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THE LEO FRANK CASE.

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THE LEO FRANK CASE

by

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The Leo Frank case highlights the problems of a society in transition. At the beginning of the twentieth century rural Georgians migrated to Atlanta to enjoy the heralded advantages of industrialization. To their chagrin they found harsh working conditions and squalid living quarters. Southern traditions, which glorified the Anglo-Saxon Protestant heritage, and the bitter memories of the Lost Cause, complicated the newcomers' reactions to urban life. Unable to retaliate against the industrialists whose colossal indifference caused them many hardships, the new urbanites vented their pent-up aggressions upon Negroes and other vulnerable ethnic groups. It is against this background that the Frank case has been explored.

In 1913 the bruised body of a thirteen-year-old girl was found in the basement of the factory where she had been employed. Her employer, Leo Frank, a Jew from New York City, was the last person to admit having seen her alive. The police, who had been under pressure because of previous failures, found flaws in Frank's story and arrested him. As a northern, Jewish, industrialist, Frank also symbolized the evils Southerners felt had been inflicted upon them. The Atlanta newspapers further aggravated Frank's plight, and intensified public antagonism towards him, by publishing careless headlines and tales of sexual immorality.

Frank was tried in a hostile atmosphere devoid of the safeguards civil libertarians consider mandatory today. Courtroom spectators applauded the prosecuting attorney, crowds outside of the building vociferously expressed their views in voices loud enough to punctuate the judicial proceedings, and the presiding judge, fearing for the defendant's safety, advised him to remain away from the court when the jury rendered its verdict. At the conclusion of the trial the jury found Frank guilty, and the judge sentenced him to hang.

After Frank's conviction some of his friends appealed to northern Jews for assistance. On the basis of the information received, the northerners concluded that an "American Dreyfus" affair had occurred, and inaugurated a campaign for a new trial. Infuriated Georgians misinterpreted these efforts as an attempt to corrupt the judicial process. Tom Watson, the former Populist, became the spokesman for this group when he launched a series of articles lumping the defenders of Frank with those wealthy business interests whose actions in the past had subverted the principles of Southern life.

Frank's lawyers appealed to the Georgia Supreme Court for a reversal of the decision, and ultimately to the United States Supreme Court. In each court the justices turned down the requests for vindication on the grounds that proper procedures had been adhered to in the original trial. After all court action had failed, the Governor of Georgia, who had access to additional information tending to exonerate Frank, commuted the sentence to life imprisonment. A few weeks later a band of men stormed the prison, kidnapped Frank, and lynched him.

The Frank case dramatized the reactions of those Southerners who revolted against the injustices of industrialism. Unfortunately, they seized upon one individual to pay for all of the crimes, real or fancied, which they believed had been inflicted upon them by northerners, industrialists, and Jews. This study is also significant for its treatment of the leading members of a defensive minority group who viewed the Frank case as an omen for the future of American Jewry. And finally, the dissertation indicates the primitive development of civil liberties in the early part of the twentieth century. For Leo Frank was victimized both by the passions of infuriated mobs and the myopic views expressed by some of the nation's leading jurists concerning due process of law.

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TABLE OF CONTENTS

	Page
ACKNOWLEDGMENT.	ii
Chapter	
I. BACKGROUND FOR MURDER.	1
II. THE MURDER OF MARY PHAGAN.	28
III. PREJUDICE AND PERJURY.	88
IV. AN AMERICAN DREYFUS.	121
V. THE FIRST APPEAL	136
VI. ENTER TOM WATSON . . . AND WILLIAM J. BURNS. . .	147
VII. WISDOM WITHOUT JUSTICE	187
VIII. COMMUTATION.	201
IX. VIGILANTE JUSTICE.	242
AFTERMATH	262
APPENDIXES:	
A. JIM CONLEY'S LETTERS TO ANNIE MAUD CARTER . . .	293
B. "THE BALLAD OF MARY PHAGAN"	305
C. FREEMAN'S TALE.	308
BIBLIOGRAPHY.	312

CHAPTER I

BACKGROUND FOR MURDER

At the beginning of the twentieth century, Atlanta was suffering from the throes of industrialization. Rural migration had sent the city's population soaring from 89,872 in 1900 to 173,713 in 1913.¹ Positive attributes of growth, such as expanded business activity, which brought recognition to Atlanta as a leading regional business center, were inseparable from the evils of industrial exploitation. Festering slums, organized vice, and high crime rates virtually unknown a generation earlier, plagued municipal officials.

Most of the newer residents of Atlanta originated in rural Georgia. These people had learned to expect, and in some measure to cope with, poverty and suffering in their agrarian milieu. But many "found it impossible to make a quick and easy adjustment to the system of urban values."² The reason for this may have been that, difficult as rural life was, it provided traditional social guide posts. But

¹The Atlanta Constitution, January 18, 1915, p. 1; cited hereafter as AC.

²William D. Miller, Memphis During the Progressive Era, 1900-1917 (Memphis, 1957), p. 8.

the city undermined the strong family and community ties which had characterized the past.

Working conditions in Atlanta compared unfavorably with those in other parts of the country. Despite a periodic shortage of workers, factory wages were low and hours long. The normal work week lasted sixty-six hours and except for Saturday, the working day generally extended from 6 a.m. to 6 p.m., with only a half hour for lunch. In 1914, there were children working in Atlanta for as little as 22¢ a week. According to an official of the National Child Labor League, Georgia did not even have the semblance of factory inspection and employers openly violated existing child labor laws prohibiting employment of minors under ten.¹

¹ A United States government survey reported in 1910 that 90 percent of the children in Georgia earned less than \$6 a week. U.S., Congress, Senate, Report on Conditions of Woman and Child Wage-Earners in the United States, 61st Cong., 2d Sess., 1910, Senate Document #645, Serial #5685, I, 310; "Dixie Conditions Stir Unionists--Description of Actual State of Atlanta Textile Workers Make Delegates Weep," The Textile Worker, III (December, 1914), 21. The cost of living in 1913, in Atlanta, was the second highest in the nation (Boston was first), and wages lagged behind those paid in the northern cities, The Atlanta Journal, September 17, 1913, p. 1; cited hereafter as AJ. See also W. J. Cash, The Mind of the South (New York, 1941), p. 247. C. Vann Woodward reported that in 1912 and 1913 hourly earnings in New England averaged 37 percent above those in the South. Origins of the New South (Baton Rouge, 1951), pp. 420-21. U.S., Report of the Industrial Commission, 1901, VII, 56, 57. A few

Living conditions in Atlanta compounded the difficulties of its residents and seriously threatened their health. In their squalid factory slums, the laborers, mostly white tenant farmers who had come to the city in an attempt to improve upon their wretched lives on the farm, suffered from hunger and destitution. In 1908, fifty thousand persons, or approximately one-third of Atlanta's population, lived without water mains or sewers and used well water and surface closets. In 1911, more than half of the white school children, and slightly under three-quarters of the Negro school children, suffered from malnutrition, anaemia, enlarged glands, and heart disease. The United Textile Workers Union complained in 1914 that far too many Atlanta children fell victim to pellagra--a disease without a known cure at that time. The death rate in the city was appalling. A United States census report for 1905 noted that of three hundred eighty-eight cities in this country, only twelve had a higher death rate than Atlanta. The requests for welfare, which

years later the U.S. Senate's Report on . . . Wage-Earners . . ., noted that the average work week in Georgia cotton mills in 1908 was 64 hours which was longer than that in Virginia, North Carolina, South Carolina, Alabama, and Mississippi. Of the thirty-one establishments that the Commission investigated, sixteen had a sixty-six hour week; forty minutes was the average lunch time, p. 261. A. J. McKelway, "Child Labor in the South," The Annals, XXXV (January, 1910), 163.

also reflected the city's poverty, increased sharply between 1910 and 1913. Atlanta's Journal of Labor noted that it had received 2,000 calls for help in 1910, 4,000 in 1911, 5,000 in 1912, "and the gloomy forecast presents itself that the winter of 1913-1914 will establish a new record in this respect." The Atlanta relief warden succinctly summarized the situation by stating that there were "too many people on the ragged edge of poverty and suffering."¹

The crime rate in Atlanta highlighted the stresses of the new urbanites. In 1906, a demoniac race riot, incited by a gubernatorial campaign with strong appeals to prejudice, and the reports of sensational newspapers which exaggerated stories of alleged Negro assaults upon white women, attracted national attention.² A year before that,

¹ Lenora Beck Ellis, "A New Class of Labor in the South," Forum, XXXI (May, 1901), 307; S. A. Hamilton, "The New Race Question in the South," Arena, XXVII (April, 1902), 356; C. Vann Woodward, Tom Watson: Agrarian Rebel (New York, 1938), pp. 219, 223-24, 418; Edmund De S. Brunner, Church Life in the Rural South (New York, 1923), p. 21; Annual Report of the Atlanta Chamber of Commerce, 1909, p. 5; The Textile Worker, III (December, 1914), 21; The Journal of Labor, XV (November 7, 1913), 4; Report of the Comptroller of the City of Atlanta, For the Year Ending 1911, pp. 15, 16, 20, 32, 41, 42; U.S. Bureau of the Census, General Statistics of Cities: 1909, pp. 88, 148.

² Dewey W. Grantham, Jr., Hoke Smith and the Politics of the New South (Baton Rouge, 1958), pp. 149, 150, 178;

Atlanta had arrested more children for disturbing the peace than any other city in the country. In 1907, only New York, Chicago, and Baltimore, cities with considerably larger populations, exceeded Atlanta's figure for children arrested. In 1905 the Atlanta police arrested 17,000 persons out of a total population of 115,000, and the following year arrested 22,000. These figures more than tripled the number in New Orleans, although that city had twice Atlanta's population. More than two-thirds of those arrested were guilty of disorderly conduct and drunkenness.¹

The city police force proved unable to cope with the new problems thrust upon it. In fact, at times, the policemen

Woodward, Tom Watson, pp. 374-78; Glenn Weddington Rainey, "The Race Riot of 1906 in Atlanta" (unpublished Master's thesis, Department of History, Emory University, 1929), chap. 5 (no pagination); Ray Stannard Baker, "Following the Color Line," The American Magazine, LXIII (April, 1907), 563, 569.

¹U.S. Bureau of the Census, Statistics of Cities for 1905, p. 324; Statistics of Cities: 1907, pp. 102, 107, 410. I have been unable to find an exact census of Negroes in Atlanta for 1905. The census of 1900 listed 45,532 Negroes residing in Fulton County (Atlanta comprised 85 percent of the county) and the census of 1910 listed the figure as 57,985. I assume, therefore, that Atlanta had about 50,000 Negroes in 1905. Similarly, I have not found a breakdown between the number of whites and Negroes arrested in Atlanta in 1905. But according to the census of 1910, 9,717 Negroes were committed to prison in Georgia that year, against 2,684 whites. This means that the punishment rate for Negroes was about 4.4 times greater than that of whites for that year. U.S. Bureau of the Census, Negro Population, 1790-1915 (Washington, 1918), pp. 437, 779.

went to irrational extremes in attempting to cope with certain difficulties. On one occasion, when Atlanta experienced a labor shortage, the police attempted to rectify the condition by arresting all able-bodied men found on one of the main streets. Employed and unemployed, black and white, were hauled into court, fined, and sentenced to the stockade without being given a chance to defend themselves. One man so punished had been in the city for only three days. Neither relatives nor employers were notified of the roundup or the sentencings. According to one observer, the policemen also acted with brutality. In 1909, they allegedly beat one Negro to death and chained a white girl to the wall until she frothed at the mouth. In 1910, a commission investigating prison conditions in the city uncovered "stories too horrible to be told in print."¹

The pathological conditions in the city menaced the home, the state, the schools, the churches, and, in the words of a contemporary Southern sociologist, the "wholesome

¹ Hugh C. Weir, "The Menace of the Police: II. The Bully in the Blue Uniform," World To-Day, XVIII (1910), 174; Philip Weltner, "Municipal and Misdemeanor Offenders," The Call of the New South, ed. James E. McCulloch (Nashville, 1912), pp. 110, 111.

industrial life."¹ The institutions of the city were obviously still unfit to cope with urban problems. Against this background, the murder of a young girl in 1913 triggered a violent reaction of mass aggression, hysteria, and prejudice.

2

To understand why this incident led to an emotional explosion, one must first explore the Southern heritage. Traditionally, the people in the South have feared and opposed change. Thwarted in their attempt to maintain a slave-based economy, frequently poverty-stricken, and often compulsive in defending established institutions, they developed a strong in-group loyalty which at times manifested itself in paranoid suspicion of outsiders. They clung to ante-bellum memories and despite the northern-imposed abolition of slavery, the ways of the Old South stubbornly resisted the encroachment of industrialism.

To some extent, the South had always existed as a fairly hermetic community, united by similar racial and religious backgrounds.² In colonial times, its penchant for

¹ G. W. Dyer, "Southern Problems That Challenge Our Thought," The Call of the New South, p. 27.

² Except for Louisiana, most of the Southern states were peopled by immigrants from England, Scotland, Ireland, and French Protestants.

conformity compelled state legislatures to establish a tax-supported church, and in some cases political restrictions on non-Protestants. But with the American Revolution, many of the religious proscriptions were altered, or abolished, and for perhaps half a century, from the Revolution to approximately the Jacksonian era, the outlook of the South corresponded, in broad terms, with that of the North and West.

With the beginnings of the slavery controversy, however, compulsions toward a closed society came to the surface, and became the most dominant regional characteristic. The attack upon slavery was interpreted as a dagger at the heart of the South. Beginning with the 1830's, all "true Southerners" were expected to conform to the mores of their society. In effect this meant the defense of slavery, the idolization of women, the profession of religious orthodoxy, and the cherishing of an Anglo-Saxon heritage. Uniformity of belief pervaded the region, and resulted in a sterile, backward outlook upon life. Any changes which threatened the status quo were automatically objected to; it was widely felt that the whole house would collapse if any of its underpinnings broke.

After the Civil War, the leaders of the New South--

the railroad magnates and owners of cotton mills and factories--earnestly endeavored to build an industrial community patterned after the North.¹ To accomplish their purpose these leaders departed from past policies. The immigration of foreign white labor, they hoped, would fill the factory positions and help the area prosper. Southern state governments, therefore, established immigration bureaus in the hope of attracting Northern European settlers.² The Atlanta Constitution explained that the Georgia Immigrant Association wanted only the "Best Type" of immigrant. "Best Type" euphemistically meant Northern European stock and not "the lower-class foreigners who have swarmed into northern cities." Manufacturers Record, a major Southern business publication which frequently spoke out on the South's immigrant need, stated the position more succinctly: "the South will have human sewage under no consideration." The Southern experiment proved abortive, however, since few "desirable" immigrants came, and on at least one occasion "carefully selected Northwest Europeans" turned out to be natives

¹ Woodward, Origins of the New South, pp. 144-54, passim.

² Robert De Courcy Ward, "Immigration and the South," The Atlantic Monthly, XCVI (November, 1905), 611. See also AC, February 20, 1907, p. 1.

of Southern Europe.¹

Disillusionment with the type of foreigners arriving killed the state government programs for selective immigration. Except for the New South's champions, the people welcomed an end to the policy of encouraging settlers. By the onset of Woodrow Wilson's administration, in 1913, Southern Congressmen were practically unanimous in their opposition to immigration from Southern and Eastern Europe.²

3

Between 1880 and 1915 Italians and Jews outnumbered all other Southern and Eastern Europeans entering this country. Several Italian settlements were established in the South during the 1890's and invariably suffered local harassment. Nineteen Italians were lynched in Louisiana during the decade because they seemed to fraternize with Negroes

¹John Higham, Strangers in the Land (New Brunswick, 1955), p. 113; Walter L. Fleming, "Immigration to the Southern States," Political Science Quarterly, XX (June, 1905), 282, 290; AC, February 20, 1907, p. 3; "Phases of Immigration," Manufacturers' Record, XLVII (June 15, 1905), 497; The Independent, XI (August 17, 1911), 385.

²Grantham, op. cit., p. 157; Joseph D. Herzog, "The Emergence of the Anti-Jewish Stereotype in the United States" (unpublished thesis, Hebrew Union College, 1953), p. 42; Rowland T. Berthoff, "Southern Attitudes Toward Immigration," The Journal of Southern History, XVII (August, 1951), 360.

and because many Southerners regarded them as just "another inferior race to be disciplined."¹ Czechs and Slovaks also had difficulty in the South. Forty years after they had established a colony south of Petersburg, Virginia, the "natives" still remained unreconciled to their presence.²

Jews, on the other hand, had been in the South since colonial times. Southern attitudes toward them had been an amalgam of affection, tolerance, curiosity, suspicion, and rejection. These views, which for the most part characterized Northerners also, might come to the fore singly, and in combination, on different occasions. What complicated the expression of these feelings, however, was the traditional Southern antipathy to those whose behavior and origins differed, even slightly, from those of the dominant group of white, Anglo-Saxon Protestants. During periods of relative calm Jews suffered no harm; during periods of stress, though, ancient, and relatively unconscious antagonisms became more

¹Higham, Strangers in the Land, p. 169; Berthoff, op. cit., pp. 343-44. The lynchings created an international incident and President Benjamin Harris even found it necessary to comment upon them in his State of the Union address to Congress in 1891. Charles H. Watson, "Need of Federal Legislation in Respect to Mob Violence in Cases of Lynching of Aliens," Yale Law Journal, XXV (1916), 569, 577, 578; see also "Southern Peonage and Immigration," The Nation, LXXXV (December 19, 1907), 557.

²Berthoff, op. cit., p. 344.

marked. Since there were always periods of difficulty for some groups, some degree of anti-Semitism appeared in each era. But during the great spasms of society, Jews were often pointed to as the source of the troubles.

Some prejudice toward Jews existed in the American colonies but there did not seem to be much difference between the North and the South. Although voting privileges were generally restricted to Protestants, the Jews, in fact, occupied a relatively high status in colonial times. Merle Curti has attributed this "to the fact that they contributed to commercial prosperity. . . . The jealousy frequently occasioned by such success was offset in part by the common assumption in a rapidly expanding economy that there was room for everyone to get ahead."¹ Later on, after most of the political disabilities had been abolished, the Jews in this country still comprised an infinitesimal percentage of the population, and until the Civil War, were not subjected to any organized persecution.

Since the main problem of the ante-bellum South revolved around slavery, Jews did not loom as a threat because in their quest for amalgamation, they had accepted the

¹ Merle Curti, The Growth of American Thought (New York, 1943), p. 51.

institution of slavery. At one point, this was, indeed, the test of a true Southerner. Thus Jews could rise to the highest positions in the South and often did. A South Carolina Jew served as Chief Justice of the state Supreme Court before the Civil War and his son served as Governor of the state after the war. Florida sent David Yulee to the Senate in 1845 and eight years later Louisiana elected Judah P. Benjamin to the same office. During the Civil War, not only did Benjamin serve as Confederate Secretary of State, but the Quartermaster-General, the Surgeon-General, several Congressmen and other high Confederate officials were Jews.¹

Jews also participated in the professional and commercial life of the region with no restrictions. In Atlanta, for example, a Jew founded the city's largest department store, and Abraham Cahan, editor of a prominent New York City Yiddish language newspaper in the early part of the twentieth century, noted that it was fairly common for the large Southern law firms to have both Jewish and Gentile partners.²

¹Lawrence H. Fuchs, The Political Behavior of American Jews (Glencoe, Ill., 1956), pp. 37-40; Alfred O. Hero, Jr., The Southerner and World Affairs (Baton Rouge, 1965), p. 494. Hero has an excellent historical discussion in his chapter, "Southern Jews." See also, Bernard Postal, "Jews in the Ku Klux Klan," The Jewish Tribune, XCIII (September 14, 1928), 60.

²Henry Givens Baker, Rich's of Atlanta (Atlanta, 1953), p. 225. Abraham Cahan, Blatter Von Mein Lebon (5 vols.; New

In spite of the accomplishments of individuals, however, Jews, as a group, were thought of as having peculiar characteristics and made to feel different from other Southerners. During the Jacksonian era, for example, Jews were considered "rebels against God's purpose," and many a Southern Christian mother lulled her children to sleep with fables of Jewish vices. In one popular nursery rhyme, "The Jew's Daughter" enticed a young Gentile boy into her home, "where no one would hear his call":

She sat him on a chair of gold
And gave him sugar sweet
She laid him on the dresser
And killed him like a sheep.

An incident concerning the sale of a slave girl to a Jewish woman in 1859 reveals the prevalent Judaophobic attitudes. On the day the slave was to be sent to her new mistress she disappeared. After a long search, her master found the child hiding under a bed. When queried about her actions, the girl pleaded that she did not want to be sold to a Jew. "I don't want to go to live with Miss Isaacs," the youngster explained. "Miss Isaacs is a Jew; an if the Jews kill the

York, 1931), V, 353. (My father, Abraham Dinnerstein, translated this for me from the Yiddish.)

Lord and Master, what won't they do to a poor little nigger like me."¹

During the Civil War Southern Jews aroused "pronounced anti-Semitic sentiment" for the first time. They were accused of being "merciless speculators, army slackers, and blockade-runners across the land frontiers to the North." Judah P. Benjamin, the Jewish Secretary of State in the Confederacy, remained a popular target throughout the war. Almost every one of his political enemies referred to his religion when attacking him and one critic applied the sobriquet, "Judas Iscariot Benjamin." Denunciation of Jewish merchants was a common practice in many towns of Georgia and the Southern Illustrated News observed, "all that the Jew possesses is a plentiful lot of money, together with the scorn of the world."²

¹ John Higham, "Social Discrimination Against Jews in America, 1830-1930," Publications of the American Jewish Historical Society, XLVII (1957-1958), 4; Nina Morais, "Jewish Ostracism in America," The North American Review, XCCIII (1881), 271; "The Jew's Daughter," Journal of American Folklore, XV (1902), 196. See also ibid., XIX (1906), 293-94; XXIX (1916), 166; XXV (1922), 344; and XXXIX (1926), 93-94. Harper's New Monthly Magazine, XIX (1859), 860.

² E. Merton Coulter, The Confederate States of America (Baton Rouge, 1950), p. 226; Eaton, Freedom of Thought in the Old South, p. 233; Bertram Wallace Korn, American Jewry and the Civil War (Philadelphia, 1951), pp. 158, 177, 179; Rudolph Glanz, The Jew in the Old American Folklore (New York, 1961), p. 54.

In some quarters of the South, after the Civil War, Jews were considered worthy members of society. This opinion prevailed, primarily, among those who wished for commercial growth and those who wished to imitate northern industrial accomplishments. Hence one newspaper editor hailed their presence "as an auspicious sign." "Where there are no Jews," the newspaperman observed, "there is no money to be made." Another newspaper noted that "a sober, steadier, and more industrious and law abiding class of population . . . [does] not exist."¹ In 1900, a leading Atlanta merchant was held up as "a typical exponent of the characteristics of his race [who] has happily exemplified that spirit and progressive enterprise for which his people are noted all over the world."²

Jews also occupied a unique social status in the South. One peddler recalled that the Christians he dealt with held him in special regard. Frequently asked about the Bible, he was often required to settle religious disputes "because I was a Jew and they all looked upon me as an authority." He also noted that some rural Southerners were

¹ E. Merton Coulter, The South During Reconstruction (Baton Rouge, 1947), p. 203.

² Baker, op. cit., p. 225.

so backward that they considered him as some sort of Christian. "I remember well," he reminisced, "being asked time and again 'Are you a Baptist Jew or a Methodist Jew?'" And Harry Golden, who has insisted that the South has a tradition of philo-semitism, wrote that in the rural South people held the Jewish population almost as a private possession: "He is 'our Jew' to small-town Southerners, and they often take care of him with a zeal and devotion otherwise bestowed only on the Confederate monument in the square."¹

But the very Jewish differences which allegedly attracted Southerners also made Jews the object of hostility, especially in times of strife. The causes of the anti-Semitic attitude are so complex that studies by scholars in various disciplines have resulted in numerous and sometimes completely divergent conclusions. The overwhelming number of commentators have traced the roots of the difficulty to economic and social crises.² Elias Rivkin, an American

¹ Harry Golden, Forgotten Pioneer (Cleveland, 1963), pp. 66-67; Golden, A Little Girl Is Dead (Cleveland, 1965), p. 226; Golden, "Jew and Gentile in the New South: Segregation at Sundown," Commentary, XX (November, 1955), 403-404.

² Oscar Handlin, Adventure in Freedom (New York, 1954), p. 184; Handlin, "American Views of the Jew at the Opening of the Twentieth Century," Publications of the American Jewish Historical Society, XL (June, 1951), 329; Ernst Simmel, "Anti-Semitism and Mass Pathology," in

Jewish scholar, succinctly summarized this point of view when he wrote that in the United States "at every moment of economic or social crises, especially since the 1890's, anti-Semitism has manifested itself. This anti-Semitism more and more linked the Jews with the sources of disintegration and decay. . . ." ¹ Those investigating the phenomenon from a psychoanalytical point of view see the negative feelings towards Jews as a facet of a personality disorder. Otto Fenichel, the psychoanalyst, has attributed anti-Semitism to the displacement of unconscious instincts, and Bruno Bettelheim, following along the same path, has ascribed the

Anti-Semitism: A Social Disease (New York, 1946), pp. 43-44; Werner J. Cahnman, "Socio-Economic Causes of Antisemitism," Social Problems, V (July, 1957), 24; David W. Petegorsky, "The Strategy of Hatred," The Antioch Review, I (September, 1941), 376; Rudolph M. Loewenstein, "The Historical and Cultural Roots of Anti-Semitism," Psychoanalysis and the Social Sciences, I (1947), 532, 535; Howard M. Sachar, The Course of Modern Jewish History (Cleveland, 1958), p. 339; David Riesman, "The Politics of Persecution," Public Opinion Quarterly, VI (Spring, 1942), 25; Gorham Munson, "Anti-Semitism: A Poverty Problem," Christian Century, LVI (October 4, 1939), 200; Selma G. Hirsch, The Fears Men Live By (New York, 1955), pp. 68, 70; Miriam Beard, "Anti-Semitism--Product of Economic Myths," in Jews in a Gentile World, edited by Isaque Graeber and Stewart Henderson Britt (New York, 1942), p. 392; Isaac A. Hourwich, "Is There Anti-Semitism in America?" The American Hebrew, XCIII (October 17, 1913), 683.

² Eliás Rivkin, "A Decisive Pattern in American Jewish History," Essays in American Jewish History (Cincinnati, 1958), p. 60.

hostility to the projection of one's own "unacceptable inner strivings."¹ A still different approach, by psychologist Nancy Morse, emphasizes nationalistic involvement as a causative factor. Dr. Morse believes that "personality insecurity and circumstance frustration" are associated with anti-Semitism only "if the individual is involved with the nation."² The research of John Higham seems to have reinforced the conclusions of Dr. Morse as well as those who have subscribed to the ideas of economic and social crises. Higham found that at the end of the nineteenth century, anti-Semitism in this country "was strongest in those sectors of the population where a particularly explosive combination of social discontent and nationalistic aggression prevailed."³

¹ Otto Fenichel, "Psychoanalysis of Antisemitism," The American Imago, I (March, 1940), 37-38; Bruno Bettelheim, "The Dynamism of Anti-Semitism in Gentile and Jew," The Journal of Abnormal and Social Psychology, XLII (1947), 162. Others who have subscribed to this viewpoint are Israel S. Wechsler, "The Psychology of Anti-Semitism," The Menorah Journal, XI (April, 1925), 164; Harrison G. Gouch, "Studies of Social Intolerance: II. A Personality Scale for Anti-Semitism," The Journal of Psychology, XXXIII (1951), 253; and Jacob J. Weinstein, "Anti-Semitism," in The American Jew, edited by Oscar I. Janowsky (New York, 1942), p. 199.

² Nancy Carter Morse, "Anti-Semitism: a Study of its Causal Factors and Other Associated Variables" (unpublished Ph.D. dissertation, Department of Psychology, Syracuse University, 1947), p. 422.

³ John Higham, "Anti-Semitism in the Gilded Age: A Reinterpretation," Mississippi Valley Historical Review, XLIII (March, 1957), 572.

The difficulties of tracing the roots of anti-Semitism are highlighted by the fact that it manifests itself during periods of prosperity, and in people who appear relatively well adjusted. Long time city dwellers, such as the Irish for example, have also shown signs of hostility towards Jews. Therefore other explanations must be explored.

One such effort has been made by commentators who have pointed to anti-Jewish elements in Christian teachings. Horace M. Kallen, the Jewish philosopher, has specifically stated that "When Christianity will effectively stop teaching that the Jews are the enemies of God and of mankind it will strike anti-Semitism at its foundations."¹ And J. F. Brown, in his study, "The Origin of the Anti-Semitic Attitude," concluded that Christians believe "the Savior was murdered by Jews. Most enlightened adults would scoff at this as a reason for anti-Semitism. The fact that we all heard of it at an impressionable age, the fact that we heard it from parents who themselves entertained at least a latent anti-Semitism, makes it an important factor and means that we probably all harbor some anti-Semitism unconsciously."²

¹Horace M. Kallen, Judaism at Bay (New York, 1932), p. 149.

²J. F. Brown, "The Origin of the Anti-Semitic Attitude," in Graeber and Britt, op. cit., pp. 134-35.

The complex nature of the subject makes it difficult to pinpoint the exact causes of anti-Semitism in the South. When rural Southerners flocked to the cities at the end of the nineteenth century, their impressions of the Jew combined the traditional notion of financial omnipotence with the time-worn Southern prejudice against aliens.¹ To many, the Jews also symbolized the city. Since they dealt mainly in trade and commerce, the lifeblood of the town, many considered them the urban people, par excellence. Rural and urban schools tended to glorify rural virtues and depicted the city as the locus of evil. Rural dwellers usually held some vague suspicion of urbanites even before their arrival in the big towns; subsequent experiences tended to confirm the earlier prejudice. For many months each year the former farmers worked indoors without seeing daylight. Their miserable tenements worsened their induction into this strange city life. Many of the newcomers

¹The impression of the Jew as alien existed in the South even though his ancestors might have been in the Confederate army. Cash, op. cit., pp. 305, 342.

longed for the open field, but economic necessity forced them to remain in the factories. For lack of a more specific target, the unpleasant experiences in the city could easily be attributed to the mysterious Jew who controlled finances, practiced strange customs, and personified urban perfidy.¹

Some Southerners attempted to change the existing prejudice. Senator Zebulon Vance, of North Carolina, travelled through hundreds of American cities in the 1880's and 1890's condemning the "unreasonable prejudice which existed against Jews." "Let us learn to judge the Jew," he would repeat over and over again, "as we judge other men--by his merits. And above all, let us cease the abominable injustice of holding the class responsible for the sins of the individual. We apply this test to no other people." And a minister, writing in an Atlanta daily in 1915, entitled his essay, "The Jews--Our Benefactors." He denounced "the irrational feeling of opposition, so many ignorant people

¹ Arnold Rose, "Anti-Semitism's Root in City-Hatred," Commentary, VI (1948), 375-77; Jacob J. Weinstein, "Anti-Semitism," in Oscar I. Janowsky (ed.), The American Jew (New York, 1942), pp. 187, 188; Handlin, "American Views of the Jew. . .," p. 344; John P. Roche, The Quest for the Dream (New York, 1963), p. 88; Howard M. Sachar, The Course of Modern Jewish History (Cleveland, 1958), p. 139.

cherish against the Jews. . . ." ¹ But these pleas met with little success.

4

The problems of the South merged with the difficulties of the city at the beginning of the twentieth century when the "crackers" came to Atlanta. ² They hoped to escape the grinding poverty of the farm and share in the alleged rewards of the factory. During the same period an influx of foreigners added to Atlanta's population growth, as well as to the complexities of the city's problems. ³ The coming of Russian Jews, especially, to Atlanta in the 1890's, resulted in an era of mounting friction. ⁴

¹ Zebulon Vance, The Scattered Nation (New York, 1916), pp. 50-51; Franklin Ray Shirley, Zebulon Vance, Tarheel Spokesman (Charlotte, N.C., 1962), p. 122; Dumas Malone, "Zebulon Vance," Dictionary of American Biography, XIX, 161; AJ, July 20, 1913, magazine section, p. 10.

² When used in Georgia, the term "cracker" connoted isolated, ignorant, backward frontiersmen. Bevode C. McCall, "Georgia Town and Cracker Culture" (unpublished Ph.D. dissertation, Department of Sociology, University of Chicago, 1954), pp. 105-106.

³ Clement Charlton Moseley, "Politics, Prejudice and Perjury: The Case of Leo M. Frank, 1913-1915" (unpublished seminar paper, Department of History, University of Georgia, March 22, 1965), p. 5.

⁴ Solomon Sutker, "The Jews of Atlanta: Their Social Structure and Leadership Patterns" (unpublished Ph.D. dissertation, Department of Sociology, University of North Carolina, 1950), p. 33.

Since colonial times Georgia had had a prosperous and tightly knit Jewish community. Compared to non-Jews, they occupied a relatively high occupational status,¹ and though there had always been prejudice toward Jews in Georgia,² no major problems developed with their Gentile neighbors--except during the Civil War--before the twentieth century. In Atlanta, the Jews never constituted a significant percentage of the city's population, but with the influx of Russian Jews in the 1890's, problems developed between the new immigrants and the established Jewish community, and between the Russians and the working class Atlantans. The German Jews "blackballed" the Russians from their social clubs and did not encourage them to reside in their neighborhoods. Eventually the two groups did work harmoniously in establishing some of the Jewish community's social services, but at least through 1915, "there were constant overtones of dissension between the leaders of the two groups."³

¹ Ibid., pp. 80, 81.

² The Atlanta Georgian, October 29, 1913. Clipping in Leo Frank Papers (American Jewish Archives, Cincinnati), Box 698. The Atlanta Georgian will be cited hereafter as AG; the Frank papers will be cited as Frank Papers. Since all newspaper references to the Frank Papers are clippings, the word "clipping" will not be repeated.

³ Sutker, op. cit., pp. 30-31, 120, 143, 159.

The newly arrived Europeans came into greater contact with Negroes than did the older Jewish community of Atlanta. This inadvertently led to conflict between Gentiles and Jews. The newcomers purchased small businesses, including saloons where Negroes gathered. Sensual pictures of nude white women allegedly decorated the walls of many of these establishments and rumors circulated that even the labels on the liquor bottles were designed to incite Negro passions. Many Atlantans assumed that the saloons "served as a gathering place and as a breeding-ground for criminals." When Negroes got drunk and caused disturbances, the nearby whites reproached the saloon owners for the mischief.¹

The Jews also found themselves blamed for the chaotic conditions in the city. They were charged with the operation of "dope dives," gambling dens, and brothels which flourished in Atlanta.² Whereas the American Jews of long standing in this country had at one time been separated in the public mind from the more recent immigrants, after 1900, John Higham has written, "the differentiation lessened in

¹ Rainey, op. cit., chap. 3; The Baltimore Morning Sun, November 23, 1914, p. 3.

² AC, March 4, 1907, p. 3; Franklin H. Garrett, Atlanta and Environs (3 vols.; New York, 1954), II, 574; The Baltimore Morning Sun, November 23, 1914, pp. 1, 3.

actuality and almost vanished in popular thought."¹ This worked to the disadvantage of Atlanta's older Jewish residents. Adding to the stereotyped impressions were the major muckraking stories in national periodicals and the report of a federal government investigating committee which concluded that Jews predominated in the American white slave trade.² While none of these reports named Atlanta Jews among the offenders, the publicity, combined with white Atlantans' preconceived attitudes, led to increased antagonisms towards the Jews.³

¹Higham, "Social Discrimination Against Jews in America, 1830-1930," p. 14.

²George Kibbe Turner, "The Daughters of the Poor," McClure's Magazine, XXXIV (November, 1909), 45-61, passim; S. S. McClure, "The Tammanyizing of a Civilization," ibid., pp. 122-23; Maurice Fishberg, "White Slave Traffic and Jews," The American Monthly Jewish Review, IV (December, 1909), 4, 23; "The Trade in White Slaves," The American Review of Reviews, XXXIX (March, 1909), 371; The Immigration Commission (61st Cong., 2nd Sess., Senate Document #196, Serial #5662, 1909-1910), pp. 23-24. George Kibbe Turner, whose original revelations caused a public sensation, told a New York Grand Jury, under oath, "that he had no personal knowledge of the things he wrote." "It is by such worthless evidence that the impression has been created in the minds of the people that the traffic in girls is largely in the hands of Jews." "Jews in the White Slave Traffic," The Temple, II (February 25, 1910), 176. This stereotype was not restricted to Atlanta. In the 1920's an Ohioan told a sociologist, "why, a young girl is no longer safe on our country roads! They are picked up by men in automobiles. The Jews get them and sell them as white slaves. They have a regular price list and the business is carried on from New York to San Francisco." Frank Bohn, "The Ku Klux Klan Interpreted," The American Journal of Sociology, XXX (January, 1925), 388.

³The Baltimore Morning Sun, November 23, 1914, p. 1.

In 1913 the rural-oriented population of Atlanta was still struggling with its new urban environment. With the continued influx of immigrants, the new urbanites blamed the aliens for the uncontrollable forces now shaping their lives. The people found it impossible to assume responsibility for their own failure, and were unable to attribute their problems to impersonal forces or to groups with whom they identified. Hence, in a fashion characteristic of those unwilling to face reality, they responded to their difficulties with xenophobic outbursts.

An obvious target for many of the poor white Atlantans would have been an owner of one of the newer factories. A non-Southerner would have made an even better quarry, because aliens were objects of suspicion from the start. A Jew, that eternal alien, the Christkiller, the moneychanger, was a more perfect incarnation of evil. But, a northern, Jewish, industrialist, who corrupted white virgins, the heroines of Southern life, embodied all that the South imagined as absolute evil. On Confederate Memorial Day in 1913, a little girl was brutally murdered. This unexpected killing acted as a catalyst and provided Atlantans with an opportunity to vent their accumulated hostility.

CHAPTER II

THE MURDER OF MARY PHAGAN

The girl's body lay face down in a corner of the basement. Dry blood caked her fractured skull. Both eyes were bruised. A garrote of jute rope encircled her neck and a swollen tongue protruded between cracked and bloody lips. Ashes and cinders filled the mouth and nostrils, while scratches marred what appeared to have been a pretty face. There were signs of a desperate struggle. The girl's clothes were torn and her underclothes ripped. Within hours of the victim's discovery an Atlanta Constitution "extra" informed the city: "GIRL IS ASSAULTED AND THEN MURDERED IN HEART OF TOWN."¹

1

Newt Lee, the Negro night watchman of the National Pencil Factory, found the body at about 3 a.m. on April 27, 1913. He phoned the police who arrived within ten minutes

¹AC "extra," April 27, 1913, pp. 1, 2; April 28, 1913, pp. 1, 2; AJ, April 28, 1913, pp. 1, 2.

accompanied by a Constitution reporter. So covered was the corpse with grime that it was necessary for the men to look beneath her stocking to see that she was white. The girl's purse had disappeared and there were no means of identification. One of the policemen's sisters-in-law worked in the pencil factory and she was summoned to identify the dead girl. "Oh my God!" the woman exclaimed when she saw the corpse, "that's Mary Phagan."¹

When the police questioned Newt Lee, his "wild and excited manner" aroused their suspicion. Lee claimed that he had arrived for work at 4 p.m., two hours earlier than his normal starting time, on Saturday, April 26. Because it was Confederate Memorial Day and a holiday for most of the employees, Leo Max Frank, the twenty-nine year old factory superintendent, had asked the night watchman to come in at 4 p.m. so that he could get away earlier. When Lee arrived, however, Frank had not yet completed his own work and told the night watchman to go out and return again at his usual starting time, 6 p.m. Lee said he did return at the regular time, and made his usual rounds, but it was not until 3 a.m., when he went to the basement to use the toilet, that he

¹ AC, May 8, 1913, p. 2.

discovered the body.¹

Since the murdered girl had been discovered in the factory, the pencil plant's superintendent and part owner, Leo Frank, had been summoned. The superintendent arrived at the factory visibly shaken. Two police escorts had called for him at his home and had taken him to the morgue before bringing him to the pencil plant. When Frank saw the corpse he recoiled in horror. He did not recognize the girl, but later, in the factory, after he had been given her name, checked his cash book and noted that she had arrived shortly after noon the previous day to collect her pay. At the time that Frank revealed this information, neither he nor the police realized that no one else would ever testify to having seen Mary Phagan alive after she left Frank's office.

Between the time that the police arrived on the scene, and the appearance of superintendent Frank four hours later, a search had been made for clues. On the basement floor, near the corpse, lay two notes, scrawled on some scraps of yellowed paper. They read:

Mam that negro hire down here did this i went to
make water and he push me down that hole a long
tall negro black that hoo it wase long sleam tall
negro i wright while play with me

¹ AC, April 27, 1913 "extra," pp. 1, 2; April 28, 1913, pp. 1, 2.

he said he wood love me land down play like the night witch did it but that long tall black negro did buy his slef [sic]¹

Eventually these notes would become the center of a seething controversy, but at first the policemen overlooked their significance.²

The police then searched for other information. They discovered a path which led from a ladder to where the body lay. It appeared that the girl had been dragged along this way. At the bottom of the elevator shaft observers saw a girl's hat and parasol, a ball of twine, and "something that looked like a person's stool." As soon as the elevator (which had been on the second floor of the building and had remained there until Frank arrived and began using it) was lowered to the basement, it crushed everything in the pit of the shaft. The mashing of the human excrement resulted in the spread of a foul odor.³ At the time, no one realized the significance of the crushed dung.

Having concluded their immediate investigation, the

¹ Henry A. Alexander, Some Facts About the Murder Notes in the Phagan Case (privately published pamphlet, 1914), pp. 5, 7.

² A. B. Macdonald, "Has Georgia Condemned an Innocent Man to Die?" The Kansas City (Mo.) Star, January 17, 1915, p. 1C.

³ Frank v. State, Brief of the Evidence, pp. 15, 43.

authorities left, taking the night watchman, whom they suspected of concealing evidence, to the police station for further questioning. All of those who remained in the building (and by that time Frank had summoned some of his subordinates) appeared extremely uneasy. Policemen on the scene would testify at the trial, however, that to them Frank seemed the most ruffled.¹

To protect the pencil plant's interests, superintendent Frank engaged the Pinkerton Detective Agency to make an independent investigation. The next day the Pinkertons, together with the police, combed the factory. Frank, however, was not satisfied with the investigation. He complained to a reporter that he deeply regretted "the carelessness shown by the police department in not making a complete investigation as to finger prints and other evidence before a great throng of people were allowed to enter the place."²

Indeed, there was some reason to complain of the policemen's lack of skill. They sawed off the boards of the back door in the basement which were covered with bloody finger prints, and then lost them before an examination

¹ Ibid., pp. 38, 43.

² The Atlanta Georgian, April 28, 1913, p. 2; April 29, 1913, p. 2; cited hereafter as AG.

could be made. A reporter found bloody finger prints on the corpse's jacket and brought it to the attention of the authorities. It was "stated that these prints are clearly outlined and may prove of importance in establishing the identity of the murderer."¹ Yet no report was ever issued as to whose finger prints were found, if, indeed, any examination was made at all.

Lacking any definite clues about whom the culprit might be, the police grasped at the evidence they possessed and tried to reach some conclusion. Leo Frank was the last person to see Mary Phagan alive. Whenever the police saw him afterwards he appeared extremely nervous. He had also summoned Newt Lee, the night watchman, early on the day of the murder and then sent him away again, to return at his normal hour. When Lee returned, Frank had left the building but phoned an hour later to see if everything was all right at the factory. The superintendent had never done this before but explained afterwards to the police that as he left the factory, a former bookkeeper had approached the building and wanted to pick up some old shoes which he had left when

¹ Macdonald, op. cit., p. 2C; AG, April 29, 1913, p. 2; The Savannah Morning News, April 30, 1913, p. 1; cited hereafter as SMN.

he was discharged two weeks earlier, Frank had hesitated at first, then permitted him to go in, but asked Lee to accompany him. Therefore, Frank said, he had phoned Lee to make sure that there had been no incident with the bookkeeper.

