon at six o'clock, and then, as early as three o'clock,—yes, as early as three,—knowing that this little girl would probably come there Saturday at twelve, at the usual hour, to get her pay, you went up and arranged with this man Jim Conley to look out for you,—this man Jim Conley, who had looked out for you on other occasions, who had locked the door and unlocked it while you carried on your immoral practices in that factory,—yes, at three o'clock, when you and Schiff were so busy working on the pay-roll, I dare say you went up there and told Jim that you wanted him to come back Saturday but you didn't want Darley to know that he was there. And I wouldn't be at all surprised if it were not true that this little Helen Ferguson, the friend of Mary Phagan, who had often gotten Mary's pay envelope before, when she went in and asked you to let her have that pay envelope, if you didn't refuse because you had already arranged with Jim to be there, and you expected to make the final onslaught on this girl, in order to deflower and ruin her and make her, this poor little factory girl, subservient to your purposes.

Ah, gentlemen, then Saturday comes, Saturday comes, and it's a reasonable tale that old Jim tells you, and old Jim says "I done it,"—not "I did it," but "I done it" just exactly like this brilliant factory superintendent told him. There's your plot. I'll tell you, you know this thing passion is like fraud,—it's subtle, it moves in mysterious ways; people don't know what lurks in the mind of a libertine, or how anxious they are, or how far ahead they look, and it isn't at all improbable, indeed, I submit to you as honest men seeking to get at the truth, that this man, whose character was put in



issue and torn down, who refused to go into specific instances on cross-examination, if he didn't contemplate this little girl's ruin and damnation it was because he was infatuated with her and didn't have the power to control that ungovernable passion. There's your plot; and it fits right in and jams right up, and you can twist and turn and wobble as much as you want to, but out of your own mouth, when you told your detective, Scott, that this man Gantt was familiar with that little girl, notwithstanding at other places in this state—men you tried to lead this jury of honest men to believe you didn't know her—I tell you that he did know her, and you know that he knew her.

What are you going to believe? Has this little Ferguson girl lied? Is this little factory girl a hair-brained fanatic suborned to come up here and perjure herself, by John Starnes or Black or Campbell or any of the detectives? Do you tell me that such a thing can be done, when the State of Georgia, under the law hasn't a nickel that this girl could get? I tell you, gentlemen, you know that's a charge that can't stand one instant.

Now, he says right here in his statement that he kept the key to his cash box right there in his desk. Well, he makes a very beautiful statement about these slips—but I'll pass that and come to that later. He explains why they were put on there April 28th, and so forth. Now, here's the first reference that he makes to "chatting": "I stopped that work that I was doing that day and went to the outer office and chatted with Mr. Darley and Mr. Campbell." "I should figure about 9:15, or a quarter to nine, Miss Mattie Smith came in and asked for her pay envelope." Jim is corroborated there, he identified Miss Mattie Smith and told with particularity what she did. He says, "I kept my cash box in the lower drawer of the left hand side of my desk." Jim says that's where he got some cash. This man also shows he took a drink at Cruickshank's soda fount and two or three times during this statement he showed that he was doing at the soda fount exactly as Jim says he was doing as they came on

back from the factory. Again he says, "but I know there was several of them and I went on chatting with Mr. Montag." I told you I was going to read you this, and I just wanted you to know we were going to have this out with you. Another thing he says, "I moved the papers I brought back from Montag's in the folder;" old Jim says he had the folder and put the folder away; "I would look and see how far along the reports were which I used in getting my financial statement up every Saturday afternoon, and, to my surprise, I found the sheet which contains the record of pencils packed for the week didn't include the report for Thursday, the day the fiscal week ended, that's the only part of the data that Schiff hadn't got up." "A short time after they left my office, two gentlemen came in, one of them Mr. Graham"—Mr. Graham says that he talked to this negro down stairs; the negro told him the way to the office, and they tried to get around it on the idea there's some difference in color. Well, being in jail, gentlemen, changes the complexion of anybody. That man was there, Graham says, Tillander says, and he was there for what purpose? By whose request? And he wasn't drunk, either. And then he says, "I gave the required pay envelope to the two fathers," this man Frank says, "I gave the pay envelope and chatted with them at some length."

Mr. Arnold says these darkeys pick up the language and manners of the men by whom they are employed. I tell you that, if Frank didn't come in contact with the people that worked in that factory more than he would lead you to believe, old Jim Conley never had the opportunity to pick up words that he uses; and yet here old Jim says, and even in his statement, even in his statement, this man uses the very language that Jim puts in his mouth. I just picked out four of them, in a very few pages, I don't know how many others there are.

"Miss Hall finished her work and started to leave when the twelve o'clock whistle blew." Whistle blowing on a holiday? Well, maybe it did, I'll leave that for you to say.

Another place he says "I chatted with them:" "Entering, I found quite a number of people, among them Darley," etc. "I chatted with them a few minutes,"—using the same words Jim said he used with reference to this girl: "Miss Hall left my office on her way home; there were in the building at the time, Arthur White and Harry Denham and Arthur White's wife, on the top floor; to the best of my knowledge, it must have been ten or fifteen minutes after Miss Hall left my office when this little girl, whom I afterwards found to be Mary Phagan, entered my office and asked for her pay envelope." "This little girl whom I afterwards found"—why didn't you give her her money? No, he didn't give her her money; he knew her all right. That child never got her money, she never got her money, and this man Frank, when Mrs. White came down there at 12:35, and when he jumped and when Jim Conley was still sitting down stairs,—the one fact in this case that must make you see that Jim Conley didn't do the deed,—this man Frank was at that safe then, when he jumped and Mrs. White came up, getting out the pay envelope of this little girl, who had gone back to the rear to see whether the metal had come or not—not to make water, as he stated in that note. At the time Frank was at that safe and Mrs. White came in, she says he jumped. Remember that. As she went down the stairs at 12:35 she saw Jim Conley, or a negro who resembled him, and that's the one incident in this case that shows that old Jim Conley didn't do the deed. Then it was after this man had tipped up and tipped back, —then it was, he had to let Mrs. White go up. Previously he had sent up had them to come down, but this time he lets Mrs. White go up, and then after Mrs. White had been up there a little while, and in order not to get caught in the act of moving that body, because he knew Mrs. White might come down, he knew that these men had their lunches and would work and stay up on that floor; at 12:50, Mrs. White says when she went down she saw Conley there, at 12:50, and Frank was anxious to get Mrs.

White out of the building, in order that he might call Jim Conley, if Jim had seen, and his saying that he had seen would have given him away; then it was that he wanted to get her out of the building, and he sent her upstairs and then went upstairs to get her out and pretended to be in a big hurry to get out, but according to her evidence, instead of going out, he didn't have on his coat and went back in his office and sat down at his desk. Anxious to get out,—going to close up right now! Now, that wasn't the purpose.

Talk about no blood being found back down there? Talk about no blood being found? Well, there's two reasons why there wasn't any found: This lick the girl got on the back of the head down there wasn't sufficient to have caused any great amount of blood, and if old Jim Conley hadn't dropped that girl as he went by the dressing room and the thing hadn't gone out like a sunburst all around there, like these men describe it, there wouldn't have been any blood. When you assaulted her and you hit her and she fell and she was unconscious, you gagged her with that, and then quickly you tipped up to the front, where you knew there was a cord, and you got the cord and in order to save this reputation which you had among the members of the B'nai B'rith, in order to save, not your character because you never had it, but in order to save the reputation with the Haases and the Montags and the members of Doctor Marx's church and the members of the B'nai B'rith and your kin-folks in Brooklyn, rich and poor, and in Athens, then it was that you got the cord and fixed the little girl whom you had assaulted, who wouldn't yield to your proposals, to save your reputation, because dead people tell no tales, dead people can't talk. And you talk about George Kendley saying that he would be one to lead a riot, and you talk about your ability to run George Kendley with a fan or a corn shuck. I tell you Frank knew and you know that there would have been men who would have sprung up in this town, had that little girl lived to tell the tale of that brutal assault, that would have run over ten thousand men

like you, would have stormed the jail or done anything. It oughtn't to be, because that thing ought to be left to be threshed out before an upright Court and an honest jury.

But this man Frank knew,—he didn't expect her to turn him down, he paved the way, he had set the snare and he thought that this poor little girl would yield to his importunities, but, ah! thank God, she was made of that kind of stuff to which you are a stranger, and she resisted, she wouldn't yield, you couldn't control your passion and you struck her and you ravished her, she was unconscious, you gagged her and you choked her. Then you got Mrs. White out, the woman that saw you jump at 12:35 when you were there fixing to see about little Mary's pay envelope, which you never did give the poor child. And you fussed a good deal about that pocket book, that mesh bag; I wouldn't be at all surprised if old Jim's statement that Frank had that mesh bag, didn't keep that mesh bag from turning up in this trial, just exactly like that plant of old Newt Lee's shirt and just exactly like that club and just exactly like these spots these men found on May 15th around that scuttle hole. It worried you too much, it worried you too much, it disconcerted your plans. The thing had already been done when Mrs. White got back there at 12:35 and old Jim Conley was still sitting down there waiting patiently for the signal that had been agreed upon, waiting patiently for the signals that you had used when some other women from the fourth floor and other people had been down there to meet you Saturdays and holidays. And the first thing he did after he had gagged her with a piece of her underskirt, torn from her own underskirt, was to tip up to the front, where he knew the cords hung, and come back down there and choke that poor little child to death. You tell me that she wasn't ravished? I ask you to look at the blood—you tell me that that little child wasn't ravished? I ask you to look at the drawers, that were torn, I ask you to look at the blood on the drawers, I ask you to look at the thing that held up the stockings. And I say that as sure as

you are born, that man is not like other men. He saw this girl, he coveted her; others without her stamina and her character had yielded to his lust, but she denied him, and when she did, not being like other men, he struck her, he gagged her, he choked her; and then able counsel go through the farce of showing that he had no marks on his person! Durant didn't have any marks on his person, either. He didn't give her time to put marks on his person, but in his shirt sleeves, goaded on by an uncontrollable passion, this little girl gave up her life in defense of that which is dearer than life, and you know it.

Why this man says he had an impression of a female voice saying something. How unjust! This little girl had evidently—listen at that, gentleman, this little girl whose name had appeared on the pay-roll, had evidently worked in the metal department, and never was such a farce enacted in the courthouse as this effort on the part of able counsel to make it appear that that wasn't blood up there on that floor. Absurd! Not satisfied with the absurdity of the contention that it's paint, that it's cat blood, rat's blood, varnish, they bring in this fellow Lee, who perjures himself to say that that man stood there just letting the blood drip. Old man Starnes tells you that they saw the blood there and chipped it up, and saw the blood right along on the route towards the elevator; Jim Conley tells you that right there is where he dropped the head so hard, and where Frank came and took hold and caught the feet.

Every person that described that blood and its appearance bears it out that it was caused by dropping, because it was spattered,—one big spot here and other little ones around it,—and if human testimony is to be believed, you know that was blood—that that was blood and not paint, you know that it was the blood of Mary Phagan and not the blood of Duffy. Duffy says so. You know that it was the blood of Mary Phagan because it corresponds with the manner in which Jim Conley says he dropped the body. You know it's blood because Chief Beavers saw blood there. It

spattered towards the dressing room; you know it was blood because Starnes says he saw it was blood and he saw that the haskoline had been put over it,—and I'm going to read you this man's statement, too, unless I give out physically, about this haskoline, it's the purest subterfuge that ever a man sought to palm off on an honest jury.

Starnes tells you that "I found more blood fifty feet nearer the elevator on a nail." Barrett,—Christopher Columbus Barrett, if you will, that discovered the hair that was identified, I believe, by Magnolia Kennedy, Monday morning, as soon as they began work, before anybody ever had had time to write a reward,—Barrett, who was not caught in a single lie, Barrett, who though he works for the National Pencil Company, had the manhood to stand up—I trust him and put him up against this man Holloway, who says that Jim Conley was his nigger. This man Holloway, who made a statement to me in my office, when he didn't see the purpose and the import and the force of the suggestion that this elevator key, after the elevator box was locked, was always put in Frank's office, but when it became apparent that too many people saw this man Frank Sunday morning go there and turn the lever in the power box, without going to his office to get the key, then it was that this man Holloway, who we put up and for whose veracity we vouched and who betrayed us and entrapped us, after he saw the force of the suggestion, after he had told us that always, without exception, he had locked this elevator box himself and put the key in Frank's office, throws us down and by his own affidavit as read in your presence here, made at a time when he didn't see the importance of the proposition, changed his evidence and perjured himself either to have this jury acquit this guilty defendant, his boss and employer, or to get the reward for the conviction of "his nigger," Jim Conley.

Contrast him with Barrett,—Barrett, the man who discovered the hair on his machine early in the morning and whose attention was called to this blood there by the dress-

ing room at a time when no reward is shown to have been offered and indeed, when you know that no reward was offered because no executive of this State or of this city offered any reward during Sunday or as early as 7 or 8 o'clock Monday morning. I say to you that this man Barrett stands an oasis in a mighty desert, standing up for truth and right and telling it, though his own job is at stake, and you know it. And you may fling your charges of perjury just as far as you want to, but I tell you right now, gentlemen, that Barrett, when he swore that he found blood there at the place where Conley said he dropped the body, told the truth; and when he said he found that hair on that machine, I tell you Barrett told the truth, and if there be a man in this town that rightly deserves and who ought to receive the rewards, if there are any, it's this poor employe of the National Pencil Company, who had the manhood and the courage to tell the truth, and I hope if there be such a thing as a reward to be given to anybody, that this man Barrett gets it. But not a single thing did Barrett swear but that either didn't occur before any rewards were offered, or that weren't substantiated by four and five of the most reputable witnesses that could be found. And Barrett didn't make his discoveries May 15th, either, Barrett made them Monday morning, April 8th, and they haven't any resemblance to a plant. They come so clean and so natural that the most warped and the most biased must recognize the fact that Barrett has told the truth, the whole truth and nothing but the truth.

But you can wipe Barrett out of this case and still you have got an abundance of firm ground upon which to stand. Barrett isn't shown to have lied, dodged or equivocated. Mrs. Jefferson,—and I'm only going to give you a few of the people that saw blood there—Mrs. Jefferson saw dark red spot about as large as a fan, and in her opinion, it was blood, and it was blood. Mel Stanford says he saw the blood at the dressing room Monday, dark spots that looked exactly like blood and this white stuff, hascoline, had been



smear over it. "It was not there Friday, I know," said Mel Stanford, "because I swept the floor Friday at that place. The white substance appeared to have been swept over with a coarse broom; we have such a broom, but the one used by me Friday in sweeping over that identical spot was of finer straw; the spots were dry and the dark led right up here within five feet of where the smear was." Blood and haskoline.

