

THE TRIAL OF LEO FRANK

REUBEN R. ARNOLD'S
ADDRESS TO THE COURT IN
HIS BEHALF

INTRODUCTION BY ALVIN V. SELLERS

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Introduction

ON Saturday, April 26, 1913, Mary Phagan left her Bellwood home—two miles away—to go to the office of the National Pencil Company in Atlanta, Ga., to collect the wages due her for some work she had done as an employee of the company; and then, perchance, to mingle with friends in the holiday crowds of that throbbing city.

It was just before noon on this Confederate Memorial Day that this girl of youth and beauty went away from that suburban home to which she was, alas! to return no more forever.

Her lifeless body was found early Sunday morning in the basement of the pencil factory in the very center of that Southern metropolis. There were marks of violence upon her person, and a cord was tightly drawn around her neck. She had died of strangulation.

By the body were found two notes purporting to have been written by the girl herself as she lay—a stricken prisoner—in that dark cellar of gloom and desolation.

Human reason rebelled at the weird suggestion that the girl had written the notes, and the con-

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clusion was irresistible that the writer and the murderer were one.

Leo M. Frank, the superintendent of the factory, stated that this little girl came to his office on the second floor of this factory building that early afternoon for her wages, that he gave her the amount due her, that she immediately left the office and that he saw her no more.

Searches for the girl's meager purse were vain and unavailing and the mystery of the murder deepened as the days wore away.

Specimens of various parties' handwriting were obtained and compared with the notes—with a relentless resolve to find the one who had destroyed that pure and radiant life in the bloom of its stainless morning.

Jim Conley, a negro employee of the factory, when asked for a specimen of his handwriting, proclaimed his inability to write. Written evidence, however, was found to the contrary and Conley, confronted with this proof, eventually admitted writing the notes, but said he wrote them for his employer Frank on the day before the girl was killed. He asserted that he was innocent of the murder and that he was not even at the factory on the day it was committed.

Frank was indicted by the Grand Jury and his trial began on July 28, 1913. Solicitor General Hugh M. Dorsey, assisted by E. A. Stephens and F. A. Hooper,

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appeared for the State. Luther Z. Rosser, Reuben R. Arnold and Herbert Haas represented the defendant.

At the trial Conley testified that he was at the factory on this Saturday afternoon, that he saw Mary Phagan enter and go up the stairway that led to the second floor, that presently he heard a scream; and that soon thereafter Frank told him he had approached her, she had resisted, he had struck her and she had fallen. He stated further that he and Frank carried the body down into the cellar and that he later went up into Frank's office where he, at Frank's request and dictation, wrote the notes that were afterwards found by the body of the dead girl.

Conley readily admitted that much of his evidence conflicted with previous affidavits he had made, but insisted that he was now telling the truth.

The defense contended that Conley's story was a fabrication; that Frank had no knowledge of the crime and had no motive to murder; that Conley himself killed the girl when she came down the stairs with her purse in her hand, and that after the evidence began to accumulate that he had written the notes he felt compelled—in order to save himself—to charge their *origin to another* and allege that *he*, not Conley, was the perpetrator of the deed.

Many witnesses were sworn by each side and the trial had entered its fifth week before it was concluded.

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Frank was convicted and sentence of death pronounced upon him. A motion for a new trial was made by his counsel, and the hearing of this motion took place later before the trial judge, Hon. L. S. Roan.

The address which follows was delivered at that hearing by Reuben R. Arnold, one of the most brilliant of Southern orators and one of the great lawyers of this great Union of States.

I am sure that all who appreciate forensic eloquence and like to read and study the masterpieces of the bar, will welcome the publication of Mr. Arnold's presentation of his client's defense in the South's most noted criminal case.

ALVIN V. SELLERS.

BAXLEY, GA., 1915.

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Speech of Mr. Arnold

MAY IT PLEASE YOUR HONOR:

It takes thirteen jurors to murder a man in cold blood. So that I feel I am not only justified but required, by the scope of Your Honor's authority and duty and the tremendous responsibility that rests upon you, to argue to the court the facts of this unusual case, and to give the reasons why the verdict of guilty should be set aside and a new trial granted.

In many respects, this is an unusual case. Unfortunately, murder is a frequent crime. The example of Cain is too often followed in this vale of tears, and this very community has had many killings that were horrible to contemplate.

That fact does not mitigate this offense, of course, in any degree—and this was an atrocious deed—but I do say, that while we have seen murder here as cruel as this, we have had no such trial as this.

The feeling here grows out of something over and beyond the mere facts of the crime, and if you will look down a little under the surface you will find the cause to be the one that has run down the ages and shed innocent blood for twenty centuries.

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A trial is going on to-day in Russia that parallels this case. A Jew is there being tried for a ritual murder of a thirteen-year-old boy. The naked evidence against him makes a terrible case; but the civilized world stands aghast at it, looks upon it with horror, and knows that the attempt to connect that man with the murder is but the hideous appearance again of that racial prejudice that has reflected no credit for two thousand years upon the race to which Your Honor and I belong.

I feel, Your Honor, that the time is coming when the whole human race will be one great brotherhood. Some day all of this prejudice will cease to exist. That day is already here with enlightened people; and it is here with some of the benighted part of the population when they allow their better feelings to prevail.

We have the best people on earth in this Southern country. We are really the only American part of this Republic; and I know that when our people finally think and feel on a subject like this they will come to a decision divested of all prejudice and find only truth.

As long, though, as there is an element pushing itself into a courthouse to disgrace the community by applause and demonstration, a great many people are going to take that as manifestation of the public sentiment. They forget the thousands of good people who are up in the offices, in the shops, in the stores. They take it for granted that the public sentiment is shown

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by the acts of those persons who have nothing to do except to crowd into a courthouse where a poor fellow is on trial for his life, and who cheer, and whose faces light up with smiles when he is found guilty, and who rejoice and shake hands with each other and throw up their caps in glee over the fact that a man is sentenced to die. That was the spirit that clung to the Frank trial.

I was reading in this morning's newspaper an article from the pen of a writer who was undertaking to account for congregations of men—mobs, we call them—perpetrating deeds of atrocity when ordinarily and naturally a man as an individual is kind. He said the spirit of the mob was not the spirit of any one mind, but the fusion of many and their effect upon each other, just as you mix many chemicals and produce a result different and apart from the quality of any one chemical that entered into the mixture.

And how deadly is the spirit of the mob! When the great War President Lincoln was assassinated—cruelly killed by a fanatic who represented naught but his own disordered brain—so wild were the people in civilized Washington, the seat of government, of enlightenment, of culture, that they committed a crime which compared with the assassination itself. They put to death six or seven people charged with being members of a conspiracy to assassinate the President. Among those put to death was a poor woman, Mrs. Surratt, admitted now by everybody, North and South, to have been guiltless of the crime.

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Sentiment, prejudice, excitement, had taken the place of justice.

And so it was when Frank was tried! An intense prejudice on the part of ignorant people sometimes overlaps that class and spreads into other circles by the mere fact of its existence.

Your Honor, there should have been but a single question in the Frank case, and there should have been no feeling in arriving at the truth. I never could understand how anybody could be prejudiced about ascertaining a fact. Why should there be any feeling in simply determining the question, Did A kill B? Yet we were so overwhelmed with it that all energies were bended in an effort to overcome the influence of the crowd that piled around us, blocked our way from and to the court, applauded in and out of court, and scowled menacingly at Frank. The looks of murder that appeared in human eyes reached court, lawyers, witnesses, jurors.

Argument was lost upon that jury. Proving facts was but casting pearls before swine. There they sat, huddled like twelve sheep in the shambles. Talk to me about those jurors not having been influenced by such surroundings! They may not *know* they were. Nor did the rabbit that ran through the briar patch know which briar scratched and which did not.

I venture to say if this case had been tried where it had never been heard of before, without the feeling, the prejudice and excitement which clustered about it here, with Your Honor as the judge, and before

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a fair and impartial jury with minds unstained by whispered lies and white as unsoiled sheets of paper, there would not have been a moment's hesitation about the verdict.

Why should there be? Was ever a case heard of before where the only witness on whose testimony the conviction rested was a party to the crime, both before it was committed, by watching, and after it was committed, by helping to conceal the body; was a criminal of the lowest type and as absolutely devoid of conscience as a man-eating tiger; one who lied in writing four different times, and who never confessed anything about the crime until the dead evidence was discovered on him that he had written the notes that accompanied the body; who admitted he lied many times in his affidavits; and where, after he made his last affidavit, the story that he brought into court was so unlike it that you could hardly recognize any points of similarity; and where he changed his story seven different times when he went over the subject with the Solicitor General?