The day following the discovery of the corpse, blood stains and hair "identified positively as the dead girl's"¹ were found in a workroom opposite Frank's office. The blood stains allegedly formed a path from a lathe in the metal workroom to the elevator.² This new information, coupled with the superintendent's suspicious behavior, led to the arrest of Leo Frank. Reporters seemed surprised at the turn of events and assumed that the police might have more information than had been revealed. But when they queried Chief of Detectives Newport Lanford about Frank's detention, the Chief refused to give out any information and would only say, "The town seems to be very much wrought up over the murder and I think this is the wisest course to take."³

¹AG, April 28, 1913, p. 1; AJ, April 28, 1913, p. 1. The state biologist later stated that he could not identify the hair as Mary Phagan's.

²AG, April 28, 1913, p. 1; April 30, 1913, p. 1; AJ, April 29, 1913, p. 1. Later on this information was proven to be false.

³Quoted in SMN, April 30, 1913, p. 1.

Leo Max Frank was born in Paris, Texas, on April 17, 1884. His parents, Rudolph and Rae Frank, had moved to Brooklyn, New York, a few months after their son's birth. Frank had attended the Brooklyn public schools, Pratt Institute, and Cornell University, where he received the degree of Mechanical Engineer in 1906. The B. F. Sturtevant Co., in Hyde Park, Massachusetts, a Boston suburb, gave him his first job after he was graduated from college.

Frank did not remain long in Massachusetts. He moved back to Brooklyn and worked there for a short time before accepting the invitation of his uncle, Moses Frank, to help establish the National Pencil Factory in Atlanta. The uncle generously permitted the nephew a small financial interest in the business.

In 1910, Frank married Lucille Selig, daughter of a wealthy and established Atlanta family. The newlyweds made their home with the bride's parents. In Atlanta, Frank achieved some degree of social prominence and the local B'nai B'rith elected him its President in 1912. He had never attracted any public attention until April 29, 1913, when the police arrested him on suspicion of murder.¹

¹The New York Times, August 26, 1913, p. 18; February 18, 1914, p. 3; AC, June 1, 1915, p. 4; AG, May 13,

At the time of his arrest, The Constitution described Frank as a "small, wiry man, wearing eyeglasses of high lens power. He is nervous and apparently high-strung. He smokes incessantly and stuffed a pocket with cigars upon leaving for police headquarters. . . . His dress is neat, and he is a fluent talker, polite and suave."¹ A business associate later recalled that upon first meeting Frank he found him "incongenial. His was the nervous, bilious temperament which at first repels rather than attracts."²

The news of Frank's arrest stunned those who knew him. His wife rushed to the police station but was refused permission to see her husband. To a Georgian reporter she sobbed, "My husband is absolutely innocent. . . ."³ Frank's

1913, p. 2; interview with Alexander Brin, a Boston reporter who covered the later stages of the Frank case, August 19, 1964; Charles and Louise Samuels, Night Fell on Georgia (New York, 1956), p. 21.

¹ AC, April 30, 1913, p. 2.

² Elmer R. Murphy, "A Visit with Leo M. Frank in the Death Cell at Atlanta," Rhodes' Colossus, March, 1915, p. 3. Murphy added, however, that as he got to know Frank, he found him a very fine person. Mrs. Samuels told me that in the course of her research she spoke with reporters who covered Frank's trial. They found him to be a cold person, and difficult to get to like. Alexander Brin, on the other hand, thought Frank a very warm, friendly person.

³ AG, April 29, 1913, p. 2; AC, April 30, 1913, p. 1. That Mrs. Frank tried to visit her husband appeared quite

friends expressed their indignation over his detention and declared it to be impossible for him to have had anything to do with the murder. The Augusta Chronicle noted, "the Jewish people are also standing by Frank, having every confidence in his innocence and ready to do anything necessary to establish that fact."¹

Frank had engaged counsel to protect the National Pencil Factory's interests because the murder occurred in the pencil plant. When the police brought him to headquarters for questioning the day after the murder, his lawyers were informed and rushed to his side. Herbert Haas and Company represented the National Pencil Factory, the firm owned by Frank's uncle and the place of the murder, and later Frank; Haas, and Luther Rosser, who would become chief defense counsel at the trial, presented themselves during the interrogation at police headquarters. Although Frank was not formally arrested until April 29, word spread through Atlanta that he had hired counsel beforehand. This rumor led many to conclude that the superintendent had a guilty

insignificant on April 29. Hugh Dorsey, the prosecuting attorney, would argue at Frank's trial, however, that Mrs. Frank waited two weeks before visiting her husband and he concluded that this proved Mrs. Frank knew her husband was guilty.

¹SMN, May 1, 1913, p. 1; The Augusta Chronicle, May 2, 1913, p. 6; cited hereafter as TAC.

conscience and also made it easier to believe many of the other rumors which would soon spread about him.¹

3

Anyone, of course, would have been shocked by the horrid crime. But Southern attitudes toward "the sweetest and purest thing on earth--a young girl,"² conditioned Atlanta's reaction to the murder. For generations Southerners had feared assaults upon women. An attack upon a white woman was considered an attack upon the South itself.³ The Memphis Commercial Appeal commented upon the prevailing sentiment editorially:

Today after centuries of progression, we have reached a plane where there are other things dearer than life, and chief among these is female virtue. When this is slain . . . with devilish deliberation and cunning . . . the avenger has the right to go forth in quest of blood-atonement and if he does not do so he is unworthy of the civilization of the day.

There is a higher law . . . and that law readeth "Thou shalt protect female virtue at all hazards."⁴

But the idealization of womanhood which was so important to the South had undergone some rude shocks under the pressure

¹C. P. Connolly, The Truth About the Frank Case (New York, 1915), pp. 55-56.

²AG, April 28, 1913, p. 3.

³Cash, op. cit., p. 118.

⁴The Memphis Commercial Appeal, June 7, 1904, as quoted in William D. Miller, Memphis During the Progressive Era, 1900-1917 (Memphis, 1957), p. 25.

of industrialization. The poverty that sent the farmers into the towns also pushed their women into the factories. Although economic necessity may have forced women into industrial occupations, they undertook such employment with trepidation. Southerners considered factory work for women degrading and contact with male workers corrupting.¹ Husbands and fathers hesitantly violated southern traditions by sending their wives and daughters to the factory, but they were tormented with guilt. As the owner of a cotton textile mill explained, "It was considered belittling--oh! very bad! It was considered that for a girl to go into a cotton factory was just a step toward the most vulgar things. They used to talk about the girls working in mills up-country as if they were in places of grossest immorality. It was said to be the same as a bawdy house; to let a girl go into a cotton factory was to make a prostitute of her."²

Workers expressed hostility toward the absentee northern owners who controlled most of the new industries and who imposed grim working conditions and penurious salaries.³ Atlanta's cotton mills, the city's leading

¹Broadus Mitchell, The Rise of Cotton Mills in the South (Baltimore, 1921), p. 195. To some extent, this attitude existed in the North also.

²Ibid., p. 194.

³Sutker, op. cit., p. 89.

industry, turned out children "sapped of their life-blood . . . starved, stunted and all but demoralized."¹ The assault upon Mary Phagan added one more horror to the list of industrial exploitations. Atlanta's Journal of Labor expressed the working class sentiment: "Mary Phagan is a martyr to the greed for gain which has grown up in our complex civilization, and which sees in the girls and children merely a source of exploitation in the shape of cheap labor. . . ."²

With the murder of Mary Phagan, a dreaded fantasy was realized. The murder of the child symbolized all that was evil and most feared about the city. "No girl ever leaves home to go to work in a factory," Atlanta's Judge Arthur Powell wrote in later years, "but that the parents feel an inward fear that one of her bosses will take advantage of his position to mistreat her, especially if she repels

¹"Dixie Conditions Stir Unionists . . .", p. 21.

²Journal of Labor, XV (May 2, 1913), r. The opinions of the working classes might have had a greater influence in Atlanta than in a city with a different power structure. An economist has commented upon the influence of labor in Atlanta. He noted that the Mayor of Atlanta in 1913 was a member of the typographical union, and that two-thirds of the city's wards were dominated by workingmen. This fact was reflected in the composition of Atlanta's city council. Mercer G. Evans, "The History of the Organized Labor Movement in Georgia" (unpublished Ph.D. dissertation, Department of Economics, University of Chicago, 1929), p. 289.

his advances."¹ Mary Phagan's mother sobbed to a reporter, "There are so many unscrupulous men in the world. It's so dangerous for young girls working out."² Rage filled the hearts of the dead girl's neighbors. One of them remarked, "I wouldn't have liked to be held responsible for the fate of the murderer of little Mary Phagan if the men in this neighborhood got hold of him last night."³

Mary Phagan would have celebrated her fourteenth birthday a few weeks after the murder. A native of Marietta, Georgia, she typified the small-town Southerner who left her home to seek work in the urban factories. When her widowed mother remarried in Atlanta, Mary did not have to remain in the factory any longer. She continued at her job only because she liked her work. But after her death, Mary became a symbol for all the young women who had never been permitted a choice.⁴

Grieving friends and relatives were heartbroken over the young girl's slaying. Ten thousand mourners, "the largest

¹ Arthur G. Powell, I Can Go Home Again (Chapel Hill, 1943), p. 287.

² Quoted in AG, April 28, 1913, p. 3.

³ Quoted in AG, April 28, 1913, p. 2.

⁴ AC, April 28, 1913, p. 3; AG, April 28, 1913, p. 2; AJ, July 30, 1913, p. 4.

crowd that ever viewed a body in Atlanta," passed by her bier. The funeral attracted more than one thousand persons. As the white coffin "befitting the innocence of the young girl lying within it" was brought into the church, the choir sang, "Nearer My God To Thee," and Mary's mother fainted. At the cemetery in Marietta, Mary's grandfather cried, an aunt let out a "piercing scream," and the child's mother collapsed again. The presiding minister supplicated, "May God bring the man guilty of this terrible crime to justice."¹

4

In 1913 Atlanta had three daily papers: The Constitution, which monopolized the morning field, and The Journal and The Georgian, which competed with each other in the afternoon. The Journal had at one time been owned by Hoke Smith, who, in 1913, was a United States Senator. Smith sold the paper in 1900 but the general consensus in Georgia was that The Journal still represented his political views.²

¹AG, April 28, 1913, p. 5; April 29, 1913, p. 1; AJ, July 27, 1913, p. 1; SMN, April 30, 1913, pp. 1, 5.

²Louis Turner Griffith and John Erwin Talmadge, Georgia Journalism: 1763-1950 (Athens, Ga., 1951), p. 138; Mary Richards Colvin, "Hoke Smith and Joseph M. Brown, Political Rivals" (unpublished M.A. thesis, University of Georgia, 1958), p. 16.

The Constitution, on the other hand, was owned by Clark Howell, who bitterly opposed the policies of both Smith and The Journal. Both papers agreed, however, upon Georgia's need to industrialize and therefore encouraged northern financiers and "high-quality" immigrants to make their fortunes in the state. Of the three daily papers, The Journal had the largest circulation and was clearly the most popular until 1912 when William Randolph Hearst purchased The Georgian.¹

Hearst, who aimed for newspapers that "made the reader recoil in shock,"² attempted to give Atlantans the show that his audiences in San Francisco, New York, and Chicago had come to expect. He sent Keats Speed, the editor of his New York Journal, to Atlanta to spruce up the new acquisition, and soon banner headlines, photographic layouts, advice to the lovelorn, comic strips and syndicated features suddenly became prominent. Formerly, the last

¹N. W. Ayer & Son's, American Newspaper Annual and Directory (Philadelphia, 1911, 1912, 1913, 1914), listed the following circulation figures:

	1910	1911	1912	1913
AC	35,454	41,519	41,405	41,405
AG	42,858	40,000	38,000	60,000
AJ	52,035	51,827	52,000	54,000

²W. A. Swanberg, Citizen Hearst (New York, 1963), p. 232.

edition of The Georgian had gone to press at about 2:30 p.m. Speed added several editions so that news of the latest doings, the ball scores, and any sensational items might reach Atlantans sooner. Editions went "onto the street everytime anything happened that would justify a headline, and frequently when it wouldn't."¹ The populace reacted to the new policy with enthusiasm and the newspaper's circulation began to rise.²

With the murder of Mary Phagan, The Georgian developed "the greatest news story in the history of the state, if not of the South. . . ."³ Screaming streamers and banner headlines appeared on "extra" after "extra" as the factory girl's death received the full Hearst treatment. In only four months, from the end of April through the end of August, 17,686 column inches, or the equivalent of more than 100 pages the size of The New York Times were devoted to the case. By the end of August, The Georgian had tripled its normal sales of about 40,000 papers a day, and boasted the largest

¹ Herbert Asbury, "Hearst Comes to Atlanta," The American Mercury, VII (January, 1926), 87-88.

² See p. 43, n. 1, supra.

³ Asbury, op. cit., p. 89.

circulation of any Southern daily through 1913.¹ The Georgian had inaugurated its dramatic handling of the case with twenty "extras" and five pages of pictures and stories about Mary Phagan and her family.² The Journal and The Constitution, both of whose usual formats featured conservative, one-column headlines, were forced to compete with the Hearst paper by expanding their coverage of the murder. The more space the newspapers devoted to the murder, the larger the headlines, the more vociferous their editorials, the more intense was the public reaction.

The rural Georgians who flocked to Atlanta at the beginning of the century expected the daily newspaper to provide them with the information that they needed to comprehend their strange new urban environment. They also wanted gossip, entertainment, and drama--items they had customarily received from their small-town weeklies.³ In addition to helping the immigrants adjust to their new surroundings, the papers also relished whipping up the popular passions. Characterized by

¹Ibid., p. 87; William Curran Rogers, "A Comparison of the Coverage of the Leo Frank Case by the Hearst-Controlled Atlanta Georgian and the Home-Owned Atlanta Journal, April 28, 1913 - August 30, 1913" (unpublished M.A. thesis, University of Georgia, 1950), p. 66; Paul Rosenblum, printer for The New York Times, told me that there are 176 inches in each page of the newspaper.

²AG, April 28, 1913, pp. 1-5; clipping in Boston Herald-Traveler newspaper morgue, June 8, 1915.

³Miller, op. cit., p. 29, Richard Hofstadter, The Age of Reform (New York, 1960), pp. 188-89.

innuendo, misrepresentation, and distortion,¹ the yellow journals' account of Mary Phagan's death aroused an anxious city, and within a few days, a shocked state.

The first reports following the murder indicated that Newt Lee, the night watchman, might have committed the crime. He was the first one arrested and the police had intimated that he knew more than he had told them. On the afternoon of The Constitution's sensational extra announcing the murder, the detectives brought Lee back to the factory to help them obtain additional information. A large crowd of spectators had already surrounded the building. As the people spotted Lee they cried out, "he ought to be lynched."²

It was later proven that Lee's only connection with the crime was the discovery of the corpse, but early newspaper slanders disregarded known facts in their reporting. The Journal claimed to have "proven conclusively" that either Newt Lee "mistreated and murdered pretty Mary Phagan" or else knew who did. The police also suspected Lee for they allegedly tortured him mercilessly. For three days they kept the night watchman manacled to a chair and put him "through a

¹W. I. Thomas, "The Psychology of the Yellow Journal," American Magazine, LXV (March, 1908), 492.

²AC, April 30, 1913, p. 2.

searching, grilling 'third degree' that left him weeping and nerveless." No amount of questioning, however, could get the Negro to change his contention that he knew nothing about the murder. Nevertheless, the readers of Atlanta's newspapers were told that the police believed Lee "has the whole story at his tongue's end and that he will eventually clear the mystery."¹

After three days of grilling Newt Lee, without gaining any new information, the police dispatched the Negro to a basement cell and practically forgot about him. But this did not prevent The Georgian from running a streamer, "LEE'S GUILT PROVED." There seems to have been no evidence or information to support this last contention other than the remark of Atlanta's chief detective, Newport Lanford, that "We Have Evidence in Hand Which Will Clear the Mystery in the Next Few Hours. . . ."² The next day, Atlanta's other dailies condemned The Georgian's absurd and inflammatory conclusion.³

The newspapers also incited Atlantans against Leo Frank. On the morning that he was taken into custody a

¹AJ, April 28, 1913, p. 1; April 29, 1913, p. 1; AG, April 29, 1913, p. 1.

²AG, April 29, 1913, p. 1, extra #5.

³AC, April 30, 1913, p. 1; AJ, April 30, 1913, p. 1.

Georgian extra ran a streamer, "SENSATIONAL ARREST SOON," the headline beneath it proclaimed, "Factory Employee May Be Taken Any Moment," and the article below read that the police "are confident that the author of the terrible deed was a person not under arrest at the present time. They know his name. They have talked with him. They have his story. . . . But they are not satisfied with his tale. It is known that they will have him behind bars within a few hours."¹ Shortly afterwards the police announced that they had arrested Leo Frank, and the city assumed that he must have been the one referred to in The Georgian's commentary. A peculiar juxtaposition of words in the headline of the following morning's Constitution once more gave the impression that the factory superintendent, rather than the night watchman, might really top the list of suspects: "We Have Sufficient Evidence to Convict the Murderer of Mary Phagan, Declare Local Detectives and Pinkertons -- Leo M. Frank Subject to a Gruelling Third Degree."²

After four days of newspaper hysteria, Atlanta's Mayor urged the police to refrain from releasing so much

¹ AG, April 29, 1913, p. 1, extra #5.

² AC, April 30, 1913, p. 1.

information about the crime. He had received numerous complaints about the sensational newspaper extras with their distortions and exaggerations and he demanded a cessation. The Mayor had been warned that these newspaper excesses were "calculated to inflame the people and might possibly result in grave damage."¹ The Governor of Georgia also seemed alarmed. He readied ten companies of the state militia to protect the prisoners in case of an attempt upon their lives. There had been "persistent rumors" that an attempt would be made to storm the jail and relieve officials of their two celebrated charges.² A week after the murder, The Augusta Chronicle's Atlanta correspondent summed up the climate in the state capital. "Feeling here is still high, the horror of the deed gripping people fast. The deadline between calm and unbridled rage is narrow, and the fear is strong that if the guilty [one] is caught at last inflamed people will seek to wreak summary punishment."³

The newspapers had not only inflamed the public but challenged the mettle of the police as well. Speaking for an enraged city The Constitution demanded that the girl's

¹ SMN, May 1, 1913, p. 3.

² SMN, May 2, 1913, p. 2.

³ TAC, May 2, 1913, p. 1.

slayer be found: "If ever the men who ferret crime and uphold the law in Atlanta are to justify their function it must be in apprehending the assailant and murderer of Mary Phagan."¹ The police had quickly arrested seven suspects² but two weeks passed without any conclusive evidence about the murder provided to the public. The Constitution refused to accept what it considered official incompetence and displayed a scathing cartoon on the front page of its Sunday edition. The cartoon portrayed a woman carrying a scroll called, "Mary Phagan Mystery," pointing at a door marked, "Detective Dept." The woman was saying to herself, "I wonder if they're all asleep in there?"³

In desperation, or perhaps in an attempt to "scoop" its competitors, The Constitution sought to obtain outside aid. The paper started a fund to "Bring Burns Here to Solve Mary Phagan Mystery," and the next day expressed the opinion that only William J. Burns, "the world's greatest detective,"

¹AC, April 29, 1913, p. 4.

²Among the seven, two were quickly released because there was no evidence against them. Two others were Negroes, and after the police questioned them, the two were put in cells and the police forgot about them for a while. Both were eventually released. Newt Lee, Leo Frank, and Jim Conley were the only three who received serious press attention after the first two or three days following the murder.

³AC, May 11, 1913, p. 1.

could solve this baffling case.¹ A public subscription raised enough money to lure Burns to Atlanta, and the great detective dispatched one of his best agents to investigate the situation preparatory to his arrival.²

The invitation to the "world's greatest detective" was a direct attack upon the city police. The record of the police provided ample justification for such action. For two years preceding Mary Phagan's death, about eighteen Negro women had been murdered in the city, but none of the assailants had ever been found.³ Although no violent protests erupted when the assailants of Negroes escaped, these unsolved murders left the impression that the police were incompetent. The rapidity of the city's growth not only increased the amount of vice and crime but seemed to overwhelm those charged with upholding the law. "A force of village constables" suddenly found themselves "face to face with

¹ AC, May 16, 1913, p. 1; May 17, 1913, p. 4.

² Burns, in fact, did not reach Atlanta until 1914. And at that time, he was in the employ of Leo Frank's attorneys. The reason for this is that shortly after his agents began working for the city of Atlanta, Solicitor Dorsey satisfied himself that he had enough evidence to convict one of his suspects, and that the services of the Burns agency would no longer be necessary. See below, p. 66.

³ Macdonald, op. cit., p. 1C; Connolly, op. cit., p. 40; Murphy, op. cit., p. 6; Samuels, op. cit., p. 19.

crime conditions of a great city hall," and could not cope with them.¹ The police were frightened. They had repeatedly failed and this time, with a white victim, inefficiency would not be tolerated. The Mayor reflected public sentiment when he warned the police: "Find this murderer fast, or be fired!"²

5

Two days after Frank's arrest the authorities jailed another suspect, James Conley, a Negro sweeper at the pencil factory. A foreman at the plant observed the sweeper trying to wash blood off a shirt and informed detectives. The police arrested Conley on suspicion but "were inclined to attach little importance to his arrest."³ No one even bothered to have the city bacteriologist test the blood stains on his shirt.⁴

In view of the Southern attitude toward Negroes it is difficult to understand why the police were so negligent

¹ Murphy, op. cit., p. 6.

² Quoted in Samuels, op. cit., p. 20.

³ AG, May 1, 1913, p. 1.

⁴ AC, October 4, 1914, p. 1.

in ignoring the sweeper's bloody shirt. It may be that given Southern sentiments towards women, Jews, and industrialism, a Jewish factory owner provided a much more suitable suspect for the murder of a young female employee. The pastor of the Baptist Church attended by Mary Phagan's family recalled in later years his original attitude after the murder: "My own feelings, upon the arrest of the old negro nightwatchman, were to the effect that this one old negro would be poor atonement for the life of this innocent girl. But, when on the next day, the police arrested a Jew, and a Yankee Jew at that, all of the inborn prejudice against Jews rose up in a feeling of satisfaction, that here would be a victim worthy to pay for the crime."¹ Tom Watson would eventually emphasize "the indescribable outrage committed upon 'the factory girl' in the factory."²

6

Within a few days after the murder the Coroner's jury began an inquest. Leo Frank was the key witness. The factory superintendent related his activities on the fatal

¹L. O. Bricker, "A Great American Tragedy," The Shane Quarterly, IV (April, 1943), 90.

²The Jeffersonian, April 9, 1914, p. 8. (Italics in original.)

day and repeated the information he had already given to the police. Numerous witnesses corroborated Frank's statements; no witness made any remarks which contradicted the superintendent's claims.

Information also came to light at the inquiry which reflected adversely upon Frank. George Epps, a youth who lived near the Phagan family, and who said he rode into town with Mary on the fatal day, stated that the girl confessed her fears about the factory superintendent who acted in too familiar a fashion and made advances towards her.¹ A number of former employees of the pencil factory also testified that Frank flirted and "indulged in familiarities with the women in his employ." The sister of a former employee swore that she had come one day to collect her sister's pay and Frank had behaved improperly. He had taken a metal box from his drawer. "It had a lot of money in it. He looked at it significantly and then looked at me. When he looked at me he winked. As he winked he said, 'How about it?' I instantly told him that I was a nice girl."²

¹AC, May 1, 1913, p. 1. A few days earlier an Atlanta Georgian reporter interviewed young Epps and the boy told the reporter that he sometimes rode into town with Mary Phagan but did not mention that he had done so on the fatal day. Connolly, op. cit., pp. 28-29.

²AC, May 8, 1913, p. 2; AG, May 9, 1913, pp. 1, 2.

The Coroner's jury ordered both Frank and Lee held for further questioning despite the fact that the two detectives who had been spending the most time on the investigation, Harry Scott of the Pinkertons and John Black of the city detective force, testified that "they so far had obtained no conclusive evidence or clues in the baffling mystery. . . ." ¹

Days after the inquest concluded, Frank's case appeared further damaged when a special policeman revealed that a year earlier he had apprehended the superintendent "and a young girl in a desolate spot of the woods. . . ." At that time the policeman claimed to have obtained a confession from Frank that he had taken his young companion "to the woods for immoral purposes." ² The policeman later admitted that he had been mistaken about Frank having been the person he had seen, but this information, unlike the accusation, never reached the front pages of the newspapers.

The following week, the Atlanta police released an affidavit from Mrs. Nina Formby, the proprietor of a "rooming house" in Atlanta, disclosing that on the day of the murder Frank had telephoned her repeatedly and had attempted

¹ AC, May 9, 1913, p. 1.

² AC, May 11, 1913, p. 1.

to secure a room for himself and a young girl. Mrs. Formby allegedly informed him each time that all of her rooms were occupied. The city detectives announced that "this is one of the most important bits of evidence they hold," and indicated strongly that they believed Frank to be the culprit.¹

7

The crime shocked Atlantans, who not only followed the hunt for information about the murderer intently, but who also were ready to believe any tale circulated, no matter how fantastic. The newspapers needed but to hint at some new item of discovery or outlandish conclusion, and within hours the account, greatly embroidered, would circulate throughout the city.² Three days after the killing, The Constitution printed an article beneath the headline, "Every Woman and Girl Should See Body of Victim and Learn Perils." Most females did not see her, but rumors had it that the girl had been drugged and rendered helpless before being slain, that she was slashed in many places with a

¹ AC, May 23, 1913, pp. 1, 2.

² AJ, May 3, 1913, p. 1; Anon., "Why Was Frank Lynched?" Forum, LVI (December, 1916), 686.

knife, and that her "breasts had been bitten and gnawed." Indeed, rumors that the body had been mutilated would not down for years.¹

It would be impossible to enumerate all of the rumors that travelled through Atlanta and the state of Georgia after Frank's imprisonment. The most prominent concerned both sex and religion. Gossipers authoritatively related that the tenets of the Jewish faith forbade the violation of Jewish, but not Gentile, women.² Other tales asserted that Frank's wife was about to divorce him; that his wife knew he was guilty and therefore did not visit him in jail; that he had another wife in Brooklyn; that he had had another wife in Brooklyn whom he had killed; that he had numerous children out of wedlock; that his wife knew all of the foregoing facts and had already applied for a divorce; that he was a pervert, and that he went out on street car lines waiting for young girls, "pulling them off the cars in spite of their crying and resistance."³ It was even said

¹AC, April 29, 1913, p. 3; AG, May 7, 1913, p. 1; Macdonald, op. cit., p. 1C; Manning Jasper Yeomans, "Some Facts About the Frank Case" (unpublished thesis, Emory University, n.d., ca. 1915), p. 4.

²Cahan, op. cit., V, 494; Connolly, op. cit., p. 14; Samuels, op. cit., p. 26.

³Interview with McLellan Smith in Washington, April 2, 1964. Mr. Smith covered the trial of Leo Frank as a cub

that Frank "was a Mason and the Masons were all for him; that he was a Catholic and they were all for him; that he was a Jew and the Jews were all for him."¹

The charge of perversion probably did the most damage. The newspapers never clearly explained what was perverse about Frank, but the word meant different things to different people. To some, murder and rape² would certainly be indications of a severe abnormality. But to others, the accusations merely acted as stimulants to their imaginations. Perhaps the alleged escapades with young girls or Frank's supposed extra-marital affairs seemed aberrant to conservative thinkers. Later on, in court, the prosecutor would make veiled allusions to Frank and his supposedly delicate relationship with an office boy. This, too, would reinforce the opinions of those who believed that Frank was sexually abnormal.

reporter for The Atlanta Georgian. Samuels, op. cit., p. 26; The New York Times, December 20, 1914, IV, 9; AC, March 14, 1914, p. 2; AJ, May 12, 1913, p. 1; The Baltimore Morning Sun, November 19, 1914, p. 3; Macdonald, op. cit., p. 1C; Yeomans, op. cit., p. 5; Sam P. Maddox to Luther Rosser, June 10, 1915, John M. Slaton Manuscripts, Brandeis University (cited hereafter as Slaton, Brandeis); Wyatt E. Thompson, A Short Review of the Frank Case (Atlanta, 1914), p. 25.

¹Thompson, op. cit., p. 26.

²Even though newspapers reported that Mary Phagan had been raped, doctors could not find any evidence to substantiate this point.

The police desperately needed a conviction as the public demanded that Mary Phagan's assailant be found. The Solicitor-General of Atlanta's circuit, Hugh M. Dorsey, who directed and coordinated the state's case, also needed a conviction. He had recently prosecuted two important alleged murderers and had failed each time to convict them. The Savannah Morning News would later observe, "Another defeat, and in a case where the feeling was so intense, would have been, in all likelihood, the end of Mr. Dorsey as solicitor. . . ." ¹ On the other hand, if he successfully prosecuted Mary Phagan's killer, future political success would doubtless be insured.

The search for the murderer was handicapped by the fact that the various investigators worked alone, rather than in unison. At one point there were four separate groups independently groping with the same facts. The Constitution reported that "the detectives of police headquarters, who were first to investigate the slaying, are now working alone, refusing to give information to anyone. The Pinkertons, who were next retained, are working exclusively. Cooperation, however, is found in the joint investigation being promoted

¹ SMN, August 31, 1913, Frank Papers, Box 698.

by Solicitor Dorsey and the Burns agent now in the city."¹
The Constitution might have made a mistake about the last point because ten days later, when the Burns agent left the case, he told reporters that "open opposition and efforts to frustrate our work" forced the resignation.² In addition to the major groups, The Journal noted that "practically every private detective in Atlanta, and they are legion, has . . . been quietly lending his efforts to a solution of the mystery."³

Numerous detectives, pursuing their own lines of investigation, complicated an already tangled situation. Friction and competition among groups of detectives made it difficult even to assemble a complete and accurate account of what was an extremely complex case. But as the days passed, it became evident that police, detectives, and the Solicitor were focusing their efforts on finding enough material to convict Frank.⁴ Harry Scott, the head of the Pinkerton Detective Agency, who had been hired by Frank, later admitted

¹ AC, May 18, 1913, p. 2.

² AC, May 27, 1913, p. 1.

³ AJ, May 18, 1913, p. 1.

⁴ The Frank Case: Inside Story of Georgia's Greatest Mystery (Atlanta, 1914), pp. 39-40.

to newspaper reporters that the Pinkertons had directed their efforts "to obtain evidence supporting the theory that Frank is the slayer." Scott supposedly told one of his subordinates, "unless the Jew is convicted the Pinkerton Detective Agency would have to get out of Atlanta."¹

The findings and opinions of the various investigators formed the basis of the information which Solicitor Dorsey presented to the Grand Jury when it met on May 23, four weeks after the murder, to consider an indictment. The Solicitor brought several witnesses along with him who re-told the jury what the public had already been informed of weeks before. The state's case impressed the Grand Jury, which deliberated less than ten minutes before granting the indictment on May 24.²

On May 23, the day that the Grand Jury began listening to Hugh Dorsey's presentation, The Atlanta Journal published an exclusive dictograph transcription relating a conversation between an Atlanta attorney and a police official. The Atlanta lawyer accused the police of having tortured Jim Conley, the Negro sweeper who had been arrested a few weeks

¹ AC, May 25, 1913, p. 1; The New York Times, November 20, 1914, p. 5; Connolly, op. cit., p. 40.

² AJ, May 24, 1913, p. 1.

earlier, into confessing his guilt. The lawyer criticized detectives for fastening blame upon the poor Negro for another man's crime. "I know who killed Mary Phagan," the Atlanta attorney asserted. "That d___d Jew Frank killed her. . . ." Then the lawyer added that the Chief of Detectives, Newport Lanford, "knows that Frank killed this girl but he has sold out to the Jews for big money" and is therefore shielding the factory superintendent.¹

This well-publicized charge against the police put additional pressure upon them to convict their Jewish prisoner and thus acquit themselves. In the face of the accusation, moreover, the police would have had a difficult time convincing the public afterwards that Conley, and not Frank, committed the murder.

Ironically, on May 24, at the very time the police were accused of having tortured Conley, and the same day that the Grand Jury indicted Leo Frank, Atlanta newspapers published a highly improbable affidavit from Jim Conley. According to Conley's statement, Frank had called him to the office on Friday afternoon, April 26, the day before the murder, had asked if he could write,

¹AJ, May 23, 1913, p. 1; AC, May 24, 1913, p. 2.

and then, after getting an affirmative answer, handed the sweeper a note pad and dictated the following phrases: "dear mother," and "a long, tall, black negro did this by hisself [sic]." Frank allegedly asked him to repeat this "two or three times," and then supposedly mumbled something which sounded to Conley like, "Why should I hang?" Conley stuck to this story despite additional questioning. No, he had not written anything else. No, he had not seen any dead girl. No, he had not been to the factory on Saturday. And so forth. The entire truth, Conley maintained on May 24, was in his affidavit. He claimed to know nothing else about the crime.¹

Jim Conley, short, stocky, ginger-colored, was the very opposite of the long, tall, black Negro described in the murder notes. Twenty-seven years old, he had already served several jail terms for petty thievery besides having been fined on many occasions for disorderly conduct. On the morning of the murder he had been drinking both beer and whiskey and may even have been drunk. According to Arthur Garfield Hayes, some people thought that Conley "always

¹ Lawson, op. cit., p. 245; AJ, May 24, 1913, p. 1; AC, May 25, 1913, p. 1; AG, May 24, 1913, p. 1; May 25, 1913, p. 1.

seemed to be kind of nervous or half drunk."¹

The authorities had not considered Conley a serious suspect until they discovered that he could write. The Negro sweeper had originally denied his ability to read and write but the news that he could eventually reached Harry Scott of the Pinkertons because of a chance remark made in front of Leo Frank. "I know he can write," Frank said, "I have received many notes from him asking me to loan him money."² Scott immediately confronted Conley with this information. Forced to write, the Negro penned a duplicate of the murder notes that appeared almost identical to the originals.³

The test took place on May 18, a week before the Grand Jury indictment, but on May 19, a detective announced that "the examination of the handwriting of the negro . . . failed to connect him with the writing of the notes."⁴ Not until the Grand Jury indicted Frank on May 24, and the Atlanta attorney accused the police of shielding their Jewish

¹ AC, August 6, 1913, p. 2; Arthur Garfield Hayes, Trial By Prejudice (New York, 1933), pp. 312-13; The Baltimore Morning Sun, November 21, 1914, p. 1; Macdonald, op. cit., p. 2C.

² John D. Lawson (ed.), American State Trials (10 vols.; St. Louis, 1918), X, 236.

³ AJ, May 29, 1913, p. 1; AG, August 7, 1913, p. 1.

⁴ AG, May 19, 1913, p. 2.

prisoner, did the public learn of Conley's participation in the crime.¹

Released to the press on May 24, Conley's sensational revelation failed to impress the editors of The Georgian, who considered the Negro's statement "exceedingly peculiar." The paper could not understand why Frank would have muttered, "Why should I hang?" or have taken the Negro sweeper into his confidence. It certainly was not like Frank to speak so freely. In fact, the superintendent's silence since his arrest had been so overbearing that newspapers labeled him, "The Silent Man in the Tower." Therefore Frank's alleged remark appeared "entirely outside the realm of probabilities. . . ." Another improbability was that Frank had called Conley to his office the day before the murder and asked him to write a note (Conley had originally maintained that he had written only one of the murder notes and that Frank had written the other) indicating that the superintendent must have been planning the crime ahead of time. This idea had never been entertained by the investigating authorities because they concluded from the nature of the corpse that the killer must have acted without premeditation.²

¹The Grand Jury had not been informed of Conley's statement. Like everyone else, the jurors read about it in the newspapers after Frank had been indicted.

²Lawson, op. cit., p. 237; AG, May 24, 1913, p. 1.

Despite the difficulties involved in believing everything in Conley's affidavit, the police were enthusiastic about it. They considered Conley's sworn statement as the final link in the chain of evidence against Frank, or at least that is what they led the public to believe. Newport Lanford declared himself "perfectly satisfied" that the murder had been solved and assured reporters that "Frank will be convicted. He is the guilty man and we will show it beyond a doubt." Both the Pinkertons and the Burns' agent agreed with Lanford. In fact the Burns investigator dropped out of the case at this point because Solicitor Dorsey informed the chief of the detective agency in Atlanta "that the investigation has been so thorough and successful that, really, the Burns men would not be greatly needed any longer."¹

For public consumption detectives maintained that they "never for a moment" thought that Conley might have been guilty. Only reluctantly, in fact, did they eventually concede that he wrote the murder notes.² Yet doubts remained

¹AJ, May 23, 1913, p. 7; AC, May 25, 1913, p. 1; May 27, 1913, pp. 1, 2; AG, May 25, 1913, p. 2; May 26, 1913, p. 1.

²The following items appeared in successive editions of The Atlanta Georgian, May 28, 1913, p. 2: (1) "Despite the new developments, the detectives, of course, stand firmly by their theory of Frank's guilt. They assert that they have

and the newspapers continued to assert that Conley's tale did not ring true. The inconsistencies in the Negro's story would have to be cleared up. Therefore the prisoner underwent further rounds of interrogation. Reporters were told that no prisoner had ever been put through such severe cross-examinations as Conley.¹ Pinkerton Detective Scott later explained to a packed courtroom the procedure he and Atlanta's Chief Detective Lanford employed upon the Negro to elicit "the truth." "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."²

The lengthy interrogation proved fruitful. On May 28 Conley made another affidavit in which he added considerably to his first one and acknowledged his presence at the factory on the day of the murder. In his second sworn

the testimony of four handwriting experts that the writing on the notes found by the body of Mary Phagan positively is that of Frank. This evidence is lessened in importance by the fact that three other handwriting experts have declared as positively that the writing is that of Newt Lee. . . ." (2) The same officials who "had announced that they had conclusive evidence 'by experts' . . . that Frank wrote the notes," now said that Conley had written them. See also AJ, May 28, 1913, p. 1.

¹ AJ, May 26, 1913, p. 1.

² Frank v. State, Brief of the Evidence, p. 81.

statement Conley recalled that he had been drinking on the morning of the murder. He had accidentally met Frank in the street, and the superintendent had asked him to come to the factory. When they arrived at the pencil plant, Conley claimed he was instructed to wait on the main floor until Frank whistled for him to come up. At about 1 p.m. the whistle sounded and Conley went up to Frank's office. As soon as he reached the inner office Frank allegedly remarked that two female employees were coming up the steps and that Conley must get into the wardrobe. After the women left Frank supposedly dictated the note that Conley alleged he had written on Friday. The rest of the second affidavit repeated substantially the same things as had been proffered in the original.¹

The Georgian's response to Conley's new tale was anything but credulous. "With his first affidavit repudiated and worthless," the paper noted, "it will be practically impossible to get any court to accept a second one." In fact, The Georgian thought the case against Conley stronger than that against Frank. After all, Frank had "answered all the questions" put to him at the Coroner's inquest "in a

¹ Lawson, op. cit., pp. 245-48; AJ, May 29, 1913, p. 1.

straight-forward, unwavering manner, never once being trapped in a lie or misstatement," whereas Conley had lied continuously. Nevertheless Newport Lanford, the chief of detectives, exuded confidence and beamed happily over Conley's second affidavit, calling it "the final and conclusive piece of evidence . . . against Frank."¹

But the detectives realized that Conley's second affidavit also had some shortcomings and therefore they decided to put the sweeper through another interrogation "with a view to clearing up the weak points in his statement."² During the course of what The Georgian described as a "merciless sweating"³ on May 29, Conley's interrogators "dragged sentence by sentence from the frightened negro"⁴ a more plausible explanation. The next morning Atlantans read the results of the previous day's "sweating": "CONLEY SAYS HE HELPED CARRY BODY OF MARY PHAGAN TO PENCIL FACTORY CELLAR."⁵

The latest of the Conley revelations added significantly to his previous affidavits. Conley now alleged that

¹ AG, May 28, 1913, p. 1; May 29, 1913, p. 1; May 30, 1913, p. 2; AJ, June 2, 1913, p. 9.

² AJ, May 29, 1913, p. 24.

³ AG, May 30, 1913, p. 2.

⁴ AJ, May 30, 1913, p. 4.

⁵ AC, May 30, 1913, p. 1.

after Frank had called him up to the office, the superintendent had told him that he had let a girl fall against a machine in the metal room and that he wanted Conley to remove her. Conley had gone into the room and had found the girl dead. He had reported this to Frank but the superintendent had ordered him to carry the body to the elevator anyway. Together they had taken the corpse to the basement and Conley had dumped her in the corner. It was after this that Conley and Frank had returned to the second floor office, and the sweeper had written the notes. The rest of the third affidavit was similar to the previous ones except that this time Frank had supposedly given the Negro \$200, and then took the money back with the promise that he would return it again.¹ The Journal regarded Conley's latest remarks as "the most sensational development in the Phagan murder case since the arrest of Superintendent Frank," and the detectives considered it "the most important link in their chain of evidence against the factory official."²

After his third affidavit, the detectives took Conley back to the pencil factory and had him reenact the events of

¹ Lawson, op. cit., pp. 248-50.

² AJ, May 30, 1913, p. 4.

the murder day. The sweeper, The Georgian reported, "went through the grim drama with a realism that convinced all who listened and watched that he at last was telling the whole truth."¹

Shortly after Conley made the last of his sensational statements, he was removed from the police jail, where he had been for a month, and placed in a cell in the Fulton County Tower, where reporters would have free access to him. But within a few days, after Conley had complained that Frank's visitors intimidated him with remarks like, "I could shoot you through the bars of your cell right now," and "Don't you think you ought to be shot?"² Solicitor Dorsey petitioned the presiding judge of the Fulton County Criminal Court, Leonard Roan, to transfer the prisoner back to the police jail. Dorsey argued that he did not want anyone to tamper with Conley "in any manner which might destroy his value as a witness."³ Roan acceded to the Solicitor's request. Once the sweeper was back in the police jail, Chief Detective Lanford remarked, "We wanted Conley where

¹AG, May 30, 1913, p. 1.

²AC, June 1, 1913, p. 1.

³Ibid., p. 2.

we could get to him at any time we thought advisable."¹

But the transfer had the effect of insulating the prisoner. In the city jail, Solicitor Dorsey, or one of his staff members, screened Conley's visitors, a thing they could not do had he been in the county jail. When Pinkerton Detective Scott announced in July that he was reexamining his conclusions about who murdered Mary Phagan, the police immediately curtailed his access to Jim Conley. Chief Detective Lanford explained the action as follows: "We did not want to embarrass Scott by requesting him to keep silent and did not risk the probability of letting new developments reach Frank's attorneys, therefore we were forced to prevent him from seeing the negro."² Until August, when Conley would testify in court, no one who was skeptical of the Negro's innocence or of Frank's guilt, was permitted an interview with the sweeper.

Once the authorities were satisfied with Conley's sworn statement, they continued their search for other witnesses who might substantiate their case against Leo Frank. The next affidavit they obtained came after the arrest of

¹AJ, June 1, 1913, p. 1.

²AC, July 19, 1913, p. 1.

Minola McKnight, the Negro family cook at the Selig-Frank household. Albert McKnight, Minola's husband, reportedly informed his employers that his wife knew something about Frank's actions on the day of the murder. The employers told this to the police who arrested the cook at the beginning of June and held her, without a warrant, for twenty-four hours. Reporters heard Mrs. McKnight screaming from behind locked doors that she was going to be hanged for a crime that she knew nothing about.¹ When finally released, after being "quizzed to a point of exhaustion,"² she left an affidavit behind her indicting Leo Frank.

Mrs. McKnight swore that Frank came home for lunch at about 1:30 p.m. on the day of the murder but left ten minutes later without eating. The cook then claimed that she overheard a conversation the following day between Mrs. Frank and her mother, Mrs. Selig. The younger woman supposedly told her mother that Frank had been drunk the night before, and that he wanted to shoot himself. He allegedly confessed to his wife that he was in trouble and that he did not know why he would want to commit a crime such as he had earlier in the day. Mrs. McKnight swore that her wages had been

¹AC, June 3, 1913, p. 1.

²AG, June 5, 1913, p. 1.

raised twice since the murder, "but it was not for my work, they didn't tell me what it was for . . . but of course I understood what they meant. . . . I understood it was a tip for me to keep quiet."¹ After being released, Minola McKnight repudiated her entire affidavit, but once again the repudiation did not make front page headlines as did the accusation.²

The imprisonment and methods used to obtain a statement from the cook finally broke the silence that the Frank family had maintained since the superintendent's arrest. In a letter to all three Atlanta dailies, Mrs. Frank denounced Solicitor Dorsey and the city police. She castigated the law enforcers for torturing Mrs. McKnight "for four hours with the well-known third degree process," in order to get the confession. Under the circumstances, Mrs. Frank wrote, anyone would have confessed to anything.