Jim Conley saw her go up and didn't see her go down. Necessary, absolutely necessary, that this man should put her where he said in his telegram or letter the body was found. The discovery made Monday by Barrett and Jefferson and Mel Stanford and seen by Beavers and Starnes, but not only that, but reinforced by Darley, for Darley says "I saw what appeared to be blood spots at the dressing room, a white substance had been smeared over it, as if to hide it." And Quinn says "The spots I saw at or near the dressing room looked like blood to me."

Sometimes you have got to go into the enemy's camp to get ammunition. It's a mighty dangerous proposition,—Doctor Connally knows what a dangerous proposition it is to go into the enemy's camp to get ammunition, he has been an old soldier and he will tell you that there is no more dangerous proposition,—I expect Mr. Mangum knows something about it, this going into the enemy's camp to get ammunition; and yet in this case, conscious of the fact that we were right, having Darley tied up with an affidavit, we dared to go right into the enemy's camp, and there we got the best evidence of the fact that Frank was more nervous than he had ever been known to be except on two occasions, one when he had seen a little child killed, and the other when he and his boss had had a falling out—this man Montag, who was so afraid something was going to be twisted in this case—and also Darley saw the blood. It was a mighty hard pill for Darley, it was an awful hard situation for him, but we drove it up to him and he dared

not go back on the affidavit which he had signed, though he did modify his statements.

All right; I'm not going to call over all these other people,—Mrs. Small and others,—though Mrs. Carson denied it, she went there,—who claimed to have seen that blood. But to cap it all, Mel Stanford says "I swept the floor,"—he's an employe and he's an honest man,—"it wasn't there Friday." Why? Because old Jim, when he went to move that body, put it there Saturday. To cap it all, Doctor Claude Smith, the City Bacteriologist, says "I analyzed it and I tell you that I found blood corpuscles." And now you come in with the proposition that that blood had been there ever since that machinist Lee saw that fellow Duffy stand there with his finger cut and let it spout out at the end,—a thing Duffy says never happened, and you know never happened, and we called on you to produce the paper this man Lee said he signed and you can't do it, because he never signed one. Not only that, but your own employe, your own witness, Mary Pirk, your own witness, Julia Fuss, your own witness, Magnolia Kennedy, your own witness, Wade Campbell, and your own witness Schiff and others whose names are too numerous to take up your valuable time to mention, all say that they saw this great big spot there covered over with something white, which we know to have been haskoline.

Now, Harry Scott didn't manipulate exactly right, so they got them some new Richmonds and put them in the field, and this fellow Pierce,—and where is Pierce? Echo answers where? And where, oh, where, is Whitfield? And echo answers where? The only man you bring in here is this man McWorth. Starnes denies, Black denies, Scott denies, every witness put on the stand denies, that around that scuttle hole anything was seen immediately after that murder. Don't you know that Frank, who went through that factory,—that Schiff, Darley, Holloway, don't you know that they would have been only too glad to have reported to Frank that blood spots had been found around

that scuttle hole, and don't you know that Frank would have rushed to get his detective Scott to put the police in charge of the information that blood had been found here? But long after Jim Conley had been arrested, after this man Holloway had arrested him, after this man Holloway had said that Jim was "his nigger," realizing the desperation of the situation, realizing that something had to be forthcoming to bolster up the charge that Conley did it, then it was and not until then that this man McWorth, after he had gone looking through the factory for a whole day, at about 3:30 o'clock saw seven large stains, found the envelope and stick right there in the corner.

Now, he found too much, didn't he? Wasn't that a little too much? Is there a man on this jury that believes that all these officers looking as they did there, through that factory, going down in this basement there through that very scuttle hole, would have overlooked seven large stains which were not found there until May 15th? Scott said "I looked there just after the murder, made search at the scuttle hole, didn't see blood spots there." Starnes says the same, Rosser says the same, and these men Mel Stanford and Darley both say they had been cleaning up all that very area May 3rd, and yet the men who cleaned up and all these men never saw them and never even found the envelope or the stick. Why it's just in keeping with that plant of the shirt at Newt Lee's house. I don't care how much you mix this man Black. Boots Rogers says, Darley says, that Sunday morning, when suspicion pointed towards this man Newt Lee, that this man Frank, the brilliant Cornell graduate and the man who was so capable at making figures that certain parts of his work have never been fixed since he left that factory, when he knew a girl had been murdered down stairs, when he knew that suspicion pointed towards Newt Lee, took that slip out of the clock and stood there, looked at it, told those men, in answer to a question, if Newt Lee would have had time to have left and gone

home after he killed that girl and changed his clothing, that old Newt didn't have the time.

Why did he say it then? Because he knew that Lanford and Black and the other detectives who were there would have examined that slip for themselves, then and there, and would have seen that these punches were regular or irregular. But he stood there, and because he knew he would be detected if he tried to palm off a fraud at that time and place, this man of keen perception, this man who is quick at figures, this Cornell graduate of high standing, looked over those figures which register the punches for simply twelve hours,—not quite twelve hours,—in that presence, surrounded by those men, told them that Newt Lee wouldn't have had the time, but, ah! Monday afternoon, when he sees that there isn't enough evidence against Newt Lee, and that the thing ain't working quite as nicely against this man Gantt, who he told was familiar with this little girl, Mary Phagan, and then he suddenly proposes, after a conference with his astute counsel, Mr. Haas, that "you go out to my house and make a search," and then, in the same breath and at the same time, he shrewdly and adroitly suggests to Black that Newt Lee, he has suddenly discovered, had time to go out to his house, and forthwith, early Tuesday morning, John Black, not having been there before because Leo M. Frank told him that Newt Lee didn't have time to go out to his house, but after the information comes in then Tuesday morning, John Black puts out and goes to old Newt's house and finds a shirt; that's a plant as sure as the envelope is a plant, as the stick is a plant, as the spots around the scuttle hole. And the man that did his job, did it too well; he gets a shirt that has the odor of blood, but one that has none of the scent of the negro Newt Lee in the armpit. He puts it, not on one side, as any man moving a body would necessarily have done, but he smears it on both sides, and this carries with it, as you as honest men must know, unmistakable evidence of the fact that somebody

planted that shirt sometime Monday, at whose instance and suggestion we don't know.

And that club business: Doctor Harris says that that wound could not have been done with that club, and Doctor Hurt says it could not have been done with that club, and not a doctor of all the numerous doctors, good men and good doctors as they are for some purposes, ever denies it. A physical examination of that shirt shows you that it wasn't on the person when that blood got on it,—there is as much blood on the inside or the under side that didn't come through to the outside. Lee didn't deny the shirt, but he never did say that it was his shirt. Cornered up as he was, not a negro, one negro in a thousand, that wouldn't have denied the ownership of that shirt, but old Lee was too honest to say that it wasn't his shirt,—he didn't remember it; and you don't know whether it was his or not.

Now this envelope and this stick is found at the radiator, at the scuttle hole, May 15th, after the place had been cleaned up, according to Darley and other witnesses, including Mel Stanford, and after, as I said, it had been thoroughly searched by Scott, Campbell, Rosser, Starnes and I don't know how many others; and then you say that these things weren't a part and parcel of the same scheme that caused this man to have Conley write those notes planted by the body to draw attention away from him. Gentlemen, you can't get away from the fact that blood was there, you can't do it; now, can you? Just as honest men, now, honest men can you get away from that? If human testimony is to be believed, you've got to recognize the fact that blood was on the second floor, and that there was no blood at the scuttle hole; that the shirt and the club and the spots were plants.

"She had left the plant five minutes when Lemmie Quinn, the foreman of that plant, came in and told me I couldn't keep him away from the factory even though it was a holiday, at which time I smiled and kept on working." Smiled and kept on working! "I wanted to know when they would

have lunch, I got my house and Minola answered the phone and she answered me back that she would have lunch immediately and for me to come right away. I then gathered my papers together and went upstairs to see the boys on the top floor; this must have been, since I just looked at my watch, ten minutes to one. Mrs. White states that it was 12:35, that she passed by and saw me, that's possibly true, I have no recollection about it, perhaps her recollection is better than mine." She remembered it very well.

Now, this Minola McKnight business. Isn't it strange that this man Albert, her husband, would go up there and tell that kind of a tale if there wasn't some truth in it? Isn't it strange that Minola herself, in the tale that they seek to have you believe was a lie, should have been sustained by Mrs. Selig, when she tells you "Yes, I gave her \$5.00 to go get some change," and Mrs. Frank gave her a hat? Do you believe that this husband of hers didn't see that man Frank when, after this murder, he went home and was anxious to see how he looked in the glass, but as the people had gone to the opera, anxious to get back to keep his engagement with Jim Conley? And all this talk about Mrs. Selig, about this thing not having been changed. Gentlemen, are you just going to swallow that kind of stuff without using your knowledge of human nature? And you tried to mix old Albert up, and right here, I'm going to read you a little bit about Albert's evidence: "Yes sir, he came in close to 1:30, I guess, something like that." "Did he or not eat anything?" "No sir, not at that time, he didn't, he came in and went to the sideboard in the dining room and stood there a few minutes, then he goes out and catches the car." "How long did he stay at the house?" "I suppose he stayed there five or ten minutes." "About five or ten minutes?" "About five or ten minutes." "What did he do at the sideboard?" "I didn't see him do anything at the sideboard." "Isn't there a door between the cook room and the dining room?" These gentlemen asked him, and Albert said, "Yes, this here dining room was open;" yes,

they didn't keep it shut all the time, said Albert. "And you know he didn't eat anything in that dining room?" "Yes, I know he didn't eat."

And this is the tale that had been told Craven by the husband of Minola McKnight, and Minola went down there and in the presence of her counsel, stated these things to these officers and she never would have done it if it hadn't been the truth. Gordon was down there, and he could have said—and if he hadn't said it then he's unworthy of the name of lawyer—"Minola, if these things aren't true, don't you put your name to it, if you do you are liable to go to the penitentiary for false swearing; if you don't, the writ of habeas corpus is guaranteed to every man, and in less than two hours, by an order of a judge of the Superior Court I'll have you out of here." And yet, George Gordon, with his knowledge of the law, with his knowledge of his client's rights, sits there and lets Minola McKnight, the cook, who is sustained in the statement that she then made, but which here in this presence she repudiated, corroborated by her husband and sustained in many particulars by the Seligs themselves,—George Gordon sat there and let her put her fist to that paper, swearing to a lie that might send her to the penitentiary, and he was her lawyer and could have released her from that prison by a writ of habeas corpus as quick as he could have gotten to a judge, because any judge that fails to hear a writ of habeas corpus immediately is subject to damages and impeachment.

But Craven was there and Albert was there and this woman, McKnight, sitting there in the presence of her lawyer, this man that was so eager to inject into this case something that these men wanted in here all the time, but never could get until he got on that stand and swore that I had said a thing that you saw by the questions that I asked him never did occur, that I was afraid that I would get in bad with the detectives—I would get in bad with them if I would try to run their business, and I never will get in bad with them because I never expect to undertake

to run their business; I've got as much as I can say grace over to attend to my own business. And you go out there, now, and bring in Julius Fisher and a photographer, and all these people, and try to prove this negro Albert McKnight lied, and by the mere movement of that sideboard, which Mrs. Selig in her evidence says, even, every time they swept it was put just exactly back in the same place,—then you try to break down Albert McKnight's evidence with that. Why, gentlemen, Albert says that that sideboard had been moved, and you know it had been moved, and Albert McKnight stood, not where these gentlemen sought to put him, but at a place where he could see this man Frank, who came home, there sometimes, as Albert says, between one and two o'clock, after he had murdered the girl, and didn't eat his dinner, but hurried back to the factory to keep his engagement with Jim Conley, who had promised to come back and burn her body in the furnace.

You tell me that Albert would have told that lie? You tell me that Albert's wife, in the presence of Albert and Craven and Pickett, honorable, upright men, who worked for the Beck & Gregg Company, the same firm that Albert McKnight works at,—and do you tell me that George Gordon, a man who poses as an attorney, who wants to protect the rights of his client, as he would have you see, sat there in that presence and allowed this woman, for her husband, to put her fist to a paper and swear to it which would consign her to the penitentiary? I tell you that that thing never happened, and the reason Minola McKnight made that affidavit, corroborating this man, her husband, Albert, sustained as she is by the Seligs, biased and prejudiced and willing to protect their son-in-law as they were, is because it was the embodiment of the truth and nothing but the truth; and as honest, unprejudiced, unbiased men, you know it.

And you know he didn't eat anything in that dining room, yes, I know he didn't eat. "Don't you know you can't sit in that dining room," says Mr. Arnold, "and don't



you know you can't see from the kitchen into the dining room, you know that, don't you?" "Yes sir, you certainly can see;" and the very evidence of the photographs and Julius Fischer and others who came here, after that sideboard had been moved, sustains Albert McKnight, and shows that once that sideboard is adjusted, you could see, as Albert says, and he did see because he would have never told that tale unless he had been there and seen it. "You can see in there?" "Yes sir, you can see; look in the mirror in the corner and see all over that dining room;" that's what Albert swore. And if there's anybody in the world that knows how to get up a plan to see from the kitchen into the dining room or to hear what's going on among the white folks in the dining room, it's a negro. And Albert told too straight a tale, he told too reasonable a tale. "Don't you know that you can't look in the mirror in the corner and see it?" Albert says "I did do it, I stayed there about five or ten minutes while he was there and looked in that mirror at him, Mr. Frank." "You stayed there in that kitchen on that occasion and looked in the mirror at him that five or ten minutes he stayed there?" "Yes sir." "By looking in that mirror you can see what's going on in that room?" "You can see if they are eating at the table." "Don't you know that you can't see in that room by looking into that mirror?" "Yes sir, you can see in there." "You can see all over the room?"—tried to make him say that—"No, not all over it exactly." "But you can see even when they are eating at the table?" "You can look in that mirror and see in the sitting room and through that dining room," said Albert, "to a certain extent." And he says he never was in the dining room in his life. That's reasonable. "You were right side of the back door of the kitchen?" "Yes, sir." "Let me give you a little drawing; now were you sitting right in front of that little hallway between the two rooms, in front of it?" Says Albert, "Not exactly." "You were sitting right here against the wall, weren't you?" And he said "Yes sir." "I don't know

whether it's fair or not,—that's a fair statement?" And Albert says, "I don't know whether it's fair or not, but I know I saw Leo M. Frank come in there some time between one and two o'clock Saturday, April 26th, and I know he didn't stay but about ten minutes and left to go to town." And he tells you the way in which he left, and Frank in his statement says that, while he didn't get on that car, he went in such a direction as Albert McKnight might have naturally supposed he went down there. "Minola she went in there but stayed only a minute or two in the dining room, I never looked at the clock." "You don't know exactly what time?" "No, but I know it was obliged to have been something after one when Mr. Frank came there and he came in and went before the sideboard and then went back to town." And he says "I don't know exactly whether he did or not because I have never been in the house no further than the cook room." Then he says "Who did you tell?" "I told Mr. Craven." "Who is Craven?" "He is the boss at the plow department at the Beck & Gregg Hardware Company;" and that's the way the detectives got hold of it, and try all you will to break old Albert down, I submit to you, gentlemen, that he has told the absolute truth and stands unimpeached.