As my lamented friend Charlie Hill used to say, "Did ever one hobble to a verdict on such a rotten pair of crutches?" Does Your Honor believe that a worm that crawls in the dust would have been convicted on such testimony under ordinary and usual circumstances?

Admitting he lied scores of times in matters of substance and in immaterial matters, a criminal from birth practically, without character, without stand-

ing, with every motive to lie, with his own neck to save, Conley was so plastered over with contradictions that it's monstrous to argue his testimony.

And yet people say he stayed on the stand three days without breaking down! He did stay there *physically* three days, and all the wretch would say when you got him outside of the story he was fixed and prepared on was "I don't know," or "I lied about that," or "I don't remember." You can teach a parrot, "Polly wants a cracker," and he will say it six months, and he won't break down on it either unless you take a club and knock him down.

An idea seems to be abroad that a lawyer has to hypnotize a witness and get him to talk in a trance before he is discredited. If a witness's testimony is unreasonable or unbelievable, that witness is *broken down* in the legal sense. If Rosser's bombardment didn't finish Conley, then there was no way it could be done except by cleaving him with a battle-axe.

There are many parts of the record here showing what marvelous assistance Conley had in the preparation of his story before he was ever brought into court to testify. When Conley told something that didn't fit in with the undeniable facts of the crime, the undisputed logic of the situation, his attention was promptly called to it by these officers who had him in charge and were nursing him, and the story was changed; when he made a statement that did not correspond with the views held by the police the tale was reconstructed.

Left alone, the negro spread out over the whole territory of asininity; but they took his story like you would take a rough piece of timber and fashion it over with the power of machinery. I have counted in this record twenty-nine lies that Detective Scott testified Jim Conley told to him and Detective Black that they got him to correct. Twenty-nine lies that they prevailed upon him to change! Not little, technical lies, but big, fat, substantial lies. This is not a mere conclusion of mine. The *record* is the *proof*.

Your Honor remembers from the evidence how the negro's story grew. When the search was on to find the writer of the notes there was no doubt in anybody's mind, of course, that the writer of the notes was the murderer of the girl. That fact would admit of no dispute. Conley was denying that he could write. The discovery was made, however, that he could write and the evidence gathered that he was the author of the notes. Conley saw no way to save his miserable neck except to say he had written them for some one else.

Frank had been held under suspicion. One bank official of the city had even said that a comparison of the notes with the handwriting of Frank indicated they were written by him. Many stories of unknown origin were circulated everywhere. The cry rang out, "The d—— Jew did it." Slanders against Frank were poured in the people's ears. He was locked up in jail and had no chance to meet them. The seeds

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of prejudice were sown broadcast and Frank was condemned in the public mind.

Conley saw this and he saw his own life trembling in the balances. He was compelled to say that some one else was the real author of the notes or else give up his life; and he named Frank as the man. He said he had done the writing at Frank's dictation on Friday—the day before the murder.

Well, of course, that was a *ridiculous, unreasonable* lie. Mr. Dorsey does not contend that the killing was premeditated, that Frank knew on Friday he was going to kill the girl on Saturday. But Conley, in his savage ignorance, saw not the unreasonableness of the story and insisted that he had done the writing on Friday.

Now, what happened? Let me read from Scott's testimony. Scott says:

We talked very strongly to Conley. We saw him on May 27th in Chief Lanford's office. We talked to him five or six hours. We tried to impress him with the fact that Frank would not have written those notes on Friday; that that was not a reasonable story. That showed premeditation, and that would not do. We pointed out to him why the first statement would not fit. We told him we wanted another statement. He declined to make it. He said he had told the truth. On May 28th Chief Lanford and I grilled him for five or six hours again, endeavoring to make clear several points which were far-fetched in his statement. We pointed out to him that his statement would not do and would not fit. He then made us another long statement.

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On May 29th we had another talk with him; talked with him almost all day. Yes, we pointed out things in his story that were improbable, and told him he must do better than that. Anything in his story that looked to be out of place we told him wouldn't do.

Great God! It sickens me. I shudder to think of the deeds perpetrated in this case—the methods used to bring this man to his destruction.

Take the Minola McKnight episode. Mr. Dorsey says:

I honor the way they went after Minola McKnight.

Now, let us see what his standard of honor is. Here was a poor, humble, negro woman, an employee of Frank's household: the husband who had sworn to protect her had turned against her and she was helpless and alone. She is taken down to Mr. Dorsey's office, and there she makes a full statement showing that she knows nothing incriminating against her employer. That is sworn to and the Solicitor has it in writing.

Now, Dorsey honors the fact that later the detectives get her and bring her back to his office, where she is confronted with her husband, who tries to get her to agree that the stories he is telling are true. Dorsey honors the fact that when she refused to agree they, in flagrant violation of law, and in a way that never would have been perpetrated on a man who could assert his rights, took her to the station house without warrant or charge of crime, and there compelled

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her, behind iron bars, in tears, and before uniformed and armed officers, brass buttons and pistols, to agree that the villainous lies her husband told were true. That's what he honors: and it seems the jury and the crowd honored it, too. Was this a mere technical right that was violated? Not so; and yet, without technical rules, Might would always triumph over Right. Our race has experimented in government for centuries, not as vassals, but as sovereigns; and certain laws that have stood the test of time have been adopted to guide us between governmental tyranny on the one hand and anarchy on the other. Technicalities they may be, but if they are destroyed one may as well camp out in the woods and let the strongest man prevail. They are the refined wisdom of the ages.

Hear Dorsey again:

I don't know whether they want me to apologize for that 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.

Oh, no, we didn't expect that; but we did expect them not to violate the criminal laws of the country; we did expect them, when a witness had had a full and fair chance to make a statement, to let her alone; not to violate the laws of God and man, and put the thumbscrews and torture to her and lock her in a

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prison cell to make her change her statement. We did expect that; and you wouldn't have had to balk at tea parties either: you could have gone further than that.

May it please Your Honor, those are some of the methods that have been used against the man over yonder in that jail who is condemned to death on as base a fabrication as was ever constructed in darkest Russia.

Your Honor, I speak plainly because I am so constituted by Nature that I cannot call a spade anything except a spade. I am looking through all the surrounding paint and varnish to see the hideous thing inside of this prosecution, and it sickens me to think that man in jail is in peril from such methods.

There is no evidence against him in this case except such as comes from Jim Conley, that prince of liars. You could no more impeach Conley by showing he had lied than you could saturate a duck by pouring water down its back. He is impervious to a charge of lying. He will admit it any day in the week.

But Mr. Dorsey, realizing what a burden Conley is for him to carry, says Conley is not the only evidence in the case. For instance, he says the expression, "It is too short a time since you left for anything startling to have developed down here," in a letter written by Frank on the day of the tragedy, shows guilt. Expressions of this character are extremely common in letters; but Mr. Dorsey says it proves that something startling *had* happened and that the writer had killed

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Mary Phagan. That deduction of Mr. Dorsey's is just as sound as any other he has drawn.

In this letter, which was written on Memorial Day to Frank's uncle, himself a Confederate Soldier, the writer also refers to the "thin gray line of veterans braving the chilly weather to honor their fallen comrades." I would be glad to hear even an Arab of the desert speak kindly of these men, but Mr. Dorsey sneers at this tribute Frank paid the old soldiers in gray.

Everything that Frank did has had an unfair construction placed upon it, and is looked upon as a circumstance of guilt and sufficient reason for his condemnation.

It reminds me of the fable of the wolf and the lamb. The wolf was going to kill the lamb for muddying the water. "But," said the lamb, "you are drinking above me in the run of the stream." "Well," said the wolf, "I don't care; your grandfather muddied it once and I am going to get you anyhow."

Mr. Dorsey also refers to the telegram sent by Frank on Monday to Adolph Montag, telling him of the finding of the body in the cellar of the pencil factory. Dorsey says:

In factory? In factory? No, "in cellar." Cellar where? "Cellar of pencil factory."

There was no sense in all this talk of Mr. Dorsey's but there was plenty of sound and that was satisfactory to the jury.

Yes, she had been found in the "cellar of the pencil

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factory." The police had come for Frank and carried him down there. The story would be in all the papers. Many rumors were being started. Frank, the superintendent of the factory, wired Montag, one of the owners of the factory, telling him of the tragedy and asking him to assure his uncle he was all right in case he asked.

Is there anything incriminating here? No fair mind can find it. But all Dorsey had to do with that gang of wolves out there in the audience was to turn and look at them and they would beam on him with bloody satisfaction. They were trying to take the life of a fellow creature in holiday fashion and Frank was the butt end of that Roman holiday.