Mrs. Frank also used this opportunity to defend her husband and deny the gossip about their relationship. "Every conceivable rumor has been put afloat that would do him and me harm, with the public, in spite of the fact" that

¹AJ, June 4, 1913, p. 1; AG, June 4, 1913, p. 1; AC, June 5, 1913, p. 3.

²AG, June 5, 1913, p. 2; AJ, June 6, 1913, p. 9.

they are untrue. "I know my husband is innocent," she concluded, "he is utterly incapable of committing the crime that these detectives and this solicitor are seeking to fasten upon him."¹

Solicitor Dorsey, who to this point had also kept his own counsel, now answered Mrs. Frank's accusations: "the wife of a man accused of crime would probably be the last person to learn all of the facts establishing his guilt, and certainly would be the last person to admit his culpability, even though proved by overwhelming evidence to the satisfaction of every impartial citizen beyond the possibility of reasonable doubt."²

9

Two weeks after the public exchange between the Solicitor and Mrs. Frank, another significant episode in the Phagan murder case made headlines. In the middle of June, the maid at Mrs. Formby's "rooming house" asserted that the detectives had been pestering her on numerous occasions to

¹AG, June 5, 1913, p. 1; AJ, June 5, 1913, p. 1; AC, June 6, 1913, p. 2.

²AG, June 5, 1913, p. 1; AJ, June 5, 1913, p. 1; the wording of Dorsey's reply varies slightly in the two publications.

make an affidavit supporting Mrs. Formby's contention that Frank had phoned half a dozen times for a room on the evening of the murder. The maid refused because she claimed that there had been no such call that evening, and if there had been she certainly would have answered the phone.¹ One of Dorsey's assistants shortly afterwards announced that the state never attached much importance to Mrs. Formby's affidavit, "except for the first few days," and had no intention of using it at the trial.² One of Frank's attorneys used this remark to denounce the prosecution:

I see the detectives are gradually giving it out that Mrs. Formby will not be called as a witness, although her affidavit has been paraded before the public bearing the unqualified endorsement of the detective department as being perfectly reliable and true. Worse than this, an intimation was published in the newspapers that Frank's friends had persuaded her to leave town. In this and in many other ways our client has been done a very great injustice. The effort seems to have been not to find the criminal but to try by all means to put the crime on Frank.³

In July, lawyers for the defense "leaked" an affidavit they had in their possession from an insurance agent who tried to sell Conley insurance on the day of the murder.

¹AG, June 19, 1913, p. 1.

²AG, June 21, 1913, p. 1.

³Quoted in AJ, June 22, 1913, p. 1.

The sweeper had no intention of purchasing any insurance at that time, and feeling annoyed about the solicitation threatened the agent: "I've killed a girl today; I don't want to kill nobody else." According to the affidavit, the insurance agent had gone to the police and also to some factory officials (not including Frank) on April 29 with his tale but no one seemed interested. In the factory the insurance agent was allegedly told that there were no Negroes at the pencil plant on the day of the murder.¹ The detectives responded quickly to this "leaked" affidavit, and The Georgian reported: "CONLEY IN SWEATBOX AGAIN."²

Despite the state's conviction that Frank had killed Mary Phagan, the Grand Jury now wanted to indict Jim Conley. The foreman asked Solicitor Dorsey to call the group into session but he refused to do so.³ Then the foreman threatened the Solicitor that action would be taken without him. It was "the first time the grand jury [took] up the consideration of a criminal case in this county over the protest of the solicitor general."⁴

¹ AG, July 10, 1913, p. 1.

² AG, July 11, 1913, p. 1.

³ AC, July 22, 1913, p. 1.

⁴ AG, July 18, 1913, p. 1.

When the veniremen met, Dorsey pleaded with them not to indict the Negro sweeper. The Grand Jury finally acceded to his request, but "the solicitor did not win his point without a difficult fight. He went in with a mass of evidence showing why the indictment of the negro would injure the state's case against Frank and stayed with the grand jurors for nearly an hour and a half."¹

10

A careful reading of the three Atlanta newspapers throughout the pre-trial period reveals that there was a difference in their coverage of the case that extended far beyond the quantity of words expended, the size of the banner headlines, or the number of extras put out.² The Georgian, despite its sensationalism, and The Journal, its competitor in the afternoon, presented a more judicious view of the affair than did the morning Constitution, which seemed to assume Frank's guilt.³ One reason for The Constitution's

¹AC, July 22, 1913, p. 1.

²During the first week after the murder there was a great deal of confusion in the city, and this was reflected in the newspapers which published rumor and hearsay, information and misinformation, indiscriminately. My comments concerning the newspapers' handling of the case, therefore, refer to the treatment given after May 5 or 6, 1913.

³The Constitution, for example, published a full page

attitude might have been that it had friends in the police department, and therefore accepted the official version more easily. Whenever the police wished to publicize materials incriminating Frank, The Constitution usually got the exclusive story.¹ The Constitution also gave greater prominence to the theories of the police. The Journal's methods might have been influenced by the character and integrity of its chief reporter on the case, Harold Ross, who later won fame as the editor of The New Yorker magazine. Ross would later write, "Without making the assertion that Frank is innocent, it may be said that his conduct from the outset was that of an innocent man. . . ." ² There are two possible explanations for The Georgian's approach. In the first place, it was primarily concerned with selling newspapers rather than with the guilt or innocence of any of the suspects. Hence there would be no reason to concentrate on building up

article the day before the trial opened, lauding the detectives who "solved" the murder case. AC, July 27, 1913, magazine section.

¹ The statements from the policeman who thought he had seen Frank alone in a park with a young girl the previous year, and then from the proprietor of the "rooming house" that Frank had allegedly phoned on the night of the murder, were both published first in The Constitution.

² Harold Ross wrote this for a San Francisco newspaper in June, 1915. It is reprinted in Harry Golden, A Little Girl Is Dead (Cleveland, 1965), pp. 355-58.

a case against any single individual. On the other hand, Hearst had sent some of his top reporters to Atlanta after he had purchased The Georgian. He sent additional talent after Mary Phagan had been murdered. These people were carefully selected on the basis of their journalistic skills. It is possible that they were perhaps more sophisticated, and had learned from their experiences in other cities, that the authorities, like everyone else, could make mistakes. It was a Georgian reporter, in fact, who observed that Hugh Dorsey "has never shown any unusual skill as a detective,"¹

It would be inaccurate to state that material favorable to Frank did not appear in The Constitution or that The Journal and The Georgian constantly showed concern for the prisoner's welfare. But each paper did handle the news differently. Whereas The Journal gave a front page headline to the item that "Frank's Treatment of Girls in Factory Described as Unimpeachable by One Young Lady Employee,"² two weeks later The Constitution buried a similar comment at the bottom of an inside page, where its readers might easily ignore it.³ The Georgian, on the other hand,

¹ AG, May 11, 1913, p. 2.

² AJ, May 8, 1913, p. 1.

³ AC, May 23, 1913, p. 2.

printed the following letter, from a questioning Atlantan, in type large enough to catch the eye: "Is not the case against Leo Frank so far presented against him palpably weak? And does not the far greater weight of evidence now point unmistakably to the negro Conley as the sole perpetrator of the crime?"¹ One would hardly expect The Constitution to give prominence to such a comment. Less than two weeks earlier, its readers had been informed that Conley's "story, said to have been told at the last explanation, is so straight-forward and coincides so perfectly with other phases that have already been brought out that it is said to be indisputable."²

Northern journalists who later came to investigate the affair in Atlanta, wrote afterwards that the newspapers had assumed Frank's guilt from the time of his arrest.³ This was not true. The only daily which seemed to imply that Frank was guilty was The Constitution, and even that paper severely criticized the way in which the police had handled

¹AG, June 11, 1913, p. 2.

²AC, May 30, 1913, p. 2.

³Even an astute observer like C. Vann Woodward accepted, uncritically, the views of the northern journalists. In his biography, Tom Watson, Woodward wrote, "The Atlanta press immediately assumed the guilt of Frank . . .," p. 435.

the investigation during its earliest stages.

11

A variety of factors complicated the search for Mary Phagan's murderer. As Arthur Train later observed, "Newspaper sensationalism, the unscrupulous use of rumor and falsehood, the inflamed condition of the public mind, the beauty of the dead child, the fact that it was a crime of violence upon a woman, must have made it difficult for the police to deal--if they can ever be expected to deal--judicially with the evidence at their command."¹ Yet the police did deal with the evidence and concluded that Frank was guilty. They picked a Jew as the culprit over a Negro, and an attempt must be made to explain why that choice had been made, particularly in view of later findings that the proof against Frank was not conclusive. Unfortunately, lack of sufficient information makes it impossible to arrive at a wholly satisfactory explanation for the decisions of the police.

The authorities, of course, might have sincerely believed Frank guilty. One of Dorsey's assistants maintained

¹ Arthur Train, "Did Leo Frank Get Justice?" Everybody's, XXXII (March, 1915), 317.

that such was the case many years after the trial.¹ Perhaps while examining Conley, the police had become convinced that parts of his story, especially the incriminating remarks about Frank, were true.

There is also a possibility that the police had become so deeply committed to the theory of Frank's guilt at an early date, that later evidence made it, at best, psychologically difficult for them to change, or at worst, politically inexpedient. Unluckily for Frank, an Atlanta attorney inadvertently blundered into the situation. When the dictograph transcription was published in The Atlanta Journal, the public read that the police knew of Frank's guilt but were trying to protect him! It would have further complicated the position of the police if they had changed their attitude towards the main suspect at the very moment they were accused of shielding him.

Added to this was the mounting pressure of public anxiety. The Constitution started a fund to bring one of

¹ DeWitt H. Roberts to Leonard Dinnerstein, February 19, 1964. (Mr. Roberts, a native Georgian, did a study of the Frank case for the Anti-Defamation League in 1953. His essay is on file in the Anti-Defamation League offices in New York City.) Roberts wrote to me that he had been present during a "heated but good-natured argument" on the subject of Frank's guilt in 1931. At that time, one of Dorsey's key assistants still maintained that Frank had been guilty.

the world's most prominent sleuths to Atlanta to solve the murder--William J. Burns. The police felt threatened. They were forced to act quickly, and perhaps in their haste, they overlooked materials which under other circumstances might have been more soberly considered.

The opinions and activities of the police helped to condition the public's reaction. The police led the people to believe that the strands of hair which had been found on a metal lathe in the workroom opposite Frank's office had been "identified positively" as that of the dead girl. This, in fact, was not true, but I have been unable to discover whether the authorities knew it was false when they released the information to reporters. Similarly the red spots on the floor near the metal lathe, called "blood stains" by the police, and repeated as such in the newspapers, were proven to be something other than human blood--but this information did not reach the public until 1914. Released affidavits about Frank's alleged sexual escapades might also have colored people's opinions. The statements of the policeman who supposedly had seen Frank with a young girl in the park, and of the proprietor of a "rooming house" that Frank had reportedly phoned her for a room on the night of the murder, were never produced in court. Yet both probably affected

the thoughts of newspaper readers.

The behavior of other officials might also have weighed heavily against Frank in the public's mind. In July, the members of the Grand Jury wanted to indict Jim Conley, but Solicitor Dorsey convinced them not to do so. Atlantans might have assumed that Dorsey certainly must have given the Grand Jurors compelling reasons to dissuade them from their intended course. Perhaps they recalled the assurance that The Georgian had given its readers in May: "That the authorities have very important evidence that has not yet been disclosed to the public is certain." Even more plausible, however, is that the people of Atlanta had assumed, and quite naturally, that the Solicitor would not have prosecuted a white man, rather than a Negro, "unless the evidence was overwhelming."¹

Even if the published stories had been less incriminating, Frank had a great many things working against him in this Southern community. He was a northerner, a Jew, an industrialist, and an employer of cheap female labor. Commentators disagree as to which of these factors did the most damage, but all agree that each hurt Frank. Alton Jones,

¹AG, May 30, 1913, p. 1. DeWitt H. Roberts to Leonard Dinnerstein, February 19, 1964.

author of "Progressivism in Georgia," believes that Frank "had a great deal against him" because he projected a "northern, urban, industrial image."¹ Franklin Garret, author of the massive Atlanta and Environs, acknowledged that had Frank been a Gentile, the public might have been less willing to accept the word of a Negro accuser.² One chronicler of the Frank case put the argument somewhat differently by relating the following incident: "One man, after asserting that there is no prejudice against Frank, because he is a Jew, grows eloquent and says Mary Phagan is our folks."³

Frank also provoked community wrath as an employer of underpaid female labor. "What was uppermost in the minds of those who were indignant," The Outlook commented afterwards, "was the fact that the accused represented the employing class, while the victim was an employee."⁴ John Higham wrote that many working class people "saw in Frank a symbol

¹Alton D. Jones to Leonard Dinnerstein, May 21, 1964.

²Telephone conversation with Franklin Garret, in Atlanta, January 24, 1964.

³Thompson, op. cit., p. 29.

⁴"The Case of Leo M. Frank," The Outlook, CX (May 26, 1915), 167.

of the northern capitalist exploiting southern womanhood."¹

Atlantans were further prejudiced against the factory superintendent because of his alleged activities with young girls. None of the accusations was ever proved but they had a profound effect upon the public. Arthur Train, who analyzed Frank's situation in 1915, commented that "suspicion of being a pervert sealed his fate." Train also noted that "once suspicion had been directed against him there was a universal effort to prove him guilty, and every conceivable argument that tended to support the theory was evoked, including the fact that he was an employer of young girls, and that he was a Jew."²

As he readied himself for the trial, Frank confidently expected an acquittal.³ The four weeks in the courtroom, however, would provide him with a series of shocking experiences. He eventually came to realize that the rumors of his alleged indiscretions, and the alien image that he presented, significantly affected the course of his trial.

¹ Higham, Strangers in the Land, p. 185.

² Train, op. cit., pp. 315-17.

³ AJ, July 26, 1913, p. 1.

CHAPTER III

PREJUDICE AND PERJURY

No trial in Georgia's history rivaled Leo Frank's for public interest. No Georgian appeared indifferent to the fate of the accused. Even outside of Atlanta one could hardly find "a hamlet or wayside, city or township in Georgia that [was] not submerged head over heels, in interest in the Frank case."¹

For more than four months the newspapers featured the manhunt above all other subjects and outside of the state the trial made front page headlines in the largest cities of the south. But a reporter for The Atlanta Constitution lamented that "because it is not in New York, the papers of that fickle metropolis have not, in all, carried more than a column of the entire case."² He also might have mentioned that outside the South few people knew that

¹AC, August 4, 1913, p. 2; August 17, 1913, p. 2A; AG, July 27, 1913, p. 1.

²SMN, August 10, 1913, p. 3; AC, August 4, 1913, p. 2.

Leo Frank existed. The situation would soon change, however, and Georgians would not be very happy about it.

1

The trial opened in an atmosphere unfavorable to the defendant. A Georgian reporter observed, "the public has not YET become convinced--and may never become convinced--that Leo Frank is innocent of the crime for which he has been indicted." Gossip about the murder had been so widespread and the details of the manhunt so frequently recalled, that some people in Atlanta doubted whether a jury could be assembled which would "be willing to view the evidence coolly, without prejudice or without bias."¹ In fact, the temper of the crowd surrounding the courthouse was so ugly that twenty officers guarded the courtroom and someone suggested, as a further precaution, that spectators be searched for dangerous weapons before entering the building.²

Leo Frank had engaged two of Georgia's outstanding lawyers to defend him. His main counsel, Luther Z. Rosser, had a reputation for being "the most persuasive and the most domineering lawyer in Atlanta in the art of examining witnesses," while Rosser's associate, Reuben R. Arnold, "perhaps

¹AG, July 27, 1913, p. 2.

²Ibid.

the best-known attorney in Georgia," had long been regarded as "one of the ablest criminal lawyers in the South."¹ The brilliant reputations of the defense attorneys would eventually prove disastrous to Frank's cause because they failed to display their forensic talents at the very moment they were most needed. But as the trial opened, The Atlanta Constitution guaranteed its readers the "Greatest Legal Battle in the History of Dixie."²

The prosecution began with a repetition of published information. The state sought to establish, through different witnesses, that blood spots on the floor and strands of Mary Phagan's hair on a lathe nearby indicated that the murder had occurred in the second floor workroom, opposite Frank's office, and that the superintendent, the last person known to have seen the girl alive, had the opportunity to kill her. Doctors testified that Mary Phagan's death probably occurred between 12:00 and 12:15 p.m. The state also introduced Monteen Stover, one of the factory employees, who had arrived to collect her pay on the day of the murder

¹Herbert Haas and Co. was the legal firm retained by Frank. Rosser and Arnold, however, directed the presentation in court. AC, July 27, 1913, p. 2; June 22, 1913, p. 1; AJ, June 22, 1913, p. 1.

²AC, July 27, 1913, p. 1.

at 12:05 p.m., looked into Frank's office, did not see him, waited five minutes, and then left the building. This employee's testimony was especially damaging because at one of his first interrogations, on April 28, Frank had told Chief Detective Lanford that Mary Phagan arrived between 12:05 and 12:10 p.m., and that he had not left his office between 12:00 and 12:30 p.m.¹ The state's case appeared clear--the prosecution would try to prove that Leo Frank murdered Mary Phagan at the very time Monteen Stover had waited for her pay.

During the first week of the trial, testimony of the state's witnesses furnished the background for Jim Conley, the Negro sweeper, whose story would provide the crux of the prosecution's presentation. Most observers agreed that Frank's fate rested upon the jurors' willingness to believe the sweeper's tale.²

When Conley finally reached the witness stand, an obvious transformation had taken place in his appearance. Habitually he wore dirty clothes and presented a rather

¹Lawson, op. cit., pp. 197, 201, 242; AJ, August 2, 1913, p. 5.

²AC, August 5, 1913, p. 2; August 13, 1913, p. 2; SMN, August 6, 1913, p. 1; AJ, August 3, 1913, p. 1; AG, July 27, 1913, p. 2; August 3, 1913, p. 1; TAC, August 11, 1913, p. 1.

shabby if not downright filthy, appearance. In the courtroom, though, his face was scrubbed, his hair cut and combed, his clothes clean and new.

Solicitor Dorsey led Conley through his paces and the Negro responded with alacrity. In the courtroom, Conley both added to, and elaborated upon, his earlier affidavits. The Atlanta Journal commented afterwards that the sweeper's glibness had a rehearsed air.¹ Nevertheless, Conley unfolded a tale filled with painfully vivid detail.

The sweeper explained that he had arrived in the factory on the day of the murder at 8:30 a.m., as he had on other Saturdays, and that he spoke with Frank who instructed him to go out, take care of some errands, and then return. The superintendent allegedly mentioned that he was expecting a young lady who would come to "chat" for awhile. Conley then told the court that he had "watched out" for Frank on other occasions when ladies came to "chat" and that when Frank stamped his foot the sweeper would lock the front door; then he would wait in the lobby and unlock the door when Frank whistled.²

¹ AJ, August 4, 1913, p. 6.

² Lawson, op. cit., p. 202.

Conley then related how Mary Phagan arrived and went upstairs. After that he heard footsteps going back to the metal workroom (where the prosecution contended that Mary had been murdered), a girl scream, and then saw Monteen Stover enter the building and go up to the second floor. "She stayed there a pretty good while," and then left the building. After that Conley heard footsteps tiptoeing to the office and then back to the metal room. At that point the sweeper dozed off and went to sleep. A stamping foot from the second floor awoke him and he locked the front door. A few moments later the whistle came and Conley unlocked the same door and went up to the superintendent's office. When he arrived he found

Mr. Frank was standing up there at the top of the steps and shivering and trembling and rubbing his hands. . . . He had a little rope in his hands--a long wide piece of cord. His eyes were large and they looked right funny. He looked funny out of his eyes. His face was red. Yes, he had a cord in his hands just like this here cord. After I got up to the top of the steps, he asked me, "Did you see that little girl who passed here just a while ago?" and I told him I saw one come along there and she come back again, and then I saw another one come along there and she hasn't come back down, and he says, "Well, that one you say didn't come back down, she came into my office awhile ago and wanted to know something about her work in my office and I went back there to see if the little girl's work had come, and I wanted to be with the little girl, and she refused me, and I struck her and I guess I struck her too hard and she fell and hit her head against something, and I don't know how bad she got hurt. Of course you know I ain't built like other men. The reason he said that was, I had seen him in a position I haven't seen any other man

that has got children. I have seen him in the office two or three times before Thanksgiving and a lady was in his office, and she was sitting down in a chair (and she had her clothes up to here, and he was down on his knees, and she had her hands on Mr. Frank. I have seen him another time there in the packing room with a young lady lying on the table, she was on the edge of the table when I saw her). He asked me if I wouldn't go back there and bring her up so that he could put her somewhere, and he said to hurry, that there would be money in it for me. When I came back there, I found the lady lying flat of [sic] her back with a rope around her neck. The cloth was also tied around her neck and part of it was under her head like to catch blood. . . . She was dead when I went back there and I came back and told Mr. Frank the girl was dead and he said, "Sh-Sh!" He told me to go back there by the cotton box, get a piece of cloth, put it around her and bring her up.

Conley claimed that he did as he was bid: he rolled the girl up in the cloth, tried to pick her up but could not lift the bundle to his shoulder, let her fall, and called out to his boss, "Mr. Frank, you will have to help me with this girl, she is heavy." The sweeper then related that Frank came and caught her by the feet and helped Conley take the body to the basement, via the elevator, deposited it there, and then took the elevator back to the second floor. Conley then recalled having followed Frank back to his office. As soon as they arrived, the sweeper continued, they heard footsteps coming up the stairs and Frank put Conley in the wardrobe. After the people left, Frank allegedly released the Negro and asked,

"Can you write?" and I said, "Yes, sir, a little bit," and he taken [sic] his pencil to fix up some notes. I

was willing to do anything to help Mr. Frank because he was a white man and my superintendent, and he sat down and I sat down at the table and Mr. Frank dictated the notes to me. Whatever it was it didn't seem to suit him, and he told me to turn over and write again, and I turned the paper and wrote again, and when I done that he told me to turn over again and I turned over again and I wrote on the next page there, and he looked at that and kind of liked it and he said that was all right.

Then Frank allegedly gave Conley another piece of paper, dictated another note, approved of what the sweeper wrote, and handed him \$200.

After awhile Mr. Frank looked at me and said, "You go down there in the basement and you take a lot of trash and burn that package that's in front of the furnace," and I told him all right. But I was afraid to go down there by myself, and Mr. Frank wouldn't go down there with me. . . . And I said, "Mr. Frank, you are a white man and you done it, and I am not going down there and burn that myself." He looked at me then kind of frightened and he said, "Let me see that money" and he took the money back and put it back in his pocket, and I said, "Is this the way you do things?" and he said, "You keep your mouth shut, that is all right." And Mr. Frank turned around in his chair and looked at the money and he looked back at me and folded his hands and looked up and said "Why should I hang? I have wealthy people in Brooklyn," and he looked down when he said that, and I looked up at him, and he was looking up at the ceiling, and I said, "Mr. Frank, what about me?" and he said, "That's all right, don't you worry about this thing, you just come back to work Monday like you don't know anything, and keep your mouth shut, if you get caught I will get you out on bond and send you away," and he said, "Can you come back this evening and do it?" and I said "Yes, that I was coming to get my money." He said, "Well, I am going home to get dinner and you come back here in about forty minutes and I will fix the money," and I said, "How will I get in?" and he said, "There will be a place for you to get in all right, but

if you are not coming back let me know, and I will take those things and put them down with the body. . . ."

Then the two of them left the building.¹

On the witness stand Conley told his story with such dramatic realism that "every spectator in the crowded courtroom hung on his words." The narrative struck the presiding judge as unfit for innocent ears, and after a few hours, barred women and children from the courtroom for the remainder of the sweeper's testimony. The women could not even have the vicarious pleasure of reading Conley's whole story because the newspapers held that "the most startling features of the negro's testimony are unprintable."²

Rosser and Arnold cross-examined Conley for sixteen hours on three consecutive days. When they finished, the lawyers had gotten the sweeper to admit that he had lied on a number of previous occasions, that he had told only partial truths in previous affidavits, and that his memory was exceedingly poor except for the specific questions which Hugh Dorsey had required him to answer. Yet the defense attorneys, in their attempt to confuse Conley and catch him in a

¹Frank v. State, Brief of the Evidence, pp. 54-57.

²AG, August 4, 1913, p. 2; AC, August 5, 1913, p. 2; SMN, August 6, 1913, p. 1.

major misstatement, forced him to talk of the other times that he had "watched for" Frank and the witness vividly described other women who had come to "chat" with the superintendent while he had guarded the front door.¹

Conley's revelations shocked the spectators "into almost irresponsible indignation. . . ." After he stepped down from the witness stand one reporter wrote, "If so much as 5 per cent" of the story sticks, it "likely will serve to convict" Frank. The Atlanta Journal questioned whether "this illiterate negro [could] have conceived and fitted together such a set of detailed circumstances without some foundation in fact?"²

The weight of Conley's words assumed greater import because the defense attorneys had failed to upset his account. Many Georgians assumed that Conley must have told the truth because Luther Rosser, "the most dreaded cross-examiner at the Georgia bar, and who knows the negro character thoroughly . . . was unable to make a dent in the

¹Frank v. State, Brief of the Evidence, pp. 59-73, passim. Conley also admitted that he defecated at the bottom of the elevator shaft on the morning of the murder day but this significant fact seemed to escape both reporters and jurors.

²AG, August 5, 1913, p. 4; August 6, 1913, p. 3; AJ, August 4, 1913, p. 6; August 10, 1913, p. 1.

negro's story."¹ People believed Conley could not be flustered because he told what he had seen and done rather than what he might have been drilled to say. Fifty years after sitting in the courtroom and listening to the sweeper's testimony, McLellan Smith, who had covered the trial as a cub reporter for The Atlanta Georgian, was still certain that Conley had told the truth. "A man of his mental capacity," Smith reminisced, "could have been broken if he was lying."²

That the defense attorneys permitted Conley to discuss previous occasions on which he had "watched for" Frank while the superintendent entertained women in his office seemed strange to many observers. Why they pursued this line of questioning was never explained, but speculators assumed that Rosser and Arnold felt confident that they could break the sweeper's story. After a day of cross-examination, however, which failed to change any major aspect of the narrative, defense counsel moved to have the testimony referring to Frank's alleged assassinations struck

¹The Memphis Commercial Appeal, January 3, 1915, p. 5; see also Macdonald, op. cit., p. 2C; Hal Steed, Georgia: Unfinished State (New York, 1942), p. 238.

²Interview with McLellan Smith, April 2, 1964, Washington, D.C.

from the record. Instantaneously the prosecutors jumped to their feet. One of Dorsey's assistants agreed that the testimony should have been ruled out, but he doubted the right of the defense to ask for this after having examined the witness on these points. Dorsey echoed his assistant's protest: ". . . able attorneys here have sat and let testimony enter the records without making protest, cross-examine him for two days, and twenty-four hours later, decide to complain."¹

The motion to strike incriminating remarks from the record backfired. "By asking that the testimony be eliminated," The Constitution wrote, the defense "virtually admit their failure to break down Conley." Throughout Atlanta the "news spread that the negro had withstood the fire and that Frank's attorneys were seeking to have the evidence expunged from the records." This serious defense miscalculation "made Frank's road to acquittal a thousand times harder to journey."²

The presiding judge, Leonard S. Roan, allowed Conley's remarks to remain as recorded. The Judge observed that while

¹Quoted in AC, August 6, 1913, p. 2.

²AC, August 6, 1913, p. 2; August 7, 1913, p. 2; AG, August 21, 1913, p. 3.

the words "may be extracted from the record . . . it is an impossibility to withdraw it from the jury's mind." Roan's ruling electrified the spectators, who applauded and stamped their feet enthusiastically. The Judge immediately gavelled for order and announced that he would tolerate no further demonstration; but courtroom decorum was restored "with some difficulty." The Constitution reported the scene in a banner headline: "SPONTANEOUS APPLAUSE GREET'S DORSEY'S VICTORY." Reuben Arnold, Frank's attorney, sprang to his feet after the outburst subsided and announced, "If that happens again I shall move for a mistrial."¹

2

After Jim Conley finished testifying, the prosecution called a few relatively unimportant witnesses and then rested

¹AC, August 7, 1913, p. 3; AG, August 7, 1913, p. 3; Chattanooga Daily Times, August 7, 1913, p. 1. Technically Arnold could not ask for a mistrial at the point that he jumped up because the jury had been excused for a few moments and had not been present to hear the demonstration. Other grounds for a mistrial had presented themselves earlier in the trial, before Conley testified. The jury observed Judge Roan reading a copy of The Atlanta Georgian. Roan held the paper so that every juror could read the headline emblazoned in red: "STATE ADDING LINKS TO CHAIN." The defense attorneys asked Roan at that time to caution the jurors about ignoring newspaper headlines when they reached their conclusion and did not press for a mistrial. Roan did as he was asked. AG, August 3, 1913, p. 1; AC, August 3, 1913, p. 1; SMN, August 3, 1913, pp. 1, 3.

its case. The first Atlanta publication to editorialize upon the state's presentation was Frost's Magazine, which to that point had refrained from any commentary upon the murder. The editor of the magazine stated that heretofore comment had been withheld because Dorsey and Lanford had given the public the impression that they possessed evidence which would assure Frank's conviction. After hearing the testimony, the editors of Frost's Magazine asserted that Atlanta's Chief Detective and the Solicitor both "misled the public. We cannot conceive that at the close of the prosecution, before the defense has presented one single witness, that it could be possible for any juryman to vote for the conviction of Leo M. Frank." Frost's Magazine based its conclusions primarily on Conley's testimony. "He did not adhere to his original story. He was shown by the cross-examination of Attorney Rosser to be absolutely unreliable in veracity and memory. One thing the negro did was to reply that 'he did not remember' to everything that did not tend toward the guilt of Frank, and would always fall back to his invented story." The periodical assumed that the additions Conley injected in the courtroom could have been made up from reading the newspapers and/or coaching from his attorney or Solicitor Dorsey. Of the Solicitor Frost's Magazine observed, "It is evident that he has sought self-aggrandizement

in his ruthless effort to make out a case where he knew beforehand that he had no case."¹

3

When Rosser and Arnold assumed the burden of presenting their client's defense they attempted to show that Frank had conducted himself in his usual manner on the day of the murder and that he would not have been able to do so if he had performed so heinous a crime. Numerous witnesses testified to Frank's whereabouts on the fatal day to establish that the superintendent did not have enough time alone to commit the crime of which Conley accused him.

The defense attorneys thought they had a convincing case. Conley had sworn to being with Frank at times when other persons claimed to have seen the superintendent. None of the defense witnesses was impeached; all were of good character; and practically all were white--an important consideration with a Southern jury.

The problem of time loomed largest in Conley's narrative and Frank's refutation. According to the sweeper, Mary Phagan had arrived in the pencil factory to collect her pay before Monteen Stover. Miss Stover swore that she had

¹"The Prosecution of Leo M. Frank," Frost's Magazine, I (August, 1913), 1, 2.

been in Frank's outer office from 12:05 to 12:10 p.m., and then left. The motorman and conductor of the trolley car on which Mary Phagan had come to town, testified that she left the trolley at 12:10 p.m. Other witnesses agreed that it took about two to four minutes to walk from the trolley station to the factory. Therefore either Monteen Stover or Jim Conley had made a mistake. Two employees who claimed that they had arrived at 11:45 a.m. to collect their pay, had come after 1:00 p.m. according to the sweeper. Frank claimed that he had gone home for lunch at 1:00 p.m. The defense introduced witnesses who had seen the superintendent between 1:00 and 1:30 p.m. Another state witness, Albert McKnight, had sworn that he had seen Frank at home at 1:30 p.m. Yet Conley had testified that he and Frank had been in the factory at 1:30 p.m. Furthermore, Frank's attorneys produced witnesses who attested to the superintendent's whereabouts during most of the period that Conley claimed they had been together. According to the sweeper, and others, it would have taken Frank and Conley more than half an hour, if they had worked as quickly as possible, to perform the time-consuming tasks of murdering the girl, bringing the body to the cellar, returning to the superintendent's office on the second floor, hiding in the

wardrobe, and writing the murder notes.¹ Yet, with the exception of about eighteen minutes (between approximately 12:02 and 12:20), Frank's time seemed to have been accounted for between 11:30 a.m. and 1:30 p.m. The Constitution observed that the "chain of testimony, forged with a number of links, has established a seemingly unbreakable corroboration of Frank's account of his whereabouts. . . ."2

Leo Frank climaxed the defense presentation with a four hour effort to convince the jurors of his innocence. He briefly outlined his life history, his reasons for coming to Atlanta, and his actions on the day of the murder. At times he specifically touched on points that the prosecution had scored against him. He explained that Monteen Stover may not have seen him in his office when she arrived because when he sat at his desk "it is impossible for me to see out into the outer hall when the safe door is open, as it was that morning, and not only is it impossible for me to see out, but it is impossible for people to see in and see me there." On the other hand, he thought he might have been out of his office momentarily because of "a call of nature."

¹Frank v. State, Brief of the Evidence, pp. 26, 41, 54, 83-84, 103-17, 153-54, 229-32; Lawson, op. cit., p.220; AC, August 7, 1913, p. 3.

²AC, August 17, 1913, p. 2A.

The superintendent branded Conley's entire narrative "a tissue of lies," and again denied participating in the crime. A Georgian reporter wrote afterwards that "Frank was far and away the very best witness the defense has put forward," and The Constitution observed that Frank's words "carried the ring of truth in every sentence."¹

Altogether the defense introduced more than two hundred witnesses, including over one hundred who testified to Frank's good character, and at least a score who insisted they would never believe Jim Conley under oath or otherwise because of his notorious reputation for lying.² When Solicitor Dorsey cross-examined these witnesses he asked them if they knew of Frank's reputation for lascivious behavior? The solicitor also asked witnesses if they had heard of Frank putting his arm around some girls and bouncing others on his lap?³ Dorsey even asked one man if he had ever heard of Frank "kissing girls and playing with their nipples on their breast . . . ?"⁴ It mattered not how the witnesses

¹Lawson, op. cit., pp. 227, 237; AG, August 21, 1913, p. 3; AC, August 19, 1913, p. 1.

²AC, August 9, 1913, p. 1; August 17, 1913, pp. 2A and 4A; August 18, 1913, pp. 1, 2.

³AJ, August 15, 1913, pp. 6, 20; August 14, 1913, p. 6; AG, August 18, 1913, p. 2.

⁴Leo M. Frank v. State of Georgia, Motion For a New Trial, p. 107.

responded. Conley had already said enough to damage Frank's reputation and the mere reiteration of the subject refreshed the jurors' memories. At one point, Solicitor Dorsey's questions resulted in an unexpected outburst from the defendant's mother, Mrs. Rae Frank. Dorsey asked a witness if he had ever heard of "Frank taking a little girl to Druid Hills [Park], sitting her on his lap and playing with her?" Before the witness could answer Mrs. Frank jumped up and shouted at the prosecutor, "No, nor you either--you dog!"¹

Dorsey implied that Frank might also be a homosexual. He asked a former office boy if Frank had not made improper advances toward him and though the boy denied it, the insinuation that Frank indulged himself in this fashion "went from mouth to mouth gaining credence as it went."²

After the defense concluded its presentation the state offered rebuttal witnesses. Most of them swore that Frank did have a reputation for lascivious behavior. The state also brought forth George Kendley, a trolley car

¹Quoted in AC, August 14, 1913, pp. 1, 3. The Atlanta Journal and The Atlanta Georgian reported Mrs. Frank's outburst but did not include the words "you dog" as part of her remark. AJ, August 13, 1913, p. 1; AG, August 13, 1913, p. 1. The New York Sun, on the other hand, quoted Mrs. Frank as saying, "No, nor you either--you Christian dog!" October 12, 1913, p. 6.

²AC, August 13, 1913, p. 1; Thompson, op. cit., p. 25.

conductor, who remembered seeing Mary Phagan walking in the direction of the factory at about noon on the day of the murder. The defense rebutted with people who repudiated Kendley and who swore that on numerous occasions the trolley conductor had loudly proclaimed his opinion that Frank "was guilty as a snake" and that if the court did not convict the Jew, Kendley would willingly join a lynching party to end this villain's life.¹ The trolley conductor's testimony was less important for its content than for the attitudes expressed. It was the first time that any indication of overt anti-Semitism appeared in the court.

4

The lawyers for both sides finally concluded their cases after four weeks of testimony. The state received whatever advantage might accrue from having both the opening and closing arguments before the jury with Frank's lawyers sandwiched in between.

In his summary argument, one of Solicitor Dorsey's assistants suggested that Frank was a Dr. Jekyll and Mr. Hyde, presenting one facet of his personality to friends and relatives and another to the girls working in the pencil factory.

¹Lawson, op. cit., pp. 238, 239, 242; AJ, August 21, 1913, p. 2.

Arnold and Rosser accused the prosecutors as well as the city detectives of misrepresentation and duplicity. The former suggested that "if Frank hadn't been a Jew there would never have been any prosecution against him," and that the entire case is the "greatest frame-up in the history of the state."¹

Though Rosser and Arnold, as well as Hooper, spoke well, Hugh Dorsey received the most extravagant praise from the newspapers. In his concluding argument, characterized by The Constitution as "one of the most wonderful efforts ever made at the Georgia bar,"² the Solicitor reviewed the state's evidence and asked the jurors to bear in mind that Rosser and Arnold, "two of the ablest lawyers in the country" had been unable to break Jim Conley. "They" introduced the race question, Dorsey reminded the jurors, "the word Jew never escaped our lips." The prosecutor spoke kind words about Disraeli, Judah P. Benjamin, and the Strauss brothers but he also emphasized the activities of Jewish criminals: Abe Ruef, the former Mayor of San Francisco, Abe Hummell, "the rascally lawyer," and "Schwartz, who killed a little girl in New York. . . . [The Jews] rise

¹Lawson, op. cit., pp. 264, 266.

²AC, August 24, 1913, p. 1.

to heights sublime, but they also sink to the lowest depths of degradation!" Dorsey dismissed the argument that Frank had a good character. He noted that Judas Iscariot and Benedict Arnold were considered honorable men before they committed their treacherous deeds.¹

"A perfect case"² is what the Solicitor claimed the state had against the accused. He cited as proof of this part of a letter the defense had introduced which Frank wrote to his uncle on the day of the murder. The letter read, in part, "It is too short a time since you left for anything startling to have developed down here." Dorsey found this sentence "pregnant with significance, which [bore] the ear-marks of the guilty conscience. . . ." "Too short! Too short! Startling!" Dorsey fulminated before the jury. "But 'Too short a time,' and that itself shows that the dastardly deed was done in an incredibly short time."³ Dorsey also mentioned in his summation that

¹AC, August 24, 1913, p. 1; AG, August 23, 1913, p. 1; Lawson, op. cit., pp. 302, 303, 312. The windows of the courtroom were constantly open because of the heat. Since the room was on the main floor of the building some of the voices traveled clearly to the outside. At times Dorsey's summation was so impressive that murmurs of applause could be heard inside of the courtroom from those assembled outside of the building.

²Lawson, op. cit., p. 319.

³Ibid., p. 321.

Mrs. Frank did not visit her husband until two weeks after he was imprisoned because she knew that he was guilty.¹

Then the Solicitor moved on to the murder notes. He contended that proof that these notes had originated in a white man's mind was supplied by the use of the words "Negro" and "did." If Conley had relied upon his own vocabulary, Dorsey argued, he would have employed the expressions "nigger" and "done" since Negroes never used the other terms. At this point Rosser interrupted the Solicitor and disputed Dorsey on the words that Conley had written. Rosser noted that according to the stenographic report of the trial, Conley had used the word "did" on a number of occasions. Dorsey responded that the court stenographer must have recorded the word incorrectly, but the stenographer then announced to the court that "the shorthand character for 'did' is very different from 'done' [and] there's no reason for a reporter confusing the two." Dorsey refused to yield, however, and announced, "Let it go then, I'll trust the jury on it."² He then resumed his summary.

¹This is one of the rumors that traveled through Atlanta after Frank's arrest. It is not without foundation, however. Although Mrs. Frank rushed to the police station as soon as she heard of her husband's arrest, the police refused her permission to see him. Mrs. Frank did not visit her husband again until May 11--supposedly because he expected to be released at any moment and did not want to have her humiliated by visiting him in jail. AG, April 29, 1913, p. 1; AC, April 30, 1913, p. 1; AG, May 12, 1913, p. 1.

²Lawson, op. cit., p. 395.

Dramatic incidents in the courtroom punctuated the Solicitor's final talk. On the first day that he spoke, Mary Phagan's mother "became hysterical and let out several piercing screams. . . ." She was overcome with emotion just at the moment that Dorsey pointed his finger at Frank and declared that the child gave her life to defend her honor. Dorsey's "impassioned reference to the slain girl . . . had many in the courtroom in tears."¹

Dorsey's performance obviously pleased the crowd. As he left the courtroom each day the admiring throng greeted him with thunderous ovations. The temper of the crowd frightened the editors of all three Atlanta dailies. They petitioned Judge Roan not to let the case go to the jury on a Saturday, the second day of Dorsey's summation, because they feared that if the jurors' verdict came that night, a riot similar to that of 1906 might ensue.² Judge Roan had the same thought. That Saturday afternoon he conferred, in the presence of the jury, with Atlanta's Chief of Police and the Colonel of the Fifth Georgia Regiment as to how they would

¹AJ, August 23, 1913, p. 1; AG, August 24, 1913, p.1.

²AG, August 22, 1913, p. 1; August 23, 1913, p. 1; August 24, 1913, p. 1; AC, August 23, 1913, p. 1; AJ, August 24, 1913, p. 1; AC, October 24, 1913, p. 7.

handle the crowds after the announcement of the verdict. Both men were known, by sight, to the jurors, and the defense later alleged that this indicated to the jury that a riot would ensue should Frank be declared innocent.¹ In any case Roan interrupted Dorsey before he concluded his final argument, thus forcing a recess until the following Monday.

As Hugh Dorsey entered the courtroom to conclude his argument, the assembled throng welcomed him with a noisy, enthusiastic demonstration. The apprehensive judge demanded that the sheriff quell the demonstration and threatened to clear the courtroom if his order were not obeyed. "Your honor," the Sheriff responded, "that is the only way it can be stopped."² Roan then held a hurried conference with defense counsel and suggested that neither they nor their client be present to hear the jury's verdict. Rosser and Arnold agreed. They neither asked for, nor received, Frank's consent for this action.³

The solicitor then proceeded to speak. After three hours, he finally ended "the most remarkable speech which

¹Frank v. Manqum, 235 Supreme Court Reporter 594 (1914).

²Frank v. State, Motion for a New Trial, p. 130.

³AC, October 25, 1913, p. 14; 235 Supreme Court Reporter 594 (1914).

has ever been delivered in the Fulton county courthouse" with the words, "Guilty, guilty, guilty!" The bell of a nearby Catholic Church tolled the hour of noon as Dorsey paused before reiterating the same dread sound. The punctuation of the bell between each concluding word "cut like a chill to the hearts of many who shivered involuntarily." Judge Roan then charged the jurors and they retired to thrash out a decision.¹

The jury needed less than four hours to come to a decision. When the jurors returned to their chairs, the courtroom was empty except for a few officials, newspapermen, and friends of the defendant. "It took no student of human nature to read . . . the verdict. . . . On the face of each juror was the drawn look of men who had been compelled through duty to do an awful thing--to consign a fellow creature to the gallows. There was no mistaking that look. The strongest of the men shook as if some strange ailment had stricken them [sic]." The foreman pronounced the dread judgment: Guilty! But as Judge Roan attempted to poll the individual members, their responses were drowned by the din which had erupted from the outside as soon as a reporter had thrust his head out of the window

¹AC, August 26, 1913, pp. 1, 2.

and shouted out the verdict. Roan requested that the windows be shut. Again he took his poll; each juror responded, "guilty." Prudence, Roan decided, required the sentencing at some other time. He therefore adjourned the court.¹

Leo Frank awaited the verdict in his prison cell. Surrounded by cheerful friends and relatives, he appeared confident that the jury would acquit him. But at 5:25 p.m. a friend brought the news. A sudden pall was cast over everyone. "My God!" Frank exclaimed, "even the jury was influenced by mob law. I am as innocent as I was one year ago." Mrs. Frank sobbed bitterly and then fainted. "The silence was dreadful."²

But outside of the courtroom "a mob thousands strong . . . went wild with joy. . . ."³ The next day

¹AC, August 26, 1913, p. 1. Conley was tried as an accessory to the crime in February, 1914. He was found guilty and sentenced to a year on the chain gang.