*August 25.*

*Mr. Dorsey:* I regretted more than you the necessity for your being carried over another week or, rather, another Sunday. I was even more exhausted than I anticipated, and this morning my throat and voice are in such shape that I fear I will not be able to do the case the justice it demands. I thought myself, had we not had the adjournment that I might have been able to finish my speech and His Honor charge you Saturday afternoon, but I am sure such would not have been the case.

When we closed on Saturday, I was just completing a brief analysis of the statement made by this defendant. I'm not going into any exhaustive analysis of that statement, because it is not necessary to further inconvenience

you and I haven't the physical strength, but there is certain language and certain statements and assertions made in this statement by this defendant which merit some consideration. This defendant stated to you, after His Honor had excluded our evidence and properly, I think, that his wife visited him at the police station. He says that she was there almost in hysterics, having been brought there by her father and two brothers-in-law and Rabbi Marx—no, "Rabbi Marx was with me, I consulted with him as to the advisability of allowing my dear wife to come up to the top floor to see those surroundings, city detectives, reporters and snap-shotters." He doesn't prove that by a living soul and relies merely upon his own statement. If they could have proven it by Rabbi Marx, who was there and advised him, why didn't they do it? Do you tell me that there lives a true wife, conscious of her husband's innocence, that wouldn't have gone through snap-shotters, reporters and everything else, to have seen him—

*Mr. Arnold.* I must object to as unfair and outrageous an argument as that, that his wife didn't go there through any consciousness of guilt on his part. I have sat here and heard the unfairiest argument I have ever heard, and I can't object to it, but I do object to his making any allusion to the failure of the wife to go and see him; it's unfair, it isn't the way to treat a man on trial for his life.

The COURT. Is there any evidence to that effect?

*Mr. Dorsey.* Here is the statement I have read.

*Mr. Arnold.* I object to his drawing any conclusions from his wife going or not going, one way or the other, it's an outrage upon law and decency and fairness.

The COURT. Whatever was in the evidence or the statement I must allow it.

*Mr. Dorsey.* "Let the galled jade wince"—

*Mr. Arnold.* I object to that, I'm not a "galled jade," and I've got a right to object. I'm not galled at all, and that statement is entirely uncalled for.

Frank said that his wife never went back there because she was afraid that the snapshotters would get her picture—because she didn't want to go through the line of snapshotters. I tell you, gentlemen of the jury, that there never lived a woman, conscious of the rectitude and innocence of

her husband, who wouldn't have gone to him through snap-shotters, reporters and over the advice of any Rabbi under the sun. And you know it. Frank says in his statement, with reference to these notes written by Conley, "I said I know he can write." How long did it take him to say it, if he ever said it. "I received many notes from him asking me to loan him money, I have received too many notes from him not to know that he can write." In other words, says Frank, in his statement, I have received notes signed with his name, purporting to have been written by him, and he says they were written by a pencil. Frank says he said "I told them if you will look in the drawer in the safe you will find the card of a jeweler from whom Conley bought a watch on the installment plan." He corroborates Conley there, with reference to the watch incident and what occurred there in his office when Conley told him not to take any more money out. "Now, perhaps if you go to that jeweler you may find some sort of receipt that Conley had to give and be able to prove that Conley can write." Scott says that no such thing ever happened. But if Frank knew so well that this man Conley could write, in the name of fairness why didn't Frank, when he saw those notes at the police station, found beside this dead body, then and there say "this is the writing of James Conley?" Why didn't he do it? Scott denies that any such thing happened, or that they came into possession of any information from Frank that led to knowledge on their part that this man Conley could write. And up to the time that they discovered this man Conley could write, this man had kept his mouth sealed and it was only the knowledge on the part of the detectives and the knowledge on the part of Conley that the detectives knew he was lying about his ability to write, that forced him to make the first admission that he was connected with this crime. He says he knew that Conley could write. Why, then, did he keep his mouth shut until the detectives discovered it, when he knew that the notes found beside that poor girl's body was the one key that was going to unlock the Phagan mystery?

You know why. Ah, you did know that Conley could write. You knew it, not only because he wrote the notes for you, through which you sought to place the responsibility for this crime on another man, but you knew it because he checked up the boxes of pencils, and he had written you numerous notes to get money from you, just like he borrowed money from those other people in that factory. You knew that the most powerful fact that could be brought to light showing who committed this dastardly crime was to find who penned the notes placed with the body; and yet, although you saw them, according to your own statement, at police headquarters and saw them there the very Sunday morning that the crime was committed, not a word, not a word, although the notes themselves said that the crime was done by a negro. It is not necessary to discuss that further.

Frank says, with reference to this visit of Conley to the factory, after Conley had gone through over yonder and demonstrated in detail, as told you by Branch, and in the same length of time and almost to the minute that Conley himself says it took, too, though Conley only knows the clock registered four minutes to one and don't know anything about the balance of the time, he says, with reference to the visit of Conley to the jail, when Conley wanted to confront him, "I told them if they got the permission, I told them through my friend Mr. Klein, that if they got the permission of Mr. Rosser to come, I would speak to them, would speak to Conley and face him or anything they wanted, if they got the permission of Mr. Rosser. Mr. Rosser was on that day up at Tallulah Falls trying a case." But Mr. Rosser got back, didn't he? Mr. Rosser didn't remain at Tallulah Falls.

I tell you, gentlemen of the jury, measuring my words as I utter them, and if you have sense enough to get out of a shower of rain you know it's true, that never in the history of the Anglo-Saxon race, never in the history of the African race in America, never in the history of any other race, did an ignorant, filthy negro, accuse a white *man* of a crime and

that man decline to face him. And there never lived within the State of Georgia, a lawyer with one-half the ability of Mr. Luther Rosser, who possessed a consciousness of his client's innocence, that wouldn't have said "Let this ignorant negro confront my innocent client." If there be a negro who accuses me of a crime of which I am innocent. I tell you, and you know it's true, I'm going to confront him, even before my attorney, no matter who he is, returns from Tallulah Falls, and if not then, I tell you just as soon as that attorney does return, I'm going to see that that negro is brought into my presence and permitted to set forth his accusations.

You make much here of the fact that you didn't know what this man Conley was going to say when he got on the stand. You could have known it, but you dared not do it.

*Mr. Rosser.* May it please the Court, that is an untrue statement; at that time, when he proposed to go through that dirty farce, with a dirty negro, with a crowd of policemen, confronting this man, he made his first statement—his last statement, he said, and these addendas nobody ever dreamed of them, and Frank had no chance to meet them; that's the truth. You ought to tell the truth, if a man is involved for his life; that's the truth.

*Mr. Dorsey.* It does not make any difference about your addendas, and I'm going to put it right up to this jury—

*Mr. Rosser.* May it please the Court, have I got the right to interrupt him when he mis-states the facts?

The COURT. Whenever he goes outside of the record.

*Mr. Rosser.* Has he got the right to comment that I haven't exercised my reasonable rights?

The COURT. No, sir, not if he has done that.

*Mr. Rosser.* Nobody has got a right to comment on the fact that I have made a reasonable objection.

*Mr. Dorsey.* But I'm inside of the record, and you know it, and the jury knows it. I said, may it please Your Honor, that this man Frank declined to be confronted by this man Conley.

*Mr. Rosser.* That isn't what I objected to; he said that at that meeting that was proposed by Conley, as he says, but really proposed by the detectives, when I was out of the city, that if that had been met, I would have known Conley's statement, and that's not true; I would not have been any wiser about his statement than I was here the other day.

The COURT. You can comment upon the fact that he refused to meet Frank or Frank refused to meet him, and at the time he did it, he was out of the city.

*Mr. Arnold.* We did object to that evidence, Your Honor, but Your Honor let that in.

The COURT. I know; go on.

*Mr. Dorsey.* They see the force of it.

*Mr. Rosser.* Is that a fair comment, Your Honor, if I make a reasonable objection, to say that we see the force of it?

The COURT. I don't think that, in reply to your objection, is a fair statement.

*Mr. Dorsey.* Now, may it please Your Honor, if they don't see the force of it, you do—

*Mr. Rosser.* I want to know, is Your Honor's ruling to be absolutely disregarded like that?

The COURT. Mr. Dorsey, stay inside of the record, and quit commenting on what they say and do.

*Mr. Dorsey.* I am inside of the record, and Your Honor knows that's an entirely proper comment.

*Mr. Rosser.* Your Honor rules—he says one thing and then says Your Honor knows better—

*Mr. Dorsey.* Your Honor knows I have got a right to comment on the conduct of this defendant.

The COURT. Of course, you have, but when they get up, I don't think you have any right to comment on their objections as they are making them to the Court.

*Mr. Dorsey.* I don't.

The COURT. No, I don't think so.

*Mr. Dorsey.* Isn't everything that occurs in the presence of the Court the subject matter for comment?

The COURT. No, I don't think you can comment on these things. You can comment on any conduct within the province of this trial, but if he makes an objection that's sustained, why, then, you can't comment on that.

*Mr. Dorsey.* Does Your Honor say I'm outside of the record?

The COURT. No, I don't, but I say this, you can comment on the fact that Frank refused to meet this man, if that's in the record, you have a right to do that.

This man Frank, a graduate of Cornell, the superintendent of the pencil factory, so anxious to ferret out this murder that he had phoned Schiff three times on Monday, April 28th, to employ the Pinkerton Detective Agency, this white man refused to meet this ignorant negro, Jim Conley. He refused upon the flimsy pretext that his counsel was out of town, but when his counsel returned, when he had the opportunity to know at least something of the accusations that Conley brought against this man, he dared not let him meet him. It is unnecessary to take up time discussing that. You tell me that the weakest among you, if you were innocent and a man of black skin charges you with an infamous

murder, that any lawyer, Rosser or anybody else, could keep you from confronting him and nailing the lie? No lawyer on earth, no lawyer that ever lived in any age or any clime could prevent me, if I were innocent, from confronting a man who accused me wrongfully, be he white or black.

And you, Leo Frank, went in and interviewed Newt Lee down yonder at twelve o'clock, Tuesday night, April 29th. And what did you do? Did you act like a man who wanted to get at the truth, who didn't know it and wanted to get at the truth? Ah, no. Instead of going into that room and taking up with this negro Newt Lee, the man towards whom you had directed suspicion infamously to save your own neck, a man that you would have seen hung on the gallows in order to save your reputation with the people on Washington street and the members of the B'nai B'rith, did you make an earnest, honest, conscientious effort, as an innocent employer would with his employee, to get at the truth?

No; according to Lee, you hung your head and quizzed him not, but predicted that both Lee and you would go to hell if Lee continued to tell the story which he tells even until this good day: and then in your statement here, try to make it appear that your detective Scott and old John Black concocted a scheme against you and lied as to what occurred on that Tuesday night. The reason why Frank didn't put it up to Newt Lee and try to get Newt Lee to tell him how that murder occurred and what he knew about it, was because Frank knew that Lee was innocent, that he was the murderer and that he was adding to the dastardly crime of assault upon the virtue of this girl, was adding to the crime of murder of this girl, another infamous effort to send this negro to the gallows in order to save his reputation and neck.

Listen to this—he's smart, and just listen how, in his statement, he qualifies and fixes it up so that, when we come back with rebuttal, the technical law will protect him: "They (meaning the detectives) stress the possibility of couples having been let into the factory at night"—by night watchmen? No,—"By night Watchman Newt Lee." Lee



had been there but two or three weeks,—three weeks. Frank could have told you that the detectives stressed the fact that couples went in there holidays, Saturdays and at nights, at all times and at any time when other night watchmen were there, but Newt Lee, having been there but three weeks, he effectively shuts off the State from impeaching his statement or contradicting it, and therefore, he tells you that the detectives stressed the fact that couples had been in here while the night watchman Newt Lee, was watching,—and Newt had been there but three weeks.

That wasn't the period, that wasn't the time. During that three weeks that old Newt was night watching, there was but one person for whom your passion burned, and that was Mary Phagan. And she wouldn't meet you, and she didn't meet you any time during that period that Newt Lee was night watching. But in the summer previous, when Dalton was seen to go there, if it be not true that couples were admitted, why didn't you make the bold, emphatic, challenging statement that at no time were couples ever admitted? And then you tell me that that's a good statement and a fair statement and a frank statement?

Now, another thing. Liston to this—I read from the defendant's statement: "Now, with reference to these spots that are claimed to be blood and that Mr. Barrett found, I don't claim they are not blood, they may have been, they were right close to the ladies' dressing room, and we have accidents there, and by the way, in reference to those accidents, the accidents of which we have records are not the only accidents that have happened there. Now, we use paint and varnish around there, a great deal of it, and while I don't say that this is not blood, it may be, but it could also have been paint; I have seen the girls drop bottles of paint and varnish and have them break there on the floor, I have seen that happen right close to that spot. If that had been fresh red paint or if it had been fresh red blood and that kaskoline compound, that soap in it which is a great solvent, had been put on there in the liquid state, it wouldn't have

shown up white, as it showed up then, but it would have showed up either pink or red."

Now, first, contrast that statement for a moment with this statement with reference to the condition of the floor where Barrett worked. There he says there wasn't a spot, much less a blood spot,—“looked at the machinery and the lathe, looked at the table on which the lathe stands and the lathe bed and the floor underneath the lathe and there wasn't a spot, much less a blood spot underneath.” All right; you say that that wasn't blood, you say that that haskoline wouldn't turn that color. In the name of goodness, in the name of truth, I ask you, if that haskoline mixed with that blood on the second floor wouldn't have produced the identical result that these witnesses have sworn, if it be true, as Mr. Rosser stated, that you don't attach any importance to the cabbage findings and experiments made in this case, why didn't you devote a little of your time to bringing before this jury a reputable chemist and a man who could sustain you in that statement? You had that evidence in your possession, or if you were able to bring in these medical experts here to tear down the powerful evidence of Dr. Roy Harris, as eminent an authority as lives in the State of Georgia, in the name of truth and fair play, before you men who ought to have every fact that will enable you to get at the truth, why didn't you bring one chemist to sustain you? There's but one answer, and you know what it is. Those spots were blood, they were blood over which had been placed that substance, haskoline, and the color that blood and haskoline would make upon that floor was the identical color found there by the numerous witnesses who saw it. Important? There is no more important fact for you to have shown than that this haskoline, when wiped over blood, would have made a color the like unto which Frank in his statement would have you believe would have been made.

Are you going to accept the statement of this man, with all these circumstances unsupported by chemists or anybody on earth, because they couldn't get them to come in and stul-

tify themselves on that point, as against the evidence of all these witnesses who have told you that that was blood, and against the evidence of Doctor Claude Smith, the City Bacteriologist of the City of Atlanta, who tells you that through a chemical analysis he developed the fact that that was blood?