Again, they say that when Helen Ferguson received her pay on Friday she also asked for Mary Phagan's pay envelope and that Frank refused to give it to her. Even if this had happened it would have been no evidence of guilt and would have proved nothing. It was not usual to give one person's pay envelope to another except on proper request.

But it is overwhelmingly a mistake. In the first place the evidence shows that on Friday Frank did not pay off the employees but that Schiff did. Furthermore, Magnolia Kennedy testified that she was with Helen Ferguson when they both received their pay, that they received their envelopes from Schiff, not from Frank, that they left the factory together and that the witness Ferguson did not ask for anybody's pay except her own.

Further, Mr. Dorsey says that when these notes that were found by the body of the dead girl were shown to Frank, he should have then and there said: "This is the writing of James Conley."

Frank, locked up in his prison cell, did not know at that time that Conley was denying he could write, and had no reason to think that specimens of Conley's handwriting had not already been compared with the notes. None of these officers had told Frank that Conley claimed he could not write.

Moreover, Frank did not know the handwriting of Conley and there is no proof that he did. It is true that he had seen Conley's writing but there was no individuality about it sufficient to impress itself upon one's memory. Even between these two notes themselves there is little similarity. You could not testify they were written by the same man.

While there are classes of people—professors of penmanship, bank tellers, etc.,—who seem to store away an impression of handwriting in the mind and recognize it when they see it again as if it were a human face, yet to most people there is only a generality about handwriting and seldom indeed it is that one retains a mental picture of the writing of the average negro. Why, even Mr. Berry, the bank teller who studied those notes and who studied the handwriting of Newt Lee, named Lee as their author.

Holloway, Darley, Schiff, Wade Campbell and others had also seen Conley's writing, but it never occurred to them when they looked at the notes that

they were written by Conley. Surely, if this is a circumstance of guilt it is as strong against these men as it is against Frank. Mr. Dorsey, though, does not claim that they had any part in the killing of this child. Moreover, Frank did not know that Conley had been to the factory on this holiday. No one seemed to have seen him. Mrs. White had said she saw some negro about the stairway; and, according to Detective Scott's evidence, Frank gave *him* this information on Monday following the tragedy. What more could Frank have done? And would he have done that if he had been Conley's accomplice?

But they say Frank was so excited and nervous over the murder on Sunday morning that he "trembled like an aspen." If he was nervous it was the sight of the dead girl and the discovery of such a tragedy enacted in the factory under his charge that made him nervous. He was not nervous on Saturday afternoon when he prepared the financial sheet that the foremost experts of the South say would require several hours' work. It has been overwhelmingly established that he did that work on Saturday afternoon, and yet there is not a trace of nervousness in all that mass of figures, in all that intricate, complicated work. A consciousness of guilt would have made him nervous then. But there was no nervousness then, for he knew not at that time that the corpse of the little girl was down there in the basement beneath him.

And yet on such argument as that, and amid such surroundings as those, an innocent man is condemned

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to die! There is not a proven circumstance in this case that cannot be shown to the satisfaction of any reasonable man that it is not a circumstance of guilt on the part of this defendant.

Why, may it please Your Honor, the *physical facts* of this case show that this crime could not have been committed by Leo M. Frank. The parents of the little Phagan girl swore she left Bellwood—out there two miles from the city—at 11:50 A. M. That little State's witness Epps says he got on the car with her. Neither the conductor nor the motorman saw him, but he says he got on with her and got off at Forsyth and Marietta Streets at 12:07. Detective Starnes says it took him from three and a half to four minutes to walk from that point to the pencil factory.

According to the State's own witness, therefore, the little girl could not possibly have reached the pencil factory sooner than ten and one half minutes after twelve. Epps was the first witness the State put up, and the State soon realized he had crushed their case, and began to wriggle to get away from their own testimony.

The motorman says she rode all the way around Broad Street to Hunter Street and got off there at 12:10. According to this evidence she would not have reached the pencil factory before 12:12. Now, the schedule of the street car is shown in corroboration of the evidence as to the time the car arrived in the city; and what does the State do? They put up a few street car men who said they sometimes came in ahead

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of time, though they said it was unusual to do so, was against the rules and they got demerited for it. Moreover, not one of the witnesses said that on this day, April 26th, the car came in ahead of time; and the men that were on the car, the motorman, the conductor and George Epps, all say it got in from 12:07 to 12:12.

Does Your Honor, in all of your experience before, ever remember three positive witnesses who were there when a thing occurred, one of them a witness of the State—all put into the discard because at some other time the thing had happened differently from the way it happened then? *Their whole case falls absolutely to the ground if she got off the car as late as 12:07.*

[The Court:] Why, Mr. Arnold?

[Mr. Arnold:] I'll show you why. Monteen Stover, the State's witness, gets there at 12:05. She looks to see the time as she had been trying to get there by twelve. She waited in the hall five minutes and left at 12:10. Their star witness, Jim Conley, says Mary Phagan came in before Monteen Stover came in. Your Honor, can they play fast and loose with us? Can they put up a witness and prove a certain time by the minute and then cast that witness out of the case just because it conflicts with some other part of their case? Miss Hall, an unimpeached witness, left at 12:02. So that the little Phagan girl, according to the State's theory, could have gotten there only between 12:02 and 12:05. And yet, according to the

evidence of the motorman and conductor, the car on which she rode to town that day had not come in at that time.

These are cold, unanswerable facts. Either Jim Conley lied or he told the truth. They are committed to him. Jim Conley says Mary Phagan had gone up to Frank's office, had gone back to the metal room and he had heard her scream before Monteen Stover came in, and the Stover girl came in at 12:05.

Oh, my! They don't give Frank much time to do this deed. Do you believe all that struggle would have ended with just one scream? Monteen Stover stayed there quietly five minutes. Don't you suppose she would have heard some kind of noise? Isn't it remarkable that Frank didn't go out while she was there if he had finished the job? And if it was still going on while she was there, isn't it remarkable that she heard nothing?

Monstrous fabrication! Putting up clocks, putting up street car schedules, almost changing the sun in its course, to convict this man!

Now, suppose she got there at 12:10 or 12:12. Quinn says he saw Frank at 12:20. Mrs. White says she saw him in his office at 12:30. He is seen by men upstairs just before he goes to dinner at 12:50. Then comes in the time that this negro claims the body was moved.

Let us see how this claim is borne out. Bear in mind, the moving of the body could not have begun much before one o'clock, because White and Denham

say Frank was upstairs talking to them, between 12:50 and 1:00, and the negro himself claims the moving of the body began at four minutes to one and was completed by half past one.

Now, we are getting down to the very vitals of the case, and the moving of the body is as much a part of the case as the very murder. If Conley has lied about that, he has lied about it all.

Conley says Frank left not sooner than 1:30. Harlee Branch says, that from the time the negro took, in his pantomime demonstration—where he went over with the officers the various things that he says were done that day—it could not have been finished *before* 1:30. Dr. Owens says the same thing. There is no conflict about it. And the negro could not have been mistaken as to its being as late as four minutes to one, because Denham and White are seeing Frank and talking to him upstairs as late as 12:50, and it was evident that under the State's theory it must have been after that that the moving of the body started. The Solicitor General contended that he was getting Mrs. White out of the building for that very purpose. There can't be any mistake about the time; there have been too many experiments made.

Branch said that Conley in his pantomime demonstration went through very rapidly, and he estimates that the things Conley said he and Frank did would have taken fifty minutes; that would have put it twenty minutes to two. Dr. Owens said they went through the demonstration in thirty-four minutes.

Bear in mind, after they moved the body, they came up into Frank's office and wrote the notes, and Owens didn't include the time that Conley says he was concealed in the wardrobe. Scott swore it took him three to five minutes to write one note; he saw him write it. And remember that in writing this note he was just copying one he had already seen. To make it up and write it as he says he and Frank were doing, would certainly have taken another three to five minutes at the very least calculation. He wrote four notes—twelve minutes—and stayed in the wardrobe eight minutes. That makes twenty minutes, outside of moving the body from that metal room down into the basement, running up the elevator, and so forth. Tell me he could have done it even in thirty-five minutes? It was a physical impossibility.

Now, there is the case. It is either true or false. Did Frank stay there until half past one at the very lowest calculation? If we prove him out of there by credible evidence, five, ten, or fifteen minutes before that time, the State's case falls to the ground. I don't believe he could have gotten home *even by two o'clock* if he had done all the negro said he did.

Mr. Dorsey criticizes us for saying that Frank left the factory at one o'clock and refers to a statement Frank made at the station house, on the second day after the crime, indicating that he left at about 1:10. He did estimate the time to be "about 1:10." Well, suppose you take it "about 1:10." From the pencil factory to the corner where this Kern witness—a

young girl, unimpeached—says she saw him at 1:10 or 1:11, is only about one and a half or two minutes' walk. The evidence shows that if he had left there at 1:07 or 1:08 he could have got to where this girl saw him at 1:10. Is there any dispute about that?