²AC, August 26, 1913, p. 1.

³SMN, August 26, 1913, p. 1. Different newspapers gave varying figures for the size of the crowd. The Atlanta Georgian reported it as 3,500 in one edition and 4,000 in the next, August 25, 1913, p. 1; The Marietta Journal and Courier also gave the figure of 4,000, August 29, 1913, p.2; the Associated Press figure was 2,000 plus and this was reported on August 26, 1913, p. 1, in each of the following newspapers: New Orleans Times-Democrat, Columbia (S.C.) State, Chattanooga Daily Times, Raleigh (N.C.) News & Observer, and The Birmingham Age-Herald; the New York Call estimated the size of the crowd as 5,000, August 26, 1913, p. 1.

The Constitution reported that trolley car conductors left their stations and joined the rejoicing throngs; women in fashionable social circles clapped hands; the local ball-park posted the news on the scoreboard and fans in the grandstands cheered wildly. Around the courthouse "a veritable honeycomb of humanity" yelled itself hoarse as the

cry of guilty took winged flight from lip to lip. It traveled like the rattle of musketry. Then came a combined shout that rose to the sky. Hats went into the air. Women wept and shouted by turns. As Solicitor Dorsey appeared in the doorway of the courthouse while the crowd yelled its reception of the Frank verdict, there came a mighty roar. . . . The solicitor reached no further than the sidewalk. While mounted men rode like Cossacks through the human swarm, three muscular men slung Mr. Dorsey on their shoulders and passed him over the heads of the crowd across the street to his office. With hat raised and tears coursing down his cheeks, the victor in Georgia's most noted criminal battle was tumbled over a shrieking throng that wildly proclaimed its admiration. Few will live to see another such demonstration.¹

Judge Roan and members of the jury were also greeted with applause and huzzahs as they left the courthouse. Mary Phagan's stepfather gratefully shook hands with each of the jurors, in turn, as they posed for newspaper photographers. The minister of Mary Phagan's church later recalled that the jury did exactly as he wished, and at the time, he "applauded the verdict."²

¹AC, August 26, 1913, pp. 1, 4.

²AG, August 25, 1913, p. 1; Bricker, op. cit., p. 90.

Throughout the state Georgians received the news of Frank's guilt "with great enthusiasm." In Greensboro, "a wave of actual jubilation swept over the city," and The Savannah Morning News editorialized that "those who viewed the case . . . on the evidence and independently of their sympathies or their wishes are not surprised by the verdict."¹

The day after Frank had been found guilty, Judge Roan secretly convened the principals in the case and sentenced Frank to hang. The proceedings had been arranged quickly and without fanfare because Roan feared the consequences of having Frank appear in public again. Not even Mrs. Frank was informed of the event. She did hear about it, though, but by the time she reached the court, her husband was just returning to jail. She accompanied him.²

In a public statement, after Roan's sentencing, Frank's lawyers characterized the previous weeks in the courtroom as "a farce and not in any way a trial." They condemned the fact that "the temper of the public mind . . . invaded the courtroom and invaded the streets and

¹The Marietta Journal and Courier, August 29, 1913, p. 2; The Herald-Journal (Greensboro, Ga.), August 29, 1913, p. 4; SMN, August 26, 1913, p. 6.

²AC, August 27, 1913, p. 1.

made itself manifest at every turn the jury made; and it was just as impossible for this jury to escape the effects of this public feeling as if they had been turned loose and had been permitted to mingle with the people." The attorneys then announced their intention to appeal the decision. But first they made plans to take a well deserved rest.¹

5

Atlantans had freely expressed their hostile attitudes toward Frank during the trial. The Augusta Chronicle summarized the feeling that existed before the jury rendered its verdict:

The last day of the criminal trial which has absorbed the city's attention for four weeks was marked by an impatience which was evident in every move of the public. There was a nervous tension apparent in the very atmosphere today. Wherever two or three persons were gathered there was a discussion of the probable outcome, of the time the jury would be out . . . and more than all else--of the possibility of "something happening" in the case of acquittal.

That is the black shadow which has hung over Atlanta for a month--the unspoken fear of "trouble"--of violence. Nobody will admit there was such a danger--but the feeling was there. There was a fear of the same element which brought about the great Atlanta riot of 1907 [sic]--the lower element; the people of the back streets and the alleys; the near-beer saloons and the pool rooms.

¹Ibid., p. 2.

That is recognized as the real reason the trial of Leo Frank was abruptly adjourned Saturday and a recess taken until today. The Saturday night crowd in Atlanta, beer-drinking, blind-tiger frequenting, is not an assemblage loving law and order. A verdict which displeased these sansculottes of the Marietta street might well result in trouble should it be published in flaring extras after dark.

The report that state troops have been given some kind of warning to be ready will not down. . . . There was vigorous denial that any steps had been contemplated --but still the rumors persisted, and even yet it still persists.

The Atlanta papers have been wiser than in the days before the riot when the headlines of at least one paper inflamed the mob to action. There has been no word of the fear of violence, no mention of troops or riot; a careful avoidance of stirring up passion except in the printing of the court record, with its inflammatory speeches. Atlanta wants no more trouble of the kind which brought a reign of terror in 1907 [sic].¹

The antagonism toward Frank expressed itself more clearly than just a "spirit" in the air. The defense attorneys and Judge Roan had received communications during the trial to the effect that they would not leave the courtroom alive if the "damned Jew" were turned loose. There is some indication that the jurors were similarly threatened. Crowds outside the courthouse chanted, "Hang the Jew." As early as May, 1913, "a well-known Atlanta woman" wrote to The Georgian that this "is the first time a Jew has ever

¹TAC, August 26, 1913, p. 2.

been in any serious trouble in Atlanta, and see how ready is every one to believe the worst of him."¹

The Governor of Georgia had consulted with the commanding officer of the national guard regiment in Atlanta just before the trial ended, and had alerted him to the possible danger of a riot after the jury returned its verdict. The militia commandant said his troops would be ready if necessary. Two years later a North Georgia newspaperman, who had attended the trial, wrote, "There is no

¹AG, May 28, 1913, p. 3; Minutes of the American Jewish Committee's Executive Committee (American Jewish Committee Archives, New York), November 8, 1913 (hereafter cited as Minutes); W. F. Eve to Governor John Slaton, May 27, 1915 (Prison Commission files, State of Georgia Archives, Atlanta), (hereafter cited as PC Records); interview of John Slaton by Samuel A. Boorstein, October 12, 1953 (files of Anti-Defamation League, New York City); DeWitt Roberts, "Anti-Semitism and the Leo M. Frank Case" (unpublished essay, ibid., n.d., ca. 1953), pp. 12-13; The Evening World (New York City), August 26, 1913, p. 6; Macdonald, op. cit., p. 3C; AC, October 25, 1913, p. 14; Thompson, op. cit., p. 31; Connolly, op. cit., pp. 11, 18; The North Georgia Citizen (Dalton, Ga.), May 27, 1915, p. 4 (The North Georgia Citizen is frequently referred to as "The Dalton Citizen"); The New Castle (Pa.) Herald published the following item on June 22, 1915: an Atlantan, interviewed the previous day, said, "A mob as infuriated and unworthy of credence as that which clamored for the crucifixion of Jesus Christ . . . was in Atlanta during the Leo M. Frank trial and all hands were crying 'Hang the Jew!'" Clipping, John M. Slaton Scrapbooks, Georgia State Archives (Atlanta, Ga.), (hereafter cited as Slaton Scrapbooks).

use mincing words when a human life is at stake. If the jury in the Frank case had brought in a verdict of 'not guilty' the defendant would have been lynched."¹

¹The New York Times, June 22, 1915, p. 6; The North Georgia Citizen, May 27, 1915, p. 4.

CHAPTER IV

AN AMERICAN DREYFUS

Although the Frank case attracted widespread attention in the South, few people in the North heard about it until after the trial ended. Very soon thereafter, however, the news spread among the most powerful and influential Jews in the country. Frank's Atlanta friends considered him the victim of a bloodthirsty anti-Semitic attack. The Macon Daily Telegraph reported their reaction the day after Frank had been sentenced to hang:

. . . the long case and its bitterness has hurt the city greatly in that it has opened a seemingly impassable chasm between the people of the Jewish race and the Gentiles. It has broken friendships of years, has divided the races, brought about bitterness deeply regretted by all factions. The friends who rallied to the defense of Leo Frank feel that racial prejudice has much to do with the verdict. They are convinced that Frank was not prosecuted but persecuted. They refuse to believe he had a fair trial. . . .¹

Convinced that justice had not triumphed, Frank's Atlanta friends sought assistance from northern Jews who might be

¹The Macon Daily Telegraph (Georgia), August 27, 1913, Frank Papers, Box 698.

able to suggest a future course of action. Among those contacted were members of the American Jewish Committee.

1

The American Jewish Committee had been established in 1906 for the purpose of aiding Jews "in all countries where their civil or religious rights were endangered or denied."¹ It had been formed by a group of wealthy Jews, of German and American descent, who were concerned about the precarious position of American Jewry at the beginning of the twentieth century. For the most part, the founders of the American Jewish Committee had either come to the United States in the mid-nineteenth century, or were descended from those Jews who had come somewhat earlier. In their own lifetime they had experienced no organized persecution, and had found unlimited economic opportunities. As they prospered, they moved up the social ladder, leaving many of the old-world Jewish practices behind them.²

In the 1880's, groups of Eastern European Jews began

¹Minutes, I (November 11, 1906), 69.

²Yonathan Shapiro, "Leadership of the American Zionist Organization, 1897-1930" (unpublished Ph.D. dissertation, Columbia University, 1964), p. 26.

migrating to this country. The Americanized Jews had qualms about the influx of these people and regarded them as a threat to their own status in this country. They feared that the peculiar costumes and customs of the Eastern Europeans would reflect adversely upon all Jews in this country. But despite these feelings, no concerted effort was made to thwart the attempts of those who insisted upon coming, and beginning in the early part of the twentieth century, the American Jews even encouraged the Eastern Europeans to seek refuge in the United States. Once the newcomers arrived, the Americans provided them with a good deal of assistance. By helping the Eastern Europeans adjust to the New World, the established Jews hoped to lessen the anti-Semitism which, they correctly assumed, might spring up after the new immigrants settled here. One rabbi of long residence in the United States stated the issue cogently. The future of American Judaism will be powerfully affected by the Russian Jews, he noted. For "our own safety [and] our own good name" we must take them by the hand and show them how Jews live in the United States.¹

¹ Nathan Schachner, The Price of Liberty: A History of the American Jewish Committee (New York, 1948), pp. 5-6, 49-53; Shapiro, op. cit., pp. 21-22; Sklare, op. cit., pp. 163-64; Morton Rosenstock, "Louis Marshall and the Defense

The Jews who occupied prominent places in American society recognized the necessity of helping the immigrants assimilate, but they quarreled among themselves over the wisest course of action.¹ Finally, in 1903, a mass pogrom in Kishinev, Russia, enraged Jews all over the world and stimulated American Jews to establish a philanthropic organization which would coordinate and direct aid to the survivors. The sponsors of the new group viewed the organization as one which could be maintained long after aid had been given to the Russian victims, and which would act as a clearing house for problems facing American Jews.² These principles were thus embodied in the founding of the American Jewish Committee.

The founders and leaders of the American Jewish Committee constituted the most prosperous and politically influential members of the Jewish community in the United

of Jewish Rights in the United States" (unpublished Ph.D. dissertation, Columbia University, 1963), p. 67. Rosenstock's work has been published under the title, Louis Marshall, Defender of Jewish Rights (Detroit, 1966).

¹ Arthur J. Abrams, "The Formation of the American Jewish Committee" (unpublished essay, Hebrew University, 1960; deposited in American Jewish Archives, Box 2270), pp. 6-8.

² Louis Marshall to Rev. Dr. Joseph Stolz, January 12, 1906; Louis Marshall to Cyrus Adler, December 30, 1905, in Charles Reznikoff (ed.), Louis Marshall: Champion of Liberty (2 vols.; Philadelphia, 1957), I, 21, 22.

States.¹ Oscar Straus, the Secretary of Commerce and Labor, occupied the highest official political office; Jacob Schiff, head of Kuhn Loeb and Co., was probably the wealthiest. Because of the prominent standing of Straus, Schiff, and the other members of the Committee, the organization wielded much influence as the members attempted to secure the rights of all Jews in this country "through contacts with men in power."² In addition, the Committee established a publicity bureau to secure the wide circulation of material which the members desired to make public. The information disseminated emphasized the existence of discrimination against American citizens.³

2

When the American Jewish Committee began, in 1906, hardly any area of the United States seemed free of anti-Semitism. During the previous decade, Jews had experienced

¹The original members of the executive committee of the American Jewish Committee were Cyrus Adler, Nathan Bijur, Joseph H. Cohen, Rev. Dr. J. L. Magnes, Louis Marshall, Isidor Newman, Simon W. Rosedale, Max Senior, Jacob Schiff, Oscar Straus, Max Sloss, and Simon Wolf. The American Hebrew, June 29, 1906, pp. 93-94.

²Shapiro, op. cit., p. 149.

³Minutes, I (January 27, 1907), 31; II (March 19, 1911), 24.

their neighbors' sharpening hostility in Minneapolis; Rochester, New York; Chicago; Washington, D. C.; and Maryland. In 1898 a Unitarian Minister, in Colorado, had announced, "It is the Jewish race, not the Jewish church that is disliked,"¹ but Jews considered this a distinction without a difference.

¹ Albert I. Gordon, Jews in Transition (Minneapolis, 1949), p. 46; Stuart E. Rosenberg, The Jewish Community in Rochester, 1843-1925 (New York, 1954), pp. 118-19; E. A. Fischkin, "Jewish Problems in Chicago," The Reform Advocate, XXXII (January 26, 1907), 830; David Herman Joseph, "Some More of It, and Why," The Temple, I (December 10, 1909), 3; B. H. Hartogensis, "Religious Intolerance in Maryland," The Jewish Exponent, XLV (April 12, 1907), 8; Ida Libert Uchill, Pioneers, Peddlers, and Tsadikim (Denver, 1957), pp. 157-58. Indications of the growing anti-Semitism in the United States can also be garnered from Rev. F. F. Ellinwood, "The Duty of Christendom to the Jews," The Missionary Review of the World, III, New Series (November, 1890), 801-807; Josephus, "The Jewish Question," The Century, XLIII (1891-1892), 395-98; "Classical Anti-Semitism," The Nation, LXI (1895), 50-51; "A Gross Injustice," The Jewish Messenger, LXXVIII (July 12, 1895), 4; Major W. Evans Gordan, M. P., "Where Come Our Immigrants," The World's Work, V (April, 1903), 3276-81; Richard Hayes McCartney, That Jew! (Chicago, 1905); "The Jews in the United States," The World's Work, XI (January, 1906), 7030-31; "Is a Dreyfus Case Possible in America?" The Independent, LXV (November 12, 1908), 1105-1108; Sydney Reid, "Because You're a Jew," ibid., LXV (November 26, 1908), 1212-17; "Race Prejudice Against Jews," ibid., LXV (December 17, 1908), 1451-56; "Will the Jews Ever Lose Their Racial Identity?" Current Opinion, I (March, 1911), 292-94; J. G. Wilson, "The Crossing of the Races," The Popular Science Monthly, LXXIX (November, 1911), 486-95; Nathum [sic] Wolf, "Are the Jews an Inferior Race?" The North American Review, CXCIV (April, 1912), 492-95; Burton J. Hendrick, "The Great Jewish Invasion," McClure's Magazine, XXVIII (January, 1907), 307-21; Hendrick, "The Jewish Invasion of America," ibid., XL (March, 1913), 125-65.

During its first year, the American Jewish Committee was alarmed by three distinctive unpleasantnesses. In that year, The New York Sun pictured the "Jew as arrogant, ambitious, covetous, scheming, and stubborn. . . ." In Spencer, Massachusetts, fifteen hundred workers threatened to strike a shoe factory unless the firm dismissed its nine Jewish employees. And Oklahoma Jews sought the American Jewish Committee's assistance to prevent a statement about the divinity of Christ from being injected into the proposed state Constitution.¹

Anti-Semitic outbursts were confined neither to class nor region, and cannot be ascribed merely to the ignorant and underprivileged. It existed among the leaders of society, and included ministers, patricians, progressives, college teachers, and students who would be the opinion moulders of the future. These people sometimes expressed their opinions subtly, but their prejudices might have given a patina of respectability to the more vulgar fulminations of the less sophisticated. One can trace the bias back to the nineteenth century; it was especially prevalent during

¹ Joseph D. Herzog, "The Emergence of the Anti-Jewish Stereotype in the United States" (unpublished thesis, Hebrew Union College, 1953), p. 68; American Jewish Year Book, VII (1905-1906; Jewish year, 5666), 235; Minutes, I (November 25, 1906), 125.

the 1890's. In the twentieth century, the hostility seemed to grow more intense.

The attitudes found in prominent social clubs and educational institutions lent a veneer of gentility to anti-Semitism. In 1901, Frederic Bancroft opposed the membership of a Gentile into the Metropolitan Club of Washington because he belonged to a class of people who, "like Jews . . . are not only undesirable, but are likely to be a disturbing element, because they lack the refinement that restrains men of good breeding." A faculty member at Columbia's Teachers College did not hesitate to write a colleague, in 1907, "My dear Mr. A.____, Please do me the favor of not coming to the banquet tomorrow night, as I have invited a friend who does not like Jews." And at Harvard, many clubs "rigorously excluded Jewish students." During the academic year 1913-1914, students in Utica, New York, organized a "Kill Kyke Klan."¹

Two of the most prominent American men of letters also made no attempt to hide their negative feelings towards Jews. Mark Twain explained his reason for this feeling:

¹Frederick Bancroft to President & Board of Governors of Metropolitan Club in Washington, March 25, 1901, Frederic Bancroft Papers, Columbia University; Joseph, op. cit., p. 9; Heywood Broun and George Britt, Christians Only: A Study in Prejudice (New York, 1931), p. 57; The American Israelite, September 17, 1914, p. 1.

"the Jew is a money-getter; and in getting his money he is a very serious obstruction to less capable neighbors. . . ."

Henry Adams made no bones about his dislike for Jews. In the 1890's he saw no place for himself in "a society of Jews and brokers," and twenty years later informed a correspondent, "We keep Jews far away, and the anti-Jew feeling is quite rabid." Adams did not indicate any distaste for this hostility.¹

The combination of patricians and progressives also upset the Jews, especially when the negative feelings were expressed under the guise of objectivity or praise. In a hearing before a Congressional committee considering immigration revision, in 1909, Henry Cabot Lodge insisted, despite the protests of two members of the American Jewish Committee, Simon Wolf and Judge Julian Mack, that Jews were a race and not merely a religious group. Lodge added that there were even members of Christian faiths who belonged to the Jewish race. In Georgia, Lucian Lamar Knight, the patrician historian of the state, ostensibly praised Jews for their commercial, and other, talents. He noted, for example,

¹ Mark Twain, "Concerning the Jews," Harper's Magazine, XCIX (1899), 530, 532; Higham, "Anti-Semitism in the Gilded Age: A Reinterpretation," Mississippi Valley Historical Review, XLIII (March, 1957), 573; Worthington Chauncey Ford (ed.), Letters of Henry Adams (2 vols.; Boston, 1938), II, 620.

that Jews "are money makers to such an extent that the roll-call of the whole Hebrew population can be made from the tax-book." In good times and bad, he added, the Jew "has money to lend if not to burn and before he is ready to execute his will he owns the grocery-store, the meat-market, the grog-shop, the planning-mill, the newspaper, the hotel and the bank." E. A. Ross, one of the more prominent progressives, and a highly respected sociologist, stated quite clearly, in 1914, "The fact that pleasure-loving Jewish businessmen spare Jewesses, but pursue Gentile girls, excites bitter comment."¹

One of the most outspoken anti-Semitic progressives, Burton J. Hendrick, alarmed almost all Jews with his articles in McClure's Magazine in 1907 and 1913, on "The Great Jewish Invasion." In the earlier one he acknowledged that the Jews were ambitious and successful, in American terms, but he concluded by asking whether the Jew has "in himself the stuff of which Americans are made?" Hendrick's second work depicted the activities of a Jewish conspiracy seeking

¹U.S. Immigration Commission, "Transcript of Testimony by Simon Wolf and Julian W. Mack" (typescript in American Jewish Committee Library, New York City, 1909), no pagination; Lucian Lamar Knight, Reminiscences of Famous Georgians (2 vols.; Atlanta, 1907), I, 512; E. A. Ross, "The Hebrew of Eastern Europe in America," The Century Magazine, LXXXVIII (September, 1914), 787.

to seize the country. He catalogued the different industries in the United States which "the Jews absolutely control," and predicted that the Jewish influence in this country within the next hundred years would "be almost preponderating."¹

Hendrick's second article appeared in March, 1913. Mary Phagan was murdered and Leo Frank arrested one month later. After Frank's conviction in August, his friends contacted members of the American Jewish Committee and asked for their assistance. In light of the apparent atmosphere in Atlanta, and the increasingly negative views of the Jews in the United States, the Committee took a special interest in Leo Frank.

3

At the beginning of September, 1913, Louis Marshall, President of the American Jewish Committee, received three letters from prominent Atlanta Jews concerning the plight of Leo Frank. Two did not state their problem clearly, but the third spelled out what the others mysteriously refrained from putting down on paper: "I would like to enlist your assistance in what is without doubt an American 'Dreyfus'

¹Hendrick, McClure's Magazine, XXVIII (January, 1907), 314, 319-20; XL (March, 1913), 125, 126, 136, 153, 156, 158.

case that has just developed in Atlanta." The writer summarized the affair and stated his opinion that the "evidence against Frank is purely prejudice and perjury. The feeling against the D_____ Jew is so bitter that the jury was intimidated and feared for their own lives, which undoubtedly would have been in danger had any other verdict been rendered."¹

Other members of the American Jewish Committee received similar communications. Cyrus Adler, in Philadelphia, heard that there was "violent anti-Jewish sentiment in Atlanta," and Cyrus Sulzberger, in New York, received a letter from a resident of Columbus, Georgia, who had learned from his Atlanta friends of the "fearful state of affairs as to this case."² These letters were funneled to the American Jewish Committee's President, and as he digested the material, he, too, concluded "that this case is almost a second Dreyfus affair."³

¹Milton Klein to Louis Marshall, September 4, 1913; David Marx to Louis Marshall, August 30, 1913; Leonard Haas to Louis Marshall, August 30, 1913, Louis Marshall Papers (American Jewish Archives, Cincinnati), Box 38. All letters to and from Louis Marshall are in this collection unless otherwise stated; therefore the expression "Marshall Papers" will not be repeated. Louis Marshall will be cited hereafter as LM.

²Cyrus Adler to Herman Bernstein, September 2, 1913; E. B. M. Browne to Cyrus Sulzberger, September 21, 1913, "The Leo Frank Correspondence Folder" (The American Jewish Committee Archives, New York City).

³LM to Irving Lehman, September 9, 1913, Box 1584.

Marshall decided that "it would be most unfortunate if anything were done . . . from the standpoint of the Jews. Whatever is done must be done as a matter of justice, and any action that is taken should emanate from non-Jewish sources."¹ The American Jewish Committee President understood the sensitivity that Southerners felt about northern interference and feared that anti-Semitism would spread if northern Jews led a campaign to overthrow the verdict against Frank. Marshall counselled that "there is only one way of dealing with this matter . . . and that is, in a quiet, unobtrusive manner to bring influence to bear on the Southern press," to use its position in creating "a wholesome public opinion which will free this unfortunate young man from the terrible judgment which rests against him."²

4

When the American Jewish Committee met in executive session to discuss Leo Frank for the first time, the general opinion seemed to be that Frank's conviction resulted both from an outburst of anti-Semitism in Atlanta and a newspaper

¹ Ibid.; LM to Milton Klein, September 9, 1913; LM to Simon Wolf, September 27, 1913, Box 1584.

² LM to Adolph Kraus, September 27, 1913; LM to Irving Lehman, September 9, 1913, Box 1584.

campaign which forced the police to find a victim quickly. The members of the Committee interpreted the situation as another Dreyfus affair and proof of virulent anti-Semitism in the United States. They viewed what happened to Frank as a threat to the status of all American Jews. The Committee members were all the more alarmed because in recent decades anti-Semitic attacks had multiplied at a frightening pace, notwithstanding their vigorous efforts at counteraction. The conviction of Frank could not go unchallenged. American Jewry would have to fight back.

But in spite of its sympathy for Frank, and its concern over the position of the Jews in America, the American Jewish Committee did not act hastily. Jacob Schiff suggested raising a fund to help Frank, but another member thought that this would be imprudent because reports would circulate to the effect that other Jews were financing him "and the question would thus become a Jewish question. It is very important that we should prevent that." The Committee resolved to take no official action, although its members, as individuals, might do as they thought best. In explaining this action a year later, Louis Marshall noted that the American Jewish Committee did not want "to be considered as championing

the cause of Jews who are convicted of crime."¹

Frank's friends in Atlanta had been anxiously awaiting the American Jewish Committee's decision. After the Committee decided to refrain from giving any official assistance, Louis Marshall wrote to Herbert Haas, head of the legal firm defending Frank, that while the organization, as such, could not make any contributions towards a legal fund, a number of the members had indicated that if a new trial were granted, and additional finances were necessary, they would be willing to contribute "to a reasonable extent."² Whatever efforts northern Jews desired to make, however, would have to remain in abeyance for a while. Legal avenues had not been exhausted and prudence dictated patience until the appeals court issued its verdict.

¹ Minutes, II (November 8, 1913), 180; LM to William Rosenau, December 14, 1914, Box 145.

² LM to Herbert Haas, December 27, 1913, Box 1585. The initial expenses had been taken care of by Frank's immediate family and a well-to-do uncle. By the beginning of November, 1913, they already had spent about \$30,000. Minutes, November 8, 1913.

CHAPTER V

THE FIRST APPEAL

While northern Jews deliberated upon a course of action, the Atlanta attorneys prepared their appeal. They did not intend to let the jurors' verdict rest without a fight, and no sooner did the trial end than work began on the next brief. Leonard Roan, the trial judge, would be the first to hear their plea. According to a 1906 Constitutional Amendment in Georgia, an appeal in a capital case could be based only upon errors in law, and the appellate judge would not have the authority to reevaluate the evidence.¹ Frank's counsel, therefore, stressed the procedural irregularities which prevailed during the trial.

The appeal contained one hundred and fifteen points, including affidavits attesting to the alleged prejudice towards the defendant on the part of two of the jurors: A. H. Henslee and M. Johenning. Eight people swore that they heard Henslee express hostile sentiments towards Frank

¹Connolly, op. cit., p. 16.

before the trial commenced and one recalled that shortly after Frank's arrest he overheard Henslee remark: "I am glad they indicted the God damn Jew. They ought to take him out and lynch him. And if I get on that jury I'd hang that Jew sure." Three members of one family swore to having heard prejudicial remarks by Johenning.¹

The defense also submitted affidavits from Atlantans who witnessed the trial attesting that the jury had heard the crowds outside of the courtroom and had seen the public demonstrations. Other defense motions included the assertion that Conley's testimony, relating to Frank's alleged sexual perversions, should never have been admitted into the courtroom; and that the verdict was both without evidence to support it and contrary to the weight of the evidence.²

To the charges made by the defense, Solicitor Dorsey countered with affidavits from eleven of the twelve jurors (the twelfth was out of town on business) who swore that they did not hear cheering or applause from outside the courtroom except after they had rendered their verdict.

¹Frank v. State, Motion for a New Trial, p. 125; AJ, October 4, 1913, p. 1.

²Ibid., pp. 1, 2; Frank v. State, 141 Georgia 283(1914).

They contended that they made up their minds strictly on the evidence presented and that the public clamor did not affect their decision.¹ Henslee and Johenning made additional statements swearing that they entered the jury box ready to be convinced by either side. Both qualified their affidavits to some degree. Henslee indicated that together with others he had read about Frank in the newspapers and discussed him with various people but that he never formed any opinion "further than that 'whoever killed Mary Phagan ought to hang.'" Johenning stated that he did at one time indicate that the outlook for Frank, based upon newspaper accounts, did not "seem to be very bright for him," and that he (Johenning) thought that Frank would "have a hard time in getting loose."²

Once again Rosser and Arnold presented Frank's case before Judge Roan and once again Dorsey and Hooper argued for the state. The defense attorneys underscored their original arguments: the evidence did not warrant the verdict and prejudice precluded a fair trial. Dorsey and Hooper maintained that Frank did receive a fair trial. Hooper dismissed the defense's assertion that demonstrations

¹AJ, October 21, 1913, p. 1.

²AC, October 22, 1913, p. 9.

might have prevented the jury from conscientiously doing its duty. If such were the case, Hooper explained, the state would never get a conviction, for each defendant could arrange for his friends to demonstrate in his behalf and this would cause an automatic mistrial. The state also contended that affirmative action by Judge Roan would put the jury system in peril and shatter the laws of the state. To grant a new trial, Dorsey concluded, would be "a slap in the face of justice."¹

Judge Roan denied the defense's motion. Along with his decision, however, the Judge issued a most peculiar statement, one which could not help but gratify Frank's supporters and puzzle everyone else:

I have thought about this case more than any other I have tried. I am not certain of the man's guilt. With all the thought I have put on this case, I am not thoroughly convinced that Frank is guilty or innocent. The jury was convinced. There is no room to doubt that. I feel it is my duty to order that the motion for a new trial be overruled.²

Frank's counsel may have been disappointed with Roan's decision, but they certainly were not disheartened. "I recall your remarks upon the subject of incompetent and weak judges," Herbert Haas wrote to Louis Marshall. "The

¹AC, October 28, 1913, p. 1.

²Quoted in AG, November 1, 1913, p. 1, Frank Papers, Box 697.

presiding officer in this case tries to do his duty, but I fear he is lamentably weak." The Atlanta attorney viewed the future optimistically. "Our Supreme Court," Haas continued in his letter, "has held more than once that it will reverse the judgment of the lower court declining a motion for a new trial where, in the bill of exceptions, it is certified that the presiding judge himself is in doubt as to the guilt of the defendant."¹

The Atlanta Georgian found difficulty in accepting Roan's "amazing decision." "Could anything be more astonishing than this?" The Georgian asked in a lead editorial. If Roan does not know whether Frank is guilty, how can the people know? "It would seem that Judge Roan has written into the case an objection so large and overshadowing that the other 115 sink into insignificance and that the [Georgia] Supreme Court will order a new trial on Judge Roan's decision, if for no other reason." When the trial judge is in doubt, the editorial concluded, "is it not time to pause before legal murder is added to the long list of other crimes in our State?"²

¹Herbert Haas to IM, October 31, 1913, Box 39.

²AG, n.d. (November 1, 1913?), Frank Papers, Box 694.

The Georgian, though, expressed a minority opinion in the state. The Waycross Herald and the Greensboro Herald-Journal, on the other hand, expressed what appeared to have been the sentiment of most Georgians. The Waycross Herald editorialized, "It was none of Judge Roan's business to be convinced of Frank's guilt. . . . The jury was fully convinced and said so. It was purely up to the jury and not Judge Roan." The Herald-Journal, while "surprised" at Roan's "ignorance," sarcastically noted that "there are plenty of people right here in Greensboro, Greene county, and elsewhere that know better than that. Why, they've never heard one word of evidence [sic], as Judge Roan but they know absolutely that Frank is guilty. There are some mighty smart people in the world." In the face of Roan's acknowledged doubt, one Georgia jurist tried to explain the trial judge's refusal to grant a new trial: "The judge must stand for re-election in a year."¹

There is reason to surmise that Judge Roan believed Frank innocent but feared an outburst of mob violence if he granted another trial. He allegedly confided to a friend that had he granted the defense's request, the Governor

¹Waycross-Herald, November 5, 1913, Frank Papers, Box 694; Greensboro Herald-Journal, November 7, 1913, p. 6; "The Real Case," Southern Ruralist, XX (January 15, 1914), 20.

would "not have enough troops to control the mob," which would certainly have gathered as the news spread. Furthermore, in a conversation with another friend shortly after the decision, Roan asked what people thought of his unusual comment. "I told him," the friend later wrote to the Georgia Prison Commission and Governor John Slaton "that some people thought it was eminently proper for him to certify his doubts, and others thought it highly improper. . . ." Speaking for himself, the friend claimed to have told Roan, that "if I had felt as [you] did, I certainly would have granted a new trial. [Roan] then said, 'well suppose I had, then that dreadful mob spirit would have broken out again, and now when it goes to the [Georgia] Supreme Court and comes back, maybe he can get a fair trial.'"¹

Six weeks after Roan denied the appeal for a new trial, Rosser and Arnold argued Frank's case before the Georgia Supreme Court. Because of the unusual nature of the case, and its exceptionally long written record, counsel for both sides were permitted to speak for two hours apiece, twice the normal length. In such time Rosser and

¹J. J. Barge to Georgia Prison Commission and Governor John Slaton, May 31, 1915, PC Records. See also, Allen Lumpkin Henson, Confessions of a Criminal Lawyer (New York, 1959), p. 65.

Arnold could do little more than reiterate their oft-stated themes that prejudice and perjury had convicted Frank. They centered their appeal, however, upon Judge Roan's expression of doubt. The defense attorneys cited half a dozen legal citations showing that where the trial judge had expressed doubt, a new trial had been granted.¹

Thomas Felder, Georgia's Attorney-General, assisting Hugh Dorsey in the presentation before the Supreme Court, expressed the state's position that not only was the evidence against Frank "mountain-high" but that Judge Roan should never have certified his doubt in the bill of exceptions.² After both sides completed their arguments, the attorneys retired to await the decision.

A month later the Supreme Court voted four to two to uphold Judge Roan's ruling in denying a new trial.³ Judge Samuel C. Atkinson summarized the major conclusions.

¹AJ, December 11, 1913, p. 1; December 15, 1913, p. 19; AC, December 16, 1913, pp. 1, 4.

²AC, December 17, 1913, p. 1. Felder seemed less concerned with the legality of Roan's action, than winning his case. He said nothing about the precedents covering cases where the trial judge did so certify.

³The justices of the Georgia Supreme Court at that time were William H. Fish, Chief Justice, Beverly D. Evans, Joseph Henry Lumpkin, Marcus W. Beck, Samuel C. Atkinson, and Hiram Warner Hill. Justices Fish and Beck dissented from the majority.

He dismissed the accusation of prejudicial jurors with the explanation that when the impartiality of the jurors is in question, the trial judge must decide the point and the Supreme Court will not reverse the decision "unless it appears that there has been abuse of discretion." Though spectators expressed their enthusiastic approval of events in the presence of the jury on two occasions, this did not "impugn the fairness of the trial." "The general rule," Judge Atkinson explained, "is that the conduct of a spectator during the trial of a case will not be ground for a reversal of the judgment, unless a ruling upon such conduct is invoked from the judge at the time it occurs."¹

Conley's testimony was ruled admissible because it not only explained his presence at the factory on the day of the murder but also because of the "peculiar opportunity" it afforded him to have knowledge of the crime. Although certain portions of the sweeper's testimony tended to incriminate Frank as the perpetrator of other crimes, this testimony was ruled admissible as "material and relevant" to the issue at hand. Conley's account of Frank's alleged previous conduct tended to render his tale more credible,

¹Frank v. State, 141 Georgia 246-247, 281, 283.

Atkinson wrote, and also helped to explain Frank's motivation.¹

Finally, when Atkinson came to the point concerning Judge Roan's personal expression of doubt, the Supreme Court Justice said that the rule is that even if the judge considers a case weak, if he overrules a motion for a new trial despite his own personal doubts, "his legal judgment expressed in overruling the motion will control; and if there is sufficient evidence to support the verdict, this court will not interfere because of the judge's oral expression as to his opinion." Taking the case as a whole, the Supreme Court majority found that

the evidence tended to show a practice, plan, system, or scheme on the part of the accused to have lascivious or adulterous association with certain of his employees and other women at his office or place of business. . . . It tended to show a motive on the part of the accused, inducing him to seek to have criminal intimacy with the girl who was killed, and, upon her resistance, to commit murder to conceal the crime.²

Justices Beck and Fish dissented from the majority but confined their argument to Conley's testimony. Using the same legal citations as the majority, they concluded that evidence as to Frank's alleged perversion should never have been admitted to the courtroom. "It is perfectly clear

¹Ibid., pp. 253-254, 256, 260.

²Ibid., pp. 266-267, 284.

to us," they wrote, "that evidence of prior acts of lasciviousness committed by the defendant . . . did not tend to prove a preexisting design, system, plan, or scheme, directed forward to the making of an assault upon the deceased or killing her to prevent its disclosure." To admit such evidence, they concluded, was calculated to prejudice the defendant in the minds of the jurors and thereby deprive him of a fair trial. Justices Beck and Fish made no reference to the issue of Judge Roan's expression of doubt, nor did they comment either upon the alleged prejudices of two of the jurors. They devoted their entire dissent to one main point: that evidence of any other crimes allegedly committed by the defendant was inadmissible.¹

Six months after the trial, Frank's position seemed worse than it had been the previous August. But the prisoner's friends, who considered him to have been victimized by a gross miscarriage of justice, were not willing to accept the judgment of the Georgia Supreme Court as final. Renewed efforts would have to be made to rally support for Frank throughout the nation. And so those who were most concerned with his welfare began working harder to win his freedom.

¹Ibid., pp. 285-307.

CHAPTER VI

ENTER TOM WATSON . . . AND WILLIAM J. BURNS

The Frank camp had expected an adverse decision from the Georgia Supreme Court and had prepared accordingly. The Atlanta attorneys had solicited northern Jews for financial assistance and with the money received they had hired additional associates, including the world renowned detective, William J. Burns.¹ Investigators discovered new evidence, obtained new affidavits, and prevailed upon prosecution witnesses to repudiate their original testimony. Influential Jews alerted newspapers to Leo Frank's plight and the nation's press published forceful editorials attacking Georgia justice. Mobilization

¹Burns had been brought into the case a year earlier when a public subscription had been raised to pay for the famous detective's services in helping Atlanta find the culprit. After Conley's affidavits, however, toward the end of May, 1913, Solicitor Dorsey informed the Burns agency in the city that its services would no longer be needed. The Burns agent, who had investigated the murder for about two weeks, had announced in May, 1913, that he, too, believed Frank guilty. But William J. Burns had never come to Atlanta, nor did he have any hand in the investigation undertaken by his agents in 1913. Once Dorsey had informed his agency that its services would no longer be necessary, the Burns people dropped all association with the case. Therefore when William J. Burns was again solicited, in February, 1914, he felt free to accept the assignment from the defense. See AC, May 27, 1913, pp. 1, 2.

of these forces required financing and leadership; northern Jews provided both.

1

Soon after the Georgia Supreme Court had refused Frank a new trial, The Atlanta Journal published the results of an interview with the state biologist who had examined Mary Phagan's body shortly after her death. A microscopic study of one of the prosecution's main clues, the hair found on the lathe which Mary Phagan used, led the biologist to conclude that the hair did not belong to the dead girl. He related this information to Hugh Dorsey but the Solicitor ignored it. The Journal confronted Dorsey with the biologist's findings and asked why he maintained that the hair belonged to Mary Phagan. "I did not depend on [the biologist's] testimony," Dorsey answered, "other witnesses in the case swore that the hair was that of Mary Phagan, and that sufficed to establish my point."¹ Atlanta's Southern Ruralist, which had condemned Dorsey's methods earlier, repeated its censure: "Prejudice is the mildest possible term for such conduct. Such official misrepresentation of fact . . . is

¹AC, February 21, 1914, p. 1.

the very murder of justice itself."¹

During the next few weeks the defense released a series of affidavits from prosecution witnesses repudiating their testimony. Hearst's Georgian headlined the first retraction: "Plot to Hang Frank." The paper related how defense counsel obtained an affidavit from Albert McKnight, husband of the Frank family cook, stating that his employer had bribed him to swear that he had seen Frank act peculiarly on the day of Mary Phagan's death. McKnight now maintained that he had not seen Frank that day, and summarized his retraction in one sentence: "Most everything I said on the stand was a lie."² When the affidavit became public, McKnight disappeared.

The next retraction came from New York. Mrs. Nina Formby, the proprietor of the "rooming house" Frank had allegedly phoned on the night of the murder, told The New York Times that she wished to change her story. Mrs. Formby described how police had plied her with liquor and had encouraged her to relate an imaginary episode concerning Leo Frank. The woman stated that because of her position the

¹ Southern Ruralist, March 15, 1914, p. 21.

² Quoted in AG, February 22, 1914, p. 1; Frank Papers, Box 694.

police had "unduly influenced" her and had intimated that it would be prudent for her to help them.¹ Atlanta's Chief Detective, Newport Lanford, refused to believe Mrs. Formby's latest recollection: "The idea that Mrs. Formby is the author of the statement purporting to come from her is the most absurd thing I ever heard of."²

Shortly after Mrs. Formby's repantation, Mary Phagan's friend, George Epps, Jr., repudiated the statements that he had made at the Coroner's inquest and the trial. Epps asserted that a detective had forced him to lie but that now he wished to tell the truth. In his newest affidavit, Epps recalled having seen Mary Phagan on the trolley, but since he had been seated behind her they engaged in no conversation aside from polite greetings.³ The defense also released statements from other witnesses who related how the police, the detectives, and/or Solicitor Dorsey had manufactured the "evidence" they had revealed in court.⁴

¹The New York Times, February 26, 1914, p. 1.

²Quoted in AC, February 27, 1914, p. 2.

³AJ, March 4, 1914, p. 1. At the trial, however, the motorman who had conducted the trolley that Mary Phagan had come to town on, said he also knew George Epps, Jr. and that the boy had not been on the same trolley that Mary Phagan was on. Brief of the Evidence, p. 84.

⁴AC, February 24, 1914, p. 7; March 13, 1914, p. 1; March 15, 1914, p. 2A; March 28, 1914, p. 1. See also affidavits in Frank Papers, Box 691.

Epps, McKnight, and others whom the Atlanta police could locate and reinterview repudiated their retractions. Fourteen-year-old George Epps, an inmate of the state reformatory, where he had been sent in December, 1913, for stealing, reverted to his original story within a few days after the defense had released his recantation. No explanation was given for the sudden change. A relatively unimportant witness, who repudiated statements he had given at the trial, was arrested and brought to Solicitor Dorsey's office for questioning. The man spent the night in jail, and the next day signed his name to a new affidavit stating that agents for the defense had bribed him to swear falsely, but now, he averred, the remarks that he had made at the trial were true.¹

Albert McKnight's retraction came in a peculiar fashion. He was found unconscious one night near the railroad tracks outside Atlanta. Taken to the hospital, he hovered between life and death but finally recovered. At that point he allegedly left the hospital to seek refuge in the police station where he retracted the statement he had given the defense. McKnight now claimed that Frank's lawyers

¹AJ, March 5, 1914, pp. 1, 2; AC, May 4, 1914, p. 1; AJ, May 3, 1914, p. 1.

had hounded him and that he had asked the police to protect him by putting him in jail! The newspapers reported that McKnight wished to remain in prison indefinitely and the police obliged by keeping him in solitary confinement without visitors.¹

Frank's partisans attempted to explain the peculiar behavior of the affidavit-switchers. C. P. Connolly, author of The Truth About the Frank Case, later suggested that Solicitor Dorsey might have reminded each witness that a Georgia statute provided the death penalty for swearing falsely in a capital case. Another explanation came from a woman who had repudiated her first affidavit but then reverted to the original statement. She confided to friends that one conducting a business in Atlanta "could not afford to antagonize the police."²

2

Frank's attorneys did not rely solely upon repudiated testimony in their extraordinary motion³ for a new trial.

¹AC, March 15, 1914, p. 1; April 19, 1914, p. 1; AJ, April 19, 1914, p. 1.