This defense, gentlemen—they have got no defense, they never have come into close contact in this case, except on the proposition of abuse and villification. They circle and flutter but never light; they grab at varnish and cat's blood and rat's blood and Duffy's blood, but they never knuckle down and show this jury that it wasn't blood; and in view of the statement of that boy, Mel Stanford, who swept that floor Friday afternoon, in view of the statement of Mrs. Jefferson, in view of the statement of "Christopher Columbus" Barrett, who tells the truth, notwithstanding the fact that he gets his daily bread out of the coffers of the National Pencil Company, you know that that was the blood of this innocent victim of Frank's lustful passion.

The defense is uncertain and indistinct on another proposition, they flutter and flurry but never light when it comes to showing you what hole Jim Conley pushed his victim down. Did he shoot her back of that staircase back there? No. Why? Because the dust was thick over it. Because unimpeached witnesses have shown you it was nailed down; because if he had shot her down that hole, the boxes piled up there to the ceiling would have as effectively concealed her body as if she had been buried in the grave, for some days or weeks. Did he shoot her down this other hole in the Clark Woodenware Company's place of business? Where even if what Schiff says is true, that they kept the shellac there, it would nevertheless have concealed her body a longer time than to put it down there by the dust bin where the fireman and people were coming in through the back door. Did this negro, who they say robbed this girl, even if he had taken the time to write the notes, which, of course, he didn't—even after he had knocked her in the head with that bludgeon, which they tell you had blood on it, and robbed

her, even if he had been such a fool and so unlike the other members of his race, by whom brutal murders have been committed, should have taken time to have tied a cord around her neck, a cord seldom found down there in the basement, according to your own statement, except when it's swept down in the trash, but a cord that hangs right up there on the office floor, both back there in the varnish room and up there in the front. If he had done all that,—a thing you know that he didn't do, after he had shot her down in that hole in the Clark Woodenware Company, down there in that wing of the place where they keep this shellac, if they do keep it, why would that negro have gone down there and moved her body, when she was more securely fixed down there? And why was it, will you tell me, if he shot her down that scuttle hole, that he wrote the notes and fixed the cord, and will you tell me how it happens that, when after this man Holloway, on May 1st, had grabbed old Jim Conley, when he saw him washing his shirt and said "he's my nigger,"—fifteen days afterwards, when squad number two of the Pinkerton people had been searching through that factory a whole day and right down in that area, the elevator being run, the detectives, both the Pinkertons and the city force had looked around there immediately after the crime, will you tell me how it happened that, if he shot her down that hole, that there was so much blood not found until the 15th of May, and more blood than that poor girl is ever shown to have lost?

Another thing: This man Frank says that "Mr. Quinn said he would like to take me back to the metal department on the office floor, where the newspapers that morning stated that Mr. Barrett of the metal department had claimed he had found blood spots, and where he had found some hair." Although he had seen in the morning papers that this man Barrett claimed to have seen blood there, before he went back to see it, although this thing tore him all to pieces, and although he was anxious to employ a detective,—so anxious that he phoned Schiff three times to get the Pinkertons

down, according to his own statement, Lemmie Quinn had to come and ask him back to see the blood spots on the second floor, found by this man Barrett.

Is that the conduct of a man, the head of a pencil factory, who had employed detectives, anxious to assist the police,—saw it in the newspapers and yet Lemmie Quinn had to go and ask him to go back? And then he tells you in this statement, which is easy to write, was glibly rattled off, a statement that you might expect from a man that could plot the downfall of a girl of such tender years as little Mary Phagan, that he went back there and examined those blood spots with an electric flashlight, that he made a particular and a minute examination of them, but strange to say, not even Lemmie Quinn comes in to sustain you, and no man on earth, so far as this jury knows, ever saw Leo M. Frank examining what Barrett said and Jefferson said and Mel Stanford said and Beavers said and Starnes said and a host of others said was blood near the dressing room on the second floor. You know why? Because it never happened. If there was a spot on this earth that this man Frank didn't want to examine, if there was a spot on earth that he didn't want any blood found at all, it was on the second floor, the floor which, according to his own statement, he was working on when this poor girl met her death.

Schiff, he says, saw those notes down there and at police headquarters. Frank says he visited the morgue not only once but twice. If he went down there and visited that morgue and saw that child and identified her body and it tore him all to pieces, as he tells you it did, let any honest man, I don't care who he be, on this jury, seeking to fathom the mystery of this thing, tell me why it was, except for the answer that I give you, he went down there to view that body again? Rogers said he didn't look at it; Black said he didn't see him look at it.

*Mr. Rosser.* He is mis-stating the evidence. Rogers never said that he didn't look at the body, he said he was behind him and didn't know whether he did or not; and Black said he didn't know whether he did or not.

*Mr. Dorsey.* Rogers said he never did look at that body.

*Mr. Arnold.* I insist that isn't the evidence. Rogers said he didn't know and couldn't answer whether he saw it or not, and Black said the same thing.

I'm not going to quibble with you. The truth is, and you know it, that when that man Frank went down there to look at that body of that poor girl, to identify her he never went in that room, and if he did look at her long enough to identify her, neither John Black nor Rogers nor Gheesling knew it. I tell you, gentlemen of the jury, that the truth of this thing is that Frank never looked at the body of that poor girl, but if he did, it was just a glance, as the electric light was flashed on and he immediately turned and went into another room.

*Mr. Rosser.* There isn't a bit of proof that he went into another room, I object again, sir, there isn't a particle of proof of that.

If that man Frank ever looked at that girl's face,—I challenge them to produce the record to show it,—it was so brief that if she was dirty and begrimed and her hair was bloody and her features contorted, I tell you that, if he didn't know her any better than he would have you believe he knew her, he never could have identified her as Mary Phagan. Never could. And I say to you, gentlemen of the jury, that the reason why this man revisited that morgue on Sunday afternoon, after he had failed to mention the subject of death in the bosom of his family at the dining table, when he tells you that it tore him all to pieces, there was but one reason for revisiting that morgue, and that was to put his ear to the ground and see if at that hour there was any whisper or suggestion that Leo M. Frank, the guilty man, had committed the dastardly deed.

Black didn't see him, Rogers didn't see him, Gheesling didn't see him. One of the earliest to arrive, the superintendent of the factory (Rogers said he had his eye on him) he turned and stepped aside, and he himself said that the sight tore him all to pieces, and he seeks to have you believe that that automobile ride and the sight of that poor girl's fea-

tures accounts for the nervousness which he displayed; and yet we find him going, like a dog to his vomit, a sow to her wallow, back to view the remains of this poor little innocent girl. And I ask you, gentlemen of the jury, if you don't know that the reason Leo M. Frank went down to that morgue on Sunday afternoon was to see if he could scent anything in the atmosphere indicating that the police suspected Leo M. Frank? He admits his nervousness, he admits his nervousness in the presence of the officers; the Seligs say that he wasn't nervous, that he wasn't nervous Saturday night when he telephoned Newt Lee to find out if anything had happened at the factory, that he wasn't nervous when he read this Saturday Evening Post.

He wanted to get out of the view of any man who represented the majesty and dignity of the law, and he went in behind curtains or any old thing that would hide his countenance from those men.

I come back to the proposition in the bosom of his family,—notwithstanding he read that Saturday Evening Post out there in the hall Saturday night, this thing kept welling in his breast to such an extent that he had to make a play of being composed and cool, and he went in there and tried to break up the card game with the laughter that was the laughter of a guilty conscience. Notwithstanding the fact that he was able, Sunday, at the dining table and in the bosom of his family, when he hadn't discussed this murder, when Mrs. Selig didn't know that it was a murder that concerned her, when the whole Selig household were treating it as a matter of absolute indifference, if he wasn't nervous there, gentlemen of the jury, surely he was, as I am going to show you, nervous when he came face to face and had to discuss the proposition with the minions of the law.

He was nervous when he went to run the elevator, when he went to the box to turn on the power, and he says here in his statement, unsupported by any oath, that he left that box open because some member of the fire department had come around and stated that you must leave that box open because

the electricity might innocently electrocute some members of the fire department in case of fire. I ask you, gentlemen of the jury, what was the necessity for leaving the box open when a simple turn of the lever would have shut off the electricity and enabled the key to have been hung up in the office, just exactly like old Holloway swore when he didn't know the importance of the proposition, in the affidavit which I have and which was submitted in evidence to you, that that box was locked and the key was put in Frank's office? Why don't they bring the fireman here who went around and gave such instructions? First, because it wasn't necessary, they could have cut the electricity off and locked the box. And second, they didn't bring him because no such man ever did any such thing, and old Holloway told the truth before he came to the conclusion that old Jim Conley was "his nigger" and he saw the importance of the proposition that when Frank went there Sunday morning the box was unlocked and Frank had the key in his pocket.

*Mr. Rosser.* You say Mr. Frank had the key in his pocket? No one mentioned it, that isn't the evidence; I say it was hung up in the office, that's the undisputed evidence.

*Mr. Dorsey.* Holloway says when he got back Monday morning it was hung up in the office, but Boots Rogers said this man Frank—and he was sustained by other witnesses—when he came there to run that elevator Sunday morning, found that power box unlocked.

*Mr. Rosser.* That's not what you said.

*Mr. Dorsey.* Yes it is.

*Mr. Rosser.* You said Frank had the key in his pocket next morning, and that isn't the evidence, there's not a line to that effect.

*The COURT.* Do you still insist that he had it in his pocket?

*Mr. Dorsey.* I don't care anything about that; the point of the proposition, the gist of the proposition, the force of the proposition is that old Holloway stated, way back yonder in May, when I interviewed him, that the key was always in Frank's office; this man told you that the power box and the elevator was unlocked Sunday morning and the elevator started without anybody going and getting the key.

*Mr. Rosser.* That's not the point he was making, the point he was making, to show how clearly Frank must have been connected with it, he had the key in his pocket. He was willing to say that when he ought to know that's not so.

*The COURT.* He's drawing a deduction that he claims he's drawing.



*Mr. Rosser.* He doesn't claim that. He says the point is it was easily gotten in the office, but that's not what he said.

*The Court.* You claim that's a deduction you are drawing?

*Mr. Dorsey.* Why, sure.

*The Court.* Now, you don't claim the evidence shows that?

*Mr. Dorsey.* I claim that the power box was standing open Sunday morning.

*The Court.* Do you insist that the evidence shows he had it in his pocket?

*Mr. Dorsey.* I say that's my recollection, but I'm willing to waive it; but let them go to the record, and the record will sustain me on that point, just like it sustains me on the evidence of this man Rogers, which I'm now going to read.

Rogers said "Mr. Gheesling caught the face of the dead girl and turned it over towards me; I looked then to see if anybody followed me, and I saw Mr. Frank step from outside of the door into what I thought was a closet, but I afterwards found out where Mr. Gheesling slept, or somebody slept, there was a little single bed in there."

I don't want to misrepresent this testimony, for goodness knows there's enough here without resorting to any such practice as that, and I don't want to mislead this jury and furthermore, I'm not going to do it. Frank says, after looking at the body, "I identified that little girl as the one that had been up shortly after the noon of the day previous and got her money from me. I then unlocked the safe and took out the pay roll book and found that it was true that a little girl by the name of Mary Phagan did work in the metal plant and that she was due to draw \$1.20, the pay roll book showed that, and as the detective had told me that some one had identified the body of that little girl as that of Mary Phagan, there could be no question but what it was one and the same girl." And he might have added, "as I followed her back into the metal department and proposed to her that she submit to my lascivious demands, I hit her, she fell, she struck her head; to protect my character, I choked her—to protect my reputation I choked her, and called Jim Conley to move her down to the basement, and for all these reasons, because I made out the pay roll for fifty-two weeks during which time Mary had worked there, I know, for these reasons, al-

though I didn't look at her and couldn't have recognized her if she was in the dirty, distorted condition," he tells you in this statement, she really was, "but I know it was Mary Phagan."

And he corroborates in his statement these detectives, he says down at the undertaking establishment, "went down a long dark passageway with Mr. Rogers following, then I came and Black brought up the rear, Gheesling was on the opposite side of the little cooling table, the table between him and me; he took the head in his hands, put his finger exactly where the wound in the left side back of the head was located;" and he seeks to have you believe that he "noticed the hands and arms of the little girl were very dirty, blue and ground with dirt and cinders, nostrils and mouth,—the mouth being open,—nostrils and mouth just full of saw-dust, the face was all puffed out, the right eye was blackened and swollen and there was a deep scratch over the left eye on the forehead." He tells in his statement that in that brief glance, if he ever took any glance at all, he saw that. The only way in the world to believe him is to say that these men, John Black and Boots Rogers, who have got no interest in this case in God's world but to tell the truth, perjured themselves to put the rope around the neck of this man. Do you believe it? Starnes is a perjurer, too? Starnes says "when I called this man up over the telephone I was careful not to mention what had happened;" and unless Starnes on that Sunday morning in April was very different from what you would judge him to be by his deportment on the stand here the other day, he did exactly what he said he did. And yet this defendant in his statement said he says "what's the trouble, has there been a fire?" He says "No, a tragedy, I want you to come down right away;" "I says all right;" "I'll send an automobile after you," and Starnes says that he never mentioned the word tragedy, and yet, so conscious, so conscious was this man Frank when Rogers and Black went out there and he nervously twitching at his collar, "What's the trouble, has the night watchman reported anything,"

asked them not, "has there been a fire," but "has there been a tragedy?" But Starnes, the man who first went after Newt Lee, the negro night watchman, because he pointed his finger of suspicion at him,—Starnes, the man who went after Gantt because this defendant pointed the finger of suspicion at him,—Starnes, the man who has been a detective here on the police force for years and years, is a perjurer and a liar; to do what? Simply to gratify his ambition and place a noose around the neck of this man Frank, when he could have gone out after, if the circumstances had warranted it, or if he had been a rascal and wanted to travel along the line of lest resistance, Newt Lee or Gantt or Conley.

Another thing: Old Newt Lee says that when this defendant called him Saturday night, a thing that he had never done during the time that he had been there at that pencil factory serving him as night watchman, Newt Lee tells you, although the defendant says that he asked about Gantt, Newt Lee says that Gantt's name was never mentioned, and that the inquiry was "has anything happened at the factory?"

You tell me, gentlemen of the jury, that all these circumstances, with all these incriminating circumstances piling up against this man that we have nothing in this case but prejudice and perjury!

Newt says he never mentioned Gantt. Frank in his statement says "I succeeded in getting Newt Lee, and asked him if Mr. Gantt had gone." He instructed this man Newt Lee to go with Gantt, to watch him, to stay with him, and old Newt Lee wouldn't even let Gantt in that factory unless Frank said that he might go up. He had instructed Lee previous thereto not to let him in for the simple reason he didn't want Gantt coming down there. Why? Because he didn't want him to come down and see and talk with little Mary for some reason I know not why; and old Newt Lee stopped this man Gantt on the threshold and refused to let him go up, and this man Frank says "you go up with him and see that he gets what he wants and usher him out." And yet, though he had never done any such thing during the time Newt Lee

had been up there, he innocently called Newt up to find out, he said, if Gantt had gone and Newt said to find out if everything was all right at the factory; and you know that the reason he called up was to find out if Newt, in making his rounds, had discovered the body of this dead girl.