Frank says in his statement that his best judgment is he left at about one o'clock. He doesn't claim to have timed it to the minute; he had no reason to do so; but after carefully thinking of everything that happened before and afterwards, his opinion is he left at about one o'clock.

Now, 1:08 is "about one o'clock." Suppose he left at 1:08. He could have reached the corner where this witness says she saw him at 1:10. It takes that street car approximately ten minutes to go from that corner to where Frank lives. Mrs. Levi says she saw Frank get off the car at his home at 1:20. Mrs. Levi is no kin to Frank. She was looking for her son on that car and saw Frank get off instead. And Albert McKnight, the State's prize witness, and his wife both testify they saw him at his home at 1:30.

How can these things be answered with common sense? Your Honor, this is not a case of *believing* the defendant to be innocent; we are *demonstrating* his innocence.

We have shown that the little Phagan girl didn't get to the factory at a time when he could commit the crime, according to Conley. We have shown that Frank left there before the moving of the body had ever been completed, as Conley claims. That is why

we had that alibi chart made, but it fell on deaf ears.

Argument and demonstration are worthless against a vicious mob. Throw truth to the winds! All that is needed is a pack of wolves surrounding the jury, thirsting for blood. How strange it is that people sometimes reach such savage depths!

Once down here at the county jail I saw a negro hanged. Peter Daniels was his name. Such a dreadful spectacle I hope never to see again. The poor creature asked time to pray, and he prayed long and loud. He then asked to have an old colored woman who was present come up and sing, "Swing Low, Sweet Chariot," and they raised their tremulous voices in that song. They sang one verse, two verses, three verses; the poor wretch trying to prolong it as much as possible, and then he pretended to fall down in a faint and they had to literally hold him up to hang him. When the negro was praying there was a murmur from some of those present and I heard them say, "He is only praying for time; let's go ask the sheriff to hurry up with the hanging." That was their spirit. The lowest passion of the human breast is this thirst for blood.

The only way, perhaps, these elements of character can be overcome, is to let Time re-make the man. Just as in every seven years the whole human system is said to change—blood, bone, fleshy tissue and all—so it is that a man may change mentally and morally with the passing of the years.

The trial and conviction of Leo M. Frank on the testimony of Jim Conley, shows what results may sometimes be produced when you have a groundwork of prejudice, ignorance, passion and excitement to build on as you wish.

On one side is a man of education, of prominence, of responsibility, of character, whose ancestors are peaceful people; a man who could have no motive to murder except the far-fetched claim of the Solicitor. On the other side is a negro with a long criminal record, besotted with liquor, proven to have been at the very place where he could with lightning-like rapidity grab the girl, and in the struggle with her render her unconscious, rob her and throw her into the cellar; and afterwards go down there and write the notes that were found by the body, that are a part and parcel of the murder, and prove themselves to have been conceived in none but an ignorant, savage mind.

The elevator shaft was there, open and yawning, right in that dark area where the stairway ends. That is the place where the evidence shows Conley was. Conley was hard up for money. The little girl had a purse which has never been found. It has not been found because Conley stole it; and the little girl was found down in the cellar because Conley threw her there.

The circumstances of guilt in this case point not to Frank but to Conley. There is no evidence that Frank had anything to do with this murder except from the negro himself.

In other words, you get dead evidence on a man, physical evidence showing he was at the scene of the murder and that he hid the body; he is a debased character, has told a dozen lies about it, and has confessed a part of the crime. Yet, in order to excuse and clear himself, he brings a decent, respectable man into it, and he—*and he alone*—places upon that man the vile charge of perversion:—a good life to count for nothing and the circumstances of the case to count for nothing. Conley, on the one hand, is not even indicted for the crime; and Frank, on the other, is sentenced to be hanged. It is enough to shock the conscience of humanity!

But Mr. Dorsey says, Conley is sustained by some facts and circumstances in the case. Let us see now what Dorsey says it is that sustains Jim Conley.

Mr. Dorsey says:

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, 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 calls 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.

Now, listen to that! A boy on the street who had heard a group of men say, “Why, I believe Frank is

a pervert; I believe Frank killed the girl; I believe Frank was lascivious,” could come in and swear to the same bad character that these girls swore to, and that would sustain Jim Conley according to Mr. Dorsey. That would sustain him in his story about finding the body and in his grotesque tale about the notes.

These girls didn’t have to *know* anything against Frank. All they had to do was to swear what they had *heard*. They could have been loaded with five thousand slanders. That was little compared with what was done with Minola McKnight and Jim Conley. They found Conley a rough mass of wood and shaped him into an article symmetrical and polished.

In the name of fairness, in the name of high-toned procedure, in the name of the gentle men of this good country, and the old fathers of the State, Ben Hill, Bob Toombs, Alex Stephens—in the name of men that would have scorned to tread upon a worm, what would you say of a proceeding of this sort in Georgia?

These witnesses knew nothing against this man except wild, vague rumors, and yet every question we would have asked on that line would have been used before that gaping mob against us.

Does our failure to cross-examine them sustain Jim Conley in his monstrous tale about the murder? Why, if you can sustain an accomplice that way, all you have to do is to get out a little gossip about a man, and get a few people to hear that gossip, and let them get confused in their minds about the time when they

heard it—whether before or after the commission of the crime—and put them on the stand and let them say the man's reputation is bad. In other words, you might charge a man with a crime at the North Pole, and witnesses who swore his character was bad at the North Pole would sustain a man who swore he committed a crime at the North Pole. That's just his argument exactly. Why, anything sustains according to that. Mr. Dorsey might just as well argue that Frank had hands, that he could have tied a knot in a rope and could have choked a girl to death; that sustains Jim Conley. Frank has legs, he has hands, he could have pulled the elevator rope and gone down to the basement. That sustains Jim Conley if Dorsey's reasoning is good.

The defense put up numbers of witnesses—upright, honorable people—who had associated with Frank in his daily life, people who knew him well and had elected him president of a grand charitable organization here, and these people testified that his character was good.

But let's go on with what Dorsey says sustains Conley. He says:

His relations with Miss Rebecca Carson—he is shown to have gone into the ladies' dressing room even in broad daylight and during work hours, by witnesses whose names I cannot recall right now—sustains Jim Conley!

Where did these witnesses come from? They came from the same hands that handed Jim Conley to the

court. They came from hands that were bold enough to take Minola McKnight and endeavor to warp her testimony. Class hatred was played on here—the discharged employee class. They played on the enmity the poor feel against the wealthy—they gave a bid to discontent.

Those little girls who had been discharged—doubtless discharged by this Miss Carson, a forelady, and glad to say anything against her—testify that in broad daylight, during work hours, Frank went into a room with her and shut the door. The proof shows there was no lock on the door.

Suppose he did go in there and shut the door. He may have wanted to talk with her about the work. He may have wanted to go over the question of whether the girls were flirting from that room—a thousand and one things he may have wanted to talk with her about.

It is horrible that in work hours, in broad daylight, a man in charge of a factory couldn't take the forelady of a department into a room without any lock to it, and shut the door, without such a vicious construction being placed upon the act.

Now, Dorsey says that sustains Jim Conley.

Again, he says:

Your own witness, Miss Jackson, who says that this libertine and rake came when those 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. And Miss Jackson's asser-

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tion that she heard of three or four other instances, and that complaint was made to the foreladies in charge, sustains Jim Conley.

Now, as I understand this Miss Jackson, she says Frank put his head in the door of the lounging room; and she said also (I believe she is the one who said it) that whenever those girls were lounging and loafing in there and Frank came in, they all proceeded to their work, too. A man who employs scores of women has to be around them occasionally in justice to himself to see that they are doing their duty, even though they complain of his presence. The sardonic grin is Mr. Dorsey's conclusion: none of these girls testified to it. It is perfectly apparent that Frank, on these occasions, was attempting no familiarity with these girls but was only trying to see that they did their work, and were not idling their time away. Surely a woman isn't so absolutely sacred that you can't ask her to perform her contract as she has agreed to do; and if she isn't doing it, ask her why, and find out why. Ought this to be held against the defendant? And can it be fairly said to sustain Conley's statement that Frank is guilty of murder?

Says Mr. Dorsey:

Miss Kitchens, the lady from the fourth floor, whom, in spite of the repeated assertions 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.

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What did he ever do? Opened the door of this room, after work hours, as he had a right to do. There was no bath or toilet in there. It was a room where before work hours these girls simply changed clothes and if they were there at any other time, they were presumed to be only lounging, and some of them had been flirting from the window into the street.