²AJ, May 1, 1914, p. 22; May 3, 1914, p. 1; May 4, 1914, p. 1; Connolly, op. cit., p. 65; Macdonald, op. cit., p. 2C.

³An "extraordinary motion" was needed to place Frank's case before the Georgia courts again because the ordinary

Henry Alexander, one of the numerous lawyers working for the defense, made a careful study of the "murder notes" found near Mary Phagan's body and reached some startling conclusions. His examination showed that these notes were written on the carbons of old order pads which had been used previously by a former factory official. The dateline read "190_" indicating that the forms must have been at least four years old. The official who signed the orders left the employ of the factory in 1912, and all of his office records, including pads, had been removed to the basement, near where Mary Phagan's body had been found. Alexander concluded that this proved that Conley could not have written the notes upon a pad which Frank had provided him with in his office.¹

Alexander then proceeded to examine the wording of the notes. In the second one the author had used the phrase, "play like the night witch did it." Because of a chance remark which had been made by Newt Lee, the night watchman, when the notes had been found, that "night witch" probably meant him, the night watchman, most people automatically

procedures had already been exhausted. The "extraordinary motion" was based upon new information, not available at the time of the trial.

¹The New York Times, March 9, 1914, p. 1; March 17, 1914, p. 3; The Washington Post, March 9, 1915, p. 5; AJ, March 8, 1914, p. 1; March 9, 1914, p. 2.

assumed the same thing. But Alexander pointed out that although the author of the murder notes had made many spelling errors, he had not made any in pronunciation. Therefore it seemed extremely unlikely that "night witch" would have been written if "night watch" or "night watchman" had been the author's intention. "Night witch," Alexander wrote, meant "night witch"! He then explained that the term "night witch" referred to a peculiar Negro superstition.¹ A Baptist minister later added that when he had asked his Negro servant the meaning of "night witch" she had replied, "when the children cry out in their sleep at night, it means that the night witches are riding them, and if you don't go and wake them up, they will be found next morning strangled to death, with a cord around their necks."² Those who believed Frank innocent agreed that only a southern Negro would have known about, and used, such an expression; therefore Frank could not have dictated the murder notes.³

¹Henry A. Alexander, Some Facts About the Murder Notes in the Phagan Case (privately published, 1914), p. 7.

²L. O. Bricker, "A Great American Tragedy," The Shane Quarterly, IV (April, 1943), 91.

³Macdonald, op. cit., p. 2C; Connolly, op. cit., p. 88; The New York Times, March 15, 1914, III, 10; Cahan, op. cit., V, 502.

In the preparation of both the extraordinary motion and the brief for the first appeal the previous fall, Frank's counsel sought and received the aid of Louis Marshall, who was not only President of the American Jewish Committee, but a renowned constitutional lawyer. Marshall advised that in addition to the appeal for a new trial based upon new evidence, another motion be introduced asking for Frank's freedom on the basis that his enforced absence from the courtroom at the rendition of the jury's verdict constituted deprivation of due process of law; hence, the Georgia authorities were holding Frank in custody illegally.

The Atlanta attorneys at first hesitated to include this new point involving a federal question because they feared it would mitigate the effect of their extraordinary motion. Marshall vigorously dissented from their view. He argued that if the attorneys procrastinated until the extraordinary motion had been disposed of before introducing the federal question they would find both the court and the public prejudiced against them "on the theory that [they] are apparently delaying proceedings by making one application after another." If both were made together, Marshall argued, then Frank's position would be strengthened "because a court which might hesitate as to the granting of a new

trial on the ground of newly discovered evidence, might be induced to take a more favorable view of the proposition because of the fact that there is a serious question as to the regularity of the trial." "At all events," he added in his letter to Leonard Haas, brother and associate of Herbert Haas, "if the case should go to the Supreme Court of the United States on the question which I have discussed, it might be very useful to have in the record which goes to that court the testimony given on the extraordinary motion for a new trial, because it would impress the court that there has been an injustice done in this case."¹

The Atlanta attorneys followed Marshall's advice and hired additional counsel to argue this federal question in the Georgia courts. At the time that the Solicitor had agreed to let Frank remain away from the courtroom, when the jury rendered its verdict, Luther Rosser and Reuben Arnold had promised Hugh Dorsey that they would not use their client's absence during part of the judicial proceedings as a basis for future appeals. Therefore Rosser and Arnold felt obliged to honor their pledge and different attorneys had to be engaged to argue this federal point in court.²

¹LM to Leonard Haas, March 25, 1914, Box 1586.

²The New York Times, October 26, 1914, p. 1.

In addition to legal advice, the President of the American Jewish Committee used his influence in an attempt to change southern attitudes. He induced Adolph Ochs, publisher of The New York Times, and also a member of the American Jewish Committee, to employ his newspaper as a weapon in the fight to exonerate Frank. The Times thereupon embarked upon a protracted campaign to obtain another trial. Marshall cautioned Ochs that his newspaper must print nothing "which would arouse the sensitiveness of the southern people and engender the feeling that the north is criticizing the courts and the people of Georgia." The American Jewish Committee's President also "strongly urged that there should be no suggestion that the Frank case involves any element of anti-Semitism."¹ The Times' articles followed Marshall's suggestions and tried to avoid offending southern, especially Georgian, sensitivities. The campaign failed, however, because many Georgians interpreted every item favorable to Frank as a hostile act. In retrospect it seems that the attempt was doomed from the start. The southerners who feared and resented aliens could not have been expected to heed the pleas of northern, urban, Jewish-owned newspapers.²

¹LM to Adolph Ochs, January 8, 1914; LM to Judge Julian Mack, March 17, 1914, Box 1586.

²Tom Watson would eventually remind his readers that the northern periodicals leading the fight to exonerate

In addition to Louis Marshall and other members of the American Jewish Committee, Albert D. Lasker, the Jewish advertising genius from Chicago, contributed his services. Lasker, too, had heard of Frank's plight and, according to his biographer, John Gunther, "Every instinct he had for justice and fair play, for racial tolerance, for dignity in the courts and good citizenship, was aroused." He went to Atlanta, interviewed Frank and his friends, and returned to Chicago determined to aid the cause. Since large sums of money were necessary to wage the legal battle, Lasker solicited wealthy friends for contributions to the "Frank Fund." It is not clear just how much money he raised at that time, but Frank personally acknowledged Lasker's "kindness and interest in my case."¹

Frank--Puck, The New York Times and The Evening World (New York)--were all owned by Jews. "What is the purpose of this continued and systematic crusade in behalf of one convicted Jew whose connections command unlimited wealth?" Watson later asked. And then he added, touching on one of the themes he frequently made reference to when discussing the influence of the Jews: "The Frank case is enough to depress the most hopeful student of the times. It has shown us how the capitalists of Big Money regard the poor man's daughter. It has shown us what our daily papers will do in the interest of wealthy criminals. It has shown us how differently the law deals with the rich man and the poor." The Jeffersonian, December 5, 1914, pp. 1, 8.

¹ Albert D. Lasker's secretary, C. M. Langan, to Julius Rosenwald, December 10, 1913. Julius Rosenwald

More important than Lasker's money was the time he devoted. For a man of his position to have written very large checks may not have been a great sacrifice, but to have neglected all other business activities for more than a year, as Lasker did, indicated what a great injustice he saw in the Frank case. Lasker made numerous trips to Atlanta where he directed detectives and investigators while giving advice to Frank's attorneys. He also encouraged newspapers throughout the country to present Frank's case in a favorable light. He believed that as long as there was no obvious

Papers, University of Chicago; hereafter cited as Rosenwald Papers. Leo Frank to Albert D. Lasker, December 18, 1913, ibid.; Albert D. Lasker to Julius Rosenwald, June 26, 1915, ibid.; John Gunther noted that over a two-year period Lasker contributed \$100,000 out of his own pocket. Taken at the Flood (New York, 1961), pp. 82-83. Harry Golden, on the other hand, estimated that Lasker and his father had spent \$160,000 between them, and that an uncle of Frank's had spent \$50,000; A Little Girl Is Dead, p. 230; on June 19, 1915, Herbert Haas acknowledged that "Mr. Frank's defence [sic] for the past fifteen months has been assisted financially by and through Mr. A. D. Lasker, of Chicago." Haas to Jacob Schiff, Jacob Schiff Papers, American Jewish Archives; cited hereafter as Schiff Papers. People such as Louis Marshall, Jacob Schiff, and Julius Rosenwald also contributed substantial sums to Frank's cause. Based on the entire list of contributors, it seems conservative to estimate that at least a quarter of a million dollars was spent in order to free Leo Frank. Albert D. Lasker to Herbert Haas, April 20, 1914, Schiff Papers; Schiff to Herbert Haas, June 21, 1915, ibid.; Julius Rosenwald's secretary, "WCG," to Julius Rosenwald, March 9, 1914, March 13, 1914, March 14, 1914, Rosenwald Papers; Albert Lasker to Louis Wiley, April 20, 1914, April 22, 1914, Schiff Papers.

connection between the Jews and the press "their work can do no harm, but only good."¹

Louis Marshall also sought "through various channels" to induce prominent individuals, especially Southerners, to take up the cause. To a friend in Baltimore, who asked what he could do to aid Frank, Marshall wrote, "The greatest aid that you and your friends in Baltimore can give to this cause would be, to induce some of the leading newspapers in Baltimore, Richmond, Savannah, and other Southern points which you reach, to write editorials similar to that which recently appeared in the Atlanta Journal, and to reproduce the articles which have appeared from day to day in the New York Times and the Washington Post." The friend obviously responded to the advice, for within a few weeks he answered, "After receiving your letter, I interested all of the Baltimore papers in this matter, editorially as well as otherwise."²

Men like Lasker and Marshall, concerned about the miscarriage of justice, communicated their feelings to publications throughout the nation, and induced them to publicize

¹Gunther, op. cit., p. 83; "WCG" to Julius Rosenwald, March 14, 1914, Rosenwald Papers; Julian Mack to LM, March 16, March 19, 1914, Box 40.

²LM to Siegmund B. Sonneborn, March 13, 1914; Siegmund B. Sonneborn to LM, April 2, 1914, Boxes 1586 and 112.

Leo Frank's situation in the spring of 1914. A Boston newspaperman wrote of the "vigorous and well supported movement . . . to free Frank," and papers as far away as North Dakota and Utah discussed Georgia justice. In Bismarck, North Dakota, an editorialist commented, "We would have sat on that jury until this great globe hangs motionless in space and the rotting dead arise in their cerements, before we would condemn any man to death on the evidence which convicted Frank." The Baltimore Sun headed an appeal, "Justice Demands a New Trial for Frank," and articles urging a new trial appeared in Little Rock's Arkansas Gazette, Richmond's Times-Dispatch, and The Mobile Tribune.¹

Even Georgia newspapers responded. The Macon News wrote that Frank's execution "under the evidence offered against him would be practically without a parallel in the annals of Georgia jurisprudence." And the Atlanta Constitution, perhaps afraid to express any sentimental feelings toward Frank, suddenly decided to discuss a controversial conviction which had occurred in New York. In this case,

¹ Clipping, April 18, 1914, Boston Herald-Traveler Library; The American Israelite, May 21, 1914, p. 1; The Baltimore Morning Sun, March 17, 1914, p. 8; Arkansas Gazette, April 15, 1914, Richmond Times-Dispatch, March 24, 1914, The Mobile Tribune, March 21, 1914, Frank Papers, Boxes 694 and 698.

the Constitution advocated a new trial for the defendant.

One could not, however, be oblivious to the obvious parallel in Georgia:

if the atmosphere of a trial or its controlling circumstances are such as to produce bias or prejudice, the accused shall have the benefit of the doubt. It is, or should be, axiomatic and impelling, that at every turn, under every condition, an environment of perfect fairness surround and characterize the trial.

Justice does not contemplate passion.

Justice does not comprehend obscure evidence, or evidence from dubious sources, especially where that evidence shall be substantiated by indirect circumstances only.¹

The most dramatic appeal for Frank came from The Atlanta Journal. The editors, in a scathing attack on Georgia justice, demanded that the prisoner be given another opportunity to clear himself. To hang Frank on the basis of the jury's verdict would constitute "judicial murder." The Journal recalled the circumstances surrounding the trial:

The very atmosphere of the courtroom was charged with an electric current of indignation which flashed and scintillated before the very eyes of the jury. The courtroom and streets were filled with an angry, determined crowd, ready to seize the defendant if the jury had found him not guilty. Cheers for the prosecuting counsel were irrepressible in the courtroom throughout the trial and on the streets unseemly demonstrations in condemnation of Frank were heard by the judge and jury. The judge was powerless to prevent these outbursts in the courtroom

¹The Macon News, March 9, 1914, p. 11, Frank Papers, Box 701; AC, February 26, 1914, p. 4.

and the police were unable to control the crowd outside. . . . it was known that a verdict of acquittal would cause a riot such as would shock the country and cause Atlanta's streets to run with innocent blood.¹

The strong editorial evoked a mixed reaction. Two small-town Georgian newspapers, The Greensboro Herald-Journal and the Dalton Citizen, applauded the Atlanta paper's position.² The Journal also received a number of congratulatory letters praising the editors for their "courageous" stand. One letter, written by the court stenographer who had transcribed testimony at Frank's trial, contained the statement that "every lawyer I have talked to says that the Frank trial was simply a farce." But some people accused The Journal of having been "bought with Jew money," and the paper suffered a loss in circulation. Another year would pass before The Journal spoke out again for Leo Frank.³

¹ AJ, March 10, 1914, p. 8.

² The Greensboro Herald-Journal, March 20, 1914, p. 8; The North Georgia Citizen, March 12, 1914, p. 4.

³ AJ, March 15, 1914, pp. 5, 6; Macdonald, op. cit., p. 3C. A Georgia woman wrote to a northern newspaper, "no one has yet dared publicly to express his belief in Frank's innocence without being accused of having been bought with Jewish money," The New York Times, November 28, 1914, p. 5. Berry Benon also indicated at the beginning of his presentation, "I have not received one cent from Frank's people, nor from anybody. I make this statement to anticipate the low jibe of any vicious or crazy person, or any person both crazy and vicious, who may say I am in the pay of the Jews." "Five Arguments in the Frank Case" (np., n.d., ca. June, 1914), p. 1.

The prodigious efforts made to save Leo Frank from death offended a great many Georgians. Outside influence and alien money outraged state officials and citizens alike. Many yearned for a native voice to rebut the national attack. In Tom Watson they found their spokesman.

Tom Watson had an enormous following in Georgia. From the Populist era until his death in 1921, Watson remained one of Georgia's idols. Early in his career he had fought for the yeoman farmer--both black and white--who had been oppressed by tyrannical industrialists and a compliant government. Although elected to Congress on the Democratic ticket in 1890, by 1892 he had renounced the party and had proclaimed himself a Populist. The Democratic Party in Georgia retaliated by manipulating the Congressional elections of 1892 and 1894 in such fashion as to rob Watson of reelection. The basest methods were used: bribery, ballot-box stuffing, and repeating voters. Negroes were coaxed and intimidated, by Democrats in control, to vote against Watson, who had publicly defended their political rights and who had also denounced lynchings. In 1896 the Populist Party forced William Jennings Bryan to accept a Populist vice-presidential nominee in return for endorsing his presidential aspirations.

To run with Bryan, the Populists selected Tom Watson. With defeat in 1896, Watson practically secluded himself from politics and retired to his law practice. At the same time he indulged himself with the writing of history. Eight years later he reemerged as the presidential nominee of an almost defunct Populist Party.

Thereafter one noticed a great change in the old Populist. He had become a self-conscious defender of Southern mores and the Lost Cause. His former understanding of, and sympathy with, Negroes, changed to a more orthodox Southern outlook. He began to refer to the "bugaboo of negro domination" in Georgia politics. Furthermore, in 1906, Watson completely abandoned the Jeffersonian ideals of equalitarianism and humanitarianism which he had championed only a decade earlier. In 1910 he formally returned to the Democratic Party and two years later his arrival at the Democratic state convention "suggested the return of some Roman conqueror." Police officers had to force a path for him and his appearance on the floor of the convention resulted in "an outburst resembling pandemonium."¹

¹ Woodward, Tom Watson, pp. 176, 177, 187-89, 223, 332, 348-49, 357, 371, 402, 408, 419; Woodward, Origins of the New South, pp. 188, 257, 262; Lucian Lamar Knight, A Standard History of Georgia and Georgians (6 vols.; Chicago,

Tom Watson thrived upon the ignorance and prejudices of rural Georgians. His weekly newspaper, The Jeffersonian, and his monthly, Watson's Magazine, circulated throughout the state and provided many Georgians their only contact with the outside world. Popular among illiterates, who listened to others read what Watson had written, and "crackers," Watson inspired "an almost fanatical following, many who accepted without question anything he told them." In 1891, a national periodical had described these Georgia "crackers" as people "borned in the country" who seldom, if ever, visited a neighboring town. They were frequently suspicious of strangers and one Southerner had written that they imagined every stranger a "Yankee." It was primarily these people that Tom Watson stirred with his diatribes against the financial manipulators of the North, whom he believed had been keeping the South in economic bondage. To cater to his followers' need for vicarious excitement, and perhaps to provide himself with a satisfactory answer for why the world was "plunging hellward," Watson broadened his attack to include Catholics, the Pope, and finally Leo Frank,

1917), II, 1127; Mary Richards Colvin, "Hoke Smith and Joseph M. Brown, Political Rivals" (unpublished M.A. thesis, University of Georgia, 1958), p. 70. See also Gustavus Myers, History of Bigotry in the United States (New York, 1943), p. 261.

who turned into the greatest sales bonanza in The Jeffersonian's history.¹

C. Vann Woodward has observed that Tom Watson found his greatest satisfactions "out among the people preaching a crusade."² This was true in his Populist days and in his more frustrating years as well. In 1914, Watson embarked upon one of his most reckless attacks. Ironically, the "sage of Hickory Hill" aimed his thrusts at another target, and touched upon what would eventually emerge as his real quarry in an oblique fashion.

Hoke Smith, Georgia's senior United States Senator in 1914, had once owned The Atlanta Journal. Although he had relinquished controlling interest in the paper years before, everyone recognized The Journal as Smith's political organ.³ The Senator stood for reelection in 1914, and although he and Watson had at one time been allied politically,

¹ Mercer G. Evans, "The History of the Organized Labor Movement in Georgia" (unpublished Ph.D. dissertation, Department of Economics, University of Chicago, 1929), p. 291; Clare de Graffenried, "The Georgia Cracker in the Cotton Mills," The Century Magazine, XLI (February, 1891), 477-48, 495, 496; Ward Greene, Star Reporters and 34 of their Stories (New York, 1948), p. 132; Oscar and Mary Handlin, Danger in Discord (New York, 1948), pp. 22-23; Woodward, Tom Watson, p. 442.

² Woodward, Tom Watson, p. 248.

³ Griffith and Talmadge, op. cit., p. 138; Colvin, op. cit., p. 16.

a breach had developed between the two six years earlier. The old Populist leader had his own candidate for Smith's seat and when The Journal demanded a new trial for Leo Frank, Watson misinterpreted the plea as an attempt to drag the Frank case into politics.¹ Enraged by the editorial, Watson lashed back angrily.

He entitled his first salvo, "The Frank Case: When and Where Shall Rich Criminals Be Tried?" and devoted most of this attack to the "personal organ" of Senator Smith, which according to The Jeffersonian's editor, was attempting "to bring the courts into disrepute, drag down the judges to the level of criminals, and destroy the confidence of the people in the orderly process of the law." Not until midway in the article, and on an inside page, did Watson switch his fire to Frank and then he concluded "by a process of elimination" that either Frank, Conley, or both, had murdered Mary Phagan. Watson also asked two questions which plagued many Georgians: "Does a Jew expect extraordinary favors and immunities, because of his race?" and "Who is paying for all this?"²

¹Woodward, Tom Watson, p. 437; Griffith and Talmadge, op. cit., p. 139; Garrett, op. cit., II, 625-26; Steed, op. cit., p. 239.

²The Jeffersonian, March 19, 1914, pp. 1, 8. Albert Lasker acknowledged privately, "if it had not been for the

Although Watson aimed his assault at Hoke Smith and The Atlanta Journal, there is some indication that readers responded more positively to his words against Frank, and that Watson, therefore, concentrated future articles on Frank. In April, he started attacking the Jew more vehemently, without making any connection to Smith or The Journal. It was also in April that Watson began printing letters which commented upon his outburst against Frank. "Nothing you have written in recent years is being so widely read," wrote one admirer.¹ As the weeks passed, The Jeffersonian devoted more and more space to reader reactions on Leo Frank-- and all of the letters published praised Watson's stand. In May, a correspondent confessed, "The manner in which you are handling the Frank case has opened my eyes." And the following week another thanked the editor "from the depths of my soul for the great service you are rendering. . . . I believe you are making more friends by your editorials on the Frank case than you ever did. The name Tom Watson is heard more during a conversation than it ever was."²

energy, influence and money expended, Frank--innocent though he is--would have been hung long ago." Lasker to Louis Wiley, April 20, 1914, Schiff Papers.

¹The Jeffersonian, April 2, 1914, p. 2.

²Ibid., May 7, 1914, p. 5; May 14, 1914, p. 3. Praiseworthy letters on this subject were published in every issue from April 16 through May 28, 1914. No unfavorable comments were printed.

The popular response stimulated Watson. His polemics were an ingenious weaving of fact and fantasy.¹ The former Populist leader seized upon the weakness in the defense presentation and skillfully attacked Luther Rosser, who Watson claimed, "strengthened the State's case enormously when he made his ludicrous failure, cross-examining that darkey."

If the "mob" influenced the trial, Watson asked, why had not a change of venue been asked for? Because of Watson's well known legal talents, his remark that "No case can come under 'mob' influence, unless the defendant and his lawyers are entirely negligent," stung the defense while rendering Frank's attorneys helpless to retort.²

Watson cannily played upon the hatreds, fears and prejudices of his readers. He wrote of the "little factory

¹"Tom Watson fell on the Frank case with the lust of a starved tiger and the cunning of a political opportunist. By the time . . . national names . . . were blazoned among Frank's supporters Watson was feeding his 'woolhats' a diet of 'Wall Street plot, Jewish gold and Yankee meddlers' in language careless of truth or decency and always inflammatory." Greene, op. cit., p. 132.

²The Jeffersonian, April 9, 1914, p. 1. Louis Wiley wrote LM: "While I can understand the clamor and mob feeling which led to the unjust verdict in the Frank case, I am strongly inclined to believe that the prisoner was not adequately defended. If he had been it seems to me the dreadful situation now before us might have been prevented." April 3, 1914, Box 112.

girl who held to her innocence," and further endeared Mary Phagan to his readers by characterizing her as "a daughter of the people, of the common clay, of the blouse and the overall, of those who eat bread in the sweat of the face, and who, in so many instances are the chattel slaves of a sordid Commercialism that has no milk of human kindness in its heart of stone!"¹

Watson always stressed simple themes so that his readers would quickly see right from wrong. "We cannot have . . . one law for the Jew, and another for the Gentile," he commented. On another occasion he concluded, "It is a bad state of affairs when the idea gets abroad that the law is too weak to punish a man who has plenty of money." With magnificent simplicity he summed up the crux of his argument, "Leo Frank is guilty of the foulest crime ever committed on a Georgia girl, and he should not be allowed to escape."² A contemporary publication in Georgia evaluated Watson's contributions so highly that The Jeffersonian reprinted the entire eulogy. "Tom Watson," The Madisonian's editorial began, "has added new laurels and new lustre to his fame as a

¹The Jeffersonian, April 9, 1914, p. 8; April 30, 1914, p. 10.

²Ibid., April 9, 1914, p. 1; May 7, 1914, p. 1; April 23, 1914, p. 10.

writer . . . by his articles on the famous Frank case. His productions touching this case . . . are modern epics. . . . They have added a hundred thousand new friends to Mr. Watson's long list, and given The Jeffersonian a standing and a circulation in Atlanta and in Georgia never before enjoyed by any Watson publication."¹

Tom Watson reinforced accepted beliefs. Emotionally Georgians "knew" that Leo Frank murdered their little girl. Yet they wanted reassurance by hearing a more prominent and articulate spokesman reiterate and confirm their "knowledge." Watson supplied this need. The people had formed their opinions a year earlier. They probably forgot the specific details which led them to their conclusion. Yet they knew in their hearts that Leo Frank had murdered Mary Phagan. Not only did the courts of Georgia agree with them but Tom Watson, one of the most popular Georgians of his era, confirmed their feelings. For this the people of Georgia lionized the old Populist.

¹ Quoted in The Jeffersonian, May 28, 1914, p. 5.

The Frank camp unwittingly provided material for Watson's gibes. In February, 1914, immediately after the Georgia Supreme Court rejected the bid for a new trial, Frank's counsel announced the employment of William J. Burns to help prove Frank innocent.¹ The appointment turned out to be a colossal blunder.² In his first public statement Burns offended the people by asserting his expectation of finding a solution to a crime Atlantans considered already solved. "What are believed to be mysteries," he declared, "are invariably solvable if common sense is applied." For three months the famous detective exuded confidence and made public statements which could not be justified in terms of his discoveries. "I am utterly confident of success," he repeated to newspaper reporters time after time. "The trail is very plain," he revealed, but declined to elaborate. After six weeks of investigation Burns announced:

I know who is the murderer of Mary Phagan. In time I will let the public know, and I will show conclusive proof. There will not be a single ground for the public to contradict me. . . . The Phagan mystery is no

¹ AJ, February 18, 1914, p. 9.

² Herbert Asbury, "Hearst Comes to Atlanta," The American Mercury, VII (January, 1926), 91; Steed, op. cit., p. 239; Knight, A Standard History of Georgia, II, 1165.

longer a mystery. We have cleared it. I was confident from the outset that we would have success. It was no difficult task and our work was simple--merely the following of the criminal trend of mind which left so many manifestations in the Phagan tragedy.¹

Burns' complete disdain for the public and for police officials multiplied Frank's enemies in Georgia. If Burns knew Mary Phagan's slayer, he should have revealed this information to the proper authorities. If his evidence was so conclusive, he should not have delayed publicizing his discoveries. His conceited assertions led Northerners to assume that he would "produce a confession from the real murderer, or at least direct evidence. Failing to do that," Albert Lasker confided to Herbert Haas, "the people up here will be very disappointed, and, to be very frank with you, I fear if he does not do something like that, it will hurt us and may do the case more harm than if he had not entered it at all."²

The pent-up indignation Georgians felt towards Frank and Burns manifested itself, on May 1, 1914, in Marietta, Georgia, Mary Phagan's home town. A mob surrounded Burns after his car broke down while going through the city. A

¹ AJ, February 19, 1914, p. 1; March 16, 1914, p. 1; March 18, 1914, p. 1; AG, March 22, 1914, Frank Papers, Box 693; AC, March 20, 1914, p. 2; April 5, 1914, p. 1.

² Lasker to Herbert Haas, April 20, 1914, Schiff Papers.

crowd of people pursued the detective back to his hotel where more than two hundred shouted out threats of "Lynch him!" "Shoot him!" "Mob him!"¹ The Mayor of Marietta pleaded with the mob to disperse, "but the crowd seemed to grow more demonstrative." Then a respected Judge asked the assemblage to let Burns get out of town. The crowd yielded and before it could change its mind Burns was whisked into an auto and taken back to Atlanta. As the speeding auto left Marietta, the mob bombarded the vehicle with rotten eggs.²

The antagonism Burns created highlighted his failures, but he did manage to bring a good deal of information to light, and under other circumstances the new material would have helped Frank. The detective believed that the charge of perversion adversely affected the defendant before and during his trial and that if this could be proved erroneous the public would be willing to reevaluate new evidence. So the detective offered \$1,000 reward to anyone who could submit proof of Frank's alleged perversity.³ "If Detective Burns wants this information as badly as he pretends he wants it," Chief Detective Lanford of the Atlanta police

¹ AC, May 2, 1914, pp. 1, 2.

² AC, May 2, 1914, p. 2.

³ AJ, April 12, 1914, p. 3.

department told reporters, "I'll certainly furnish him with what I believe to be convincing proof."¹ Burns responded to Lanford's offer, and accompanied by David Marx, the leading rabbi of Atlanta, and Henry A. Alexander, one of the lawyers working for the defense, went to the chief detective's office, prepared to turn over the reward. When they arrived Lanford refused to grant them access to the proof he claimed was locked in the police safe. He added, however, that "the state does not contend, and never has contended, that Frank is a pervert. The perversion charge was injected into the case by the attorneys for the defense, not by those for the state."² Lanford's remarks astonished his listeners. Leo Frank, after learning of the Chief Detective's comment, vented his wrath in a public statement: "Is there a man in Atlanta," he asked, "who would deny that the charge of perversion was the chief cause of my conviction, or deny that the case, without that charge, would be an entirely different question?"³ And in the north, The New York Times editorialized, "the present denial by the head of the Police Department

¹ Quoted in AC, April 12, 1914, p. 2A.

² Quoted in AJ, April 24, 1914, p. 1. See also The New York Times, April 25, 1914, p. 8.

³ AJ, April 28, 1914, p. 20.

that either it or the State ever charged Frank with moral perversity is incomprehensible to anybody who has read the report of the trial and therefore knows how directly contrary to recorded fact the denial is." Burns then increased his reward to \$5,000 but there were no takers.¹

The noted detective also found, although how he did so was never made clear, letters written from jail by Jim Conley to a girl friend, Annie Maud Carter. Copies of these letters were furnished to the newspapers but The Constitution explained to its readers that "their contents were so vile and vulgar that their publication is impossible."² The letters, according to Burns, "show beyond a peradventure of a doubt that Conley is an abnormal man. . . . They are full of the vilest, most abominable language, dealing with Conley's lust. His perverted passion was aroused by her [Annie Maud Carter] and most of the letters are full of this vile stuff."³ Some of Conley's expressions were indeed vile, perhaps even degenerate. He also used the words "did" and "Negro," indicating they were part of his normal vocabulary. At the

¹ The New York Times, April 25, 1914, p. 8; April 27, 1914, p. 10.

² AC, April 26, 1914, p. 1. See Appendix A.

³ Quoted in AC, April 26, 1914, p. 3.

trial, one of the explanations offered by Dorsey to prove that Conley did not write the "murder notes" was that a Negro ordinarily uses the words "done" and "nigger" rather than "did" and "Negro."¹

Conley denied authorship of the letters,² but Annie Maud Carter swore otherwise. Graphologists who examined the notes confirmed that the writing compared favorably with other material penned by Conley. Miss Carter also swore that Conley revealed his innermost secrets to her, including a description of how he murdered Mary Phagan. According to her statement Conley allegedly beckoned to Mary Phagan after she left Frank's office on the fatal day. When the girl approached he knocked her over the head, choked her, and then pushed her down a scuttle hole in the back of the building. After following her down, he wrote the murder notes and left them near the body. Conley hoped suspicion would fall on Newt Lee, "a long tall black Negro." After writing the notes the sweeper broke the bolt on the back door of the

¹ AJ, April 26, 1914, p. 7; supra, p. 110

² AC, April 25, 1914, p. 3. In June, 1915, he inexplicably changed his mind. At that time he admitted writing the letters but claimed that someone else must have put in the vulgar expressions because he had not done so. AJ, June 14, 1915, p. 1. None of the Atlanta papers commented about Conley's admission in 1915.

basement and left the building. Miss Carter's narrative corroborated known facts and her explanation of how the body reached the basement seemed plausible if the elevator had not been used.¹

Surprisingly, and inexplicably, the Atlanta press made no comment about the letters received by Annie Maud Carter aside from indicating that they were vulgar. Miss Carter's remark that Conley had confessed his guilt to her was simply reported in the news columns, but provoked no editorial comment.

The Solicitor and the detectives, however, were quite concerned with the letters. Annie Carter was in New Orleans when her affidavit was made public, but Hugh Dorsey went to court and demanded that she be subpoenaed for questioning. The presiding judge issued the order and Frank's attorneys had her brought back to Atlanta. Dorsey immediately arrested Miss Carter and some days later produced a new affidavit from her in which she asserted that she had received only "two or three" letters from Conley, that none

¹ AJ, April 24, 1914, p. 8; AC, May 6, 1914, p. 5; The New York Times, April 25, 1914, p. 20. Frank's attorneys maintained at the trial that the elevator had not been used to take the body to the basement; the prosecution argued otherwise. Lawson, op. cit., p. 210.

were vulgar, and that he had confessed no crime to her.¹ In this instance, at least, it seems quite clear that the authorities had encouraged a defense witness to deliberately tell a lie, because it was later shown that Conley had written the letters. It is impossible, at this point, to know if any others might also have been induced to swear falsely. The defense, however, believed that Dorsey and his staff had intimidated all of the witnesses whom they could reach.²

Perhaps the most incriminating piece of information uncovered by Burns, which quickly backfired and severely damaged any chance Frank may have had for the new trial, was the evidence given by the Reverend C. B. Ragsdale, pastor of an Atlanta Baptist Church. The day after the murder, in April, 1913, Ragsdale allegedly overheard two Negroes conversing. One said, "I'm in trouble. I killed a little girl at the factory the other day and I want you to help me." The other asked, "Who was there beside you?" And the first replied, "nobody except Mr. Frank, and I'm not sure about him." Ragsdale repeated these words to a friend who advised

¹AJ, May 5, 1914, p. 2; AC, May 6, 1914, p. 5; The New York Times, May 6, 1914, p. 3.

²Herbert Haas to A. D. Lasker, April 30, 1914, May 2, 1914, Rosenwald Papers.

that he keep his own counsel. Ragsdale followed this advice. Somehow a Burns agent tracked the minister down and induced him to reveal what he knew. The defense presented the Ragsdale affidavit in court, along with one from the friend he had confided in who corroborated the minister's tale, as part of the additional evidence warranting a new trial. A few days later both men repudiated their statements and swore that they had been bribed by Burns, and others, to give false testimony. Burns denied this, but his words had no effect upon those whose confidence he lacked. Herbert Haas, however, explained the defense's position in a letter to Albert Lasker, "The charge of Ragsdale that he was bribed . . . is unqualified falsehood." Despite Haas' conviction that Burns told the truth in this matter, he readily admitted, in another letter, "It is the belief of nearly all of our friends that Burns connection with the case has done us irretrievable damage."¹

The Burns fiasco impaired any chance Frank may have had for a new trial. The detective's public antics also

¹The New York Times, April 25, 1914, p. 8; May 1, 1914, p. 5; AC, April 30, 1914, p. 5; May 1, 1914, p. 1; Haas to Lasker, April 30 and May 2, 1914, Rosenwald Papers.

highlighted the huge sums of money being spent to save the accused, a fact which Dorsey brought to public notice when he argued against a new trial. The Solicitor came to court armed with repudiations of affidavits made for the defense. In these statements the affiants claimed that attorneys and investigators working in Frank's behalf bribed them to change their tales. The charge of corruption by so many of the prosecution's original witnesses reinforced the popular impression that the defense spent unlimited amounts of money to free Frank.¹

Dorsey also scored brilliantly when he examined Burns in the courtroom. During the course of the interrogation the prosecutor forced the noted sleuth to admit that he had never read the testimony of the trial, only the brief prepared by the defense attorneys, and that his report to Frank's lawyers contained the opinion that "they didn't need any more evidence than was in the record." Finally Burns acknowledged that aside from the information that had already been produced in court, and the repudiated affidavits of Annie Maud Carter and C. B. Ragsdale, he had obtained no

¹The New York Times, May 6, 1914, p. 3; AC, May 2, 1914, p. 2; May 4, 1914, p. 1; May 5, 1914, p. 10; May 6, 1914, p. 1; AJ, May 5, 1914, p. 2.

other evidence to incriminate the murderer of Mary Phagan.¹ Dorsey's interrogation of Burns appeared to the Frank camp as the final blow. "The situation is worse today than it has ever been," Haas wrote Lasker. "It is desperate. All of us feel that the situation is hopeless. Unless the Supreme Court of the United States sustains the Constitutional point, Frank is a doomed man."²

Within a few days Frank's attorneys concluded their petition for a new trial, and without even listening to the prosecution's summation, Judge Ben Hill denied the defense motion. He subsequently refused to set aside the verdict on the constitutional grounds that Frank's absence from the courtroom constituted denial of the federal guarantee of due process. On both counts Frank's attorneys indicated they would appeal.³

¹ AJ, May 2, 1914, p. 3.

² Herbert Haas to Lasker, May 2, 1914, Rosenwald Papers.

³ AJ, May 6, 1914, p. 1; AC, June 7, 1914, p. 1. In 1913 the Georgia General Assembly created a new judgeship for the Atlanta circuit to which Judge Benjamin H. Hill was appointed. At the same time, Judge Roan, who had presided at Frank's trial, and who had denied the motion for a new trial, was transferred to the State Court of Appeals. Therefore the subsequent appeals in the Atlanta circuit were heard by Judge Hill. Knight, A Standard History of Georgia, II, 1135-36.

6

In retrospect, it seems that Frank's efforts to obtain a new trial in the spring of 1914 failed, in part, because too many people tried too hard to assist him. At the same time there was no clearly established leader to coordinate affairs. Louis Marshall had attempted to guide proceedings but he was handicapped by remaining in New York City, too far from the hub of activity, and also by the reluctance of others working for the defendant to follow his advice. Marshall did recognize, however, the cost to Frank of his well-meaning, but thoughtless, "friends." "Too many of our Jewish friends in Atlanta are assuming responsibility in this litigation," he protested to the Haas brothers, "and are conferring with Tom, Dick and Harry with regard to it."¹

Marshall had also objected to the employment of William J. Burns, the raising of large sums of money, and the northern newspaper barrage which succeeded in magnifying Georgian prejudice toward Frank. As early as March 17, 1914, he had written to a friend that "the campaign in the North may be overdone." Marshall also urged that Frank's partisans deemphasize religious prejudice. "There is too much of a

¹LM to the Messrs. Haas & Haas, April 13, 1914, Box 1586.

tendency on the part of our people, to attribute everything to anti-Semitism."¹ And after Burns had barely escaped being lynched, Marshall candidly confessed to another friend that he had been opposed to hiring the detective in the first place. "I foresaw just what has happened--an attack upon him because he is a stranger and a Northerner. . . . I have been disgusted at the farcical methods to which Burns has resorted. Every one of his acts has been a burlesque upon modern detective ideas. It is deplorable that a case so meritorious as that of Frank, should have been brought to the point of distraction by such ridiculous methods."² Finally, the President of the American Jewish Committee hit upon one of Frank's most significant difficulties: "the lawyers in the case . . . have not at all times acted with good

¹LM to Julian W. Mack, March 17, 1914, Box 1586.

²Burns' connection with the case did, in fact, have dire consequences for Frank. Louis Marshall wrote to an editor of a New York newspaper, "it is nevertheless the fact, that people of the highest standing in Georgia, some of whom prior to the advent of Burns were strong believers in Frank's innocence, have turned against him and have deduced an argument of guilt from the very fact that Burns has been identified with the case. It is also a very significant fact that, since that time, all people who are connected with trade unions and the working classes generally, have been more vituperative in their animosity to Frank than ever before." LM to Keats Speed, January 13, 1915, Box 146.

judgment."¹ The situation that Marshall had observed so clearly, was summarized in one sentence by his law partner, Samuel Untermyer: "I am afraid the whole business has been terribly botched but the point now is to avoid further blunders."²

Untermyer was undoubtedly correct. The defense attorneys therefore began preparing new briefs for an appeal to the Georgia Supreme Court. But this seemed only a formality. Eventually they expected to take their case into the federal courts, and ultimately to the United States Supreme Court, where they hoped that justice might be obtained.

¹ LM to Louis Wiley, May 5, 1914, Schiff Papers.

² Samuel Untermyer to Louis Wiley, May 5, 1914, ibid.

CHAPTER VII

WISDOM WITHOUT JUSTICE

The summer of 1914 marked a calm interlude after the frenetic activity in Frank's behalf during the previous spring. American newspapers ceased condemning Georgia justice, Tom Watson vented his frustrations upon other subjects, no witnesses came forth with crucial evidence or repudiated previous testimony, the public focused its attention on the perilous European situation, and the defense counsel quietly appealed to the Georgia Supreme Court.

The repetitive arguments before Georgia's highest court lacked drama and required merely a few columns of Atlanta newsprint. The defense based its appeal upon new evidence and Frank's alleged denial of life and liberty without due process of law. The Court waited until the fall before once more thwarting the petitioner's hope for legal vindication in Georgia. The Georgia Justices unan- imously agreed that Judge Ben Hill, before whom the new evidence had originally been presented, had not abused his discretion in denying the extraordinary motion for a new

trial and the Court saw no reason to reverse him.¹

Once the Georgia Supreme Court turned down Frank's second request for a new trial, a realignment of his legal staff took place. Luther Rosser and Reuben Arnold, who had defended Frank during the trial, and had argued his appeals in the Supreme Court, ended their formal association as counsel. Thereafter, the brothers Haas, Herbert and Leonard, worked with Henry Alexander, who had been hired in 1913, and the firm of Tye, Peeples and Jordan, which had been retained in the spring of 1914 to introduce the constitutional question of whether a trial can be considered valid if the defendant had been out of the courtroom during any part of the proceedings. Louis Marshall remained in New York, but continued to supervise the work of the Atlanta attorneys.

Marshall had originally suggested to the other attorneys that an attempt should be made to invalidate Frank's conviction on the technical ground that neither the defendant, nor counsel, had the right to waive his constitutional privilege to be present in the courtroom at every stage of the proceedings. Henry Peeples, John Tye, the Haas brothers, and Henry Alexander had argued this point before Judge Ben Hill, who had denied their allegation in June, 1914. On

¹Frank v. State, 83 Southeastern Reporter 234.

appeal, the Georgia Supreme Court upheld Hill's decision. Five of the six Supreme Court justices¹ agreed that the defendant's enforced absence from the court was known at the time of the first appeal and the alleged lack of due process should have been brought up at that time. If it had been, the Justices intimated, then redress would have been granted.

It would be trifling with the court [however] to allow one who had been convicted of crime, and who had made a motion for a new trial on over 100 grounds, including the statement that his counsel had waived his presence at the reception of the verdict, and have the motion heard by both the superior and the Supreme Courts, and, after a denial of both courts of the motion, to now come in and by way of a motion to set aside the verdict include matters which were or ought to have been included in the motion for a new trial.²

Again frustrated, but not unexpectedly, Louis Marshall, commenting on the latest failure, wrote Leonard Haas, "I am not surprised [at the Georgia Supreme Court's decision], and only hope that the opinion will be on such grounds as will not increase the difficulties of procuring a review of the fundamental question by the Supreme Court of the United States."³ But, alas, the Georgia Supreme

¹The sixth justice was ill and did not participate in the decision.

²83 Southeastern Reporter 654

³LM to Leonard Haas, November 14, 1914, Box 145.

Court refused to grant Frank's attorneys' request for a writ of error¹ on the grounds that the case presented only a procedural question and no constitutional point existed.²

The adverse judgment did not stop Frank's attorneys. Leonard Haas, Henry Peeples, Henry Alexander and Louis Marshall appealed to United States Supreme Court Justice Joseph R. Lamar for the writ of error. Lamar gave them "a most patient and courteous hearing,"³ but denied their application on the grounds that the point raised involved only a question of state procedure which the

¹Writ of error: a writ issued for an appeals court to the judge of court of record requiring him to remit the record in order that an examination may be made of certain errors alleged to have been committed so that judgment may be reversed, corrected or affirmed. Frank's counsel wanted the Georgia Supreme Court to grant the writ of error so that the United States Supreme Court would review the evidence and remand the case back to the Georgia courts for another trial. Even though technically the defense asked to have the verdict set aside, in reality they did not want, or expect, the judges to do this. But they did expect a new trial. Louis Marshall and Albert Lasker agreed that "if a new trial were to take place, with the entire nation looking on and with newspaper correspondents from all parts of the country in attendance, there would be no likelihood of a conviction, especially in view of the fact that the facts of the case are now much better understood than they were at the time of the trial." IM to Lasker, January 30, 1915, Box 146.

²AC, November 21, 1914, p. 4.

³IM to Chief Justice Edward D. White, November 24, 1914, Reznikoff, op. cit., p. 300.