"Would you convict him on this circumstance or that circumstance?" No. But I would weave them all together, and I would make a rope, no one strand of which sufficiently strong to send this man to the gallows for this poor girl's death, but I would take them all together and I would say, in conformity with the truth and right, they all make such a rope and such a strand and such a cable that it's impossible not only to conceive a reasonable doubt, but to conceive any doubt at all.

Frank was in jail, Frank had already stated in his affidavit at police headquarters, which is in evidence, contradicting this statement and this chart which they have made, that he didn't leave his office between certain hours. Frank didn't know that his own detective, Harry Scott, had found this little Monteen Stover,—and I quote her evidence, I quote it and I submit it shows that she went in that office and went far enough in that office to see who was in there, and if she didn't go far enough in, it's passing strange that anybody in that office,—Frank himself, could have heard that girl and could have made his presence known. Scott, their own Pinkerton detective, gets the statement from Monteen Stover, and he visits Leo M. Frank in his cell at the jail. Frank in order to evade that says, "to the best of my recollection I didn't stir out of the office, but it's possible that, in order to answer a call of nature, I may have gone to the toilet, these are things that a man does unconsciously and can't tell how many times nor when he does it."

I tell you, gentlemen of the jury, that if this man Frank had remained in his office and was in his office when Monteen Stover went in there, he would have heard her, he would have seen her, he would have talked with her, he would have given her her pay. I tell you, gentlemen of the jury, that if

this man Frank had stepped out of his office to answer a call of nature, that he would have remembered it, and if he wouldn't have remembered it, at least he wouldn't have stated so repeatedly and unqualifiedly that he never left his office, and only on the stand here, when he faces an honest jury, charged with the murder, and circumstances banked up against him, does he offer the flimsy excuse that these are things that people do unconsciously and without any recollection. But this man Scott, in company with Black, after they found that little Monteen Stover had been there at exactly the time that old Jim Conley says that that man with this poor little unfortunate girl had gone to the rear, and on May 3rd, the very time that Monteen Stover told them that she had been up there, at that time this Pinkerton detective, Scott, as honest and honorable a man as ever lived, the man who said he was going hand in hand with the police department of the City of Atlanta and who did, notwithstanding the fact that some of the others undertook to leap with the hare and run with the hounds, stood straight up by the city detectives and by the State officials and by the truth, put these questions, on May 3rd, to Leo M. Frank: says he to Frank:

"From the time you got to the factory from Montag Brothers, until you went to the fourth floor to see White and Denham, were you inside your office the entire time?" Answer: "I was." Again, says Scott—and Mr. Scott, in jail, when Frank didn't know the importance of the proposition because he didn't know that little Monteen Stover had said that she went up there and saw nobody in his office—Scott came at him from another different angle: "From the time you came from Montag Brothers, until Mary Phagan came, were you in your office?" and Frank said "yes." "From twelve o'clock," says Scott, "until Mary Phagan entered your office and thereafter until 12:50, when you went upstairs to get Mrs. White out of the building, were you in your office?" Answer: "Yes." "Then," says Scott, "from twelve to twelve-thirty, every minute during that half hour,

you were in your office?" and Frank said "yes." And not until he saw the wonderful capacity, the wonderful ability, the wonderful devotion of this man Scott to the truth and right did he ever shut him out from his counsel. No suggestion then that he might have had to answer a call of nature, but emphatically, without knowing the importance, he told his own detective, in the presence of John Black, that at no time, for no purpose, from a few minutes before this unfortunate girl arrived, until he went upstairs, at 12:50, to ask Mrs. White to leave, had he been out of his office.

Then you tell me that an honest jury, with no motive but to do right, would accept the statement of this man Frank, that he might have been, these things occur so frequently that a man can't remember, and by that statement set aside what he said to his own detective, Harry Scott? Well, you can do it; you have got the power to do it; no king on the throne, no potentate has the power that is vested in the American jury. In the secret of your consultation room, you can write a verdict that outrages truth and justice, if you want to, and no power on earth can call you to account, but your conscience, but so long as you live, wherever you go, that conscience has got to be with you,—you can't get away from it; and if you do it, you will lose the peace of mind that goes with a clear conscience of duty done, and never again, so long as you shall last upon this earth, though others not knowing the truth might respect you, will you ever have your own self-esteem.

I have already talked to you about this time element. You made a mighty effort to break down little George Epps. You showed that McCoy didn't have a watch; have tried to show this man Kendley was a liar because he knew the little girl and felt that he knew in his heart who the murderer was. But there's one witness for the State against whom not a breath of suspicion has been apparent,—we impeached these men Matthews and Hollis by other witnesses besides George Epps and besides George Kendley and besides McCoy, and as to how that little girl got to that factory, gentlemen, this

man Mr. Kelley, who rode on the same car with Hollis, the same car that Hollis claims or Matthews claims that he rode on, knew the girl, knew Matthews, tells you and he's unimpeached and unimpeachable, and there's no suggestion here, even if you set the evidence of Epps and McCoy and Kendley aside, upon which an honest jury can predicate a doubt that this man Kelley of the street car company didn't tell the truth when he says that she wasn't on that car that this man Matthews says she was and she went around, because "I rode with Matthews and I know her and I know Matthews."

And Mr. Rosser says that he don't care anything about all this medical evidence,—he don't care anything about cabbage. I'm not going back on my raising here or anywhere, and I tell you, gentlemen, that there is no better, no more wholesome meal, and when the stomach is normal and all right, there is nothing that is more easily digested, because the majority of the substances which you eat takes the same length of time that cabbage requires. And I tell you that cabbage, corn bread and buttermilk is good enough for any man. I tell you, gentlemen of the jury, that Mr. Rosser's statement here, that he don't care anything for that evidence of Doctor Roy Harris about this cabbage which was taken out of that poor girl's stomach, is not borne out by the record in this case. It wouldn't surprise me if these able, astute gentlemen, vigilant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect that it might have upon you.

*Mr. Arnold.* There is not a word of evidence as to that; it is a grossly improper argument, and I move that that be withdrawn from the jury.

*Mr. Dorsey.* I don't state it as a fact, but I am suggesting it.

*Mr. Arnold.* He has no right to deduct it or suggest it, I just want Your Honor to reprove it—reprimand him and withdraw it from the jury; I just make the motion and Your Honor can do as you please.

I am going to show that there must have been something besides the training of these men, and I'm going to contrast them with our doctors.

*Mr. Arnold.* I move to exclude that as grossly improper. He says he is arguing that some physician was brought here because he was the physician of some member of the jury, it's grossly unfair and it's grossly improper and insulting, even, to the jury.

*Mr. Dorsey.* I say it is eminently proper and absolutely a legitimate argument.

*Mr. Arnold.* I just record my objection, and if Your Honor lets it stay in, you can do it.

*Mr. Dorsey.* Yes, sir; that wouldn't scare me, Your Honor.

The COURT. Well, I want to try it right, and I suppose you do. Is there anything to authorize that inference to be drawn?

*Mr. Dorsey.* Why sure; the fact that you went out and got general practitioners, that know nothing about the analysis of the stomach, know nothing about pathology.

The COURT. Go on, then.

*Mr. Dorsey.* I thought so.

*Mr. Arnold.* Does Your Honor hold that is proper—"I thought so?"

The COURT. I hold that he can draw any inference legitimately from the testimony and argue it—I do not know whether or not there is anything to indicate that any of these physicians was the physician of the family.

*Mr. Rosser.* Let me make the suggestion, Your Honor ought to know that before you let him testify it.

The COURT. He says he does not know it, he's merely arguing it from an inference he has drawn.

I can't see any other reason in God's world for going out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training with the analysis of tissues, like a pathologist has had, except upon that theory. And I am saying to you, gentlemen of the jury, that the number of doctors that these men put up here belie the statement of Mr. Rosser that he doesn't attach any importance to this cabbage proposition, because they knew, as you know, that it is a powerful factor in sustaining the State's case and breaking down the alibi of this defendant. It fastens and fixes and nails down with the accuracy only which a scientific fact can do, that this little girl met her death between the time she entered the office of the superintendent and the time Mrs. White came up the stairs at 12:35, to see her husband and found this defendant at the safe and saw him jump. You tell me that this Doctor Childs, this general practitioner, who don't



know anything about the action of the gastric juices on foods in the stomach, this man of the short experience of seven years, this gentleman, splendid gentleman though he is, from Michigan, can put his opinion against the eminent Secretary of the Georgia Board of Health, Doctor Roy Harris? I tell you no.

Now, briefly, let's run over this nervousness proposition. The man indicated nervousness when he talked to old man John Starnes, when Black went out to his house and he sent his wife down to give him nerve, although he was nearly dressed and she wasn't at all dressed, he betrayed his nervousness by the rapidity of his questions, by the form of his questions. But first, before we get to that, he warned old Newt Lee to come back there Saturday at four o'clock, and dutiful old darkey that he was, old Newt walked in and Frank then was engaged in washing his hands. Jim Conley hadn't come, but he was looking for Conley, and he sent old Newt Lee out, although Newt insisted that he wanted to sleep, and although he might have found a cozy corner on any floor in that factory, with plenty of sacks and cords and other things to make him a pallet, he wanted old man Newt to leave. Why? When Newt said he was sleepy he wanted him to leave so that he could do just exactly what old Jim Conley told you Frank made his promise to do,—he wanted an opportunity to burn that body, so that the City Police of Atlanta wouldn't have the Phagan mystery solved today, and probably it would not even be known that the girl lost her life in that factory.

His anxiety about Gantt going back into that building that afternoon, when he hung his head and said to Gantt that he saw a boy sweeping out a pair of shoes, and Gantt says "what were they, tan or black?" And ah, gentlemen, it looked like Providence had foreordained that this old, long-legged Gantt should leave, not only one pair, but two pairs. "What kind were they," he said; he gave him the name of one color, and then, as Providence would have it, old Gantt said, "ah, but I've got two pair," and then it

was that he dared not say, because he couldn't then say, that he saw that man also sweeping them out; then it was that he said "all right, Newt, go up with him and let him get them," and lo and behold, the shoes that this man Frank would have him believe were swept out, both tan and black were there. Gantt tells you how he acted; Newt tells you how he jumped. Rogers and Black, honest men when they went out there after Mr. Starnes had talked to him, tell you that he was nervous. Why? Why do you say you were nervous; because of the automobile ride? Because you looked into the face of this little girl and it was such a gruesome sight? I tell you, gentlemen of the jury, and you know it, that this man Frank needed, when he had his wife go down to the door, somebody to sustain him. I tell you that this man Frank, when he had his wife telephone Darley to meet him at the factory, did it because he wanted somebody to sustain him. I tell you, gentlemen of the jury, that, because he sent for Mr. Rosser,—big of reputation and big of brain, dominating and controlling, so far as he can, everybody with whom he comes in contact, the reason he wanted him at the Police Headquarters, and the reason he wanted Haas, was because his conscience needed somebody to sustain him.

And this man Darley! We had to go into the enemy's camp to get the ammunition, but fortunately, I got on the job and sent the subpoena, and fortunately Darley didn't know that he didn't have to come, and fortunately he came and made the affidavit, to which he stood up here as far as he had to because he couldn't get around it, in which Darley says "I noticed his nervousness; I noticed it upstairs, I noticed it downstairs," when they went to nail up the door. "When he sat in my lap going down to the Police Headquarters he shook and he trembled like an aspen leaf." I confronted him with the statement, in which he had said "completely undone." He denied it but said "almost undone." I confronted him with the statement that he had made, and the affidavit to which he had sworn, in which he had used

the language, "Completely unstrung," and now he changed it in your presence and said "almost completely unstrung."

You tell me that this man that called for breakfast at home, as Durant called for bromo seltzer in San Francisco, this man who called for coffee at the factory, as Durant called for bromo seltzer in San Francisco, you tell me that this man Frank, the defendant in this case, explains his nervousness by reason of the automobile ride, the view of the body,—as this man Durant, in San Francisco tried to explain his condition by the inhalation of gas,—you tell me, gentlemen of the jury, that these explanations are going to wipe out the nervousness that you know could have been produced by but one cause, and that is, the consciousness of an infamous crime that had been committed?

Old Newt Lee says that when he went back there that afternoon he found that inside door locked,—a thing that never had been found before he got there at four o'clock, a thing that he never had found. Old Newt Lee says that Frank came out of his office and met him out there by the desk, the place where he always went and said "All right, Mr. Frank," and that Frank had always called him in and given him his instructions. But Newt Lee says that night, when he went into the cellar, he found the light, that had always burned brightly turned back so that it was burning just about like a lightning bug. You tell me that old Jim Conley felt the necessity to have turned that light down? I tell you that that light was turned down, gentlemen, by that man, Leo M. Frank, after he went down there Saturday afternoon, when he discovered that Conley wasn't coming back to burn the body, to place the notes by the body, that Conley had written, and he turned it down in the hope that the body wouldn't be discovered by Newt Lee during that night.

Monday evening, Harry Scott is sent for, the Pinkerton man—and it didn't require any affidavit to hold old Scott down to the truth, though after my experience with that man Darley, I almost trembled in my boots for fear this

man Scott, one of the most material witnesses, although the detective of this defendant's company, might also throw me down. Scott says this man Frank, when he went there Monday afternoon, after he had anxiously phoned Schiff to see old man Sig Montag and get Sig Montag's permission—had phoned him three times—Scott says that he squirmed in his chair continually, crossed and uncrossed his legs, rubbed his face with his hand, sighed, twisted and drew long deep breaths. After going to the station Tuesday morning, just before his arrest—if he ever was arrested—just before his detention, at another time altogether from the time that Darley speaks of,—Darley, the man for whom he sent, Darley the man who is next to him in power, Darley the man that he wanted to sustain his nerve—Scott, your own detective, says that he was nervous and pale, and that when he saw him at the factory, his eyes were large and glaring. Tuesday morning, Waggoner, sent up there to watch him from across the street, says before the officers came to get him, he could see Frank pacing his office inside, through the windows, and that he came to the office window and looked out at him twelve times in thirty minutes,—that he was agitated and nervous on the way down to the station.

I want to read you here an excerpt from the speech of a man by the name of Hammond, when prosecuting a fellow by the name of Dunbar for the murder of two little children, it explains in language better than I can command, why all this nervousness:

"It was because the mighty secret of the fact was in his heart; it was the overwhelming consciousness of guilt striving within him; it was nature over-burdened with a terrible load; it was a conscience striving beneath a tremendous crushing weight; it was fear, remorse and terror—remorse for the past, and terror for the future. Spectral shadows were flitting before him"—the specter of the dead girl, the cord, the blood, arose. "The specter of this trial, of the prison, of the gallows and the grave of infamy. Guilt, gentlemen of the jury, forces itself into speech and conduct, and is its own betrayer."