Have we come to the point when inferences that are unfair and things that are wrong can lead us to take a man's life? Shall the fact of the crime be allowed to rob us of our reason? "Wasn't this a dreadful crime?" is a question often asked. Indeed, it was a dreadful crime. A man said to me the other day, "Ought he not suffer who did that deed?" I said "Yes, he ought, but if *you*, my friend, were charged with it, wouldn't you want it proved you were guilty before the dreadful features of the crime were even considered?"

Some people seem unable to distinguish between these separate questions. The horror of the crime isn't the question; the choking of that innocent child to death isn't the question. The question is: Who did it? And has it been proved as the law requires?

Hear Dorsey again:

Darley and Mattie Smith,—as to what they did even on the morning of Saturday, April 26th,—even going into the minutest details, sustains Jim Conley.

He says Darley and Mattie Smith, going down the steps together at half past nine, sustains Jim Conley.

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He might as well have said Judge Roan was sitting on the bench hearing motions that Saturday, and that sustains Jim Conley; or the Southern train gets in here at 4:45 from New York, and that sustains Jim Conley.

Dorsey continues:

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.

McCrary never saw Jim Conley there that day at all. He denied having any conversation with him as Jim Conley says he did. McCrary tells about getting to the factory at a certain time that morning—half past eight—and Mr. Dorsey, in his roundabout examination of him, undertook to prove that he got there a little later. Now, he figures out that sustains Jim Conley.

Dorsey says again:

Monteen Stover—as to the easy walking shoes she wore when she went up into this man Frank's room, at the very minute he was back there in the metal room with this poor, little, unfortunate girl, sustains Jim Conley.

I reckon that would sustain Jim! They had found out she had easy walking shoes and Conley's lie was just made to fit the shoes. Either that, or else the negro with lust and cupidity in his bosom was watch-

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ing those little girls so closely that he noticed even her shoes and stockings.

Not only does Monteen Stover not sustain Conley, but she proves the absurdity of his story that he was "watching" for Frank, because he could have kept her out by saying Frank was not there; yet he let her go in there, knowing, according to his own story, that Frank had a girl in there and had taken her back to the metal room, and that the girl had screamed.

How dreadful, how unjust is this argument—to cite these circumstances as evidence of Frank's guilt. That "watching" story is preposterous. What good could Conley have done by "watching"? Conley would have had no right at any of the "watching" episodes that he says took place before Jan. 1, 1913, to lock the front door because at that time that was used by the Clark Woodenware Company and the people of the pencil factory jointly. What white man could this negro have kept out anyhow? And who is it that would not have had his suspicions aroused had Conley attempted to stop him, or to give a signal to Frank that somebody was coming? If Frank was engaged in these practices his best and safest plan would have been to bolt the door of the stairway that led up to the second floor, and thereby kept everybody out. Furthermore, there is no evidence that Frank had any engagement on this day that would have made "watching" necessary. There was nothing to "watch" for.

But to bolster up the story of the notes, some rea-

son had to be given why Conley and Frank were thus coming in contact in a transaction that would ordinarily admit of no confidants; and the "watching" story was thus born. The lie was clumsy, but necessary.

And what a wonderful watchman was Conley! This timid little girl, Monteen Stover, came in and tripped up the stairs like an antelope, and he let her in at the very time he ought not to have let anybody in. The proof of the pudding is in the eating. He says he was not asleep when she came in. If there ever was a time when his boss needed protection, it was when he tipped back to that metal room with the little girl and when the little girl had screamed a wild scream. Why, even to Conley's dull, besotted intellect, it would have said: "Mr. Frank and that girl are having trouble back there; I must watch carefully for him now." And right at that time he let Monteen Stover in there—this faithful watchman!—and Mr. Dorsey says that sustains Jim Conley:—Monteen Stover!

Mr. Dorsey continues:

Monteen Stover, when she tells you that she found nobody in that office, sustains Jim Conley.

Yes, and she clears Frank, too; because if Epps tells the truth, if the schedule of the street car tells the truth, if the men in charge of the car tell the truth, Mary Phagan had not reached the office at that time and had not even reached town at that time.

Mr. Dorsey further says:

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 Corinthia Hall, sustains Jim Conley.

He didn't show *how* that sustained Jim Conley. Lemmie said he got to the office at 12:20 and was at the Busy Bee Restaurant at about 12:30. Does that sustain Jim Conley? Mrs. Freeman, formerly Miss Emma Clark, and Corinthia Hall, both say they saw Lemmie Quinn at the Busy Bee Restaurant and talked with him. Quinn had already been at Frank's office at 12:20 and only Frank was there. Quinn went down to the cafe about 12:30 and met Mrs. Freeman and Corinthia Hall. The two women left Quinn at the cafe and went up into Frank's office to use the phone, finding Frank there alone. This evidence corroborates Quinn. There is complete harmony in this testimony. Frank also in his statement shows that Quinn came in and left, and afterwards the two women came in and used the phone. How can that sustain Jim Conley? Mr. Dorsey just yelled that it sustained him. He is yelling that everything sustains him. The air sustains him; the courthouse sustains him; the sun when it rose this morning sustains him; when it sets to-night it will sustain him; these reporters sitting over there sustain him; everything in and out of court sustains him.

Mr. Dorsey further says:

Frank's statement that he would consult his attorneys about Quinn's statement that he had visited him in his office, sustains Jim Conley.

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You remember what that was? Quinn had talked with Frank and told him that he recollected seeing him that day, April 26th, at about 12:20. That was the substance of Frank's reply as I recollect it: "Well, I'll tell my lawyers about what you say and they will pass on whether it is of any value." Poor Frank didn't know. He knew he was innocent; but he did not know the exact value of the information that Quinn gave him that he had seen him in his office at 12:20, and in his innocence he said, "Well, I'll tell it to my lawyers and see what use they can make of it"—and that is used against him.

Why, if he had been a guilty man and Quinn had gone to him with a lie about seeing him at 12:20, he would have jumped on it like a duck on a June bug. He would have seen in a minute the use he could put it to, and he never would in a fair, conservative way have said, "I'll tell it to my lawyers and see what use they can make of it."

Frank was at sea about the wretched charge. He didn't know the depths of the malevolence that was clustering around him at the time.

Mr. Dorsey goes on:

Dalton, sustained as to his life for the last ten years here in this community and in DeKalb, when he stated he had seen Jim watching before on Saturdays and holidays, sustains Jim Conley.

Dalton! In this case they seem to have seined the lowest strata of society for the ugliest, dirtiest reptiles

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that swim and move about in the ooze of the bottom. It is hard to describe Dalton—that mangy, leprous creature which this prosecution, representing law and order, presented to the public. The profert of him is all that will do him justice. He had a face like a mud cat. You could tell his habitat was in the filth.

Dalton began as a thief and ended as an adulterer with Daisy Hopkins in the pencil factory. He was proud of it on the stand and he said that Daisy was a peach. We brought in Daisy just to show what sort of peach she was. Daisy said he lied, of course; that she never had been with him in the pencil factory, and that there was not a word of truth in what he said from its beginning to its end. Of course, she is a poor, fallen creature. I don't suppose any other kind would care to come within a thousand miles of Dalton.

The other women Dalton named as having known in that factory also said he lied. His fellow citizens from Gwinnett and Walton counties said he was unworthy of belief. But they produced two or three kind-hearted fellows who said, "Oh, well; he's reformed; he's j'ined the church"; and "while the lamp holds out to burn, the vilest sinner may return." I never did have much confidence in the reformation of such fellows. You can cure a drunkard sometimes—that's weakness in the flesh—but with a fellow like Dalton it's different. The evidence indicates that if he ever did reform he fell back into the outer darkness

right away. His conduct in this case shows he is a backslider now.

But even if he did slip in that factory with the Hopkins woman, he said he never saw Frank do anything wrong and never saw any indication of it.

Dorsey says:

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.

Daisy Hopkins says it is all a wretched lie, and it just gets back to that delightful gentleman Dalton there sustaining him. But Dorsey says Daisy Hopkins' *reputation* sustains him. Well, there are many lewd women in Atlanta and the reputation of each one sustains Jim Conley, according to that reasoning. A thousand in Chattanooga, I suppose, sustain Jim Conley; a million such women, I guess, in New York, sustain Jim:—just as much sense in one as in the other!

Mr. Dorsey further argues:

The blood on the second floor, testified to by numerous witnesses, sustains Jim Conley. The appearance of the blood, the physical condition of the floor when the blood was found Monday morning, sustains Jim Conley.