United States Supreme Court would not review.¹

Frank's counsel, out of courtesy and custom, had applied first to Justice Lamar for the writ of error because Georgia was included in his circuit. After he had refused them, they let it be known that they would appeal, if necessary, to each of the other Justices, in turn.²

The attorneys next approached Justice Oliver Wendell Holmes. Holmes, too, denied the writ because he also felt bound by the Georgia Supreme Court's decision that the motion to set aside the verdict on constitutional grounds had come too late, and was therefore a procedural question. Justice Holmes, however, doubted whether on the basis of the evidence submitted to him, Leo Frank had received due process of law. He based his conclusion upon the fact that the trial took place "in the presence of a hostile demonstration and seemingly dangerous crowd, thought by the presiding judge to be ready for violence unless a verdict of guilty was rendered."³

Denials of their appeal by Justices Lamar and Holmes did not daunt the determined counsel. They immediately

¹AJ, November 26, 1914, p. 4.

²AC, November 24, 1914, p. 1.

³Quoted in AC, November 27, 1914, p. 5; see also The New York Times, November 27, 1914, p. 1.

petitioned to be heard before the entire Supreme Court and their request was granted. But their argument had no greater effect on the judges collectively than it had upon the two who rejected the earlier petitions. It took only one week for the United States Supreme Court to refuse Leo Frank a writ of error. No written opinion accompanied the denial.¹

Holmes' commentary and the Supreme Court's refusal to issue the writ of error spawned newspaper commentary throughout the nation. Albany's (New York) Knickerbocker-Press asked, "Is it not an amazing commentary upon our judicial system that an associate Justice of the United States Supreme Court 'seriously doubts if Frank has had due process of law,' and yet there is no means at hand by which 'due process' may be had?"² The Indianapolis News questioned, "How can the lay mind be expected to see justice in a ruling of that sort? It may be entirely legal, but it hardly seems sensible."³

¹AJ, December 7, 1914, p. 1.

²Reprinted in The New York Times, December 1, 1914, p. 7.

³Reprinted in ibid., December 2, 1914, p. 8. The New York Times reprinted other newspaper comments on the case regularly. Most newspaper commentary seemed to express the feeling that Frank did not have a fair trial and

Spurred on by editorial support, and hopeful that even the United States Supreme Court might yield to the outcry, Frank's attorneys reinstated proceedings for a hearing in the nation's highest tribunal with an appeal for a writ of habeas corpus.¹ The new plea rested upon Justice Holmes' expressed doubts and Louis Marshall's conviction "that the trial court lost jurisdiction of the case when the verdict was received in the absence of the prisoner. . . ."² The petition claimed that the state of

that some way of obtaining one should be found. There are literally hundreds of clippings to this effect scattered among the Frank Papers, Boxes 694-701. Albert Lasker wrote to Jacob Billikopf, of Kansas City, Mo.:

"Outside of the State of Georgia, the press of the United States, including the leading papers of every city in the South, save Georgia, are editorially not only commenting on the case, and agitating a public sentiment for the unfortunate Frank, but daily hundreds of papers, including the leading Southern papers, are editorially crying that Frank's execution would amount to judicial murder, and that in this case, the State of Georgia is more at bar than Frank. I do not exaggerate when I state that hundreds of such editorials are appearing daily."

December 28, 1914, Rosenwald Papers.

¹Writ of habeas corpus: to get a person released from unlawful punishment. Only issue under consideration is whether prisoner's liberty has been denied with due process of law.

²IM to Meier Steinbrink, December 19, 1914, Reznikoff, op. cit., p. 303.

Georgia illegally and unjustly held Frank in captivity because his conviction did not result from due process of law. This time, however, the basis for lack of due process was not that Frank involuntarily absented himself from the courtroom, but that he did so because of the hostile attitude of the spectators within and around the scene of the trial. Hence mob influence constituted denial of due process.¹

The defense attorneys asked for the writ of habeas corpus in the Federal District Court for North Georgia. The local judge denied their petition and they appealed once more to Justice Lamar. This time Lamar agreed that the United States Supreme Court should consider their petition. Justice Lamar now saw several legal issues which he believed the Supreme Court ought to rule upon, and which had not been apparent to him in the appeal for a writ of error. Among those issues he included (1) whether a defendant in a murder trial may legally waive his right to be present at all stages of the proceedings in a State Court and (2) does the failure to raise a material point in an appeal to a State Court prevent counsel from raising

¹The New York Times, December 18, 1914, p. 6.

the question at a later date?¹ Lamar's verdict met with general newspaper acclaim. "Throughout the entire country," the Scranton (Pa.) Tribune-Republican declared, "there was a breath of relief. . . ." ² "Justice Lamar's decision," echoed the Portland Oregonian, "makes life and liberty more secure for every citizen of the United States."³

The opportunity to be heard by the United States Supreme Court gratified Frank and his supporters. They confidently expected success. A few days before Lamar granted the appeal, Marshall had written, "If we only get a chance for argument in open court, I feel that we should win. Our position is legally and morally impregnable."⁴

The final court presentation had to be prepared carefully. Like the writ of error, which asked to have the verdict set aside and make Leo Frank a free man, the writ of habeas corpus alleged that since Georgia held Frank

¹The New York Times, December 29, 1914, p. 1; AJ, December 31, 1914, p. 5.

²The Scranton (Pa.) Tribune-Republican, December 30, 1914, Frank Papers, Box 696.

³Reprinted in The American Jewish Review, IV (January, 1915), 2, Frank Papers, Box 701.

⁴Copy of letter from LM to Haas (Leonard or Herbert not stated), December 24, 1914, Rosenwald Papers.

illegally, he must be given his freedom at once. Louis Marshall prepared the defense brief with the realization that any court would hesitate before granting this extreme demand in light of the facts already known. "From a tactical standpoint," he wrote, "it would be far easier to succeed, if the Court were satisfied that a favorable decision would not finally discharge Frank."¹ In other words, the chance for the Supreme Court's granting the defense's request would be much greater if it could simply remand the case back to a Georgia court with instructions that a new trial be granted.²

Marshall's argument before the Supreme Court highlighted the irregularities of a trial dominated by hostile elements and culminating with the judge coercing the defendant's counsel to acquiesce in denying Frank the opportunity to see and face the jurors when they delivered their judgment.³ Warren Grice, the Attorney-General of Georgia, who, along with Hugh Dorsey, represented the State

¹LM to A. D. Lasker, January 30, 1915, Box 146.

²LM to A. D. Lasker, January 30, 1915, February 5, 1915, LM to Henry A. Alexander, February 19, 1915, Box 146.

³Reznikoff, op. cit., pp. 304-11, passim; The New York Times, February 21, 1915, II, 11.

of Georgia in the United States Supreme Court, rebutted Marshall's claims and particularly objected to the use of the word "coerce." "It was simply the case of a kind-hearted Judge," Grice explained, "suggesting to the counsel that their client remain absent."¹

Two months passed before the Supreme Court, on April 19, 1915, rejected the defense motion by a vote of 7-2.² Speaking for the Court Justice Mahlon Pitney elaborated upon the denial. Justice Pitney explained that errors in law, however serious, committed by a court of proper jurisdiction cannot be reviewed by habeas corpus since habeas corpus cannot be substituted for a writ of error. Furthermore "the allegations of disorder were found by both of the State courts to be groundless except in a few particulars as to which the courts ruled that they were irregularities not harmful in fact to defendant and therefore insufficient in law to avoid the verdict." Frank's contention of denial of due process because he had not been present during the entire trial

¹Quoted in The New York Times, February 27, 1914, p. 8.

²The majority included Edward D. White, Chief Justice, and Associate Justices Joseph McKenna, William R. Day, Willis Van Devanter, Joseph R. Lamar, Mahlon Pitney, and James C. McReynolds. Justices Holmes and Charles Evans Hughes dissented.

"has been set aside because it was waived by his failure to raise the objection in due season when fully cognizant of the fact." The right of the defendant to be present at the rendition of the jury verdict, Pitney continued, "is but an incident of the right of trial by jury; and, since the State may, without infringing the Fourteenth Amendment, abolish trial by jury, it may limit the effect to be given to an error respecting one of the incidents of such trial." The Supreme Court majority also acknowledged that the Georgia courts accorded Frank "the fullest right and opportunity to be heard according to established modes of procedure. . . ." Therefore, Justice Pitney concluded, the defendant had been deprived of no right guaranteed by the Fourteenth Amendment or any other provision of the United States Constitution.¹

Justices Holmes and Charles Evans Hughes dissented. They dismissed Frank's absence from the courtroom as inconsequential compared to the major point of whether a trial conducted in an atmosphere of overt public hostility is consonant with due process of law. Examining the records and commenting upon Judge Roan's expressed doubt, Holmes

¹Frank v. Manqum, 237 U.S. 326, 333, 343, 344, 345 (1915).

and Hughes thought "the presumption overwhelming that the jury responded to the passions of the mob." Therefore under no stretch of judicial imagination could they presume that Leo Frank had had a fair trial. "Mob law," they concluded, "does not become due process of law by securing the assent of a terrorized jury."¹

Northern press commentary "was bitter against the supreme court," a Missouri newspaperman wrote to Leo Frank.² "The opinion of the country will be with the dissenting Justices," averred the San Francisco Chronicle.³ The Muskegee (Okla.) Democrat lamented, "the sad part of it all is that Frank has failed to get a new trial not because the higher court believes him to be guilty but because of technical mistakes made by his lawyer." Louis Marshall

¹Ibid., pp. 347, 349. "In Frank v. Mangum, Hughes worked with Holmes on his dissenting opinion, and in circulating it Holmes wrote a note saying, 'I think it would be fairer to say (if you agree) that you and I think the judgment should be reversed and to put we for I all through.' The opinion came down that way after Hughes had replied, 'I shall be proud to be associated with you in this opinion.'" Merlo J. Pusey, Charles Evans Hughes (2 vols.; New York, 1951), I, 289.

²Letter from A. B. Macdonald to Leo Frank, John M. Slaton Papers (Brandeis University, Waltham, Mass.). Hereafter cited as Slaton-Brandeis.

³San Francisco Chronicle, April 21, 1915, p. 18; see also Washington Post, April 21, 1915, p. 6; Galveston Daily News, April 23, 1915, p. 4.

wrote to a friend, "I fear that I shall never again be able to feel that reliance upon the courts in respect to the accomplishments of the ends of justice, that I had hitherto entertained."¹

With the denial of the writ of habeas corpus all court action had been exhausted. Under the laws of Georgia only one course remained open--to petition the Governor via the Prison Commission for clemency. Frank's attorneys now set about to prepare the necessary petition.

¹Muskegee Democrat, April 29, 1915, Frank Papers, Box 695. LM to Judge Julian Mack, April 24, 1915, Box 146. Chief Justice White later insisted that he knew not one word of the evidence in the case, nor anything about its merits, and that the question of guilt or innocence did not come before him at all, "but solely the dry, technical question . . . as to whether there was such Federal question involved as to require the Federal Courts to wrest the case from the State tribunals." John M. Slaton, "Governor Slaton's OWN Defense in the Frank Case," The New York World, July 4, 1915, editorial section, p. 1.

CHAPTER VIII

COMMUTATION

A movement to have Frank's sentence commuted began in the autumn of 1914, after his appeals had been turned down by the Georgia courts, and the outlook in the federal courts appeared uncertain. Frank's friends hoped that national publicity might stimulate a groundswell of opposition to his conviction, which would persuade the Governor of Georgia to commute the sentence. Therefore, the fall of 1914 witnessed a revived interest in Frank throughout the nation. Part of this concern may be attributed to a "sensational" new development in the case, and part may be assigned to some prominent newspapers and national periodicals which, inspired by those most concerned with the prisoner's welfare, decided to investigate the case and discover why Leo Frank had been convicted.

1

The new development which stirred Atlanta and those working to save Frank, was the announcement, made on October 2, 1914, by William M. Smith, lawyer for Jim Conley,

the state's key witness at the trial. Smith declared that his own client had murdered Mary Phagan. This incredible admission seemed highly unethical, but Smith maintained that since Conley had already been convicted for his complicity in the crime, he could not be retried. Under the circumstances, Smith felt obliged to speak up to save an innocent man's life. A careful reading of the attorney's statement, detailing the reasons for his opinion, revealed speculations, intuitions, and suspicions, but no convincing proof. He unearthed no new facts, but merely juxtaposed the existing ones, to reach his conclusion. Tom Watson accused Smith of having accepted a bribe to issue his statement, and asked why the lawyer had not spoken up eight months earlier, in March, 1914, when The Atlanta Journal published its editorial demanding a new trial for Frank.¹ Those who believed Frank guilty quickly accepted Watson's charge that Smith had been bribed; those who thought Frank innocent clung to Smith's words to bolster their thesis.

The national press used Smith's statement to re-introduce Leo Frank to their readers. From June, 1914, when a Georgia court had denied his appeal for a new trial, until

¹AC, October 3, 1914, p. 1; October 4, 1914, p. 1. The Jeffersonian, October 8, 1914, p. 9.

October, 1914, when Smith announced his belief that Conley had killed Mary Phagan, Frank's name rarely appeared in print. But Smith's remarks gave the newspapers an occasion for reviewing the events in the case and stimulating further interest in Leo Frank.

Since many of the newspapers, outside of Georgia, had always been sympathetic to Leo Frank, it was natural that they would once again present his case favorably. The first of the new articles appeared in November, 1914, in the Baltimore Sun. Then--following in quick succession--came two articles in Collier's, in December, 1914, a detailed survey in The Kansas City (Mo.) Star, on January 17, 1915, and an essay in Everybody's, in March, 1915.¹ These stories kept material sympathetic to Frank before the public.

Two of the investigating journalists, C. P. Connolly, who wrote for Collier's, and Arthur P. Train, whose article appeared in Everybody's, were lawyers. Connolly had been a prosecuting attorney in Butte, Montana, while Train was

¹The Baltimore Sun, November 19, 1914, p. 1; November 23, 1914, p. 3; C. P. Connolly, "The Frank Case," Collier's, LIV (December 19, 1914), 6-7; LIV (December 26, 1914), 18-20; A. B. Macdonald, "Has Georgia Condemned an Innocent Man to Die?" The Kansas City Star, January 17, 1915, pp. 1C-3C; Arthur Train, "Did Leo Frank Get Justice?" Everybody's, XXXII (March, 1915), 315-17. Arthur Brisbane also investigated the case for the Hearst newspapers, and the New York World and Chicago Tribune sent reporters to Atlanta for further information. The New York Times, February 2, 1915, p. 6.

still an assistant district attorney in New York City when he wrote. These two men, plus the other two reporters, concluded that Frank was innocent. They saw the familiar ingredients of anti-industrialism, police incompetence, and newspaper sensationalism complicating the attack upon Frank. But each stressed Atlanta's hatred of the Jew. The Baltimore Sun's reporter viewed the case as "the American counterpart of the Dreyfus [affair]," while the essayist in Collier's wrote that the cry, "Innocent or Guilty, we will 'get' the d___ Jew!" accurately reflected Atlantan sentiment. By emphasizing anti-Semitism, these accounts overlooked the fact that in Georgia many unprejudiced and impartial citizens believed Frank guilty. Furthermore, many Georgians resented the conclusion, reached by these outsiders, that the jury had echoed the demands of the clamoring crowds.¹

These four articles spawned further commentary and discussion in the nation's press. The editors of The Baltimore Sun reread their series and confessed that their faith in the jury system had been shaken: "Sometimes the public is almost justified in feeling that the twelve men

¹The Baltimore Sun, November 19, 1914, p. 1; Collier's, December 19, 1914, p. 6; The Kansas City Star, January 17, 1915, pp. 1C-3C; Everybody's, March, 1915, pp. 315-17.

in the jury box deserve hanging even more richly than the accused." Throughout the country newspaper editorials were equally indignant. One Pittsburgh newspaper referred to the Frank case as "the most notorious example of the mob spirit that has invaded our courts for many years." Frequent comparisons were made to Russian justice. A mid-western daily declared, for example, that "Russia, with all her benightedness, never produced anything more heinous than the case of Frank. . . ." ¹

But in Georgia, there was no outpouring of sympathy. Many Georgians considered the pro-Frank editorials as the product of a press servile to Jewish interests. The accusations of race prejudice and mob passions made the people of the state more reluctant to reexamine their conclusions. Thomas Loyless, the respected editor of The Augusta Chronicle, doubted whether the northern outcry would have been so bitter were the victim of this alleged injustice a Gentile. A former Governor, Joseph M. Brown,

¹The Baltimore Sun, November 26, 1914, p. 4. The Pittsburgh Index, December 26, 1914, Duluth Herald, December 17, 1914, Frank Papers, Box 701. There are more than one hundred clippings among the Frank papers expressing these ideas. See also opinions of other American newspapers reprinted in The New York Times, December, 1, 2, 4, 9, 11, 12, 13, 15, 22, 23, 1914.

inquired indignantly, "Are we to understand that anybody except a Jew can be punished for crime?" One rural newspaper candidly asked if those publications which publicized Frank's situation realized that they were hurting the defendant with their continuing attacks upon Georgia justice. Whether they knew it or not, this daily continued, Southerners generally believed that the publications condemning Georgia were being paid to express their opinions.¹ A despondent Louis Marshall wrote to Frank: "Apparently nothing that may be written will, under present conditions, affect public sentiment in Georgia."²

2

Once the newspaper protests and Georgia retaliations subsided, another quiet interlude passed while Frank's attorneys argued before the United States Supreme Court for a writ of habeas corpus in February, 1915; then they waited anxiously for the verdict. When the Supreme Court rejected

¹The New York Times, December 10, 1914, p. 6; The Augusta Chronicle, December 27, 1914, p. 3. Then there are the following newspaper clippings from small town Georgia papers, all from the Frank Papers, Box 693: Brunswick News, November 29, 1914, Waycross Journal, January 16, 1915, and the Macon Telegraph, January 16, 1915.

²IM to Leo Frank, January 30, 1915, Box 146.

Frank's plea, on April 19, 1915, defense lawyers immediately began working for executive clemency. Marshall had been informed by Arthur Brisbane, the famous journalist in the Hearst chain, and others, that Frank would have a better chance to live if Governor Slaton, rather than Governor Harris, received his appeal. Therefore Marshall requested the United States Supreme Court to send its mandate to the local Georgia court faster than was usual.¹ Although Leo Frank preferred a complete pardon, his attorneys cautioned that, on the basis of the numerous adverse court decisions, he would be prudent to seek commutation to life imprisonment. Counsel also hoped that sometime in the future the climate of Georgia opinion might change, and Frank's innocence would be established.²

While the attorneys handled legal matters, further attempts were made to create an aura of national concern over Frank. Since Jewish leaders realized that everything they did on Frank's behalf reverberated against him, extensive efforts were made to induce prominent Gentiles to

¹None of the letters that I have seen spell out the reasons why it was thought that Slaton would be more likely to commute. IM to Herbert Haas, May 7, May 21, May 28, 1915, Box 146.

²The New York Times, April 22, 1915, p. 1.

join in the crusade to save the prisoner's life.¹ The overtures succeeded. Many Gentiles had already heard of Frank's situation and doubted his culpability. They did not hesitate to express these opinions publicly.

Leo Frank's predicament appealed to an amazing variety of people. The offices of the Georgia Governor and its Prison Commission were flooded with more than 100,000 letters requesting commutation. Solicitations came from every state in the union, from Canada, and from Mexico. Included among these pleas were communications from the President of the University of Chicago; the Dean of Yale College; Charles R. Crane, the plumbing magnate; Judge Ben Lindsay of Colorado; and Jane Addams. Elmer Murphy, President of the James H. Rhodes Company, producers of industrial chemicals, sent out an appeal to every name on the mailing list of the company's publication, Rhodes' Colossus, earnestly requesting that each of them intercede for Frank.

¹William Howard Taft to Julius Rosenwald, May 17, 1915; Julius Rosenwald to Senator L. Y. Sherman, May 18, 1915; Senator L. Y. Sherman to Julius Rosenwald, May 21, 1915; Rosenwald Papers. Simon Wolf to Woodrow Wilson, June 10, 1915; William J. Burns to Joseph P. Tumulty, May 29, 1915; Woodrow Wilson Papers, Library of Congress (Washington, D.C.), Series VI, File #3658. IM to Herbert Haas, IM to Harry Friedenwald, both May 15, 1915, Box 146. Also IM to Daniel Guggenheim, and to A. D. Lasker, both May 10, 1915, both Box 156. IM to Herbert Haas, May 21, 1915, May 28, 1915, Box 146.

The Governors of Arizona, Louisiana, Michigan, Mississippi, North Dakota, Oregon, Pennsylvania, Texas, and Virginia, wrote to Georgia's Governor, as did United States Senators from Connecticut, Idaho, Illinois, Indiana, Louisiana, Mississippi, and Texas, as well as scores of Congressmen. The state legislatures of Louisiana, Michigan, Pennsylvania, Tennessee, Texas, and West Virginia, passed resolutions urging commutation. The New York Times noted that the appeals by the Governors and state legislatures, "are said to be without precedent in the history of the United States." But there were also thousands of petitions, containing more than a million signatures, which reached Georgia from every state in the union. Chicago, alone, sent more than twenty thousand petitions with over 500,000 names, and Cincinnati, five hundred petitions. Untold thousands responded when the Detroit Times, Omaha Bee, and several Los Angeles papers printed coupons, asking clemency for Leo Frank, which readers could clip, sign, and return to the newspaper office for shipment to Georgia. Leo Frank, himself, received over 1500 letters, in May and June, 1915, from well wishers. His plight had obviously captured the imagination of more than a million people who were unwilling to see him hang after

the kind of trial he had had.¹

Georgian reaction to this fantastic display of public sympathy varied. More than ten thousand residents of the state petitioned the Governor on Frank's behalf. Included in this group were the state's junior United States Senator, Thomas Hardwick, and both the son and son-in-law of the senior Senator, Hoke Smith, a political opponent of Tom Watson; most ministers, bankers, and lawyers also joined the national trend and either wrote letters or signed petitions, indicating that doubt existed as to Frank's guilt and that, under the circumstances, the court's

¹Harvey Judson, President of the University of Chicago, to the Georgia Prison Commission, May 9, 1915; Charles R. Crane to Georgia Prison Commission, May 29, 1915, PC Records. There are thousands of other letters expressing this sentiment in the PC Records. The letters to Governor John M. Slaton are scattered in three different places: the records of the Georgia Prison Commission, and the John M. Slaton Papers, both in the Georgia State Archives (Atlanta); and the John M. Slaton Papers, Brandeis University (Waltham). See also LM to Herbert Haas, May 28, 1915, Box 146; Elmer Murphy to Leo Frank, May 1, 1915, Slaton Papers, Brandeis; and AC, May 16, 1915, p. 1; May 24, 1915, p. 5; May 28, 1915, p. 7; May 29, 1915, p. 1; May 30, 1915, p.5; May 31, 1915, p. 5; June 1, 1915, p. 4; AJ, May 29, 1915, p. 2; The New York Times, May 18, 1915, p. 6; May 25, 1915, p. 6; May 29, 1915, p. 12; May 30, 1915, II, 14; Woodward, Tom Watson, p. 436. One of the reasons for Chicago's great concern over Leo Frank may have been because of the influence of Albert Lasker, Julius Rosenwald, and the B'nai B'rith, all of whom lived, or made their main headquarters, in the city.

verdict should be altered.¹ A number of prominent state newspapers, including The Atlanta Journal, The Atlanta Georgian, The North Georgia Citizen (frequently called the Dalton Citizen), and the Brunswick News reached the same conclusion.²

But a great many Georgians still wanted to see Frank hang. None were as articulate as Tom Watson, the state's most vehement opponent of commutation. He warned the Prison Commission and the Governor not to undo what the courts had decided; if the chief executive, who had the final authority, ignored the judicial decisions, "there will almost inevitably be the bloodiest riot ever known in the history of the South."³

The attacks upon Frank, the vulnerable antagonist, thrust Watson, who had suffered years of setbacks, to the apex of his popularity in Georgia. During his crusade against the "jewpervert" The Jeffersonian's sales more

¹AC, May 27, 1915, p. 1; TAC, September 28, 1915, p. 6.

²AJ, May 23, 1915, sporting section, p. 4; AG, May 29, 1915, Frank Papers, Box 697; TAC, June 9, 1915, June 10, 1915, ibid.; Brunswick News, June 17, 1915, ibid., Box 694; The North Georgia Citizen, May 27, 1915, p. 4.

³The Jeffersonian, June 10, 1915, p. 3.

than tripled and profits soared. Before the Frank campaign had begun, Watson's newspaper had a circulation of about 25,000. For the first week of September, 1915, this figure jumped to 87,000. Thomas Loyless, the editor of The Augusta Chronicle, estimated that at the height of its popularity, The Jeffersonian's profits exceeded \$1,000 a week. Inspired by the public's responsiveness, Watson's vehemence grew more intense, more repetitive, and in the eyes of his readers, more brilliant. At the end of June, 1915, a follower rhapsodized, "It did not seem possible to me that you could improve on what you have said heretofore in the Frank case, but this last article is the best one."¹

Tom Watson's campaign against Frank exacerbated the bitterness that Georgians harbored toward "the lustful Jew." The passions originally aroused by Mary Phagan's death and Leo Frank's trial were rekindled by essays in The Jeffersonian and Watson's Magazine. "RISE PEOPLE OF GEORGIA," the vitriolic editor demanded. He urged them to hold mass meetings and vent their feelings: "Let the Governor and the Prison Commission hear from the people." "Are you going to allow a clamorous minority, make a mockery

¹Woodward, Tom Watson, p. 442; [a follower] to Tom Watson, June 25, 1915, Slaton Brandeis.

of Justice, a farce of jury trial, a bye-word of our Laws?" Watson asked. "Are you going to provide encouragement and justification for future lynchings, by allowing Big Money to annul the well-weighed findings of unimpeachable jurors, whose verdict rests on unimpeachable testimony, and bears the approval of the highest court in the world?"¹

In response to Watson's advice, protest rallies were held throughout the state. In Atlanta, mass meetings, ostensibly to defend and preserve the right of trial by jury, occurred regularly in June, 1915. One gathering, held on June 5, 1915, on the grounds of the state capital, attracted thousands. The Augusta Chronicle characterized this group as a "mob." "We say it was 'hideous' and we call it a 'mob' because there was the bloodthirsty spirit of the mob in it. . . ." Crowds cheered the mentioning of Tom Watson and Hugh Dorsey. Leo Frank's name, on the other hand, evoked cries of "Hang him, hang him, let him hang!" The meeting ended with a hymn, and the group passed a resolution upholding the verdicts of the Georgia courts and demanding that equal justice be meted out to rich and poor alike. Subsequent gatherings attracted fewer, though

¹The Jeffersonian, June 3, 1915, pp. 3, 4.

equally zealous, individuals. Oftimes "Fiddling John"
 Carson entertained the people with verses from "The Ballad
 of Mary Phagan":

Little Mary Phagan
 She left her home one day;
 She went to the pencil-factory
 To see the big parade.

She left her home at eleven,
 She kissed her mother good-by;
 Not one time did the poor child think
 That she was a-going to die.

Leo Frank he met her
 With a brutish heart, we know;
 He smiled, and said, "Little Mary,
 You won't go home no more."

Sneaked along behind her
 Till she reached the metal-room;
 He laughed, and said, "Little Mary,
 You have met your fatal doom."

Down upon her knees
 To Leo Frank she plead;
 He taken a stick from the trash-pile
 And struck her across the head.¹

¹Estimates of the June 5 crowd varied from 2,000 to 8,000; TAC, June 9, 1915, Frank Papers, Box 697; The Jeffersonian, June 17, 1915, p. 3; July 15, 1915, p. 6; The New York Times, June 6, 1915, II, 4. See also The Dalton Citizen, June 10, 1915, p. 4; AJ, June 13, 1915, pp. 1, 10; AC, June 4, 1915, p. 1; June 13, 1915, p. 5A, The New York Times, June 5, 1915, p. 6; American Jewish Review, n.d., clipping, John M. Slaton's "Miscellaneous" Scrapbook, Slaton Papers, Georgia Archives; Franklin Bliss Snyder, "Leo Frank and Mary Phagan," The Journal of American Folklore, XXXI (1918), 264; see Appendix B.

Within hearing distance of the public demonstrations, the Georgia Prison Commission met in special session on May 31, 1915, to consider Frank's appeal for commutation.¹ Frank's plea consisted primarily of information presented before other tribunals, a letter from a prominent graphologist who believed that the murder notes had definitely been written by Jim Conley,² and a new letter from Leonard Roan, the judge who had presided over Frank's trial, which had been sent to the defense counsel in December, 1914. Roan had again expressed his uncertainty of Frank's guilt, and acknowledged that perhaps he had shown "undue deference to the opinion of the jury." The Judge agreed to repeat these doubts, at the proper time, to the Prison Commission and the Governor. Roan died before the Prison Commission met, hence the attorneys for Frank

¹According to Georgia law, the Prison Commission had advisory powers only: the final decision rested with the Governor.

²The impact of the letter was offset, however, by the fact that in 1913, the same graphologist, Albert Osborn, had informed Hugh Dorsey that the notes might have been written with the assistance of an intelligent person. Albert Osborn to Prison Commissioners, May 17, 1915, May 18, 1915, PC Records. The New York Times, May 27, 1915, p. 4.

presented his views to the Commissioners. "The element of doubt, alone," one of Frank's lawyers insisted, "is sufficient to warrant commutation. And the letter of the trial justice, Judge Roan, is sufficient to establish doubt enough to warrant such action."¹

The prosecution made no counter showing to the defense plea. Dorsey had sent the Commission a letter expressing the state's opposition to any alteration of the death penalty, but he did not deem it necessary to appear in person.²

By a vote of 2-1, the Prison Commissioners refused to recommend clemency. Since there had been no new evidence, the majority saw no reason to intervene. Furthermore, they noted that neither the grand jurors who indicted Frank, the trial jurors who heard the testimony, nor the prosecutor for the state, had interceded in Frank's behalf. The one Prison Commissioner dissenting went beyond the legalities to reach his decision. He doubted the veracity of Jim Conley's story, and also seemed impressed with Judge Roan's

¹L. S. Roan to Messrs Rosser and Brandon, and R. R. Arnold, December, 1914 (no specific date), PC Records. AC, June 1, 1915, p. 1.

²Ibid., pp. 1, 4.

remarks. In his minority opinion, this commissioner noted that no precedent existed for hanging a man where the trial judge had expressed doubt about the defendant's guilt.¹

The Prison Commission's decision may have pleased a majority of Georgians, but it shocked Thomas Loyless, editor of The Augusta Chronicle, and "greatly surprised . . . the best thought and sentiment in Georgia." Loyless had been led to believe that the Commissioners were going to recommend commutation, and when they did not, he intimated that they might have been intimidated by public opinion. Loyless considered this outrageous, and advised, in the title of an indignant editorial, "Let Governor Slaton Do His Duty As He Sees It, Regardless!"²

4

Governor John M. Slaton had been one of the most popular chief executives in the history of Georgia. He had entered office with sixteen years of legislative experience behind him, and the esteem of all who knew him. In 1912, he had been elected Governor, "on a tidal wave of popular enthusiasm unprecedented in Georgia's annals."³ During his

¹AC, June 10, 1915, pp. 1, 2.

²TAC, June 10, 1915, Frank Papers, Box 697.

³Knight, A Standard History of Georgia, II, 1168.

two years in office, Slaton fulfilled the expectations of those who had elected him, including Tom Watson who had supported him, by carrying out his duties with integrity and aplomb. In the primary of 1914, he had successfully vied for the Democratic nomination for United States Senator. Although he won a plurality of the county votes, and a majority of the popular votes, the delegates to the state convention selected Thomas Hardwick for the position.¹ In the same primary, Nathaniel Harris, a "Watson man," won the nomination for Governor, and was subsequently elected. He was scheduled to be inaugurated on June 26, 1915.

Because his death had been set for June 22, 1915, Leo Frank's plea for commutation would reach Governor Slaton's desk four days before Harris would take office. In June, 1915, Slaton was at the peak of his popularity. Knowledgeable Georgians assumed that on his next try he would succeed in winning a seat in the United States Senate. It is true that Slaton did expect to crown his political achievements as a Senator from Georgia. But he had not yet amassed

¹Georgia's antiquated county unit system gave disproportionate power to the rural counties of the state. With 159 counties, each allowed a minimum of one vote, none allowed more than three votes, a minority of the population could select state wide candidates. V. O. Key, Jr., Southern Politics in State and Nation (New York, 1950), p. 119.

enough strength to capture the nomination. Additional support would be necessary. Tom Watson, one of the state's leading politicians, indicated that he would be willing to throw his weight behind the Governor, if Slaton would let Frank die.¹

Governor Slaton had an important decision to make. He had reason to believe that his political future would be jeopardized if he altered the court's decision. But if he had desired to do so, he could have resorted to an evasive tactic or begged off on seemingly ethical grounds. Since his term was about to expire, Slaton could have withdrawn gracefully from consideration of the case. He might have maintained that the pressure of last minute business awaiting his administration prevented him from giving the necessary deliberation to Frank's plea. Therefore justice would require that he defer to the next Governor, Nathaniel Harris, who would not be handicapped by lack of time, and could re-examine the material judiciously before making a final decision.

¹Knight, A Standard History of Georgia, II, 1125, 1126, 1128, 1164; Woodward, Tom Watson, pp. 439-40; John Temple Graves, "The New Governor of Georgia," Cosmopolitan Magazine, LV (August, 1913), 335-37.

Slaton also could have claimed "personal involvement" to avoid having to make a judgment. He had this option because he was the law partner of Leo Frank's attorney, Luther Rosser. In 1913, before the murder of Mary Phagan, but after Slaton had been elected Governor, the law offices of Slaton and Phillips had joined with those of Rosser and Brandon, to form the new firm of Rosser, Slaton and Phillips. Slaton had done this to insure the continuity of his practice while he was Governor. For purposes of prestige he permitted his partners to use his name while he served as the state's chief executive. The merger of the offices had been agreed upon two weeks before Mary Phagan's death, but the partnership was not actually consummated until July, 1913. In the meantime, Leo Frank had become Luther Rosser's client. After the new law partners commenced operations, Slaton had nothing to do with the defendant: he shared neither the burdens of the work nor the rewards of the fee. The Slaton-Rosser agreement received little publicity at the time of the merger, but in 1915, Tom Watson reminded Georgians that Governor Slaton and Leo Frank's attorney, Luther Rosser, were partners.¹ Although observers could legitimately

¹Woodward, Tom Watson, p. 443.

recognize the delicacy of Slaton's position, the Governor sensed no conflict of interest. When the petition for commutation reached his desk, he assumed responsibility for the decision.

Slaton, a man with a keen sense of justice, faced the issue squarely in spite of the possible political consequences. Why he did this is pure conjecture. Perhaps he felt that he could have no self-respect if he shirked this important case. On the other hand, he might have surmised--and I have no evidence to support this contention --that he would be fairer in evaluating the evidence than his successor, Nathaniel Harris, because the latter was a close ally of Tom Watson's. Slaton may have felt--and again, this observation cannot be substantiated--that Harris would have been loath to antagonize both his patron and his constituents during his first weeks in office. And, of course, there was the possibility that Slaton was simply an honest man and did what he believed to be the right thing. In any case, the decision to become the judge of Leo Frank's case proved the most fateful of John M. Slaton's career.

Once having decided to consider the matter, Slaton moved quickly. He heard arguments from both the defense counsel and the prosecuting attorney, and then visited the

pencil factory to familiarize himself with the building, its layout, and the functioning of the elevator. Since Frank's attorneys and Hugh Dorsey had differed as to the actual place of the crime--the defense had claimed that Mary met her doom in the basement, the prosecution had insisted that death overcame the girl in the metal workroom opposite Frank's office on the second floor--Slaton tried to obtain as much information as possible about the pencil plant so that he might follow the different arguments more precisely.

After the hearings ended, Slaton secluded himself to consider the evidence. He had more material to cope with than anyone realized. In addition to the voluminous court hearings and judicial pronouncements, and the letters already discussed in the newspapers, the Governor had received a personal letter from Judge Roan asking him to rectify the mistake the Judge realized he had made by sentencing Frank to death. The Governor had also received a secret communication, from one of Hugh Dorsey's law partners, informing him that Jim Conley's lawyer had confessed to this partner, that Jim Conley had murdered Mary Phagan.¹

¹Memo of conversation held by Samuel Boorstein with John M. Slaton, October 12, 1953; Anti-Defamation League Files, New York City.

Another communiqué which had been received by Slaton, and which was not published until 1923, came from an inmate in Atlanta's federal penitentiary. The inmate claimed to have seen Jim Conley struggling with Mary Phagan on the day of the murder.¹ For twelve days Slaton pondered the case. "I left no stone unturned in my investigation of the case," he confessed afterwards. "I went over it again and again from every point of view."²

While he struggled to reach a correct verdict, people emotionally involved with Leo Frank bombarded the Governor with pleas for commutation or demands that the prisoner hang. More than a thousand of the petitioners threatened to kill Slaton, and his wife, if he let Frank live. What influence these communications bore upon Governor Slaton's final judgment is difficult to determine.

Finally the day of judgment arrived. Slaton worked all day in his library, and well into the night. At 2 A.M., on June 21, he went upstairs where his wife had remained awake, waiting for him to reach a conclusion. "Have you reached a decision," she asked. "Yes," Slaton replied,

¹See Appendix C.

²The New York World, July 4, 1915, editorial section, p. 1.

"It may mean my death or worse, but I have ordered the sentence commuted." Tradition has it, that Mrs. Slaton then rose, went to her husband, and kissed him. "I would rather be the widow of a brave and honorable man," she allegedly whispered, "than the wife of a coward."¹

Before announcing his decision, Slaton made sure that Leo Frank was safe from the reach of Atlanta's mobs. He had secretly instructed the sheriff of Fulton county to deliver the prisoner to the state prison farm at Millidgeville. At about 10 P.M., on June 20, the sheriff told Frank to gather his belongings and prepare to leave the prison. Extensive security precautions had been taken. The phone wires to the jail had been disconnected, and an automobile had been ordered to pull up in front of the building and keep its motor idling. Reporters noticed the car and watched it expectantly. While they did so, the sheriff and six deputies removed Frank from his cell, escorted him to the basement, and then, to a back alley exit where another car was waiting. As soon as the group entered, the

¹Ibid.; Garrett, *op. cit.*, II, 626; A. L. Henson [Essay--no title], "Leo Frank Folder," Files of the Anti-Defamation League, New York City; Powell, *op. cit.*, p. 292; Knight, A Standard History of Georgia, II, 1168.

vehicle sped away. While reporters zealously guarded the other automobile, parked in front of the prison, Leo Frank and his guards headed for Atlanta's main railroad terminal. A midnight train took them to Macon, and at about 3 A.M. they reached their destination. The group drove the rest of the distance--about twenty-five miles--to the prison farm at Millidgeville. Orders were given to the warden to double the prison guard, and to refuse Frank all visitors who had not received authorization from the Prison Commission in Atlanta. The following day a reporter observed, "Never in the history of Georgia's prison system had such a perfect system of secrecy been thrown around an action."¹

With Frank safely at the state prison farm, Governor Slaton announced the commutation of Leo Frank's sentence to life imprisonment. "Feeling as I do about this case," the Governor added in an aside, "I would be a murderer if I allowed that man to hang."² A ten thousand word commentary, detailing the reasons for commutation, accompanied Slaton's announcement.

The Governor's explanation showed that he had given the case an exhaustive review. He appeared thoroughly

¹AC, June 21, 1915, extra, p. 1; AC, June 22, 1915, pp. 1, 2, 9.

²AC, June 21, 1915, extra, p. 1.

conversant with the minutiae of the records. Slaton based his opinions primarily upon the inconsistencies he had discovered in the narrative of Jim Conley, who, he had concluded, "was as depraved and lecherous a negro as ever lived in Georgia."

The first significant point Slaton elaborated upon was the human excrement found at the bottom of the elevator shaft in the pencil factory on Sunday morning, April 27, 1913, after the girl's body had been found. Conley had admitted, at the trial, that he had defecated there on Saturday morning. Conley had also sworn that he and Frank had taken Mary Phagan's body from the second floor metal room to the basement, via the elevator, on Saturday afternoon, April 26, 1913. But witnesses had testified, and the Governor himself had observed, that the elevator always touched the bottom of the shaft when it reached the basement. If Conley had indeed taken the corpse to the basement Saturday afternoon, the elevator would have mashed the excrement. But on Sunday morning, detectives, who had used the stairs to reach the basement, noticed the formed feces in the elevator shaft. Reviewing this evidence, the Governor concluded that the elevator had not been to the basement from the time that Conley had defecated on Saturday morning, until Sunday morning. If one accepted the fact that the

girl's body did not reach the basement via the elevator, then Conley's whole narrative fell apart, the Governor concluded.

Other points which Governor Slaton touched upon included the condition of Mary Phagan's body. She had been dealt a severe blow in the head, which had bled freely. Yet no blood had been found on the lathe her head had supposedly been bashed against, nor on the floor nearby, nor in the elevator, nor on the steps leading downstairs. On the other hand, Mary Phagan's nostrils and mouth had been filled with sawdust and grime, ingredients found only in the factory basement, where her body had been discovered. The Governor, therefore, concluded that Mary Phagan had met her doom in the pencil factory cellar, rather than on the second floor.

Slaton also commented upon the murder notes and the similarity in construction between them and the letters Jim Conley had written to Annie Maud Carter in the winter of 1913-1914, and which had been unearthed by William J. Burns. At the times of Burns' discovery, Conley had denied authorship, but by the time the letters reached Governor Slaton, in June, 1915, the Negro sweeper had acknowledged authorship, but still denied having included any of the

vulgar passages.¹ The Governor observed that the words, "like," "play," "lay," "love," and "hissself," appeared frequently, and sometimes in the same context, in the letters to Miss Carter as had been the case in both the murder notes and Conley's oral testimony. Slaton commented, too, upon Conley's frequent use of double adjectives: in the murder notes, in his oral testimony at the trial, and in his letters to Miss Carter. Expressions such as "a long tall negro, black," "He was a tall, slim build heavy man," and "A good long wide piece of cord in his hands," were examples the Governor selected to illustrate his contention. The murder notes, Slaton continued, had been written on the carbons of old order pads, found in the basement of the pencil factory. This strongly corroborated, the Governor believed, "the theory of the defense that the death notes were written, not in Frank's office, but in the basement. . . ."

That the pads were found in the basement, that the murder notes resembled Conley's other writings and oral testimony, that no blood had appeared on the lathe nor the

¹AJ, June 14, 1915, p. 1. An examination of these letters led Slaton to observe that Jim Conley seemed more of a pervert than the man he had accused. No explanation was given for why Conley suddenly decided to admit that he had written the letters.

floor near the lathe, that the elevator probably had not been used to transport the body, and finally, that the hair found on the lathe, alleged to have been Mary Phagan's, could not be verified as such when examined under a microscope, led Governor Slaton to conclude that the murder of Mary Phagan might not have been committed by Leo Frank. "What is the truth," Slaton asked rhetorically, "we may never know." But by commuting the sentence to life imprisonment, the Governor declared, he was merely expressing the same doubt about Frank's guilt as had members of every other tribunal the case had come before.¹ A few days later, in a further elucidation of his actions, Slaton added:

Two thousand years ago a Governor washed his hands in an effort to avoid responsibility, and a Jew was crucified. Ever since that time Pilate's hands have been stained with blood and Pilate's name has been a synonym for cowardice in all lands and among all peoples. His duty was plain, but he took the easy path.²

Privately, Slaton confided to friends that he believed Frank innocent and would have granted a full pardon if he were not convinced that in a short while the truth

¹AJ, June 21, 1915, pp. 1, 3, 4; The New York Times, June 22, 1915, p. 6.

²Quoted in Knight, A Standard History of Georgia, II, 1171.

would come out and then "the very men who were clamoring for Frank's life would be demanding a pardon for him."¹ The Governor knew certain "facts" about the case, which he did not reveal at the time, corroborating the theory of the defense about how Conley had murdered Mary Phagan. It is possible that he thought this material might convince everyone of Frank's innocence. If this were so, then Slaton erred. Eight years would pass before the information he had received privately would become public; and at that time few people, besides Frank's staunchest partisans, would care at all.²

5

Throughout the nation, the press and public responded jubilantly to the commutation. In Georgia, the response varied. Most of the major dailies, including The Atlanta Georgian and The Atlanta Journal,³ and about half of the rural press, commended the Governor. They restricted their remarks, however, to the courage that Slaton had exhibited

¹Powell, op. cit., p. 289.

²See Appendix C.