Mr. Rosser said that once a thief, always a thief and eternally damned. Holy Writ, in giving the picture of the

death of Christ on the Cross, says that, when He suffered that agony, He said to the thief, "This day shalt thou be with Me in Paradise;" and unless our religion is a fraud and a farce, if it teaches anything, it is that man, though he may be a thief, may be rehabilitated, and enjoy a good character and the confidence of the people among whom he lives.

And this man Dalton, according to the unimpeached testimony of these people who have known him in DeKalb and Fulton since he left that crowd back yonder where he was a boy and probably wild and did things that were wrong, they tell you that today he is a man of integrity, notwithstanding the fact that he is sometimes tempted to step aside with a woman who has fallen so low as Daisy Hopkins. Did we sustain him? By more witnesses by far than you brought here to impeach him, and by witnesses of this community, witnesses that you couldn't impeach to save your life.

Did we sustain him? We not only sustained him by proof of general good character, but we sustained him by the evidence of this man, C. T. Maynard, an unimpeached and unimpeachable witness, who tells you, not when Newt Lee was there, during the three weeks that Newt Lee was there, but that on a Saturday afternoon in June or July, 1912, he saw with his own eyes this man Dalton go into that pencil factory with a woman. Corroboration of Conley? Of course, it's corroboration. The very fact, gentlemen of the jury, that these gentlemen conducting this case failed absolutely and ingloriously even to attempt to sustain this woman, Daisy Hopkins, is another corroboration of Conley.

But, ah! Mr. Rosser said he would give so much to know who it was that dressed this man Conley up,—this man about whom he fusses, having been put in the custody of the police force of the City of Atlanta. Why, if you had wanted to have known, and if you had used one-half the effort to ascertain that fact that you used when you sent somebody down yonder,—I forget the name of the man,—to Walton County

to impeach this man, Dalton, you could have found it out. And I submit that the man that did it, whoever he was, the man who had the charity in his heart to dress that negro up,—the negro that you would dress in a shroud and send to his grave,—the man that did that, to bring him into the presence of this Court deserves not the condemnation, but the thanks of this jury.

Let's see what Mr. William Smith, a man employed to defend this negro Conley, set up in response to the rule issued by His Honor, Judge Roan, and let's see now if they are not all sufficient reasons why Conley should not have been delivered into the custody of the city police of Atlanta, though they are no better, but just as good as the sheriff of this county. "Respondent (Jim Conley, through his attorney) admits that he is now held in custody, under orders of this Court, at the police prison of the City of Atlanta, having been originally held in the prison of Fulton County, also under order of this Court, the cause of said commitment by this Court of respondent being the allegation that respondent is a material witness in the above case,—that of The State against Leo M. Frank—in behalf of The State, and it is desired to insure the presence of respondent at the trial of the above case." So he couldn't get away, in order to hold him. "Respondent admits that he is now at the city police prison at his own request and instance, and through the advice and counsel of his attorney. Respondent shows to the Court that the city police prison is so arranged and so officered that respondent is absolutely safe as to his physical welfare from any attack that might be made upon him; that he is so confined that his cell is a solitary one, there being no one else even located in the cell block with him; that the key to his cell block and the cell of respondent is always in the possession of a sworn, uniformed officer of the law; that under the instruction of Chief of Police Beavers, said sworn officers are not allowed to permit any one to approach."

Judge Roan did it,—no reflection on the sheriff, but with the friends of this man Frank pouring in there at all hours

of the night, offering him sandwiches and whiskey and threatening his life, things that this sheriff, who is as good as the chief of police but no better, couldn't guard against because of the physical structure of the jail, Jim Conley asked, and His Honor granted the request, that he be remanded back into the custody of the honorable men who manage the police department of the City of Atlanta.

*Mr. Rosser.* No, that's a mistake, that isn't correct, Your Honor discharged him from custody—he said that under that petition Your Honor sent him back to the custody where you had him before, and that isn't true, Your Honor discharged him, vacated the order, that's what you did.

*Mr. Dorsey.* Here's an order committing him down there first—you are right about that, I'm glad you are right one time.

*Mr. Rosser.* That's more than you have ever been.

*Mr. Dorsey.* No matter what the outcome of the order may have been, the effect of the order passed by His Honor, Judge Roan, who presides in this case, was to remand him into the custody of the police of the City of Atlanta.

*Mr. Rosser.* I dispute that; that isn't the effect of the order passed by His Honor, the effect of the order passed by His Honor was to turn him out, and they went through the farce of turning him out on the street and carrying him right back. That isn't the effect of Your Honor's judgment. In this sort of case, we ought to have the exact truth.

*The Court.* This is what I concede to be the effect of that ruling: I passed this order upon the motion of State's counsel, first, is my recollection, and by consent of Conley's attorney—

*Mr. Rosser.* I'm asking only for the effect of the last one.

*The Court.* On motion of State's counsel, consented to by Conley's attorney, I passed the first order, that's my recollection. Afterwards, it came up on motion of the Solicitor General, I vacated both orders, committing him to the jail and also the order, don't you understand, transferring him; that left it as though I had never made an order, that's the effect of it.

*Mr. Rosser.* Then the effect was that there was no order out at all?

*The Court.* No order putting him anywhere.

*Mr. Rosser.* Which had the effect of putting him out?

*The Court.* Yes, that's the effect, that there was no order at all.

*Mr. Dorsey.* First, there was an order committing him to the common jail of Fulton County; second, he was turned over to the custody of the police of the City of Atlanta, by an order of Judge L. S. Roan; third, he was released from anybody's custody, and except for the determination of the

police force of the City of Atlanta, he would have been a liberated man, when he stepped into this Court to swear, or he would have been spirited out of the State of Georgia so his damaging evidence couldn't have been adduced against this man.

But yet you say Conley is impeached? You went thoroughly into this man Conley's previous life. You found out every person for whom he had worked, and yet this lousy, disreputable negro is unimpeached by any man except somebody that's got a hand in the till of the National Pencil Company, unimpeached as to general bad character, except by the hirelings of the National Pencil Company. And yet you would have this jury, in order to turn this man loose, over-ride the facts of this case and say that Conley committed this murder, when all you have ever been able to dig up against him is disorderly conduct in the Police Court. Is Conley sustained? Abundantly. Our proof of general bad character, the existence of such character as can reasonably be supposed to cause one to commit an act like we charge, our proof of general bad character, I say, sustains Jim Conley. Our proof of general bad character as to lasciviousness not even denied by a single witness, sustains Jim Conley. Your failure to cross-examine and develop the source of information of these girls put upon the stand by the State,—these "hair-brained fanatics," as Mr. Arnold called them, without rhyme or reason, sustains Jim Conley. Your failure to cross-examine our character witnesses with reference to this man's character for lasciviousness sustains Jim Conley. His relations with Miss Rebecca Carson, the lady on the fourth floor, going into the ladies' dressing room even in broad daylight and during working hours, as sustained by Miss Kitchens.

His relations with Miss Rebecca Carson, who is shown to have gone into the ladies' dressing room, even in broad daylight and during work hours, by witnesses whose names I can't call right now, sustains Jim Conley. Your own witness, Miss Jackson, who says that this libertine and rake



came, when these girls were in there reclining and lounging after they had finished their piece work, and tells of the sardonic grin that lit his countenance, sustains Jim Conley. Miss Kitchens, the lady from the fourth floor, that, in spite of the repeated assertion made by Mr. Arnold, you didn't produce, and her account of this man's conduct when he came in there on these girls, whom he should have protected and when he should have been the last man to go in that room, sustains Jim Conley; and Miss Jackson's assertion that she heard of three or four other instances and that complaint was made to the foreladies in charge, sustains Jim Conley. Darley and Mattie Smith, as to what they did even on the morning of Saturday, April 26th, even going into the minutest details, sustain Jim Conley. McCrary, the old negro that you praised so highly, the man that keeps his till filled by money paid by the National Pencil Company, as to where he put his stack of hay and the time of day he drew his pay, sustains Jim Conley. Monteen Stover, as to the easy-walking shoes she wore when she went up into this man's Frank's room, at the very minute he was back there in the metal department with this poor little unfortunate girl, sustains Jim Conley. Monteen Stover, when she tells you that she found nobody in that office, sustains Jim Conley, when he says that he heard little Mary Phagan go into the office, heard the footsteps of the two as they went to the rear, he heard the scream and he saw the dead body because Monteen says there was nobody in the office, and Jim says she went up immediately after Mary had gone to the rear. Lemmie Quinn, your own dear Lemmie,—as to the time he went up and went down into the streets with the evidence of Mrs. Freeman and Hall, sustains Jim Conley. Frank's statement that he would consult his attorneys about Quinn's statement that he had visited him in his office sustains Jim Conley. Dalton, sustained as to his life for the last ten years, here in this community and in DeKalb, when he stated that he had seen Jim watching before on Saturdays and holidays, sustains

Jim Conley. Daisy Hopkins' awful reputation and the statement of Jim, that he had seen her go into that factory with Dalton, and down that scuttle hole to the place where that cot is shown to have been, sustains Jim Conley. The blood on the second floor, testified to by numerous witnesses, sustains Jim Conley. The appearance of the blood, the physical conditions of the floor when the blood was found Monday morning, sustains Jim Conley. The testimony of Holloway, which he gave in the affidavit before he appreciated the importance, coupled with the statement of Boots Rogers that that elevator box was unlocked, sustains Jim Conley. Ivey Jones, the man who says he met him in close proximity to the pencil factory on the day this murder was committed, the time he says he left that place, sustains Jim Conley. Albert McKnight, who testified as to the length of time that this man Frank remained at home, and the fact that he hurried back to the factory, sustains Jim Conley. The repudiated affidavit, made to the police, in the presence of Craven and Pickett, of Minola McKnight, the affidavit which George Gordon, the lawyer, with the knowledge that he could get a habeas corpus and take her within thirty minutes out of the custody of the police, but which he sat there and allowed her to make, sustains Jim Conley. The use of that cord, found in abundance, to choke this girl to death, sustains Jim Conley. The existence of the notes alone sustains Jim Conley, because no negro ever in the history of the race, after having perpetrated rape or robbery, ever wrote a note to cover up the crime. The note paper on which it is written, paper found in abundance on the office floor and near the office of this man Frank, sustains Jim Conley. The diction of the notes, "this negro did this," and old Jim throughout his statement says "I done," sustains Jim Conley.

*Mr. Rosser.* I have looked the record up, and Jim Conley says, "I did it," time and time again. He said "I disremember whether I did or didn't," he says "I did it"—

*Mr. Dorsey.* They would have to prove that record before I would believe it.

*Mr. Rosser.* He says time and time again "I disremember whether I did or not"; he says "I did it," page after page, sometimes three times on a page. I've got the record, too. Of course, if the Almighty God was to say it you would deny it.

*Mr. Dorsey.* Who reported it?

*Mr. Rosser.* Pages 496, (Mr. Rosser here read a list of page numbers containing the statement referred to.)

*Mr. Arnold.* I want to read the first one before he caught himself, on page 946, I want to read the statement—

*Mr. Dorsey.* Who reported it, that's what I want to know.

*Mr. Arnold.* This is the official report and it's the correct report, taken down by the official stenographer, and he said, "Now when the lady comes I'll stamp like I did before," "I says all right, I'll do just as you say and I did."

*Mr. Dorsey.* He's quoting Frank here, "and he says now when the lady comes I'll stamp like I did."

*Mr. Arnold.* "I says all right, I'll do just as you say, and I did as he said." He has got it both ways, "I did it," and "I done it," you can find it both ways.

*Mr. Dorsey.* The jury heard that examination and the cross-examination of Jim Conley, and every time it was put to him he says "I done it."

*Mr. Rosser.* And I assert that's not true, the stenographer took it down and he took it down correctly.

*Mr. Dorsey.* I'm not bound by his stenographer.

*Mr. Rosser.* I know, you are not bound by any rule of right in the universe.

*The Court.* If there's any dispute about the correctness of this report, I will have the stenographer to come here.

*Mr. Parry.* I reported 1 to 31 myself, and I think I can make a statement that will satisfy Mr. Dorsey: The shorthand character for "did" is very different from "done," there's no reason for a reporter confusing those two. Now, at the bottom of this page—I see I reported it myself, and that was what he said, quoting "All right, I'll do just as you say and I did as he said." Now, as I say, my characters for "did" and "done" are very different and shouldn't be confused—no reason for their being confused.

*The Court.* Well, is that reported or not correctly?

*Mr. Parry.* That was taken as he said it and written out as he said it.

*Mr. Dorsey.* Let it go, then, I'll trust the jury on it.

Maybe he did, in certain instances, say that he did so and so, but you said in your argument that if there is anything in the world a negro will do, it is to pick up the language of the man for whom he works; and while I'll assert that there are some instances you can pick out in which he used that

word, that there are other instances you might pick showing that he used that word "I done," and they know it. All right, leave the language, take the context.

These notes say, as I suggested the other day, that she was assaulted as she went to make water. And the only closet known to Mary, and the only one that she would ever have used is the closet on the office floor, where Conley says he found the body, and her body was found right on the route that Frank would pursue from his office to that closet, right on back also to the metal room. The fact that this note states that a negro did it by himself, shows a conscious effort on the part of somebody to exclude and limit the crime to one man, and this fact sustains Conley. Frank even, in his statement sustains him, as to his time of arrival Saturday morning at the factory, as to the time of the visit to Montags, as to the folder which Conley says Frank had in his hands, and Frank in his statement says that he had the folder. Conley is sustained by another thing: This man Harry White, according to your statement got \$2.00. Where is the paper, where is the entry on any book showing that Frank ever entered it up on that Saturday afternoon when he waited for Conley and his mind was occupied with the consideration of the problem as to what he should do with the body. Schiff waited until the next week and would have you believe there was some little slip that was put in a cash box showing that this \$2.00 was given White, and that slip was destroyed. Listen to this: "Arthur White borrowed \$2.00 from me in advance on his wages. When we spend, of course, we credit it; there was a time, when we paid out money we would write it down on the book and we found it was much better for us to keep a little voucher book and let each and every person sign for money they got."

"Let each and every person sign for money they got," says Frank in his statement, "and we have not only this record, but this record on the receipt book." And notwithstanding that you kept a book and you found it better to keep this little voucher book and let each and every person

sign for money they got, notwithstanding the fact that you say that you kept a book for express and kerosene and every other conceivable purpose for which money was appropriated, you fail and refuse, because you can't, produce the signature of White, or the entry in any book made by Frank showing that this man White ever got that money, except the entry made by this man Schiff some time during the week thereafter.

I tell you, gentlemen of the jury, that the reason that Frank didn't enter up, or didn't take the receipt from White about the payment of that money, was because his mind and conscience were on the crime that he had committed. This expert in bookkeeping, this Cornell graduate, this man who checks and re-checks the cash, you tell me that if things were normal that he would have given out to that man White this \$2.00 and not have taken a receipt, or not have made an entry himself on some book, going to show it? I tell you there's only one reason why he didn't do it. He is sustained by the evidence in this case and the statement of Frank that he had relatives in Brooklyn. The time that Frank says that he left that factory sustains old Jim.