An inventive gentleman by the name of Barrett claimed to have found blood spots on the second floor. They were chipped up and sent to a chemist for analysis. Only in one of the spots did he find a single

trace of blood, and he swore that one-eightieth part of one drop could have made it all, and that it may have been there for years. One witness testified that once a man was hurt and bled at the very spot. No man knows in which of various ways, or when, that blood got there.

Oh, what a colossal fake was here attempted to be foisted on court and jury! Its purpose was to show that the girl was killed on the second floor, and killed by Frank. As a matter of fact, the negro could just as well have killed her in the metal room as Frank could:—better. If the little girl had happened to go back there to the toilet and Conley had come to the head of the stairs and seen her go back, he could have followed, and in the quiet of that room perpetrated this wrong upon her. It would have been out of view from Frank's office and could have been done without Frank's knowledge.

No, the blood spot fake does not sustain Conley. Where Conley says he first found the body, there was no blood. The presumption is this is where the struggle took place. The absence of blood here impeaches him more than its presence elsewhere could sustain him. If there was to be any blood, here was the place.

Remember, too, that blood spot was found before Jim ever said he dropped the body there. Jim just fitted in with his manufactured tale. Why, any liar on earth can be sustained by some well-known physical fact that he runs across in the course of his lying.

If an accomplice in a murder says: "On my way home I saw Bill Jones kill Tom Smith; I passed through the capitol and the capitol had marble floors," and another witness says: "Yes, the capitol has marble floors," Mr. Dorsey would say: "Oh, that sustains him; he passed through the capitol and the floors were marble and he said it."

Further, Mr. Dorsey argues:

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.

He doesn't say what part of Holloway's evidence he is talking about; but Your Honor will remember they got Holloway down there and took an affidavit from him; but Holloway on the stand said: "When I made that affidavit I didn't remember about sawing some lumber for the man up on the fourth floor; I now remember that I got some lumber and went in and got the key to that motor box and unlocked it and never locked it again. I had to do that to saw the lumber, and I didn't think of that at the time; I was simply testifying to the custom." And Denham said he did saw the lumber for him. This shows that the elevator was not locked and disputes Conley's statement that Frank unlocked it.

Now, Dorsey says that sustains Jim Conley; how, I don't figure out.

He goes on:

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.

Does he, Your Honor? Ivey Jones met Jim Conley at a quarter to two. Does not that sustain as strongly our theory that the negro killed the girl? Our theory is also supported by Conley's confession that he handled the body, by that evidence of his handwriting, and by his confession that he wrote the incriminating notes found by the body. He was there that morning and Ivey Jones saw him at a quarter to two, just two or three hundred yards from the pencil factory. He had just left the factory and, of course, he disposed of the body after Mrs. White left there.

Conley killed this little girl when she went down the steps. He got in a struggle with her probably over that mesh bag, about 12:15 or 12:20—somewhere along there—just before Lemmie Quinn came in. She probably injured herself in the struggle; perhaps was rendered unconscious. It was but the work of a moment to throw her down into that cellar. He didn't go right then into the cellar and move the body. That perhaps would take some time and perhaps he thought she was living, and he had a more diabolical purpose in view. He waits until Frank leaves, and Mrs. White leaves at one o'clock, and he goes down into that cellar and finishes the work. He attempts to violate her person, and he had doubtless finished by a quarter to two.

And there was no purpose on Conley's part to burn the body because Conley had no control of the heating apparatus. Conley's method of throwing people off the track was by the notes. Conley never thought anybody saw him there that morning; he was in that dark place half hidden by those boxes. The evidence shows that the officers found signs indicating that something had been dragged on the ground from the bottom of the elevator shaft to where the body lay. This physical fact tends to support the theory that Conley threw the girl down the shaft and later dragged the body away; and to contradict Conley's testimony that he and Frank took the body down in the elevator and that from the elevator he carried the body *on his shoulder* to the place where it was found at the saw dust pile.

Great God! When you think how much closer this negro was to the tragedy—how he confessed his part in it—how his character coincides with it,—how the community or the jury can let just his making this infamous charge carry conviction against a lifetime of good conduct, is almost beyond the imagination of mankind.

Mr. Dorsey proceeds:

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.

Does he? Does Albert McKnight sustain him? Albert McKnight says, "At 1:30 I saw Mr. Frank

in his dining room." That contradicts Conley absolutely because Conley says he and Frank were at the factory at 1:30; yet my friend, without telling the jury how, yells at them, "That sustains Jim Conley."

No, Your Honor; liar though McKnight was in many respects, he does not sustain Conley.

What next does Dorsey say sustains him? He says:

The repudiated affidavit—made to the police in the presence of Craven and Pickett—of Minola McKnight—the affidavit which George Gordon, the lawyer, sat there and allowed her to make, although he knew he could get a *habeas corpus* and take her within thirty minutes out of the custody of the police, sustains Jim Conley.

On the contrary, I say Minola McKnight's affidavit sustains our contention that the whole case is a fabrication. It shows like the flash of lightning in the black sky a dark transaction that otherwise would have remained always dark, and makes one wonder how many similar things were done in this case.

How does he figure out that Minola's affidavit sustains Jim Conley? Can you see anything in that except the arrest of a negro woman, illegally, without a warrant, after she had voluntarily made a truthful statement; then the bringing of her to the Solicitor's office; the attempt to get her to agree with her husband who was in the hands of two men here; then taking her to the station house and putting her behind bars and forcing her to make the affidavit? Is there

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anything in Minola's affidavit except duress and violation of law by officers? How does that corroborate Jim Conley?

Mr. Dorsey says:

The use of that cord, found in abundance, to choke this girl to death, sustains Jim Conley.

Couldn't Jim Conley use the cord as well as Frank? It had that loop in it always. It was tied around a bundle of pencils. That was its natural and normal condition. That cord was found from the cellar to the garret. Jim Conley knew where they hung on the second floor. What is here to sustain Conley's story that Frank, and not he, killed the girl?

He goes on:

The existence of the notes alone sustains Jim Conley because no negro in the history of the race, after having perpetrated rape or robbery, ever wrote a note to cover up the crime.

How does he know that? Jim Conley could write. He admits he wrote these notes. When he admits he wrote the notes, that, *prima facie*, ought to disprove everything he states and ought to put a strong burden on him of explaining how he came to write them at somebody else's dictation, and to prove it by something beyond his mere *ipse dixit*.

Conley says that Frank's intention was to burn the body to conceal the crime, and that he was to come back later and help him do it; and yet that Frank, with this thought uppermost in his mind,

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conceived the additional idea of these notes to be placed beside the body and dictated them to him and he wrote them. Why were both things done?

Conley sees he must fix up an explanation for this and he says the notes were written so that if he never came back to burn the body the notes would explain the killing. Yet Frank had no reason to believe the negro would not come back. Was ever an explanation more preposterous? Don't you know that if Frank intended to burn the body he never would have written the notes? Don't you know the notes were the last explanation of how the killing occurred, and were intended by the ignorant man who wrote them to stay by the body until it was found?

Now, burning a body is a thing that would occur to any intelligent mind as a way to destroy evidence. But to conjure up these notes as a way to hide the crime is as far from the educated mind as something connected with witchcraft would be. These notes are *negro* notes from beginning to end—in thought, in composition, in everything. The savage mind acts in strange, devious, peculiar ways; the educated mind does not.

The one contention in this case that appeals the least to any man with common sense and fairness, is that the verbiage of these notes is Frank's, and not Conley's; that Frank, a Northern man, highly educated, whose knowledge of the language is wide, but with very little knowledge of negroes, almost a stranger here, without any aid from anybody, could

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get up notes like these. Never could it have happened in a thousand years.

Ignorance conjures up far-fetched ideas and conclusions unconceived of by the intelligent brain. These notes professed to be a statement from the girl herself explaining how she was killed and who did it. They are idiotic and ridiculous, except to an ignorant, darkened mind.

Take the expression "night witch," in one of the notes. I don't believe there is a white man on God's earth who would have known what that expression meant; but a negro did interpret it.

Here we have a note so obscure, so couched in the dark vernacular of the negro—he says it was all dictated by Frank, too—that our Southern policemen who corral these negroes daily, who deal with them and who play with them like you would with cards on a table, can't understand it. Every one is groping in the darkness until Newt Lee sees it. Newt Lee, a negro whose mental operations are the same as Jim Conley's, says, "That means me, boss; I'm the night watchman."

A white man goes by his intelligence, by his logic, by his discernment; a negro goes largely by his instinct, and, occasionally, it is strikingly correct.