³The editors of The Atlanta Constitution made no editorial comment about either Slaton or the commutation.

rather than the accuracy of his judgment.¹ Considering that rural Georgians had appeared so hostile to Frank, it seems surprising, at first, that so many country editors applauded Slaton's deed. But when one recalls that more than ten thousand Georgians, from all over the state, had petitioned the Governor to commute, the press reaction in the state seems less noteworthy. Thomas Loyless, editor of The Augusta Chronicle, perhaps typified those who praised the Governor. Although he had stated on a number of earlier occasions that Frank probably had murdered Mary Phagan, Loyless admitted that he was not absolutely sure of it. Therefore he supported an alteration of the death penalty to life imprisonment. A good many people in the state

¹Slaton kept scrapbooks of the newspaper reaction to the commutation. He had two books, about 15" X 27", with newspaper clippings, arranged alphabetically by state, and within each state, by city. One book is marked, "Alabama to North Carolina" and the other, "Ohio to Wyoming and Miscellaneous." Then there are other scrapbooks, one marked "Georgia Favorable," one marked, "Georgia Critical," and one marked, "Miscellaneous," which have additional newspaper clippings. By going through these books one can see that an overwhelming majority of newspapers did support Slaton's action. In Georgia, the newspapers that opposed the Governor, were primarily rural. There are also letterbooks, which contain letters from all over the country, praising and condemning the commutation. Again, most of the commentary is favorable, and again, all letters are arranged alphabetically, first by state, and then by city within the state. In this collection all states seem to be represented except Arkansas. All scrapbooks and letterbooks are among the Slaton Papers, Georgia State Archives.

either agreed with him, or else subscribed to the point of view expressed by the Macon News: "Whatever citizens may think of John M. Slaton as a man, they still owe to him, while he is Governor, the respect and deference which his office inherently commands."¹

Others in Georgia, however, reacted more negatively. L. L. Knight later commented that what had happened after Slaton commuted Frank's sentence, could not be described adequately "without the pen of Dante."² Hugh Dorsey denounced the Governor; and throughout the state mobs demonstrated, and burned Slaton in effigy. In Marietta, the dummy bore a sign, "John M. Slaton, King of the Jews and Georgia's Traitor Forever." In Columbus, one man allowed each of his three daughters to take a shot at the make-believe figure as it dangled in air. In Newnan, Frank, too, was burned in effigy, and then both figures were cut down, set on fire, and dragged through the streets.³

¹Quoted in The American Jewish Review, IV (July, 1915), 2, Frank Papers, Box 701.

²Knight, A Standard History of Georgia, II, 1169.

³SMN, June 22, 1915, p. 1; The New York Times, June 22, 1915, p. 6; June 24, 1915, p. 5; The American (New Orleans), June 22, 1915, p. 1.

Blinded by fury and prejudice, many Georgians turned upon their Jewish neighbors. In Canton, citizens threatened "summary vengeance" upon all Jews who were not out of the city within twenty-four hours. North of Atlanta, the "MARIETTA VIGILANCE COMMITTEE" distributed the following handbill to Jewish merchants:

NOTICE

You are hereby notified to close up this business and quit Marietta by Saturday night, June 29, 1915, or else stand the consequences. We mean to rid Marietta of all Jews by the above date. You can heed this warning or stand the punishment the committee may see fit to deal out to you.

And Marietta's Gentiles received small business cards, printed in red ink, which read:

(CARRY ME IN YOUR PURSE)

STOP! and THINK!

Before You Spend Your Money.
Shall It Go To A Fund To

PROTECT MURDERERS

To Buy Governors. Stop and Think. Now is the time to show your colors, to show your true American Blood. --

IS IT STREAKED?

Can't you buy Shoes from an AMERICAN?

Can't you buy the Necessities of
Life from an AMERICAN?

AMERICAN GENTILES,
IT IS UP TO YOU

This little card is only a little ant
hill to start with. HELP it grow
into a MOUNTAIN.

Jewish merchants were also boycotted in other sections of
the state. The New Orleans American predicted that these
outrages were only the beginnings of anti-Jewish demon-
strations in Georgia.¹

In his first issue after the commutation, Tom
Watson bellowed: "our grand old Empire State HAS BEEN
RAPED!" Endless streams of condemnation and denunciation
of Governor Slaton followed. "Hereafter," The Jeffer-
sonian's editor continued, "let no man reproach the South
with Lynch law: let him remember the unendurable provoca-
tion; and let him say whether Lynch law is not better than
no law at all." And then, with the ferocity that few
writers in Georgia could equal, Watson prophesied his most
diabolical fantasy:

¹Frank Papers, Box 701; clipping, June 23, 1915,
Boston Herald-Traveler Library; New Orleans American,
June 23, 1915, p. 1; The New York Times, June 24, 1915,
p. 5; The Jeffersonian, July 22, 1915, p. 2.

When John M. Slaton tosses on a sleepless bed, in the years to come, he will see a vivid picture of that little Georgia girl, decoyed to the metal room by this satyr-faced New York Jew: he will see her little hands put out, to keep off the lustful beast: he will hear her cry of sudden terror; he will see her face purpling as the cruel cord chokes her to death--and John M. Slaton will walk the floor, a wretched, conscience-smitten man, AND HE WILL SWEAT BLOOD!¹

Governor Slaton might have ignored the burnings in effigy, and the poisoned pens, but he could not overlook the pandemonium which erupted in the state capital. People gathered in downtown Atlanta as soon as the news of the commutation had reached them.² Drugged by weeks of The Jeffersonian's venomous commentaries, and stirred to a "white-heat" by their own pent-up indignation, they chanted, "We Want John M. Slaton, Georgia's Traitor Governor." And they meant, literally, what they said. After a day of threatening, shouting, and jeering, crowds, "armed with shotguns, rifles, derringers, brass knuckles, heavy canes,

¹The Jeffersonian, June 24, 1915, pp. 1, 2, 3.

²There seems to have been no consensus about the size of the crowds. The Atlanta Constitution gave no figures but used the phrase, "several thousand people," AC, June 22, 1915, p. 1; The New York Times and The New Orleans American both placed the figure at 10,000, both June 22, 1915, p. 1; The New York Evening Post, June 21, 1915, p. 1, stated 2,500; and in 1942 Hal Steed used the number, 5,000. Hal Steed, Georgia: Unfinished State (New York, 1942), p. 240.

even dynamite," surged past squadrons of city policemen and marched in the direction of the Governor's mansion.

John M. Slaton lived six miles from the state capital. State troops had already barricaded his estate and encircled it with cordons of barbed wire. An entire battalion of the state militia stood guard with bayonets bared, for Slaton had declared martial law within a half mile radius of his estate. When the impassioned mobs arrived, they threw stones, bottles, and other missiles, but the Governor's home was too far from the road for anyone inside to have been reached. The militia dutifully protected the Governor's premises and eventually dispersed the people who had come. The next night the guardsmen cornered some seventy-five men and boys in the woods behind the house. They were armed with blackjacks, guns, and dynamite. All were arrested but the Governor refused to swear out warrants against them. Martial law, around Slaton's property, however, remained in effect until he left the state a week later.¹ Mrs. Slaton recalled

¹Ibid. AC, June 22, 1915, pp. 1, 2; June 29, 1915, p. 1; New Orleans American, June 22, 1915, p. 1; June 23, 1915, p. 1; The New York Times, June 22, 1915, p. 1; Powell, op. cit., pp. 290-91.

afterwards the terror that haunted her throughout that trying period:

For four nights I scarcely slept at all. It was not exactly the anxiety of the moment that kept me awake, but the frequent calls of "Halt, who goes there," that kept ringing out. Every time I was aroused, in spite of myself. We live six miles in the country, and there are woods back of our house. These were full of men trying to get in.¹

The demonstrations lasted for more than a week. News of the commutation had reached Atlantans on Monday, June 21, 1915. On Saturday, June 26, Slaton's successor, Nathaniel Harris, was inaugurated Governor of Georgia. At the inaugural ceremonies guards continued to protect John M. Slaton. After the ceremonies, as both the old and the new Governors descended the steps of the state capital, there was an immediate outburst of hisses, boos, howls, and shouts of "lynch him, lynch him!" Heavily guarded, Slaton made his way to a waiting automobile and departed the scene. A few days later, he left Georgia for an extended journey throughout the United States. After his departure, The Atlanta Constitution editorialized: "There must be no more mob violence in Georgia!"² Once again the

¹Quoted in The American Israelite, July 8, 1915, p.1.

²AC, June 27, 1915, pp. 1A, 4A, June 29, 1915, p. 6; The New York Times, June 27, 1915, p. 1.

nation's press felt impelled to comment upon the people of Georgia. The Madison (Wisconsin) Journal observed that, "The public condemnation of Governor Slaton proves not so much that Georgia has besmirched her honor as that Georgia has no honor."¹

6

Many Georgians were unwilling to believe that Governor Slaton had commuted Frank's sentence without having received some compensation for his deed.² For more than a generation they had been inundated with tales of wealthy plutocrats subverting justice. Tom Watson's columns reiterated the same point. He continually argued that money and influence had combined to keep a Jewish murderer alive.

To be sure, money and influence did affect the course of Frank's case. It is unlikely that a poor man could have had his situation reviewed three times by the highest court in the state and twice by the United States Supreme Court. Certainly, a poor man would have been unable

¹Clipping, June 28, 1915, Slaton Scrapbook, Georgia Archives. There are many other clippings expressing the identical sentiment throughout the scrapbooks.

²The American Israelite, July 29, 1915, p. 4.

to hire additional investigators to discover new information or stimulate enough newspapers to publicize his alleged injustice. Especially when the injustice was so typical-- a man condemned, perhaps, for a crime he claimed not to have committed. It is also highly unlikely that men like Louis Marshall, Albert Lasker, Jacob Schiff, et al., would have shown as much concern if someone other than a Jew had been the victim of what they considered a gross miscarriage of justice.

Georgians believed that outsiders neither understood, nor attempted to understand, the passions and tempers which had been aroused first, by the crime, and then, by the efforts to save the defendant. This is quite true. But Watson's subsequent ravings, the mass public demonstrations, the attacks upon Slaton, and the violent outburst of anti-Semitism did not help to clarify matters. In fact, they reinforced northern convictions. The hysteria in Georgia led The New Republic to classify the state "in the category of communities like Haiti, communities which have to be supervised and protected by more civilized powers."¹

¹"Leo Frank," The New Republic, III (July 24, 1915), 300.

To a large extent, judgments were affected by stereotyped thoughts. Both northerners and southerners had definite ideas about the people in the other section, and were willing to accept, frequently uncritically, any propaganda which fit into their preconceived notions. Therefore northerners quickly believed whatever had been printed in their local newspapers and national periodicals about the Frank case, even though the reports distorted, to some extent, conditions in Atlanta before the trial, when many unbiased Georgians had assumed that Leo Frank was guilty, and that the state really did have a strong case against him. To outsiders, Jim Conley's testimony at the trial seemed incredible. But many southerners, who thought that they knew and understood Negroes, were convinced that Jim Conley, for the most part, had told the truth. Months later they might have been induced to reflect soberly upon the case, had they been approached by some prominent southerners acting without northern guidance. Instead, northerners, and primarily northern Jews, tried to change southern opinion. This was a critical error because southerners tended to see "in every notion coming out of the North a menace and an abomination; to view every idea originated by the Yankee or bearing the stamp of his acceptance as containing hidden within itself the old

implacable will to coerce and destroy. . . ."1

Law abiding citizens knew that whether they approved of the Governor's decision or not, nothing could be done about the commutation. But others recalled the words of Tom Watson. He had intimated that commutation would invoke the law of Judge Lynch. A rural newspaper, expressing the hope that people would not heed the advice of those who wished to take the law into their own hands, warned that "stranger things have happened and circumstances seem to point in that direction."²

¹Cash, op. cit., p. 140. For this same view see also, Macdonald, op. cit., p. 3C; Ward Greene, Star Reporters and 34 of their Stories (New York, 1948), pp. 132-33; Steed, op. cit., p. 238; and Albert Bushnell Hart, The Southern South (New York, 1912), p. 70.

²The Cherokee Advance, June 25, 1915, p. 4.

CHAPTER IX

VIGILANTE JUSTICE

Less than two weeks after Slaton had commuted Leo Frank's sentence, state newspapers prominently featured the somber pilgrimage of saddened Georgians to the unveiling of Mary Phagan's monument. The main speaker commemorated "this sainted little girl . . . who, true to her inherent high breeding and the teachings of her devoted mother, gave up her young life rather than surrender that Christian attribute--the crown, glory and honor of true womanhood into the threshold of which she was just entering." A group of one hundred and fifty men, who called themselves the Knights of Mary Phagan, then met secretly near her grave, and pledged to avenge the little girl's death. A few days afterwards rumors circulated that a plan had been devised to kidnap Leo Frank from the prison farm and lynch him. Governor Harris alerted the state police, and thereby thwarted, for the moment, a plot

concocted by some of Marietta's most prominent citizens.¹

1

For Leo Frank, life on the prison farm represented a striking improvement over his two years in the Atlanta cell, where he had lost sixty pounds. At Milledgeville, he spent many hours outdoors under the warm Georgia sun, and this contributed to restoring his health, which had suffered in the dank city prison.² His daily chores never required more than four or five hours to complete, and he then had the rest of the day free.

Frank enjoyed the leisure afforded him in prison. He seems to have occupied a good deal of that time maintaining a voluminous correspondence. "This is the sixteenth letter I wrote today," he told his wife, and three days later repeated, "I wrote only 18 letters yesterday. . . ." He wrote to his wife almost every day, and although he cautioned her that "the contents of my letters, & my life must be kept quiet," there were few items in his letters that

¹The Marietta Journal and Courier, June 25, 1915, p. 1; July 9, 1915, p. 2; July 16, 1915, p. 6; AC, July 18, 1915, p. 2A; July 19, 1915, pp. 1, 2; The New York Times, July 14, 1915, p. 1; Nathaniel E. Harris, Autobiography (Macon, Georgia, 1925), p. 366.

²The American Israelite, July 22, 1915, p. 17.

would interest anyone but a devoted mate. In fact, his letters during the first few weeks at the prison farm, resemble those from a child vacationing at a summer camp. Frank requested that his wife send or bring him handkerchiefs and pajamas, tooth paste, writing pads, a can opener, Beech Nut gum, a soap dish, fig bars ("I don't want sweet crackers, too rich") and \$5 in cash.¹ If the letters to Mrs. Frank give little indication of a man under stress, other writings, to Julius Rosenwald and Supreme Court Justice Oliver Wendell Holmes, reveal Frank's continuing faith that one day truth would triumph. He believed that eventually "Right and Justice" would hold "complete sway" and his vindication would be universally acknowledged.²

This semi-idyllic life did not last long. Only four weeks after his arrival, a fellow convict, William Green, crept up to Frank's cot, plunged a butcher knife into the

¹Leo Frank to Mrs. Leo Frank, June 23, 24, 29, July 2, 5, 6, 8, & 9, 1915. Frank Papers, Brandeis University (Waltham, Mass.).

²Leo Frank to Julius Rosenwald, July 11, 1915, Rosenwald Papers. Leo Frank to Oliver Wendell Holmes, July 10, 1915, letter in the possession of Mark de Wolfe Howe, who generously sent me a copy.

sleeping figure, and proceeded to slash his victim's throat.¹ By the time the guard, and two other convicts, reached the pair, blood flowed freely from a seven and a half inch wound. Fortunately, two other prisoners were doctors, and they quickly clamped the gushing jugular vein and stopped the hemorrhage. Frank was then removed to the prison hospital, where the two convict-doctors, along with the prison physician, stitched the wound. Frank's head was then placed in a metal surgical brace to prevent the stitches from falling out. Days passed, however, before anyone would predict whether the operation would be successful. The doctors feared that blood poisoning might set in, making death a certainty.²

Governor Nathaniel Harris ordered an immediate investigation of the attack, but the warden's inquiry failed to satisfy him. Harris then went to the prison farm to review recent events and personally interviewed prison officials,

¹In his A Standard History of Georgia and Georgians, L. L. Knight wrote, "What subtle irony in the choice of such a weapon with which to inflict death upon one of Abraham's seed!" II, 1185.

²AC, July 18, 1915, pp. 1A, 2A, July 20, 1915, p.1; July 22, 1915, p. 7; August 2, 1915, p. 1; AJ, July 18, 1915, p. 1; July 19, 1915, p. 1; The New York Times, July 18, 1915, p. 1; July 19, 1915, p. 1.

Leo Frank, and William Creen, the assailant. Creen told Harris that he had been called "from on high" to murder the Jew, and explained further that he had tried to kill Frank to prevent other prisoners from being harmed, should an attempt be made to storm the prison and abduct its most notorious inmate. When Harris returned to Atlanta, he found petitions demanding that William Creen be pardoned as a reward for his noble deed.¹

In the prison hospital, Frank showed remarkable resiliency, calmness, and fortitude. Although doctors feared that he might not survive, Frank told one of them, "I am going to live. I must live. I must vindicate myself." When finally on the road to recovery, which "was little short of miraculous!" Frank wrote to a friend, "Certainly my escape was providential, and the good Lord must sure have in store for me a brighter and happier day

¹Harris, op. cit., pp. 365-66; AC, July 19, 1915, pp. 1, 2; July 20, 1915, p. 1; AJ, July 24, 1915, p. 1. Harris recorded his observations about Leo Frank in an autobiography, published a decade later. He remembered that when interviewing Frank, the prisoner laughed "a queer sort of laugh." To Harris, this laugh showed, "a hard, careless heart," and the doubt which the Governor had heretofore held about Frank's guilt, "was lessened greatly." As he looked back upon the incident, Harris could not recall why he had been so impressed, but he "felt then that the man was undoubtedly a hardened criminal or a reckless prisoner." Harris, op. cit., p. 367.

when that honor, justly mine now, will be restored to me. I have been victorious in my struggle with death & I await impatiently for the day of vindication and liberty."¹

The attack upon Frank brought further denunciation of Georgia, in both the northern and southern press, as editorial writers condemned state authorities for their laxity. Frank would not have been attacked, newspapers argued, had he been properly protected. In Georgia, Thomas Loyless, of The Augusta Chronicle, castigated the "mob spirit" which culminated in Creen's savagery. He asked: "Who can doubt the psychological connection between such crazy acts as that of William Creen and the inflammatory articles and speeches of such professional agitators and apostles of hate as afflict Georgia?" And The New Republic looked back centuries for a parallel to Frank's experiences:

In ancient times when a man was treated as Leo Frank has been treated people felt that an obscene God was pursuing him. No mortal could be so relentless. No mortal could surround another with such ingenious cruelty. Only a conspiracy of fate could make horror

¹AC, July 20, 1915, p. 1; The American Israelite, July 22, 1915, p. 7; Leo Frank to W. W. Stevens, August 11, 1915, Frank Papers, Brandeis.

so massive. We try nowadays to think differently, but in the case of Frank it is not easy.¹

2

One month after the attempt on Frank's life, a band of twenty-five men stormed the prison farm shortly after 11 P.M. Five went directly to the warden's house, while several cornered the prison superintendent; both men were handcuffed, but otherwise unharmed. There were only two guards on duty that night, and they were easily overpowered. (One of them had heard several autos approaching the prison farm and had pleaded in vain with his chief to move their famous prisoner to a safer place.) Four of the intruders went directly to Frank's hospital room and met with no obstacles. As soon as they opened his door, one of the men said, "We want you to come with us." Frank got out of bed and made a feeble attempt to dress himself, but one of the men commanded: "Don't bother with the clothes; come just as you are." The abductors then handcuffed their charge, and led him out of the building. Frank, stoically calm, as was his wont, looked neither terrified nor surprised; nor

¹Pittsburgh Press, July 27, 1915, Detroit Free Press, July 19, 1915, Frank Papers, Boxes 693 and 694; TAC, July 19, 1915, p. 4; "Leo Frank," The New Republic, III (July 24, 1915), 300.

did he make any attempt to resist. In all, the intruders spent less than five minutes in the prison; when they left, no one pursued them.¹

The men who kidnapped Leo Frank had begun to plan their adventure after Governor Slaton had commuted his sentence. These men represented the "best citizens" of Marietta, Georgia, the hometown of Mary Phagan. In fact, the so-called "riffraff" had been deliberately excluded. A clergyman, two former Superior Court justices, and an ex-sheriff were included among the planners and executioners, who were later described, by the Dean of the Atlanta Theological Seminary, as "a sifted band of men, sober, intelligent, of established good name and character--good American citizens." The leader bore "as reputable [a] name as you would ever hear in a lawful community. He was a man honored and respected." The abductors were the same group who, a month earlier, had postponed their plans to kidnap and lynch Frank when news of the conspiracy reached Governor Harris. Now, however, on August 16, 1915, they carried

¹The New York Times, August 17, 1915, p. 1; August 23, 1915, p. 5; AC, August 17, 1915, p. 1; August 18, 1915, pp. 1, 2; F. J. Turner to Mrs. Leo Frank, August 17, 1915, Frank Papers, Brandeis.

out their task with order, precision, and dispatch.¹

The kidnapping of Leo Frank showed that careful preparations had been made. Two scouts had been sent in advance to reconnoiter and cut the telephone and telegraph wires leading to the prison, while the others had departed, at intervals, from Marietta earlier that afternoon. To avoid drawing attention to themselves, each small group travelled a different route in the 175 mile trip to Milledgeville. After converging at a prearranged spot, the men proceeded to the prison. To mask their identity, they wore goggles and kept their hats pulled down over their faces. After seizing Frank, they drove all night before finally stopping in a grove, just outside of Marietta. The original plan had called for hanging Leo Frank near Mary Phagan's grave, but dawn broke earlier than anticipated. The kidnapers did not wish to be seen, and therefore, they selected another site for the execution.

In the auto that had taken Frank to his final

¹Steed, op. cit., p. 240; Harry Golden, A Little Girl is Dead (Cleveland, 1965), p. 288; Smith interview, April 2, 1964; F. J. Turner to Mrs. Leo Frank, August 17, 1915, Frank Papers, Brandeis; "The End of the Frank Case," The Outlook, CXI (September 15, 1915), 115; AC, August 18, 1915, p. 1.

destination, the prisoner sat, apparently unruffled,¹ between two guards in the rear seat. The kidnappers tried to get their prisoner to confess, but he would not do so. Some of the abductors even offered to let him live, if he would confess, but Frank would not yield. In fact, on the few occasions that the prisoner spoke, he sounded so sincere that two of his listeners thought that perhaps he really had not murdered Mary Phagan, and that he should be returned to the prison farm. But when all of the autos stopped, and this suggestion was made, the passengers of the other cars were shocked. Then Frank began to talk. When he finished, he had convinced others in the group of his sincerity, and all but four indicated their willingness to forgo the lynching. But then someone pointed out that it was too late to drive back to Milledgeville, that posses were out all over the state, and that there was no time left to change their plans. So the men once again concerned themselves with the business that had originally been called for. But "at least one of [the] self-appointed executioners mutinied, urged that Frank be returned to prison and refused to

¹The New York Times claimed to have received the information that follows "in a manner which seemingly placed its authenticity beyond all question." August 23, 1915, p. 5.

take part in the final scene of the drama."¹

Those that remained finished what they had set out to do. Frank was escorted to a large oak tree. Along the way he muttered, "I think more of my wife and my mother than I do of my life." As members of the party professionally tied a Manilla rope into a hangman's knot, Frank was again asked if he had murdered Mary Phagan; but he did not reply. The leader then spoke: "Mr. Frank, we are now going to do what the law said to do--hang you by the neck until you are dead. Do you want to make any statement before you die?" Frank said that he did not wish to say anything else, but then changed his mind and requested that his wedding ring, which he then removed from his finger, be delivered to a newspaperman with the instructions that the reporter return it to his wife. (Frank's last wish was obeyed.) The executioners tied the knot around their prisoner's neck, flung the rope over a limb of the oak tree, placed Frank upon a table, and proceeded, after checking to see that everything had been done properly, to kick the table from under the suspended figure's feet.

¹Clipping from the newspaper library of the Boston Herald-Traveler, September 21, 1915; "Why Was Frank Lynched?" Forum, LVI (December, 1916), 688-89.

Without waiting to see their victim dead, the lynchers departed the scene. One of the members of the lynching party confided afterwards that the hangmen did not go about their work with "a spirit of lawlessness or vindictiveness. They felt it [the lynching] to be a duty to the State and a duty to the memory of Mary Phagan. . . ." ¹

3

News of Frank's abduction had spread quickly.

Those who had been assigned to cut the telephone wires in Milledgeville had missed one connection, so that within an hour after the kidnapping, state officials knew of the affair. Governor Harris alerted the sheriff of every county

¹AC, August 17, 1915, p. 1; August 18, 1915, pp. 1, 2; August 21, 1915, p. 1; AJ, August 17, 1915, p. 3; The New York Times, August 18, 1915, pp. 1,3; August 19, 1915, pp. 1, 3; August 23, 1915, p. 5.

The lynching of Leo Frank was in some ways atypical. The "typical" southern lynching usually resulted from the spontaneous uprising of a drunken mob of poorly educated adolescent boys and young men, intent upon avenging an alleged violation of a woman, or giving summary punishment to a suspected murderer. Only in a minority of cases did the "best citizens" actually participate in the lynching. Hadley Cantril, The Psychology of Social Movements (New York, 1941), pp. 83, 86; Cash, op. cit., pp. 309-10; Carl Iver Hovland and Robert R. Sears, "Minor Studies of Aggression: VI. Correlation of Lynchings with Economic Indices," The Journal of Psychology, IX (1940), 305-07; Arthur F. Raper, The Tragedy of Lynching (Chapel Hill, N.C., 1933), pp. 1, 8-12, 20.

between Milledgeville and Marietta to watch for a caravan of autos passing swiftly through their territories. A resident of Marietta had also seen the lynching party pass by and walked into town to announce his observation. Somehow Mariettans had no difficulty in finding the exact location of the lynching and shortly after the executioners had completed their work. Hordes of people made their way to the oak tree where the lifeless figure, with its gaping red throat wound, swayed in the wind. Souvenir hunters tore pieces of cloth from the sleeves of the nightshirt which covered the body, and snipped strands of the wavering rope.¹ Others took pictures or milled about happily, as if at a holiday barbecue. Wild-eyed people gaped--women and children examined the dead man closely without quivering an

¹It seems that taking souvenirs at lynchings may not have been unusual. In 1899 a national periodical reporter noted the following after a Negro had been burned at Palmetto, Georgia: "Before the body was cool, it was cut to pieces, the heart and liver being especially cut up and sold. Small pieces of bone brought 25 cents, and 'a bit of the liver, crisply cooked, sold for 10 cents.' So eager were the crowd to obtain souvenirs that a rush for the stake was made, and those near the body were forced against it and had to fight for their escape." T. G. Steward, "The Reign of the Mob," The Independent, LI (1899), 1296. John R. Steelman noted that in a high proportion of lynchings souvenirs are taken by the members of the mob and the onlookers. "A Study of Mob Action in the South" (unpublished Ph.D. dissertation, Dept. of Sociology, University of North Carolina, 1928), p. 412.

eyelash. One man ran up to the swaying corpse and shouted, "Now we've got you! You won't murder any more little innocent girls! We've got you now!! We've got you now!!!" Shouts and yells echoed in the wind as jubilant throngs reveled in delight.

One man who wanted to mutilate and burn the body was stopped by the intervention of a respected Marietta judge, Newton Morris. Morris had rushed to the scene as soon as he had heard of the lynching. When he arrived, he saw the half-crazed man screaming and demanding a bonfire. The Judge interceded and pleaded with everyone to permit Frank's remains to be sent home to his parents for a decent burial. He convinced the onlookers, and quickly arranged for two undertakers to carry the corpse away. As Frank's body was being removed, the man who had originally wanted to burn him, struck the body, and it fell to the ground with a thump. Then he "stamped upon the face, and ground his heel into the dead flesh, and stamped again, and again, until the crowd, stricken silent and motionless by the horror of the sight, could hear the man's heel as it made a crunching sound." "Stop him!" "Stop him!" Judge Morris implored, while signalling the undertakers to remove the dead man. They responded as ordered and swiftly lifted the corpse into their wagon--and then headed straight for

Atlanta. This maniacal incident, however, seemed to have escaped the notice of The Marietta Journal and Courier, which praised the onlookers for their good conduct: "We are proud, indeed, to say that the body hanged for more than two hours amid a vast throng and no violence was done. Cobb county people are civilized. They are not barbarians."¹

In Atlanta, thousands surrounded the undertaking establishment and threatened to force their way in. Their morbid appetites would not be satiated until they, too, could see the body of this devil incarnate. The police succumbed to their wish and permitted an orderly viewing of Frank's remains before the undertakers shipped it to New York, for burial at Mt. Carmel Cemetery. Fifty policemen stood guard as more than 15,000 persons passed by the bier. The acting Mayor appeared on the scene and urged everyone "to be orderly and quiet, and thus protect the good name of our great city," but he pleaded to no avail. Boisterous crowds pressed against the police, and each other, in their eagerness to see the corpse. Men and women filed by the

¹AJ, August 17, 1915, pp. 1, 3; The New York Times, August 19, 1915, p. 3; Steed, op. cit., p. 240; The Marietta Journal and Courier, August 20, 1915, p. 1.

casket in separate lines. "Scores of women [passed] without so much as a look of horror on their faces as their eyes fell upon the dead man's body." Cameramen photographed the corpse, the crowds, the guards, the funeral parlor, and everything else that caught their eye.¹

Outside of the undertaking establishment souvenir hunters purchased pictures of Frank's body dangling from the tree, and hundreds bought pieces of the rope. (As late as 1917 pictures of the lynching could still be purchased in Marietta.) The traffic in souvenirs alarmed city officials. Four days after the lynching, the Atlanta City Council "unanimously passed an ordinance making it unlawful to sell in Atlanta a photograph of the body of a person who has been hanged illegally."²

Several affluent Georgians offered as much as \$250 for the tree from which Leo Frank had been hung, but the owner refused to sell. Instead he encouraged loyal citizens of Marietta to guard the big oak. Townspeople made pilgrimages

¹AC, August 18, 1915, pp. 1, 2; The New York Times, August 21, 1915, p. 4.

²AC, August 18, 1915, pp. 1, 2; August 22, 1915, II, 11. Irving M. Engel to author, February 19, 1964.

to the hallowed oak, and, according to the owner, "hugged and patted that old tree and then they stood still and looked upward for a long time. I think they must have been praying." Plans were made to build a concrete wall around the tree, calling forth the sardonic comment from a Wisconsin newspaper: "If the prison in which Frank was kept had been so surrounded, the tree would not need to be now imprisoned."¹

Governor Harris expressed shock and grief at the lynching and ordered an investigation. Everyone knew, though, that the search would prove fruitless. The lynchers had carried out the will of the people and the local Marietta newspaper praised their deed: "We regard the hanging of Leo M. Frank in Cobb county as an act of law abiding citizens." With public sentiment so favorable, an indictment was impossible. The Greensboro (Georgia) Herald-Journal cannily observed that "the lynchers could confess, publish their confession in the Atlanta papers, and they would never be molested." The killers were generally known throughout Marietta--some of them, in fact, gave interviews to reporters;² but after an inquest, the Coroner's jury concluded

¹ AC, August 20, 1915, p. 12; August 21, 1915, p. 3; Racine Times, August 30, 1915, Frank Papers, Box 695.

² Although the newspaper reporters stated that the lynchers were generally known, none of the names of the alleged participants was published at the time.

that Leo Frank died at the hands of persons unknown. The Pittsburgh Gazette interpreted this announcement for its readers: "What the coroner's jury really meant was that Frank 'came to his death by hanging at the hands of persons whom the jury wishes to remain unknown.'"¹

The press of the nation denounced the state of Georgia, and the press of Georgia--with the exception of Tom Watson, The Marietta Journal and Courier, and two Macon papers--upbraided the lynchers. The opinion of the Richmond Times-Dispatch was representative of those horrified by the act: "[Frank's] lynching constitutes the most vicious blow struck at organized government in a century, and the South, in particular, must suffer." Even The Atlanta Constitution,

¹The Marietta Journal and Courier, August 20, 1915, p. 6; The Greensboro Herald-Journal, August 27, 1915, p. 1; clipping from Boston Herald-Traveler Library, September 8, 1915; Sacramento (California) Record-Union, August 25, 1915, Frank Papers, Box 693; Justine Wise Polier and James Waterman Wise, editors, The Personal Letters of Stephen Wise (Boston, 1956), p. 151; AC, August 18, 1915, p. 1; The New York Times, August 18, 1915, p. 1; August 19, 1915, pp. 1, 3, August 23, 1915, p. 5; The North Georgia Citizen, August 19, 1915, p. 4; The Pittsburgh Gazette, August 26, 1915, Frank Papers, Box 696. New York City's Evening Post observed, "The Coroner's 'quest at Marietta deserves to rank with any Dogberry's day for a sense of the bounds of human penetration: it is doubtful if the most shrewdly stupid Elizabethan villager could have seen less of what was unsafe than some of the witnesses called yesterday." August 25, 1915, p. 8.

which had heretofore remained editorially silent on Leo Frank, headed its arraignment: "Georgia's Shame!" and began its charge: "No word in the language is too strong to apply to the deliberate and carefully conspired mob."¹

There were, however, accolades for the lynchers. Tom Watson, naturally, praised the doers and the deed. The Mayor of Atlanta announced, to a conference in California, that Frank suffered a "just penalty for an unspeakable crime." L. L. Knight, the chronicler of Georgia's history, wrote in 1917, "There is something inherently fine in the passionate desire of a people to keep inviolate the honor of womanhood and to visit swift punishment upon a wretch who dares to stain the purity of a child's life. . . ."²

Judge Newton Morris, the man who had prevented Frank's corpse from being burnt, explained to a reporter that "the very best people" had permitted Frank's appeal to go through all of the courts, but after the judges had

¹"Mob-Law in Georgia," Literary Digest, LI (August 28, 1915), 392; AC, August 18, 1915, p. 6. See also The Progressive Farmer, XXX (August 28, 1915), 790.

²Knight, A History of Georgia and Georgians, II, 1196; AC, August 19, 1915, p. 12; The Jeffersonian, August 19, 1915, p.1.

turned down his successive requests, they were "outraged" by Slaton's action. Many people believed that Frank's lawyer, Louis Marshall, had deliberately speeded the judgment of the United States Supreme Court back to the Georgia courts, so that his client's clemency petition would reach Governor Slaton and not Governor Harris. (It is true that Frank's lawyers had expedited the process because they wanted Slaton to act, but there is no evidence that they had bribed him or that they had expected him to act favorably because Rosser was his partner.¹) A great many Georgians, the Judge continued, were aggrieved at how much money had been spent to buy the northern press. While Frank's position had been clearly and emphatically restated in these newspapers, Judge Morris bitterly observed, the Georgian side had been ignored. The Judge concluded: "I believe in law and order. I would not help lynch anybody. But I believe Frank has had his just deserts."²

¹IM to Herbert Haas, May 7, 1915, May 21, 1915, May 28, 1915, Box 146.

²Quoted in The New York Times, August 19, 1915, p. 3.

AFTERMATH

1

In a sense, the lynching of Leo Frank marked a symbolic victory for Georgians. Since the Civil War, Southerners had felt themselves helpless in the face of northern encroachments upon their way of life.¹ First slavery had been abolished, then industrialists and financiers had disturbed their agrarian society, and finally, some people believed, northern interlopers had interfered with their judicial system. To many Georgians, the heroism of the executioners seemed to have resurrected an almost lost way of life.

Frank's fate could, perhaps, have been forecast because the Southern heritage both dictated and glorified the lynchers' action. In antebellum days, the master had almost total power over the dispensation of justice to his slaves. And when he dealt with equals, the Southern plantation dweller would sooner resort to a duel than request any third party--a law officer, for example--to intercede on his behalf. Poor whites had absorbed the mores of the upper

¹ Many Southerners still feel this way today.

glasses, and the tradition of individual law enforcement has retained its potency well into the twentieth century. The defense of a woman's honor was also part of every Southerner's creed, and the culture dictated swift punishment to anyone who violated a kinswoman. In the closed Southern society, where fourth and fifth cousins were regarded as blood relations, whole communities felt responsible for their women. In the case of Leo Frank, the only socially respectable action, according to those small-town Southerners who pondered the question, was to lynch him. Tom Watson's bellowing encouraged an accepted procedure; and the "best citizens" of Marietta did not hesitate to fulfill their social obligations.¹

¹ Thomas Walker Page, "Lynching and Race Relations in the South," The North American Review, CCVI (August, 1917), 243; Edwin McNeill Poteat, Jr., "Religion in the South," in Culture in the South, ed. W. T. Couch (Chapel Hill, N.C., 1935), p. 258; H. C. Brearley, "The Pattern of Violence," in ibid., p. 687; Josephine Pinckney, "Bulwarks Against Change," in ibid., p. 46; Cash, op. cit., pp. 44, 309-10; Benjamin Kendrick, "The Study of the New South," The North Carolina Historical Review, III (January, 1926), 10; John Carlisle Kilgo, "An Inquiry Concerning Lynchings," The South Atlantic Quarterly, I (January, 1902), 5-9, passim; Charles S. Sydnor, "The Southerner and the Laws," The Journal of Southern History, VI (February, 1940), 8-14, passim; Clement Eaton, The Mind of the Old South (Baton Rouge, 1964), p. 241; Virginus Dabney, Liberalism in the South (Chapel Hill, 1932), p. 360.

But the death of Leo Frank did not dissipate the wrath of disgruntled Georgians. Ironically, in fact, the lynching left a void--the despondent and the vengeful had lost their whipping boy. In the autumn of 1915, Col. William J. Simmons stepped into this vacuum with a new answer to an insoluble problem: a fraternal organization dedicated toward the everlasting exaltation of Southern heroism, chivalry, and Anglo-Saxon splendor; an organization that would work for the revival of rural, Protestant culture; an organization which shunned the alien, put the Negro in his place, and elevated the Anglo-Saxon American to his rightfully superior niche in American society. This new fraternity would revive the glorious name and hallowed memory of the well-remembered paragon of Southern heroism--the Knights of the Ku Klux Klan.¹

Simmons, a professional fraternalist who belonged to six or seven other lodges, had, as an adolescent, envisioned the day when he would inaugurate a new order to memorialize the old Ku Klux Klan.² His opportunity came during the

¹ Although the Ku Klux Klan became as strong, if not stronger, in parts of the North and the West, as it was in the South after the first World War, the origins of the new organization were definitely Southern.

² Charles C. Alexander, The Ku Klux Klan in the Southwest (Lexington, Ky., 1965), p. 3; Arnold S. Rice, The Ku Klux Klan in American Politics (Washington, D.C., 1962), p. 2.

hullabaloo which ended with Leo Frank's hanging from a large oak tree. After Frank's death, Simmons found in Georgia a receptive group, which had been mobilized by Tom Watson, and which now needed new direction.¹ Simmons answered the call. His new Ku Klux Klan opposed everything that Frank had personified: urbanization, industrialization, and foreigners. The Klan staunchly defended American, small-town, Protestant values such as sexual morality, religious orthodoxy, and traditional economic individualism, and deplored all of the modern innovations which had compromised the accepted virtues of Southern life.

Had it not been for Leo Frank, Simmons would probably have had to wait before launching his venture. But he found in the Knights of Mary Phagan, already organized but with its sense of purpose vanished, a suitable nucleus for the new Klan. In the autumn of 1915, Simmons and thirty-three of the Knights of Mary Phagan met on a mountain top just outside of Atlanta, and brought the Klan into being

¹ Kenneth Coleman, Georgia History in Outline (Athens, 1960), p. 96. Coleman noted that the Klan had such an enormous following in Georgia that "most office seekers considered Klan membership a prerequisite for election." One sociologist noted that "a very high percentage" of the Atlanta police force belonged to the revised Ku Klux Klan. Sutker, op. cit., p. 17.

with elaborate ritual.¹ Within a decade, another five million people joined the Ku Klux Klan.

The story of Simmons and his Klan has been dealt with in other places. But one aspect of "Klan kulture"--overt violence--requires comment because it helps to explain why those who would kill Leo Frank, would also be attracted to the hooded Knights. During its heyday--especially after the first World War--Klansmen burned, flogged, maimed, and otherwise tortured victims of their aggression. They regarded these practices as a supplement to, rather than a substitute for, the established laws.

Violence had characterized the old South to some extent, but it flourished even more in the New South, particularly in Georgia. Gun fights, duels, lynchings, family feuds, and the like, were part of everyday living for many Southerners.² But Georgians had been especially notorious in following this infamous tradition. From 1889 through 1928, for example, more people were lynched in this one

¹Golden, A Little Girl Is Dead, p. 300. I questioned Golden about the source for this information and he wrote to me that he had heard it and then had it confirmed in an interview with one of the lynchers and a son of this lyncher. Golden to Leonard Dinnerstein, January 24, 1966. This point is also made in an unpublished essay by A. L. Henson, in the files of the Anti-Defamation League, New York City.

²Woodward, Origins of the New South, pp. 158-60.

state, than any other in the Union.¹ Two weeks after Georgians had attempted to mob him, John M. Slaton readily acknowledged that "there are some offenses to which [Southerners] take the law into their own hands." Slaton then elaborated: "In the South we generally punish by lynching for one offense"--assaulting a white woman.² Therefore the cry for Frank's neck, the hysterical demonstrations in front of the courtroom where he had been tried, and the reestablishment of an organization dedicated to perpetuate established traditions, were considered part of the acceptable standards of Southern behavior.

2

The Frank case revealed how weak were the safeguards of our judicial system against police loquacity, journalistic license, and politically ambitious prosecutors. The police have often shared their findings and assumptions with newspapermen whose papers reported--and sometimes distorted--the semi-official version of events. Sensational cases often have been tried in the newspapers long before they

¹ Steelman, op. cit., p. 128.

² Slaton, op. cit., p. 1.

reached the courtroom. Under such circumstances it is often difficult for the most conscientious juror to attempt an impartial evaluation of the facts presented during a trial. Juries, too, have been notorious for their responsiveness to community sentiment.¹ Certainly, Leo Frank was tried before he ever appeared in court.

The process of selecting American public prosecutors--not unique to Georgia--clearly contributed to Frank's undoing. More frequently elected than appointed, the state's attorney is dependent upon the good will of his constituents for both his position and subsequent political advancement. To further their careers, politically ambitious prosecutors frequently seek popular and dramatic convictions to publicize their own talents. In 1913, when Hugh Dorsey prosecuted Leo Frank, he convinced many people that his primary concern was with his political reputation and not with obtaining justice.²

¹Harold W. Sullivan, Trial By Newspaper (Hyannis, Mass., 1961), p. 19; Louis Joughin and Edmund M. Morgan, The Legacy of Sacco and Vanzetti (Chicago, 1964), p. 196; John P. Roche, "American Liberty: An Examination of the 'Tradition' of Freedom," in Aspects of Liberty, ed. Milton R. Konvitz and Clinton Rossiter (Ithaca, N.Y., 1958), p. 147; and George Palmer Garrett, "Public Trials," The American Law Review, LXII (1924), 8.

²Alden Todd to Leonard Dinnerstein, January 19, 1964. Mr. Todd wrote that one of the top editors of The Atlanta Journal had expressed the opinion that Dorsey had "deliberately set about to stir up the hate-pack in a cynical bid for political notoriety and power."

Since Frank's death the United States Supreme Court has revamped its standards for fair trials. Beginning in 1923, the Court has overruled numerous criminal convictions which came about, in its estimate, because community sentiment had entered the jury box or because pretrial publicity precluded an impartial hearing. Prosecutors have also been censured for misconduct and states have been condemned for using perjured testimony.

The first significant change occurred in 1923 when Oliver Wendell Holmes, who had dissented from the majority viewpoint in Frank v. Mangum, practically restated the same opinion as spokesman for the Court. The case, Moore v. Dempsey, involved five Arkansas Negroes who, in the words of Justice Holmes, "were hurried to conviction under the pressure of a mob, without any regard for their rights, and without according to them due process of law." Such circumstances, Holmes concluded in a doctrine which has been accepted by the Federal courts ever since, interfere with the course of justice, depart from due process of law, and hence are not coincident with the preservation of constitutionally guaranteed rights.¹ Louis Marshall commented afterwards

¹Moore v. Dempsey, 261 U.S. 86 (1923).

that the Supreme Court "adopted the principle for which I contended."¹ While the decision in Moore v. Dempsey could not bring Frank back to life, it did help to memorialize the fact that, in addition to his other sufferings, he was also a victim of the strictures of narrow legalisms.