When old Jim Conley was on the stand, Mr. Rosser put him through a good deal of questioning with reference to some fellow by the name of Mincey. Where is Mincey? Echo answers "Where?" Either Mincey was a myth, or Mincey was such a diabolical perjurer that this man knew that it would nauseate the stomach of a decent jury to have him produced. Where is Mincey? And if you weren't going to produce Mincey, why did you parade it here before this jury? The absence of Mincey is a powerful fact that goes to sustain Jim Conley, because if Mincey could have contradicted Jim Conley, or could have successfully fastened an admission on old Jim that he was connected in any way with this crime, depend upon it, you would have produced him if you had to comb the State of Georgia with a fine-tooth comb, from Rabun Gap to Tybee Light.

Gentlemen, every act of that defendant proclaims him

guilty. Gentlemen, every word of that defendant proclaims him responsible for the death of this little factory girl. Gentlemen, every circumstances in this case proves him guilty of this crime. Extraordinary! Yes, but nevertheless true, just as true as Mary Phagan is dead. She died a noble death, not a blot on her name. She died because she wouldn't yield her virtue to the demands of her superintendent. I have no purpose and have never had from the beginning in this case that you oughtn't to have, as an honest, upright citizen of this community. In the language of Daniel Webster, I desire to remind you "that when a jury, through whimsical and unfounded scruples, suffers the guilty to escape, they make themselves answerable for the augmented danger to the innocent."

Your Honor, I have done my duty. I have no apology to make. Your Honor, so far as the State is concerned, may now charge this jury,—this jury who have sworn that they were impartial and unbiased, this jury who, in this presence, have taken the oath that they would well and truly try the issue formed on this bill of indictment between the State of Georgia and Leo M. Frank, charged with the murder of Mary Phagan; and I predict, may it please Your Honor, that under the law that you give in charge and under the honest opinion of the jury of the evidence produced, there can be but one verdict, and that is: We the jury find the defendant, Leo M. Frank, guilty! guilty! guilty!

*August 25.*

*Mr. Arnold* asked that the jury be ordered to retire as he had an application to make which he did not desire it should hear.

The COURT acquiesced and the jury retired.

*Mr. Arnold.* I make a motion for a mistrial, and I wish to name the facts on which we make it. We wish to prove every fact included in this motion, unless the court already knows it. We base our motion on the following facts:

First, at the beginning of this trial counsel for the defendant requested that the court room be cleared.

Second, when the court refused to rule out evidence relating to women, the audience applauded loudly. The jury was in the court room twenty feet away and heard the applause.

Third, on Friday, August 22, when court had just adjourned for the day, when the jury was 200 feet north of the courthouse on

South Pryor street, a large crowd cheered the solicitor, crying, "Hurrah for Dorsey."

Fourth, on Saturday, August 23, 1913, when the jury was only 100 feet away from the courthouse, in the German cafe, a crowd in front of the courthouse loudly cheered the solicitor as he came out, and afterward a portion of the crowd moved up in front of the cafe and repeated their cheers.

Fifth, that on the last day of the trial, namely Monday, a large crowd of women had assembled in the courtroom and taken their seats before court opened; that as Mr. Dorsey entered the courthouse he was loudly cheered; and that the jury in rooms not more than twenty feet away must have heard the demonstration plainly.

Sixth, that these demonstrations tended to coerce and intimidate the jury and influence their verdict in the case.

Your Honor, in the event you do not take cognizance of these facts yourself and certify to them, we stand ready to prove them all. The behavior of the spectators throughout this trial has been disgraceful. This man has had anything in the world but a fair trial. I am not afraid of this crowd, and I hope no one else is, but their demonstrations tend to intimidate the jury.

*Mr. Dorsey.* We deny there were any shouts of "Hurrah for Dorsey!" And we contend that it is ridiculous to claim they amounted to anything even if they were. You have the right to charge the jury that if they heard any of these cheers, to pay no attention to them, just as you charged the jury to pay no attention to that newspaper headline which you inadvertently allowed them to see.

JUDGE ROAN. Of course I heard the cheers this morning, and the cheers Saturday afternoon. But I do not know what was said.

*Mr. Arnold.* Do you deny, Mr. Solicitor, that there were cheers of "Hurrah for Dorsey?"

*Mr. Dorsey.* I heard the noise, but I heard no such cheers as that.

*Mr. Arnold.* We want an opportunity, your Honor, to prove these facts unless you are willing to certify to them yourself.

JUDGE ROAN. Whether the jury was influenced this morning, I don't know. What was said Saturday, I don't know. As to the jury being in the German cafe Saturday afternoon, and as to a portion of the crowd moving up in front of the cafe, and continuing the demonstration, I don't know.

*Mr. Arnold.* Then we have to prove our facts. Where are these men that had charge of the jury? I understand the solicitor demurs to this action.

JUDGE ROAN. No, I don't understand that he demurs.

*Mr. Dorsey.* Your Honor I deny and demur, too.

*R. V. Davers.* Am a deputy sheriff; was not in charge of the jury on Friday, but was one of the men in charge on Saturday; the jury was near the German

cafe when the applause began and I heard the applause; did not hear cries of "Hurrah for Dorsey;" the jury could have heard the applause and cheers;

after they went inside the cafe did not hear any more cheers or applause.

*Cross-examined.* The crowd was in front of the courthouse; I could not hear the words they said, but only the noises and the handclaps; no one came inside of the cafe after the jury entered; heard nothing on the outside after they went in; do not know whether Solicitor Dorsey was in the courthouse or outside of the courthouse when cheering commenced.

*Mr. Arnold.* As Mr. Dorsey left the courtroom Friday afternoon I heard loud cheering in front of the courthouse; on Saturday I asked the Solicitor not to leave the courtroom until the jury had gotten out of hearing, to which the Solicitor readily agreed; after we had waited several minutes, we thought the jury was out of hearing, and the Solicitor left the courtroom with

me; as the Solicitor stepped into the street there were loud and excited cheers and cries of "Hurrah for Dorsey;" in my judgment these cries could have been heard as far as Alabama street.

*To Mr Hooper.* Do not know where the jury was at the time, except by information; did not hear this trial mentioned by the crowd; did not hear the crowd mention Frank's name. At any other time, I would be glad for my friend Dorsey to get all the approbation he can. But on this occasion I think the conduct of the crowd was shameful. In my judgment, if the jury is composed of men of ordinary hearing, they could have heard what I heard.

*Charles F. Huber.* Am one of the deputies who was in charge of the jury on Friday; did not know of the cheers on Friday until Saturday morning. (Laughter.)

*Mr. Arnold.* Why, your Honor! you can't even keep them quiet now, here in the courtroom. I wish to state in the record, Mr. Stenographer, that while a witness was being examined in support of the motion, quite a demonstration took place in the courtroom unfavorable to the defendant. Will your Honor certify to that?

JUDGE ROAN. I will certify to what happened.

*Mr. Arnold.* Will you decline to certify, your Honor, that I asked you before this trial commenced to clear the courtroom?

JUDGE ROAN. No, I won't decline to do that.

*Mr. Arnold.* We want an opportunity, your Honor, to complete our showing on this motion; some of the other deputies are not here.

JUDGE ROAN. I will overrule the motion for a mistrial, charge the jury, and then give the attorneys for the defense an opportunity to summon other witnesses and complete what showing they desire to make on the motion.

The jury were recalled, and entered the courtroom.

### THE CHARGE TO THE JURY.

JUDGE ROAN: Gentlemen of the jury. This bill of indictment charges Leo M. Frank with the offense of murder. The charge is that Leo M. Frank, in this county, on the 26th



day of April of this year, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the Grand Jury of this county recently empaneled Leo M. Frank, the defendant, files a plea of not guilty. The charge as made by the bill of indictment on the one hand and his plea of not guilty filed thereto form the issue, and you, gentlemen of the jury, have been selected, chosen and sworn to try the truth of this issue.

Leo M. Frank, the defendant, commences the trial of this issue with the presumption of innocence in his favor, and this presumption of innocence remains with him to shield him and protect him until the state shall overcome it and remove it by evidence offered to you, in your hearing and presence, sufficient in its strength and character to satisfy your minds beyond a reasonable doubt of his guilt of each and every material allegation made by the bill of indictment.

I charge you, gentlemen, that all of the allegations of this indictment are material and it is necessary for the state to satisfy you of their truth by evidence that convinces your minds beyond a reasonable doubt of his guilt before you would be authorized to find a verdict of guilty.

You are not compelled to find, from the evidence, his guilt beyond any doubt, but beyond a reasonable doubt, such a doubt as grows out of the evidence in the case, or for the want of evidence, such a doubt as a reasonable and impartial man would entertain about matters of the highest importance to himself after all reasonable efforts to ascertain the truth. This does not mean a fanciful doubt, one conjured up by the jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Murder is defined to be the unlawful killing of a human being, in the peace of the state, by a person of sound memory and discretion, with malice aforethought either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart.

There is no difference between express and implied malice except in the mode of arriving at the fact of its existence. The legal sense of the term "malice" is not confined to particular animosity to the deceased, but extends to an evil design in general. The popular idea of malice in its sense of revenge, hatred, ill will, has nothing to do with the subject. It is an intent to kill a human being in a case where the law would neither justify nor in any degree excuse the intention if the killing should take place as intended. It is a deliberate intent unlawfully to take human life, whether it springs from hatred, ill will or revenge, ambition, avarice or other like passion. A man may form the intent to kill, do the killing instantly, and regret the deed as soon as done. Malice must exist at the time of the killing. It need not have existed any length of time previously.

When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the state to make out its case, or from the evidence offered by the defendant or the defendant's statement.

Gentlemen of the jury, you are made by law the sole judges of the credibility of the witnesses and the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empaneled and sworn in this case—to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth?

The rules of evidence are framed with a view to this prominent end—seeking always for pure sources, and the highest evidence.

Direct evidence is that which immediately points to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable doubt hypothesis save that of the guilt of the accused.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case.

It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which otherwise would be clear.

However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to

convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised by his good character, and to acquit him.

The "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good. When a defendant has put his character in issue, the state is allowed to attack it by proving that his general reputation is not good, or by showing that the witnesses who have stated that his character is good, have untruly reported it.

Hence, the Solicitor General has been allowed to cross-examine the witnesses for the defense who were introduced to testify to his good character. In the cross-examination of these witnesses, he was allowed to ask them if they had not heard of various acts of misconduct on the defendant's part. The Solicitor General had the right to ask any question along this line he pleased, in order thoroughly to sift the witnesses, and to see if anything derogatory to the defendant's reputation could be proved by them.

The Court now wishes to say to you that, although the Solicitor General was allowed to ask the defendant's character witnesses these questions as to their having heard of various acts of alleged misconduct on the defendant's part the jury is not to consider this as evidence that the defendant has been guilty of any such misconduct as may have been indicated in the questions of the Solicitor General, or any of them, unless the alleged witnesses testify to it. Furthermore,

where a man's character is put in evidence, and in the course of the investigation any specific act of misconduct is shown, this does not go before the jury for the purpose of showing affirmatively that his character is bad or that he is guilty of the offense with which he stands charged, but is to be considered by the jury only in determining the credibility and the degree of information possessed by those witnesses who have testified to his good character.

When the defendant has put his character in issue, the state is allowed to bring witnesses to prove that his general character is bad, and thereby to disprove the testimony of those who have stated that it is good. The jury is allowed to take this testimony, and have the right to consider it along with all the other evidence introduced on the subject of the general character of the defendant, and it is for the jury finally to determine from all the evidence whether his character was good or bad. But a defendant is not to be convicted of the crime with which he stands charged, even though, upon a consideration of all the evidence, as to his character the jury believes that his character is bad unless from all the other testimony in the case they believe that he is guilty beyond a reasonable doubt.

You will, therefore, observe that this is the rule you will be guided by in determining the effect to be given to the evidence on the subject of the defendant's character. If, after considering all the evidence pro and con on the subject of the defendant's character, you believe that prior to the time of Mary Phagan's death he bore a good reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's guilt, if it so impress your minds and consciences, after considering it along with all the other evidence in the case; and if it does you should give the defendant the benefit of the doubt and acquit him. However, though you should believe his general character was good, still if, after giving due weight to it as one of the facts in the case, you believe from

the evidence as a whole that he is guilty beyond a reasonable doubt, you would be authorized to convict him.

If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say, "We, the jury, find the defendant guilty." Should you go no further, gentlemen, and say nothing else in your verdict, the Court would have to sentence the defendant to the extreme penalty for murder, to wit: to be hanged by the neck until he is dead. But should you see fit to do so, in the event you arrive at the conclusion and belief beyond a reasonable doubt from the evidence that this defendant is guilty, then, gentlemen, you would be authorized in that event, if you saw fit to do so, to say: "We, the jury, find the defendant guilty, and we recommend that he be imprisoned in the penitentiary for life." In the event you should make such a verdict as that, then the Court, under the law, would have to sentence the defendant to the penitentiary for life.

You have heard the defendant make his statement. He had the right to make it under the law. It is not made under oath and he is not subject to examination or cross-examination. It is with you as to how much of it you will believe or how little of it. You may go to the extent, if you see fit, of believing it in preference to the sworn testimony in the case.

In the event, gentlemen, you have a reasonable doubt from the evidence, or the evidence and the statement together, or either, as to the defendant's guilt as charged, then give the prisoner the benefit of that doubt and acquit him; and in the event you do acquit him the form of your verdict would be: "We, the jury, find the defendant not guilty." As honest jurors do your utmost to reach the truth from the evidence and statement as you have heard it here, then let your verdict speak it.

At 12:45 the *Jury* retired.

## THE VERDICT AND SENTENCE.

At 4:55 the *Jury* returned into court with a verdict of *guilty*.

The courtroom had been cleared of spectators; the prisoner himself, as well as his counsel, were absent (see *post*, p. 410) and only the Judge, the officers of the court and the state counsel and some other members of the bar were present.

When the verdict was rendered, the windows of the courtroom were closed on account of the noise made by the crowd in the streets.<sup>a</sup>

<sup>a</sup> "While the jury was out nearly four hours, and each and every member was pledged to secrecy, it is definitely known that only one ballot was taken and that the verdict was reached in a comparatively short time. When the crowd that filled the court room was driven out Monday afternoon on the order of Judge Roan, it flowed to the streets to await the verdict, increasing in size as the minutes passed.

"A veritable honeycomb of humanity spread over the section from Whitehall to Central avenue, on Hunter street, and from Alabama to Mitchell on Pryor. Men and women clung to the walls of buildings and sat in doorways. Windows were crowded with women and girls and children. It was as though a street audience had gathered to watch an eventful procession. The shrill orders of the mounted policemen arose over the hum of the crowd. A knot of men clustered around the press room, the windows of which front Hunter street, just opposite the new court house building. As the reporters at the telephone shouted the verdict to their offices, the word came through the windows. It was received with a shout. The cry of guilty took winged flight from lip to lip. It traveled like the rattle of musketry. Then came a combined shout that rose to the sky. Pandemonium reigned. Hats went into the air. Women wept and shouted by turns.