During the great Civil War, when the tracks were torn up and the mails couldn't go by railway, when the telegraph wires were cut and there was no quick way of communication, the negroes often heard of great battles in Virginia and Tennessee long before

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Order No. 1010

man that negro
fire down here did
this I went to
and he push me
down the hall
a long tall negro boy
that had it was
and please talk to
me light up the light

ONE OF THE "MURDER NOTES"

An exact reproduction of one of the two notes that were found by the body of Mary Phagan, with the elimination of two words which it was thought proper to omit from this publication.

he said he would have me
land down play like the
night it did it
but that long tall black
negro did by his self

THE SECOND ONE OF THE "MURDER NOTES"

A facsimile illustration of the second one of the two notes that were found near the body of the dead girl.

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the white people ever heard of them. The news travelled from hill to hill, from dale to dale, in some way through that under-strata of the population.

Your Honor, it is by Jim Conley's evidence alone that Frank is charged with having had anything to do with the writing of these notes. How does the existence of the notes sustain Conley?

Further on Mr. Dorsey states:

The note paper on which it was written—paper found in abundance on the office floor and near the office of this man Frank—sustains Jim Conley.

How? Conley knew just as well where all the paper in the building was as Frank did. That kind of paper was found down in the cellar. It was used by all the foreladies of the floors. Conley had a pencil. He could have gotten the paper anywhere in the factory. The evidence clearly showed this. Now, how does the paper sustain Conley?

Dorsey argues:

The diction of the notes "that negro did this," and old Jim throughout his statement says "I done," sustains Jim Conley.

Oh, what a trap was here laid for us!

Conley was loaded on that, but while he did go out of his way a number of times to say "I done," and was very particular about it, yet he had had just enough schooling to use the word "did," and he used it many times as he gave his evidence; and, of course, when writing, one is more accurate than when speaking.

Now, this record shows that Conley in his evidence used the word "did" ninety-two times. When Mr. Dorsey told the jury that Conley all throughout his statement said "I done," Mr. Rosser interrupted him and showed by the record and by the official stenographer that Conley on the witness stand said "I did" time and time again.

Dorsey continues:

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, there are other instances you might pick showing that he said "I done," and they know it.

Well, how does that sustain Jim Conley?

Mr. Dorsey goes on:

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 the toilet. And the only toilet known to Mary, and the only one she would ever have used is the toilet 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 toilet, right on back also to the metal room.

Mr. Dorsey proceeds on the idea that the note was telling the exact truth as to how Mary Phagan was killed. Why, the object of the note was to throw everybody off the trail, of course. The note naturally

would have put her as being killed in the wrong place, if it had done anything. It was putting it on the wrong negro and putting the girl's death in the wrong place.

Don't you suppose if Frank was dictating the notes and trying to throw everybody off the track, he would not have had the notes to show the killing to be on the floor where he actually killed the girl? Did you ever think of that? Dorsey says Frank has good sense and his theory is that Frank is writing the notes to throw everybody off the track. His theory is that the notes mean that the girl was killed right on the office floor, right where it would have incriminated Frank; and his further conflicting theory is that Frank was such a bungler that he would have written the notes to show exactly where he killed her and to show it to be on the floor where his office was. Surely, he cannot praise Frank for his good sense in one breath, and by his construction of the notes, in the next breath, prove him to be a rank fool.

This note also says: "He pushed me down that hole." There is no hole she could have been pushed down in the metal room, and this alone shows that Mr. Dorsey's construction of the note was wrong when he said the meaning was that she went back to the toilet in the metal room. She was evidently pushed down a hole in the same place, or near the same place, where the toilet was; and, as just stated, there was no such hole in the metal room; but there were two holes on the ground floor at the bottom of the steps.

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One hole was the elevator shaft and the other hole was the trapdoor down which the ladder led, which the court has heard so often spoken of. The negro, knowing that he had pushed the girl down one of these holes, unconsciously brings this fact out in the note. While he was cunning, he was very ignorant, and it was hard for him to keep up a connected tale in these hastily written notes.

Further, Mr. Dorsey says:

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 Jim Conley.

Does it? He was trying to limit it to one negro and no other negro. There is only one negro in it and that is "that tall, black negro." He is trying to exclude the idea that he, Conley, had any part in it at all, and trying to fasten it on one negro alone. Perhaps his animosity to the "long, tall, black negro," the fireman of the pencil factory, was so great that he alone was the man he wanted the charge to center on, and perhaps he did not wish to involve Newt Lee.

Mr. Dorsey argues:

Frank, even in his statement, sustains him as to the time of arrival Saturday morning at the factory, as to the time of the visit to Montag, as to the folder which Conley says Frank had in his hand, and Frank in his statement says he had the folder. The time that Frank says he left that factory sustains old Jim.

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Why, they had all of these statements of Frank long before Conley's statement was fixed up. Frank made a statement to the coroner's jury, full and in detail, involving all these facts. Frank made a statement before the detectives and it was easy enough for the negro to chime in with what Frank had said. But that does not sustain Conley.

Besides, Conley as he sat hidden down there among the boxes, doubtless knew practically everything that happened that morning, and had an opportunity to see all these people come and go. This is our theory as well as the State's.

Mr. Dorsey goes on:

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 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?

They didn't keep a book showing these amounts. They made a ticket for \$2.00 and put it in the drawer. It was done at this time, and Schiff said he found it, and that was all that was ever done in the way of an entry. They treated it as cash when they paid White his wages, and instead of giving him \$2.00, gave him his ticket on the next pay day.

Dorsey claims Frank forgot to make an entry on the book. Yet Frank went through three and a half hours of the most intricate and detailed work ever

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made on that financial sheet, and experts say there was a mistake of only fifty cents made, and that it could have been made by not carrying out minute decimals. Yet Dorsey says that Frank's mind was so occupied with the crime that he made a mistake of \$2.00, and that Conley is thereby sustained.

He says:

This expert in bookkeeping, this Cornell graduate, this man who checks and re-checks the cash—you tell me that if things were normal, 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 is only one reason why he didn't do it.

I needn't repeat it. He did make the cash ticket for \$2.00. Schiff found it and entered it on the book; Schiff says that's the way it's always done; Frank says it's the way it's always done. White says: "I got the \$2.00," and there is no complaint that White was ever paid the \$2.00 again.

Dorsey continues:

He is sustained by the evidence in this case and the statement of Frank that he had relatives in Brooklyn.

Let's see about that. Everybody knew he was from Brooklyn. The negro had worked around the factory for two years. The newspapers had stated he was from Brooklyn. This negro read the newspapers eagerly; we have shown all that; so he knew Frank was from Brooklyn. He knew his father and

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mother lived there. He doesn't merely claim that Frank said he had *relatives* in Brooklyn. If he had, that would have been a commonplace statement and it would have had no bearing; but the negro lied in what he did state. He said Frank said: "I've got *wealthy relatives* in Brooklyn," and we overwhelmingly showed he did not have wealthy relatives there. His people are of very limited means. His father was a traveling salesman with an income of \$1200 a year. He is old and crippled now and trouble is his portion.

Can anybody believe that the negro told the truth when he stated that Frank paced the floor and in his presence said, "Why should I hang? I have wealthy relatives in Brooklyn"?

Further, Dorsey says:

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 it would nauseate the stomach of a decent jury to have him produced. 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.

The answer to that is this: A man named Mincey claimed that Conley made to him a certain statement. We didn't know. They had Conley canned for weeks and months. We didn't know whether he was going to admit or deny making the statement to Mincey. We asked Conley about it and it was our duty to do so. Any fact, probable or improbable, that has been suggested to us we ought to ask about. Conley denied it. We never attached any importance to Conley's denial one way or the other. Mincey's tale may have been true, but it did not impress us as evidence that was probable and reasonable, and rather than burden our case with anything doubtful, we decided against the putting up of Mincey.

Now, how does that sustain Jim Conley?

Dorsey continues:

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 circumstance in this case proves him guilty of this crime.

That is such glittering generality that I beg to be excused from discussing it. I know of no circumstance, I know of no act, I know of no word of this defendant, inconsistent with innocence. If there ever was a fair, intelligent statement by a much persecuted man, it was this man's statement to the court and jury; and I say further that a cleaner, more honest defense than ours has never been put up in a courtroom.

I have now gone through every fact in this case that Mr. Dorsey says corroborates Jim Conley, every single one of them. I don't claim any credit for answering them. A ten-year-old school boy could answer them if he had heard the evidence and was fair.

Your Honor, the newspapers yesterday carried an account of the trial of Wilburn down in Jones County, which formed quite a contrast to the trial of Frank.

A farmer had been killed. A young man confessed having murdered him and confessed an intimacy with his wife. It would seem to be just such a case as would bring all of the savagery of the populace to the surface. Yet the people sat throughout that trial, and heard those horrible details without an expression of vengeance. He was found guilty and sentenced to hang, and the dispatches from that little town say the people were sad that the verdict had to be rendered. They felt that under the facts of the case it had to be done, but it was done, not in gladness, but in sorrow. They were not happy that a man was going to die.