"A great ovation was accorded Solicitor General Dorsey. As he appeared in the doorway of the court house while the crowd yelled its reception of the Frank verdict, there came a mighty roar."—*Atlanta Constitution*, Aug. 26, 1913.

"The jury reached their verdict within two hours after Frank's life had been placed in their hands. On the first ballot the vote was ten for conviction, one blank and one doubtful. The second ballot was taken just one hour later, and resulted in a unanimous vote for conviction."—*Atlanta Journal*, Aug. 26, 1913.

"Two thousand people, mostly men, awaited the announcement of the verdict in the streets around the court house and the demonstration following the news of the verdict drew double that number to the scene. The windows of the court room were ordered closed, so great was the din from without the court. As the solicitor passed

JUDGE ROAN: Mr. Sheriff, I will pass sentence tomorrow. Have the prisoner here. I will notify you in time of the hour. Gentlemen of the jury, I thank you for your patient service in this case. This has been the longest trial I have ever participated in, and I dare say the longest you ever have or ever will. Thanking you again for your long and faithful service and arduous labors the Court will now dismiss you. The state will furnish your script for twenty-nine days.

*August 26.*

JUDGE ROAN: Mr. Frank, stand up. The jury which has been trying you for days or rather for weeks, on yesterday afternoon rendered a verdict finding you guilty of murder. It is now my duty as the presiding judge of this court to pass the sentence of the law upon you for that offense. Before I pass that sentence, have you anything to say, wherefore it should not be passed.

*Frank:* I say now, as I have always said, that I am innocent. Further than that my case is in the hands of my counsel.

JUDGE ROAN: Mr. Frank, I have tried to see that you had a fair trial for the offense for which you have been indicted. I have the consciousness of knowing that I have made every effort, as the law requires me to do, to see that your trial was fair. Your counsel has notified me that a motion for a new

from the court house door he was picked up bodily by members of the waiting crowd, and on their shoulders carried to his office in the Kiser building across Pryor street. The shouting was deafening when the solicitor appeared in the street. Two ballots were cast by the jury before an agreement was reached. The first ballot cast showed eleven members for a verdict of guilty without the recommendation of mercy and one in doubt. After one more ballot, an hour later, the twelfth man came over to the majority and made the early verdict possible. Judge Roan declared that never in all of his experience had he witnessed such a demonstration following the announcement of a verdict. The shout from the 2,000 gathered outside the court room attracted more, and in ten minutes after the verdict was made public the crowd was so great that the police reserves began riding through it in an effort to disperse it."—*Atlanta Journal*, Aug. 26, 1913.



trial will be filed in due order, and it will be duly heard. It is now my duty to pronounce the formal sentence of the law upon you, which I will read in open court. Indictment for murder, Fulton superior court, May term, 1913. Verdict of guilty, July term, 1913. Whereupon, it is considered, ordered and adjudged by the court that the defendant, Leo M. Frank, be taken from the bar of this court to the common jail of the county of Fulton, and that he be there safely kept until his final execution in the manner fixed by law. It is further ordered and adjudged by the court that on the tenth day of October, 1913, the defendant, Leo M. Frank, shall be executed by the sheriff of Fulton county in private, witnessed only by the executing officer, a sufficient guard, the relatives of such defendant, and such clergymen and friends as he may desire; such execution to take place in the common jail of Fulton county, and that said defendant on that day, between the hours of 10 o'clock a. m. and 2 o'clock p. m. be by the sheriff of Fulton county hanged by the neck until he shall be dead, and may God have mercy on his soul.

The following protest was issued by the prisoner's attorneys and published in the Atlanta newspapers of August 26:

We deem it not amiss to make a short statement, as the attorneys of Leo M. Frank, to the public. The trial which has just occurred and which has resulted in Mr. Frank's conviction, was a farce and not in any way a trial. In saying this, we do not make the least criticism of Judge Roan, who presided. Judge Roan is one of the best men in Georgia and is an able and conscientious judge. The temper of the public mind was such that it invaded the court room and invaded the streets and made itself manifest at every turn the jury made; and it was just as impossible for this jury to escape the effects of this public feeling as if they had been turned loose and had been permitted to mingle with the people. In doing this we are making no criticism of the jury. They were only men and unconsciously this prejudice rendered any other verdict impossible. It would have required a jury of stoics, a jury of Spartans to have withstood this situation. The time ought to come when this man will get a fair trial, and we profoundly believe that it will. The final judgment of the American people is a fair one. It is sometimes delayed in coming, but it comes. We entered into this case with the profound conviction of Mr. Frank's innocence. The result has not changed our opinion. Every step of the trial has intensified and fortified our profound conviction of his innocence.

L. Z. Rosser,  
R. R. Arnold.

THE SUBSEQUENT HISTORY OF THE CASE—THE  
APPEALS TO THE COURTS—THE COMMUTA-  
TION BY THE GOVERNOR—THE LYNCH-  
ING OF THE PRISONER.

October 31, 1913, Judge Roan denied the motion for a new trial; February 17, 1914, the Supreme Court of Georgia affirmed the verdict of the lower court by a vote of four to two, and February 25, unanimously overruled a motion for rehearing.<sup>1</sup> March 7 Frank was sentenced for a second time, April 17 being set as the date for the execution. April 16 an extraordinary motion for a new trial was filed and sentence was again stayed. April 22, Judge B. H. Hill, former chief justice of the Court of Appeals,<sup>1a</sup> who had succeeded to the judgeship of Fulton Superior Court, denied the extraordinary motion for a new trial. April 25 Frank's sanity was examined and he was declared sane. November 14 the Georgia Supreme Court again denied a new trial<sup>2</sup> and on Novem-

<sup>1</sup>A large number of technical errors in procedure and in the admission of evidence and the prejudice of the jurymen were alleged by the prisoner's attorneys, but were all overruled by the Supreme Court. *Frank v. State*, 80 S. E. Rep. 1016. The Court also ruled that the disorder in the court room during the trial was not of such a character as to impugn its fairness or furnish ground for reversing the verdict; and that the cheering in the streets on the last day of the trial was not heard by the jury, and they had no knowledge of it until after they had rendered their verdict. The absence of the prisoner from the Court room when the verdict was given was not mentioned by his attorneys in this appeal. *Frank v. State*, 83 S. E. Rep. 33.

<sup>1a</sup> See *post*, p. 628.

<sup>2</sup> The error here alleged was the absence of the prisoner without his consent from the Court room when the verdict was rendered. *Frank v. State*, 83 S. E. Rep. 645. The Court stated the case in these words:

"At the time the verdict was received and the jury trying the case discharged, the defendant was in the custody of the law and incarcerated in the common jail of the county. He was not present when the verdict was received, and the jury discharged as he had the right in law to be, and as the law required he should be. He did not waive the right to be present, nor did he authorize anyone to waive it for him, nor consent that he should not be present. He did not know

ber 18, refused a writ of error. November 23, Mr. Justice Lamar, of the Supreme Court of the United States, refused a writ of error. November 25, Mr. Justice Holmes, of the United States Supreme Court, also refused a writ. December 7, the full bench of the United States Supreme Court refused a writ of error. December 9, Frank was re-sentenced

that the verdict had been rendered and the jury discharged until after the reception of the verdict and the discharge of the jury, and did not know of any waiver of his presence made by his counsel until after sentence of death had been pronounced upon him. On the day the verdict was rendered and before the judge who presided at the trial of the cause began his charge to the jury, the judge in the jury room of the court house wherein the trial was proceeding, privately conversed with two of the counsel of the defendant, and in the conversation referred to the probable danger of violence that the defendant would be in if he were present when the verdict was rendered, if the verdict should be one of acquittal; and after the judge had thus expressed himself he requested the counsel thus spoken to, to agree that the defendant need not be present at the time the verdict was rendered, and the jury was polled. In these circumstances the counsel did agree with the judge that the defendant should not be present at the rendition of the verdict. In the same conversation the judge expressed the opinion also to the counsel that even counsel of the defendant might be in danger if they should be present at the reception of the verdict. In these circumstances defendant's counsel, Rosser and Arnold, did agree with the judge that defendant should not be present at the rendition of the verdict. The defendant was not present at the conversation and knew nothing about any agreement made as above stated until after the verdict was received, and the jury was discharged and until after sentence of death was pronounced upon him. Pursuant to the conversation, neither of defendant's counsel were present when the verdict was received, and the jury discharged. Defendant says that he did not give counsel nor anyone else any authority to waive or renounce the right of the defendant to be present at the reception of the verdict or to agree that the defendant should not be present thereat; that the relation of client and attorney did not give them such authority, though counsel acted in the most perfect good faith and in the interest of the safety of the defendant. Defendant did not agree that his counsel or either of them might be absent when the verdict was rendered.

"Defendant says upon and because of the grounds above stated: The verdict was of no legal effect, and was void and in violation of article 1, Sec. 1, par. 3, of the Constitution of the State of Georgia, which provides that 'no person shall be deprived of life, liberty or property except by due process of law. That the reception of the verdict in the involuntary absence of the defendant, was in violation of and contrary to the provisions of Article 6, Sec. 18, par. 1, of the

to hang January 22, 1915. December 21 United States District Judge, W. T. Newman of Georgia, refused a writ of *habeas corpus*. December 28, 1914, Mr. Justice Lamar granted an appeal and certificate of reasonable doubt to the United States Supreme Court. April 19, 1915, the Supreme Court of the United States, with Mr. Justices Holmes and Hughes dissenting, dismissed the appeal.<sup>8</sup> May 31, Frank's plea for commutation of sentence to life imprisonment was heard before the State Prison Commission. June 9, 1915, the State Prison Commission submitted a divided report to Governor Slaton, Commissioners Davison and Rainey voting against, and Commissioner Paterson for commutation. June 21, Governor Slaton commuted Frank's sentence to life imprisonment and the prisoner was taken to Milledgeville to begin his sentence.

On July 17, 1915, Frank was attacked by a fellow convict who cut his throat with a butcher knife. He lingered between life and death for several weeks, but finally recovered.

Constitution of the State of Georgia, which provides that the right of trial by jury except where it is otherwise provided in this Constitution, shall remain inviolate. That the reception of the verdict in the absence of the defendant was contrary to and in violation of the provisions of the fourteenth amendment to the Constitution of the United States, to wit: 'Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' That the reception of the verdict in the absence of the defendant was in violation of Article 1, Sec. 1, par. 5, of the Constitution of the State of Georgia, to wit: 'Every person charged with an offense against the laws of this State shall have the privilege and benefit of counsel.' "

The Supreme Court ruled that because Frank was in court with his attorneys when he was sentenced and because later, within the time allowed by law, made a motion for a new trial, which recited, among other things his absence at the reception of the verdict, and that his presence had been waived by his counsel and his motion for new trial was refused by the trial court and its judgement affirmed by the Supreme Court, the defendant must be considered as having acquiesced in the waiver made by his counsel of his presence at the reception of the verdict, and he cannot at a subsequent date set up such absence as a ground to set aside the verdict.

<sup>8</sup> Frank v. Magnum, 237 U. S. 309.

At daybreak on August 17th, two miles northeast of Marietta, in Cobb County, Georgia, Frank was lynched by a mob. Mary Phagan's body was buried in the cemetery of this town. A number of men in automobiles arrived at the State Prison farm where Frank was serving his commuted life sentence, after dark on the evening of August 16th. These men cut the telephone wires, overpowered the guards, entered the hall where Frank was sleeping, carried him into one of the automobiles, and the journey was made during the night all the way to Marietta, Cobb County, a distance of some 125 miles. Frank was hanged to a tree by this mob. The mob was dissuaded from burning the body by some citizens who arrived on the scene after the hanging.<sup>4</sup> The body

<sup>4</sup> Marietta, Georgia. The scenes at the place where Leo M. Frank was hanged, were nerve wrecking. The crowd gathered with rapidity. They swarmed the road from both directions. They seemed to rise up out of the ground, so fast they came. The automobiles came careening, recklessly disregarding life and limb of occupants. Horse-drawn vehicles came at a gallop. Pedestrians came running. Women came, children came—even babies in arms. The sight of the body swaying in the wind with the red gaping wound in the throat, made some of the women sick, and they would utter little shrieks and groans and turn their heads away. Other women walked up to the packed mass of men, pushed their way into the pack and looked on the dead body without the quiver of an eye-lash. One of the first arrivals was a man in a frenzy of passion. He was bare-headed, coatless, his eyes blazing like the eyes of a maniac. He ran through the crowd, ran up to the body, threw up his hands, clinched his fist and shook them at the body. Then his hands opened and his fingers writhed. His fists closed again, and he shook them at the body. "Now we've got you," he screamed. "You won't murder any more innocent little girls. We've got you now. They won't put any monument over you. They are not going to get you. They are not going to get a piece of you as big as a cigar." The crowd yelled, and packed closer. At this juncture, a short, thick-set man ran up to the crowd, jostled his way through and pushed up to a place beside the man who was cursing the body. He climbed up on something so that he could see over the heads of the crowd. "Men, hear me," he said. It was Newton A. Morris, former Judge of Blue Ridge district, who had just arrived from Marietta, with Attorney John Wood, of Canton. They were attending at court, heard the news early Tuesday morning, and came at top speed to the scene. "Hear me, men," said Judge Morris. The crowd became quiet except for a mumbling by the man beside the body. "Citizens of Cobb County, listen to me, will you?" said Judge Morris. They gave a murmur of assent.

was cut down and carried to Atlanta and from there sent to Brooklyn where his parents lived.

"Whoever did this thing—" The man beside the body broke in with a shout: "God bless him, whoever he was." Judge Morris laid his hand on the man's shoulder and asked him to be quiet for a few minutes. "Whoever did this thing did a thorough job." "They shore did," chorused the crowd. "Whoever did this thing," said Judge Morris, "left nothing more for us to do. Little Mary Phagan is vindicated. Her foul murder is avenged. Now, I ask you, I appeal to you as good citizens of Cobb County, in the good name of our county, not to do more. I appeal to you to let the undertaker take it." The man by the body broke in again, "We are not going to let the undertaker have it," he shrieked. "We are not going to let them erect a monument over that thing. We are not going to let them have a piece of it as big as a cigar. We are going to burn it, that's what we are going to do. We are going to burn it. Come on, boys, let's burn the dirty thing." "Men, I appeal to you," he shouted, "don't do anything to this body. Let the undertaker have it. This man has a father and mother, and whatever we think of him, they are entitled to have the body of their son. Men, men, I appeal to you for the good name of the country. Let all who are in favor of giving this body over to the undertaker say 'Aye.'" There was a chorus of ayes. "Now, let all who oppose us say 'No.'" The man beside the body, at the top of his voice yelled "No." "Let all who are in favor of giving this body to the undertaker raise their hands," said Judge Morris. The hands of the crowd went up.—*St. Louis Globe-Democrat*, August 18, 1915.