When the verdict of the jury was rendered in the Frank case, and even before the jurors had been polled, the savages that were grouped about the courthouse here on either side were making the air hideous with their cries of delight and their shouts of joy.

Capital punishment may have to be inflicted occasionally, but when it is done it ought to be done re-

gretfully, sorrowfully, sadly. Some day the civilized world will look with as much horror upon our taking a human life by law as we do upon the old English law of years ago, when even the theft of a silk handkerchief was a capital offense.

Charles Dickens, in writing of his court and prison experiences, wrote one little story that helped to start the great crusade that changed all that in England. It was written in the first person by a young doctor about his first case.

The doctor said:

I was called once by a poor mother to treat a case at her house; I went there as she asked me to do, and she said: "The patient hasn't come yet but will be here in a few minutes"; and in a few minutes the dead-wagon rumbled up to the door and the corpse of a stalwart young man was taken out and the mother said that this was the case. "Why," I said, "he is dead; and there is the mark of the rope around his neck." "Yes," said the mother, "I just wanted you to see if he was dead, and if there was any way to bring him back to life."

He was hung for some small theft. The mother had hoped there might be some life left in the body, which the doctor might revive.

The civilized world will yet stand aghast at capital punishment. It finds support in the old law of Moses: "Whoso sheddeth man's blood, by man shall his blood be shed." That was in the time when our ancestors dressed in the skins of animals; that was in the day

when they were pastoral; when they were shepherds; when they had flocks and herds; when a man had a hundred wives if he could take care of that many; when they believed in human sacrifices; that was in the day when the nations of the earth believed in every form of torture; when the Assyrians and other ancient nations would cut off a man's hands and feet when they took him prisoner; that was even before the days of the rack and the Inquisition. Men believed in that.

But when Christ came to earth he enunciated the doctrine that I have never understood how any Christian can reconcile with capital punishment: "*Ye have heard that it hath been said, 'An eye for an eye, and a tooth for a tooth'; but I say unto you, whosoever shall smite thee on thy right cheek, turn to him the other also.*"

These words have lived through the ages; but, strange to say, many Christians that have professed to follow the doctrines of the Prince of Peace, have been as bloody as the Mohammedans who openly followed the doctrine of the sword and torch.

Civilization is a slow growth. Not by mere pronunciamento, but through the processes of the years alone, will man become civilized. It is an evolution, just as we grew up from the monkeys; just as we sat down a long time and wore off the tails with which we once scampered around the trees; just as we wore off the hair from our backs by wearing clothes. I hope my friends Dorsey and Campbell have gotten

rid of their tails and hair, but this case doesn't look much like it to me.

This trial seems to me to be a sort of reversion to barbarism. Here is a man condemned to death on the uncorroborated evidence of a moral leper, evidence given to save himself, evidence that is contrary to all light and reason, and against the most powerful alibi ever proved in court.

At the beginning there was nothing against this defendant except his own statement that he had seen the girl on the day she was killed, and had paid her the amount that was due her for her work. He was the last person known to have seen the little child alive, and it would not have been known that he had even seen her except for his own statement to that effect. A guilty man would never have voluntarily made that admission; but it was the truth and Frank spoke it.

Many stories now arose. The germs of prejudice multiplied. In the soil of falsehood the feeling against this defendant grew. When the trial came on, the oceans of feeling and prejudice crept into the courthouse at the very beginning, and remained there until the rejoicing of the happy savages marked the rendition of the verdict.

The Solicitor spoke to the mob as much as to the jury. And he didn't have to use any reason in his argument; if he had blood in his talk, that was enough. It was poison that was fed to those jay birds in the jury box.

Oh, why couldn't we have had a trial like Wilburn had? There was no ferocity, no hungering for human blood, at Wilburn's trial. We have not had a judicial trial. A judicial trial is one where calm, fair-minded men get together, and focus their minds on the facts, and spurn every outside suggestion. We have had no such trial as that.

A fair, impartial, judicial consideration of this case would have resulted in the acquittal of the defendant, for his innocence has been proven.

Can you conceive of a white man of Frank's intelligence, in broad daylight, with the doors unlocked, in charge of a factory like this, which it has been shown was a perfect hive of people all the morning of this tragedy—can you conceive of such a one's attempting such a deed? The whole thing is so despicably improbable.

Monteen Stover was at the factory at 12:10. By no stretch of the imagination can you take the evidence and get Mary Phagan there before 12:10 to 12:12. At 12:30 Frank is seen on the fourth floor by Denham and White. He left at "about one o'clock." He is seen on the corner at about 1:10. Mrs. Levi saw him get off the car at his home at 1:20. Even the State's witness McKnight says he saw him out there at 1:30.

All of the experiments that have been made show that, assuming Conley to have told the truth as to what he and Frank did, Frank could not have left the factory before 1:30. Yet the unmistakable evi-

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dence shows he had reached his home before that hour, and went back to the factory in the afternoon, and for three hours worked on that financial sheet.

Your Honor, have we lost our senses? Is this case different from other cases? Do different rules obtain here? If so, why? Sometimes I fear that perhaps the law, not Leo Frank, is on trial.

It has been shown that the time Conley gave as to the disposition of the body was false. It has been shown that Mary Phagan was not at the pencil factory at the time Conley claims the deed was done, and that Frank was not there at the time Conley claims the body was moved.

But it is asked, could Conley invent such a tale? I tell you if there is any one talent a negro has, it is inventing a striking lie.

Why, Conley stated in one of his affidavits, that before he went to the pencil factory on the day of the killing, he went over on Peters Street and drank at several saloons. He went into many details, giving the names of the saloons, the kinds of spirits he drank, the names of the men he met, and the various things he did. He says now that every word of that affidavit was false, and that those things did not occur.

Could he invent a tale? We have his own evidence as a demonstration that he could invent a *marvelous* tale.

It has been shown that Conley confessed to a part of the crime, and that confession was proven false by clocks, watches and other evidence. It has been

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shown that he wrote the notes that were found by the body of the dead girl. Don't you know that if he wrote the notes, he killed the girl? Could you offer him any better inducement to evade and to lie than not to charge him with killing the girl, when he admitted writing the notes? The detectives, even then, led him into charging the notes on Frank.

The murder of Mary Phagan is no longer a mystery. The experiments that have been made, the physical facts of the case, the testimony delivered here, show the murderer to be, not Leo M. Frank, but Jim Conley, a perpetual law-breaker who has a law-breaking race back of him to "the time whereof the memory of man runneth not to the contrary."

Will you accept as true this monstrous tale that Conley tells, or will you place the judgment of a skilled man upon it, and say it is so incredible that you will not foreclose the question forever? Conley, though reveling at first in his wonderful accomplishment as a liar, lied so much and so often that he eventually lost all pride about lying, and when cornered with a lie that he couldn't explain, just admitted it was a lie.

Will Your Honor allow this verdict to stand by believing Conley's *latest* lie, discarding human testimony, and changing clocks, watches and street car schedules? We only ask that justice be done.

Here is the only place we can argue the facts on appeal. The Supreme Court has no jurisdiction over questions of fact where the witnesses are in conflict.

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It takes *errors of law* for that court to interfere. Your Honor alone has the duty and the responsibility now of approving this verdict, or setting it aside; of saying, as an independent tribunal, whether the jury found the truth.

We have battled against the twin evils of prejudice and ignorance, but we are panoplied in the right. And

What stronger breast-plate than a heart untainted?

Thrice is he arm'd that hath his quarrel just;

And he but naked, though lock'd up in steel,

Whose conscience with injustice is corrupted.

Much is said these days about law and order, but I say to you that the spirit back of this prosecution, the spirit that was manifest in and about the courtroom where Frank was tried, and where the poor man—I hate to say it—had not a dog's show for his life, was not the law and order spirit.

The fact is often overlooked that a crime can be committed against a man charged with crime. There are murders in court as well as out of court, and I would no more be a party to the one than to the other. We may be sure, too, that the great All Seeing Eye above looks not merely at *forms* of things, but sees into their very *hearts*.

In such a case as this it behooves the officers of the law to say to the multitudes: "Stop, stay your hand; this is not a chase; there is no quarry here we have joined in to catch; we are trying to find a fact, and we are going to do it calmly, considerately, dispassionately, if it takes until eternity to do it."

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Your Honor, our cause is right and must eventually triumph if Justice rules in Georgia. Time is the great truth teller. Before the peaceful passage of time false creeds wither, error topples to the earth, the passion of the mob subsides, and in the end truth—and only truth—prevails.