Another subject on which Justices of the Supreme Court have expressed concern has been that of coerced confessions. In 1913, an Atlanta jury relied primarily upon Jim Conley's testimony to convict the factory superintendent. Yet Conley had been questioned by the police, and had given certain statements, without having had the benefit of counsel. Conley had also incriminated himself in affidavits which he signed after having undergone a series of intensive interrogations. Because Conley's charges received extensive publicity, they provided another difficult hurdle which Leo Frank had to overcome before his trial officially began.

In the 1930's, however, the Supreme Court began to overrule convictions which had been based on what it interpreted as coerced confessions. In Brown v. Mississippi, a unanimous Court ruled that confessions obtained after the

¹LM to Adolph Ochs, January 14, 1925, Reznikoff, op. cit., II, 847.

accused had been whipped into submission were void.¹ In the case of Chambers v. Florida, in 1940, Justice Hugo Black, speaking for another unanimous court, reinforced this judgment. Black declared that confessions obtained after the accused had been subjected to five days of questioning, without having had recourse to counsel, were presumed to be coerced confessions, hence a denial of due process of law.² Six years later, in Ashcraft v. Tennessee, the Supreme Court overruled the conviction of a man who had given a confession "after thirty-six hours [of] continuous grilling by investigating officers, who were holding him incommunicado in the county jail."³ In similar cases, in 1957 and 1963, the Court continued to strengthen the right of a defendant against self-incrimination. In Fikes v. Alabama, Chief Justice Earl Warren held a confession invalid which had been made after a prisoner had been kept in isolation for a week "except for sessions of questioning."⁴ In 1963, Justice Arthur Goldberg stated, in a significant ruling, that the United States

¹ Brown v. State of Mississippi, 297 U.S. 278 (1936).

² Chambers v. Florida, 309 U.S. 227, 239 (1940).

³ Ashcraft v. Tennessee, 327 U.S. 274, 276 (1946); see also Ashcraft v. Tennessee, 322 U.S. 143 (1944).

⁴ Fikes v. Alabama, 352 U.S. 191 (1957).

Constitution favors "the right of the accused to be advised by his lawyer of his privilege against self-incrimination."¹ And finally, in 1966, the Court set new and more stringent standards for police interrogations. Under the most recent rulings, "the prosecutor cannot use in a trial any admissions or confessions made by the suspect while in custody unless it first proves that the police complied with a detailed list of safeguards to protect the right against self-incrimination." These include the defendant's right to be informed that he may remain silent, that anything he says may be used against him, and that he is entitled to consult with an attorney before making any comment at all.²

There are other reasons which indicate that today's Court would not consider Frank's trial in accord with due process of law. In 1951, a majority overruled a conviction which had been obtained after considerable pretrial publicity. In the opinion of Justices Felix Frankfurter and Robert Jackson, "prejudicial influences outside the courtroom . . . were brought to bear on this jury with such force that the conclusion is inescapable that the defendants were prejudged

¹ Escobedo v. Illinois, 378 U.S. 478, 488 (1963).

² The New York Times, June 14, 1966, pp. 1, 24.

as guilty and that the trial was but a legal gesture to register a verdict already dictated by the press and public opinion which it generated."¹ In 1963, the Supreme Court re-stated this position in the case of Rideau v. Louisiana. Justice Potter Stewart, speaking for the majority, observed that after a community had been exposed to extensive publicity about an alleged criminal, "any subsequent court proceedings . . . could be but a hollow formality."² And more recently, in 1966, the Court considered the case of Dr. Samuel H. Sheppard, a Cleveland osteopath, who had been convicted, in 1954, of murdering his wife. Justice Tom Clark noted that the trial had been preceded by months of "virulent publicity" as "charges and countercharges were aired in the news media besides those for which Sheppard was called to trial." The Supreme Court assumed that some of the inflammatory assertions "reached at least some of the jury." The trial was then conducted in a "carnival atmosphere." Justice Clark, speaking for all but one member of the Court,³ asserted that Sheppard's rights had been adversely affected by "the inherently prejudicial publicity which saturated the

¹ Shepherd v. State of Florida, 341 U.S. 50, 51 (1951).

² Rideau v. Louisiana, 373 U.S. 723, 726 (1963).

³ Justice Black dissented but did not write an opinion.

community," and that he had been further injured by the trial judge's failure "to control disruptive influences in the courtroom." The opinion concluded that Dr. Sheppard had not been accorded all of his legal rights and hence the State of Ohio had incarcerated him unjustly.¹

In our own day, methods of Solicitor Dorsey might also be subject to judicial scrutiny. Not only did he engage in conduct unbecoming a state official, but he also suppressed evidence which tended to exonerate Frank. In 1935, Justice George Sutherland censured an attorney for being "guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered. . . ; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and in general conducting himself in a thoroughly indecorous and improper manner."² And eight years later, Chief Justice Harlan F. Stone severely criticized the closing remarks of a federal prosecutor which,

¹The New York Times, June 7, 1966, pp. 1, 43. At the time of this writing the case had not yet been published in the U.S. Reports.

²Berger v. United States, 295 U.S. 78, 84 (1935).

in the opinion of a majority of the Court, were calculated "to arouse passions and prejudice." In fact, the Chief Justice said that the conduct of the prosecutor "prejudiced petitioner's right to a fair trial and . . . might well have placed the judgment of conviction in jeopardy."¹

The Supreme Court has also ruled against the use of perjured testimony to obtain a conviction. While none of the witnesses in the Frank case was ever convicted of perjury, many of them changed their statements, and then reverted to the originals, in the spring of 1914. Many people also thought that Jim Conley's narrative was fictitious. In only one case, however, that of Annie Maud Carter, the lady who had received letters from Jim Conley, was it possible to prove that an affidavit was incorrect. With so many state witnesses contradicting their trial testimony, and then reverting to their original statements, the present Court might consider the possibility that the state influenced some of them to testify falsely. In a landmark decision, in 1935, the Supreme Court decided that if a state knowingly used witnesses whose testimony was falsified, the proceedings

¹
Viereck v. United States, 318 U.S. 236, 248 (1943).

violated due process and hence were void.¹ This dictum was repeated by Justice Frankfurter in 1942 when he wrote, "If a state, whether by the active conduct or the connivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law."²

With the Supreme Court so zealous in its defense of civil liberties today, it is extremely unlikely that another Frank case could occur. Although local communities and ambitious prosecutors may still wink at rigid standards of justice, the nation's highest court no longer tolerates a loose interpretation of the Fourteenth Amendment's directive that no state may "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

¹ Mooney v. Holohan, Warden, 294 U.S. 103 (1935).

² Heysler v. Florida, 315 U.S. 411 (1942). See also Pyle v. Kansas, 317 U.S. 213 (1942).

To many prominent Jews, Leo Frank's trial and conviction seemed another instance of the anti-Semitic assaults which had become increasingly obvious for almost a generation. The American Jewish community therefore resolved to take punitive steps. Four weeks after Frank's trial ended, the B'nai B'rith, a Jewish fraternal order founded in 1843, established its Anti-Defamation League to combat prejudice in the United States. Plans for the organization had been discussed for years, and each succeeding anti-Semitic outburst strengthened the hand of the proponents of the new group. But it took Atlanta's condemnation of Leo Frank to give final impetus to the League. In the founding statement, Adolph Kraus, President of the parent organization, commented upon the abundance of prejudice and discrimination in this country. "Remarkable as it is," one paragraph began, "this condition has gone so far as to manifest itself recently in an attempt to influence courts of law where a Jew happened to be a party to the litigation. This symptom, standing by itself, while contemptible, would not constitute a menace, but forming as it does but one incident in a continuing chain of occasions of discrimination, demands organized and systematic effort on behalf of all right-thinking Americans to put

a stop to this most pernicious and un-American tendency."¹

Jews were undoubtedly correct in perceiving anti-Semitic overtones in the attack upon Frank. But they were slower to recognize other features: the angers caused by the evils of industrialization, the defensive response of a people conscious of their own minority position, and the special disquietude produced by the alleged rape and murder upon an unusually repressive culture.

Probably, the intervention from outside was counter-productive in the short run. From the point of view of the nation's Jews, not to have come to Frank's aid would have violated Jewish traditions of helping brethren in distress, as well as subjecting themselves to the censure of their co-religionists. Furthermore, men such as Marshall and Lasker feared that if they took no action in regard to Leo Frank, other American communities would believe that Jews could, indeed, be attacked with impunity. Yet the Jewish efforts to rectify what they considered a miscarriage of justice failed to convince those who had to be convinced: a hard-core of Georgians bent on revenge. Northern pleadings for Frank merely stiffened some Georgians in their original conclusions, and antagonized a number of others.

¹ B'nai B'rith News, October, 1913, p. 1.

On the other hand, it is possible that the publicity given to Frank's plight led Slaton to commute the sentence. With the eyes of the nation upon him, the Georgia Governor may have weighed the evidence against Frank much more carefully than he might otherwise have done had the case not been made into such a cause célèbre by Frank's friends.

Disapproval of the intervention by Jews and hostility toward them continued to echo in Georgia long after Frank's demise. A minister noted in October, 1915, that the "masses" resented the power of money which had been used "to protect criminals from the punishment which our laws provide for their deeds."¹ Less than a year after the lynching, Senator Hoke Smith refrained from stirring up memories of things past by withholding his announcement, until the last minute, that he would vote to confirm Louis Brandeis, a Jew, for a position on the United States Supreme Court.² And in 1925, Herbert Asbury, an Atlanta newspaperman, wrote: "If the Jews had been content to regard Frank as a man suspected of murder, entitled to a fair trial and

¹Rembert G. Smith, D.C., "Some Lurid Lessons from the Frank Case," The Public, XVIII (October 1, 1915), 952.

²Alden Todd to Leonard Dinnerstein, January 19, 1964. Todd found some information on Frank while doing research for his study of Brandeis' confirmation to the Supreme Court in 1916; Justice on Trial (New York, 1964).

nothing more, instead of as a Jew on the threshold of martyrdom, hounded by Christians thirsting for his blood, there would have been little or no anti-Semitic feeling in Atlanta."¹

Whether Asbury was correct or not, however, is less significant than the continued hostility which frightened Atlanta's Jews and made them fearful of further repercussions. In 1923, at the height of the Ku Klux Klan's power, a foreign journalist, working for The Atlanta Constitution, became interested in Leo Frank and went back to study the records of the case. He came across some x-rays showing teeth indentures in Mary Phagan's left shoulder and compared them with x-rays of Frank's teeth--but the two sets did not correspond. On the basis of this, and other insights garnered from his investigation, the newspaperman wanted to write a series "proving" Frank's innocence. One anonymous correspondent sent him a printed note: "Lay off the Frank case if you want to keep healthy," but this did not deter him. What did thwart publication, however, was the effort of prominent Atlanta Jews, fearing repercussions, who prevailed upon the Constitution's editor

¹ Asbury, The American Mercury, VII, 91.

to refrain from printing the articles.¹ Even in 1942, one of Atlanta's rabbis refused a Jewish graduate student permission to examine his extensive files, detailing the efforts which had been made to save Frank, on the grounds that anything written would only stir up trouble.² Forty years after the murder, in fact, citizens still became embroiled in bitter arguments when Frank's guilt or innocence was discussed.³ And as late as 1961 the National States Rights Party inaugurated a campaign to revive interest in Mary Phagan's murder.⁴

¹ Pierre Van Paassen, To Number Our Days (New York, 1964), pp. 237-38.

² Telephone conversation with Marjorie Merlin Cohen, New York City, February 9, 1964.

³ Ernest Rogers, Peachtree Parade (Atlanta, 1956), p. 71.

⁴ Clipping, an Atlanta newspaper, May 20, 1961, located among the Frank Papers in Brandeis.

The reverberations of the Frank case touched a number of individuals who had become connected with the affair: Jim Conley, John M. Slaton, Hugh Dorsey, and Tom Watson. Jim Conley, the Negro sweeper who proved to be the key witness against Frank at the trial, passed into oblivion, and aside from his obituary notice in 1962, appeared in the newspapers again only when in jail. In 1919 he was shot in an attempt to burglarize an Atlanta drug store. For this offense he received a twenty-year sentence in the state penitentiary, although for the assistance allegedly given to Frank in removing Mary Phagan's body, Conley had spent only a year on the chain gang. In 1941 he was among a group picked up by the Atlanta police for gambling; and in 1947 he was again arrested, on a charge of drunkenness. There is no record of his ever having revealed anything more about his role in the Phagan murder case.¹

Governor John M. Slaton remained in exile from his native state for a number of years. After the first World War he resumed his law practice in Atlanta but was never

¹The New York Times, January 18, 1919, p. 2; February 25, 1919, p. 5; AC, February 25, 1919, p. 6; Golden, A Little Girl Is Dead, pp. 311-12.

again elected to public office. In 1928, however, the Georgia Bar Association honored him by unanimously electing him its President. In 1953, Slaton granted Samuel Boorstein, a good friend and contemporary of Leo Frank, an interview, and reminisced about the Frank case. Slaton recalled that Judge Roan had said to him that if Hugh Dorsey's predecessor as Solicitor-General of the Atlanta circuit had been alive, Frank would never have been prosecuted on the evidence that the state had amassed. Slaton also told Boorstein that as Governor, he had received word, indirectly, that Jim Conley's lawyer believed his client guilty. Toward the end of his life, John Slaton expressed the opinion that the passage of time had, indeed, established Frank's innocence. Upon his death, in 1955, the flags of the state capitol flew at half staff, and Ralph McGill, of The Atlanta Constitution, eulogized, "A giant of his day, it was one of destiny's mocking ironies that his great integrity should have cost him his political life. . . ." ¹

Hugh Dorsey reaped great political rewards from

¹ Memo of a conversation had by Samuel A. Boorstein in Atlanta, Georgia, with Governor Slaton, October 12, 1953, ADL files in New York City; John M. Slaton, Jr. (Gov. Slaton's nephew) to Harold Marcus, January 15, 1961, Frank Papers, Brandeis; AC, January 12, 1955, p. 1; Time, LXV (January 24, 1955), 19; Golden, A Little Girl Is Dead, p. 306.

prosecuting Frank, and emerged as one of the towering Georgians of his day.¹ In 1916, the demand for his entrance into the gubernatorial race was so great "that it swept the state like a prairie fire, rolling from the mountains to the sea."² In the primary that year, Dorsey received more votes than the combined total of his three opponents, as he scored one of the greatest electoral victories in Georgia's history. Dorsey remained Governor until 1921, when he retired to private life. In 1920, Tom Watson thwarted the Governor's attempt to oust Hoke Smith from the U. S. Senate, by decisively defeating both Dorsey and Smith in a three-cornered primary race for the Senate. Later on, Dorsey served as Judge of Atlanta's City Court and of the Fulton County Superior Court. He died in 1949.³

Tom Watson's political power increased as a result of his activities against Frank. In the election of 1916, when he supported Dorsey for chief executive, all of his candidates won decisive victories. Two years later, Watson once again ran for Congress but was narrowly defeated in a

¹ E. Merton Coulter, Georgia: A Short History (Chapel Hill, 1947), p. 400.

² Knight, A History of Georgia, II, 1208.

³ AC, September 13, 1916, p. 1; Woodward, Tom Watson, p. 473; Golden, A Little Girl Is Dead, p. 305.

contested election which the state authorities refused to review. The campaign had been marked by overtones of loyalty and patriotism: Watson had denounced President Woodrow Wilson and had opposed American entry into the war; his paper, The Jeffersonian, had been suspended for violating the espionage act; Watson's opponent, Carl Vinson, had gone down the line with the administration. After the war, Watson continued to strike out at Wilson, opposed American entry into the League of Nations and denounced the U.S. Attorney-General, A. Mitchell Palmer, for his raids upon Socialists.

By 1920, Georgians had become less enthusiastic with the administration in Washington, and Tom Watson capitalized upon this. In the presidential primary, in which the former Populist had barely campaigned, he nosed out A. Mitchell Palmer, the administration's candidate, and Hoke Smith, and carried a plurality of Georgia's counties. But Palmer had won the county unit vote and therefore went into the national convention with all of Georgia's votes behind him. Watson then entered the primary race for U.S. Senate. This time he trounced both opponents, Smith and Dorsey, and easily walked off with the victory. The Georgian did not serve long in the Senate. On September 26, 1922, he died from a bronchial

attack in Washington, D.C. The Ku Klux Klan sent a cross of roses, eight feet high, to his funeral.¹

5

A large number of people who have familiarized themselves with the Frank case have expressed their firm conviction in his innocence. This is true not only of contemporaries but of more recent chroniclers as well. Immediately after the lynching, one scribe prophesied, "future writers . . . will unanimously admit that Leo M. Frank was the victim of a biased sentiment, that his judicial rights were denied him and that his hanging on a lonely oak was the climax of a series of flagrant violations of justice which ignominiously but undoubtedly will raise him to the position of the first American martyr."² In 1943, Arthur G. Powell, a prominent Atlanta Judge and confidant of Judge Leonard S. Roan, who had presided at Frank's trial, noted in his autobiography that he knew the name of the murderer but could not reveal it while certain people were still alive. Powell died,

¹Woodward, Tom Watson, pp. 448-49, 458, 461, 466-68, 473, 486.

²Richard S. Rauh, "The First American Martyr," Jewish Criterion (Pittsburgh), August 20, 1915, clipping, Slaton Papers, Georgia State Archives, Atlanta.

however, without any public declaration. But in private, the Atlanta Judge was less hesitant in communicating his knowledge. He told an old tale, without any new information, which indicted Jim Conley. Ralph McGill, publisher of The Atlanta Constitution, who happened to have heard Powell's version, labeled the story "a mere hearsay" and by no means conclusive evidence.¹

Those who have studied the records have also reached a verdict exonerating Frank. Charles and Louise Samuels, authors of Night Fell on Georgia, ended their work with the statement: "Leo Frank was the victim of one of the most shocking frame-ups ever perpetrated by American law-and-order officials." John Roche, who recently studied the development of civil rights in this century, stated, "As one who has read the trial record half a century later, I might add . . . that Leo Frank was the victim of circumstantial evidence which would not hold up ten minutes in a normal courtroom then or now." And Harry Golden, who has written perhaps the most detailed account of Leo Frank to date, echoed Roche's opinion that no one would be convicted today

¹ Powell, op. cit., p. 291; Ralph McGill to Leonard Dinnerstein, January 28, 1964.

on the evidence which doomed Leo Frank.¹

But one still cannot ignore the views of those who believed Frank to have been guilty. A few years after the Phagan-Frank case passed into history, L. L. Knight, a chronicler of Georgia's past, felt constrained to discuss the episode "objectively." Hence he included a letter from a prominent Georgian defending Slaton's act of commutation. But Knight added afterwards that he could not espouse the Governor's action "with an unmixed feeling." If Slaton had been moved by "the purest and best motives," Knight went on, "he can snap his finger at his critics and appeal his case with confidence to the mellow wisdom of a riper time and to the final judgment of a higher court." In the same spirit of "objectivity," Knight observed that regardless of the views one might have about the kidnapping and execution of Frank, one had to acknowledge that "no finer piece of klu-
kluxing was ever known in Georgia. . . ."² With the perspective of a decade behind him, Herbert Asbury, who worked as a reporter for The Atlanta Georgian during the crisis over

¹Samuels, op. cit., p. 222; John P. Roche, The Quest for the Dream (New York, 1963), p. 91; Golden, A Little Girl Is Dead, p. xiv.

²Knight, A History of Georgia, II, 1181, 1196.

Mary Phagan's murder, wrote, "Frank's trial could hardly have been fairer."¹ And one of the newspapermen who witnessed the trial from the press table, MacLellan Smith, still remained adamant in his belief, fifty years later, that Leo Frank murdered Mary Phagan.²

Perhaps the most cogent expressions about the murder case have come from those students of the proceedings in Atlanta, both before and after the trial, who remained uncertain of Frank's guilt, yet were not completely convinced of his innocence. Into this category one might include some of the most respectable Southerners of their generations. Harold Ross, who covered the trial for The Atlanta Journal, and who later founded the New Yorker magazine, commented in 1915 that the evidence "did not prove him guilty beyond that 'reasonable doubt' required by law."³ In his penetrating study of Tom Watson, C. Vann Woodward penned, "a fateful weight of irrelevant but prejudicial fact dogged Frank's case to the end," and then added that a Negro suspect was "later implicated by evidence overwhelmingly more incrimin-

¹Asbury, op. cit., p. 91.

²Smith interview.

³Ross' article is reprinted in Golden, A Little Girl Is Dead, pp. 355-58.

inating than any produced against Frank."¹ But Woodward went no further in stating his own opinion concerning Frank's guilt or innocence. In the more recent past, Ralph McGill and Harold Davis, one of the editors of The Atlanta Journal, have both indicated that they are still uncertain about who murdered Mary Phagan.²

Since so many people have written about Leo Frank, perhaps some mention should be made as to why another study has here been attempted. Until now the fullest works--those of C. P. Connolly, the Samuels, and Harry Golden--have been penned by journalists who have been overwhelmed by what they viewed as a gross miscarriage of justice. These accounts have their merits but to some extent each has been guided by a different purpose. Connolly's essays in 1914, and his book in 1915, were designed to spur a national audience to indignation and action. He had hoped that his readers would protest vigorously against the alleged injustice and that as a result Frank's sentence would be altered. The Samuels, on the other hand, were primarily concerned with retelling the story of an exciting trial, and although they were extremely

¹ Woodward, Tom Watson, p. 435.

² Interview with Harold Davis, in Atlanta, January 24, 1964.

insightful, they did not utilize the manuscript collections extant, nor did they devote much attention to the problems of the South or the activities of Frank's friends. Recently Harry Golden attempted the most comprehensive survey of the Frank affair. He did extensive research and tried to put the Frank case into the broader setting of Georgian society circa 1913. However, he has written his book as a testament to Frank's innocence--an interesting but not a dispassionate way of examining the evidence. Furthermore, Golden has not discussed the background of anti-Semitism in the South nor has he investigated the nature of the activities undertaken in Frank's behalf. Hence a scholarly work, placing the Frank case in its historical setting, and more concerned with discovering why and how the case developed as it did than with Frank's guilt or innocence, seemed to be in order.

6

In retrospect, it seems that the Frank case illuminated the shape of historical forces long at work. It threw into dramatic relief the pressures, the frustrations, and the realities of the South's struggle to adjust to new ideas while still reluctant to part with the old. It mobilized the American Jews into a concerted defensive

action without precedent in the annals of our country. And it quickened the establishment of a new Ku Klux Klan. But above all, the Leo Frank case showed as clearly as possible, that if the laws of civilization are to be respected, societies must eradicate the conditions which turn men into beasts. For if they do not, other Leo Franks will continue to appear, and suffer punishment for crimes for which no single individual can ever be wholly responsible.

APPENDIX A

JIM CONLEY'S LETTERS TO ANNIE MAUD CARTER

The following letters, written to Annie Maud Carter from Jim Conley, while he was in jail, are located within the PC Records.

Letter 1

My dear little girl:

I got letter and feel alright and is not made with you at all now, and I believe what you say about old Jim since I read your mother's letter, and I still love you and will always love you, but I must not have a wife that will tell people to kiss her ass.

Well, I will forgive you all about that now, and let us see how much we can love each other, Baby Doll. I love you more than your Mother do I believe, and I wish that I was there to tell you how much that I love you, don't you Honey? Baby, you ought not never said anything to me about your hipped, why my dick went clean across my cell, and I read it all night, your letter, I could not sleep. Honey, you was right when you said that you had up there what I wants. You know then that I would not be mad with you, when you said you could make me call you mama, well Baby, if you do, Papa will give you what it takes to bring the bacon home, and I like to hear you said that because I always believed you could do it, and believe you could make me love it, and if you do, I will try to give you anything in the world, if I have to go and take something, cause you have got to have it Honey. That made me love you that much more, you said you would hold from the bottom, why Baby I know you can do that. I just know that and every time read that my long

dick got on a hard, why I would like to hold it in one of your hiped this morning, and let you take everything that I have got there with me, because I love you so much and if I could put my sweet long dick in your hiped, I think I could make Mama call me Papa, one time. Honey could I get you not to get out on bond. Baby, I am afraid that you will give it a way before you can make Papa call you Mama. Baby, I will marry you, but I dont no about in there. I love you enough to, but you know they will talk about it. Well that all right Honey, don't worry, I will do just what I say I would, for I am pleased with you very much and think we could be happy, But I would like to wait til we get out of there, for I love you so much. Now, dear tell I will do now, when we get out and that not long, two weeks now, you be a good little girl for I am going to call you my girl and a little later I am going to call you my wife and give you whatever you wants, that is if you dont spent what I have got too fast off. I will do all I can in this world for you because I love you and knows that I can take care of you because I have many friends to not take care of you, and all of them are white friends. Now little girl, you ought to see how long my dick has got since I read your letter and it has got just as pretty as I can be, and it is yours. Be good now, let me hear from you. I would write more but Frink is hurrying me up, so by by, from

(Signed) James.

Letter 2

Now Baby Doll Papa got your letter and was very glad to hear from you, and will be glad to get your picture. Now Baby, you know we dont want to get mad any more, so you tell me now what is that, that somebody has told you a bought me. Let me know, it will be alright.

Dont hold it back because I love you so tell me know what it is. I wish I was up there when you was dressing so I could feel your ass. Baby I will give you the last 14 dollars that I have got right now if you will come down there and let me see it. Just let me look at it, and I know I will come all over myself. I have got the money right there waiting for you, if you dont believe it, come on down there and see, and if that aint enough, I am going to get some more in the morning and that if that aint enough, why just

wait til I get out and papa go and get what you want for your big fat ass.

Well Baby Doll you aint got to wait much longer that is if you dont get out on no bond. I know if you get out on bond, somebody will get it before I do and they will make you call them papa before you can make me call you mama. I want you to keep your ass right there because it is good and you told me this last night in your letter, that two hours fucking on your big fat ass would stop all of this argument. Well that right but you know that Papa cannot lay on your ass that long before you would be done made me come, if there ever was a man that want to lay on your ass that me, and make me love it and I will show you better than I can tell you what I do for you.

Now Baby if you dont get out on no bond or if you do get out on a bond you have that right hip for me cause if you hold your fat ass on the bottom and make papa go like a kitty cat then you have won a good man, that's me. I will try to give you this world, but if you let papa put his long ugly dick up in your fat ass and play on your right and left hip, just like a monkey playing on a trapeze, then Honey Papa will be done played hell with you. Then you will call me Papa all the time then.

Well Baby Mr. Gilliland was not there to let me know what we was talking about but I am going to do so, so dont worry now Baby. Do you really mean that you are going to get out on bond? I see that your Mother said that somebody was going to give something on your bond. Tell her that you dont wanto get out on bonds, because we are going to do what I say, cause I want to stick my long dick in your ass.

Well Honey this is alright now be a good girl and save your fat ass for me and will take care of it just as sure as I am (Blank). Give your heart to God and your ass to me for you mind. Well Baby, I just dont know what to think abought your case.

Well go and get out on bond, then pay your lawyers a little to keep it out of court, but if you dont get out on bond I dont think that they can do anything with you for you have got a good lawyer. I think you will get a new trial, so dont worry. If you dont get out on bond and dont

get no new trial and then go to a high court and then get a bond.

Baby, your case is not so much, you know that because the bond that they put you under is not anything. That negro man has got out on bond. You dont know if they did turn him a lose then the detectives must be trying to work it off on you. They may not dont like you.

Well I dont care if you did do it, or if you did not. I love you just the same, and if I was out you would get out too. For I would spend everything that I have got to help you and to help your Mother to get you out.

So you ask your lawyer do he think it would be best to get out on bond.

Well Dear dont worry about a thing for Papa love you and my step mother love you, so tell my step mother I say hello, so this is all, go to sleep now, Baby Doll, Sweet Dear, bye bye.

(Signed) James Conley

P. S. On back of page 2.

Miss Annie Carter Conley, got a fat ass and a sweet pee hole I do believe and they will be mine soon (blank) I will just want that ass, Honey.

P. S. On back of page 4.

James Conley.
Answer right away I write it tonight.

Letter 3

Well, baby doll papa has got your letter and was glad to hear from you,--to know that you are feeling fine. Well honey you know if we do wait, why we can love each other just the same and when we get out why all that I have got to do then is to go and get what I have got put up and give it to you. Darling I know you told me to judge well. That alright. Papa will do anuthing that you tell him but baby papa is

going to let you be boss always. You know that you want to, and I will let you have everything that I have got. So now dont worry honey. The time is not long. I am going to ask Mr. Gilliland again. He asked me did I have any money to pay the Pastor and to get the thing with. I told him yes, and I told him if they would let one of my friends come to see me I could send him to get some money for me. He said I better let that stay there until I get out. Well honey I think that would be best, but if you think it would be the best wait til we get all right. So you be a good girl until papa can see what Mr. Gilliland will say in the morning. He say that Mr. Roberts may not be there Monday.

He say he will get them things for us if we know any pastor that we could get and get him in there before anybody see him.

Well, baby, I dont know, I will let you be the boss all the way through, and I will do whatever you say. So By By, from James, dont worry, and dont hurry, just take your time and right.

Letter 4

Honey, I did not ask Dr. Ren to let you come up there because Mr. Billy Land is not there, but just save it for me because papa love you and -is going to help you if you dont get out on bond or dont get no new trial. Now, you be a good little girl until I can get up there, or until I can get some money. I have got the money all right but how is I going to get it.

Just to show you honey that I love you if I could get it I would do all in this world for you. So dont worry now. Time is not so long now before that I can show you better than baby. I sure wish that Mr. Gilliland was there so I could come up there with you and lay in your arms.

Honey--dont you think that you will go to no prison, because you wont. I know that because I love you so much and know what I can do for you for I have it to do for you. Now if I could get it that why I say dont worry you wont go nowhere that is if you be a good girl--I will help you. If

you dont be a good girl then I wont. I have got a negro watching you--Now do like I tell you be good and dont woory [sic].

Save it til I can come up there

Letter 5

(1st page)

Atlanta, Ga., Jan. 26, 1914.

My dear little girl--

I got your letter and I did not that you --- for you was playing --- your lime be-- to fall in hard--. Aint that so honey I dont think that you meant for me to come up If you do I will try to come up there tomorow So dont worry I love you just the same All I want is a woman that can work her ass and I believe you can. So dont worry about that other-- No woman- and I dont want her I want you That is if you will be a good little girl. "Over" on next page" Honey I will tell you what my lawyer say I have not got_____.

2nd page.

just to fill out your line --- You have and _____ your fat ass _____ just as far up in _____ ass I can get nuts and all Now baby I am not made with you, so dont worry Do like I do Dont worry Just a good fucking will make you feel all _____ playing cards so _____ you forget it You was not thinking that much abought me Well that is all right I thought of you so I have not got anyting to say about that woman for I just knows her and that is all _____.

3rd page.

forgot to and _____ I say but that it is all right I love you just the same and love nobody but you I have not told you how much I love you yet honey It would brake my heart to tell you because you would mistreat me.....When_____ I love you so much sweet dear darling honey baby Papa want to fuck you so bad and give you a good fucking to your _____

Over (3) James.

because honey I love you so much me. I love feel
 now good wish you there to get I am drinking. Dont
 worry honey. Dick and a so got to sleep now . Let
 me hear you say that you worrying any more. You good
 pussy little girl_____you.

Letter 6

Honey, read til you come all over yourself. Well
 dear how are you feeling tonight. I hope you are not
 worrying at all, so go to sleep and let your good fat ass
 rest til I can get on it and that wont be long, baby,
 because we will get out all right and we will marry and
 live happy. Now tell your mother to look for a good house.
 A first class one I am not lying honey. What take to pay
 for that house I have got it.

What it take to make you happy and give you every-
 thing you want and make you keep your fat ass at that four
 room house dam if I aint got it too and what I am talking
 about nobody aint going to spend it but Miss good fat ass.
 Good pussy Annie Maude all I know that your ass is fat you
 need not say that it aint and I know your pussie is good and
 fat and warm and hairy. How do I know because my dick stay
 on a hard all the time.

When you pass this door my dick say here she go and
 do you know little girl that I love you to my heart. I
 love you more than any man that you ever went with and how
 I can love you so much is because I believe that you will
 make a good wife for me, and not to tell you no lie I will
 be good to you and will give you anything that you want to
 make you be good to me. I am not talking just to hear
 myself talk. I am talking this because I know that I can
 do and what I have got to do with because you know if a man
 get you he is got to do if he want you to treat him right,
 and I

Letter 7

Now I tell you Miss Annie you dont have to write and ask me do I like that not a dam tall. I told you just what I heard so you must know that whoever told me that was tell the truth. I guess I dont know and dont give a dam and if you dont want to write down there to me I dont care. But I will say this I love you all right and have loved every since we was at court together.

I am surprised at you Annie to hear you say for somebody to kiss your ass.

So far as you say that your mother told you not to eat or drink anything from Jim Well that all right I believe you are telling the truth about you dont care anything about him and I know that he is not your husband and not me but I would like to be if we were not in there for I love you and has always told you so and was just thinking me and Mr. Gilliland how to do. Of course I know that you never did love me and know that you are not crazy about marrying me for I was the one crazy about marrying you. You should know that I would like for you to have been my wife because I would have been pleased with you and knows that you have had a good time in your life and will change now and be a good girl and you and I could get along fine and be happy. But I did not know that you tell people to kiss your ass and I know that you are not no fool miss and I am not no fool. And I dont listen to everything that the boys tell me for I just told you just what I heard and did not tell you that it was the truth and I know that you dont have to tell me no lie for you are your own woman and you cannot mess me up for I love you too much and would do anything in this world for you. I love you and love you to my heart and if you dont love me I dont give a dam and you dont have to tell me to stop writing up there. Of course if you want me to then I wont. But, I will love you just the same. I have been writing some good letters up there too. To let you know how much I love you and I mean it well. I guess I will try to forget you. It will take me a long time for every time I read your letter I think that much more of you. Well that alright if you did not want me you did not have to get on your head. I wish you had wrote your smart letter a little sooner before Mr. Gilliland left. If you like this--- write. Please answer all of

your letter. I would like to hear from you. I am not mad at all with you and you say somebody is telling you something around here about me.

Why--- nobody cant tell you anything about me for nobody around there knows anything wrong about me and what they do know they know I am a good man. Tell me what some of them are saying _____ Answer Miss Smart.

Back of Page (2)

To Miss Smart. Answer if you like for I am not no fool either. Understand it too and I am not mad with you.

Letter 8

Atlanta, Ga., February 14, 1914

Miss Annie Conley, 92 Tatnall street, Ga.

Well dear I just dont know what to say. You say you are made with me and it hurts me to my heart. Did I tell you that love you and love nobody but you and I think if you go back on me I dont know what to do. So baby dont be mad with me please because I think that you and I will be happier some day. I know we will Annie if you will be a good little girl around there which I know you will if we ever get out of there. Because I will do all that a man can for you to make you be good for I know that you like a good time and have had a good time in your life and I believe that you will change now and do right. Sweet dear dont worry for I love you more and more. Every day that I hear something good about you and I have always believed that you will make a good wife to me or any man that will treat you right and honey I know that I can do that and I was not trying to fool you dear. I have always loved you and will always love and if you be a good girl you will always have a good friend because I am a man that loves and will give you all that you want and that . You know that I will. You find out I will give you what you want then you will love me more. But I tell you now dear from my heart that I can do for you a long time for I know what I have got you think that I would be in this case and not get anything out of it. All that I would like for you to do is to be a good baby and dont let

anybody tell me anything on you no more I would like to you all in my arms which would make me do more for you. Because I think you could put it where it would go to me head, dont you? and I believe that you could put it to some man and make him do right for you and I am one of them too. Because I have got it in my head that you can do it to me if you do, I will go out and bring back the money and it would not be long for I am a man that tell the truth about what I will do if I love a woman. I will do for her I say that I love you and love nobody but you and know what I can do for you. If I did not love you I would not write to you at all. That's the man that I am

Well honey the time aint long as it have been with me and I am going to beat my case so help me God. They have got to try me in this court or turn me a lose one. So dont you worry. If I get out first I will do all I can for you if you dont get no new trial in this court, just to show you how much I love you I will help to carry it a higher court if want me too. I just as well to help you as to help someone else for some one is going to spend what I have got. Now, baby that woman that you saw talking to me is not anuthing to me and could not give me any money, for I could give her some money like I am now. I just sent around to some of my friend just to see where they are at. I could give them something now and if I could get where you is I could give you what you want here. Because I think that much of you and is pleased with you. If you be a good little girl because when I hear things around there about you it go to me heart. Just like I told you that I love you to my heart and if you do love long will it. Of course you like a good time just like anybody else and I like a good time and what take to give you a good time, I have got it. I wish I was out there where you was are you in there with me . Now I have wrote you all the paper that I have got. Now you know that I love you and will do all in this world for you. If I could get you in there I could make you love me or try like hell one. For I love you with all the love in the world. If I didn't make you love me I would by love from you if it takes every dollar I have got.

P.S. at top of page (8), Annie I spelled my words so that you can understand it. I am not writing so fine you know

From James which is scratched.

P. S. On page (4). Now tell me something good baby doll- from James Conley.

Now I tell you Miss Annie you dont have to write and ask me do I like that. Not a dam . I told just what I heard so you must know that whoever told me was telling the truth.

Letter 9

Well honey how are you this time. I hope you are feeling fine for I am dear. Why do you say that I need what I have got. It is not because you cant get to send me any . I would have sent you some money but you know that it is to hard to send my money to you of what I want to send because you are up there and I am down there. I cant tell you what going. You knows that your self of course. I could send you some change Annie dear. What I want to send I want to send something that will do you some good and I would like to help you in your case all that I could. But, you have not been a good little girl, so they tell me. Honey it would take me a long time to spend what I have got in my cell and if I did spend all what I have got I could get more for I have got it and if I was out there with you I could give you whatever you want because I really love you baby and would like to let you spend some of my money because somebody is going to do it. But I will just let you do what you want to. If you want to marry right there I will or if you. So write now and let me know what a bout in there. Want to wait til you get out I will then.

So dont worry I just let you think but dear if you really mean what you say about it. I will do all that I can do for you and I knows what I can do for you because nobody knows I have got but me and Frank and God and Frank he cant say anything for he knows where I got it from -----so. Now sweet dear you be a good little girl for my time is not long now---So if you dont want to marry in there why I hope we will be good friends until we get out. It hard to tell about that. Have you got to wait til the last of Feb. before you be tried. Somebody told me you did well of you have. I hope you dont let the chief cook take you away. I heard you is loving him, is that so. If it is, me and you must do something right away for I am loving you now with all the love in the world and will do my best to make you happy.

Letter 10

Get it down to two or three years then motion for a new trial in a still high court _____ then get out _____ it dont cost much. It will be the 15th of next month before you will get a hearing from this court and that aint long. I think when that woman come back there I will send her to get some money for me ____ If she will bring it back and I will let you have some money to help you as I may get out before the 15th of next month and if I get out I will help you all I can Annie Dear, because I love you so much-If I tell anybody where my money is they will go and get the whole dam bunch-Then I never would get it and the State may be so long paying me, then I would not know what to do then but dont you worry.

APPENDIX B

THE BALLAD OF MARY PHAGAN

Franklyn Bliss Snyder, "Leo Frank and Mary Phagan,"
The Journal of American Folk-Lore, XXXI (1918), 264-66.

Little Mary Phagan
She left her home one day;
She went to the pencil-factory
To see the big parade.

She left her home at eleven,
She kissed her mother good-by;
Not one time did the poor child think
That she was a-going to die.

Leo Frank he mer her
With a brutish heart, we know;
He smiled, and said, "Little Mary,
You won't go home no more."

Sneaked along behind her
Till she reached the metal-room;
He laughed, and said, "Little Mary,
You have met your fatal doom."

Down upon her knees
To Leo Frank she plead;
He taken a stick from the trash-pile
And struck her across the head.

Tears flow down her rosy cheeks
While the blood flows down her back;
Remembered telling her mother
What time she would be back.

You killed little Mary Phagan,
It was on one holiday;
Called for old Jim Conley
To carry her body away.

He taken her to the basement,
She was bound both hand and feet;
Down in the basement
Little Mary she did sleep.

Newtley was the watchman
Who went to wind his key;
Down in the basement
Little Mary he did see.

Went in and called the officers
Whose names I do not know;
Come to the pencil-factory,
Said, "Newtley, you must go."

Taken him to the jail-house,
They locked him in a cell;
Poor old innocent negro
Knew nothing for to tell.

Have a notion in my head,
When Frank he comes to die,
Stand examination
In a court-house in the sky.

Come, all you jolly people,
Wherever you may be,
Suppose little Mary Phagan
Belonged to you or me.

Now little Mary's mother
She weeps and mourns all day,
Praying to meet little Mary
In a better world some day.

Now little Mary's in Heaven,
Leo Frank's in jail,
Waiting for the day to come
When he can tell his tale.

Frank will be astonished
When the angels come to say,
"You killed little Mary Phagan;
It was on one holiday.

Judge he passed the sentence,
Then he reared back;
If he hang Leo Frank,
It won't bring little Mary back.

Frank he's got little children,
And they will want for bread;
Look up at their papa's picture,
Say, "Now my papa's dead."

Judge he passed the sentence
He reared back in his chair;
He will hang Leo Frank,
And give the negro a year.

Next time he passed the sentence,
You bet, he passed it well;
Well, Solister H. M. [Dorsey]
Sent Leo Frank to hell.

APPENDIX C

FREEMAN'S TALE

An alternate explanation for the murder of Mary Phagan was published in 1923 when alleged data about Jim Conley's participation in the mystery came to light. The information had been received eight years earlier by Governor Slaton, from a questionable, but perhaps important, source. In 1915, a Negro prisoner, identified only by the name, "Freeman," thought that he was dying in the federal penitentiary located in Atlanta, and revealed what he claimed to have known about Mary Phagan's death. Freeman made his statement to a prison doctor, who relayed it to Governor Slaton.

The narrated story follows: Freeman recalled playing cards with Jim Conley in the basement of the pencil factory on the day of the murder. Shortly before noon Conley went up the ladder to the main floor. After a short while Freeman heard muffled screams. Inquisitive, he climbed to the first floor and saw Conley struggling with someone. Frightened, Freeman returned to the basement and left the building through a rear door. Later that afternoon, Conley

went to Freeman's home and said that he needed \$3 but was short \$1.80. In return for the money, Conley offered his friend a woman's mesh handbag. Freeman obliged. The following day, however, he read about the murder and Mary Phagan's missing mesh bag which contained her \$1.20 wage. Fearing involvement, Freeman gave the mesh bag to a friend and admonished her to hide it in a safe place. He then fled the city. Within two months, however, he was convicted of a federal crime, and imprisoned in Atlanta.¹

Why newspapers published Freeman's story for the first time in 1923, or how they obtained this information, was never explained. But former Governor Slaton, the ex-prison doctor, and one of the Georgia Prison Commissioners verified, in 1923, that they had heard the tale in 1915.² An Atlanta Constitution report noted "that proven inaccuracies in [Freeman's] story had discredited it."³ Unfortunately the Constitution did not elaborate.

¹The Baltimore Sun, October 2, 1923, "Frank's Prophecy of Vindication Comes True 10 Years After Georgia Mob Hangs Him as Slayer," The Jewish Advocate (Boston), XLII (October 18, 1923), 20; AJ clipping, n.d., probably October 1 or 2, 1923, Frank Papers, Brandeis.

²AC, October 2, 1923, p. 7.

³Ibid.

Amazingly, The Atlanta Georgian had also received part of Freeman's tale, although not identified as such, in June, 1913, before Frank had gone to trial. On June 6, the Georgian headlined a front page account: "REPORT NEGRO WHO SAW PHAGAN ATTACK" and related how a federal prisoner was about to be returned to Atlanta by a Pinkerton detective. The Negro in question, according to the Georgian, had allegedly been shooting craps with Conley in the factory basement on the day of the murder. Conley, having lost his money and in a half-drunken stupor, then allegedly left the basement and attacked Mary Phagan, who had just come down from Frank's office after collecting her pay. The Georgian could not verify the report and subsequently dropped the story.¹

Additional corroboration for Freeman's tale came in 1959 when an Atlanta attorney published his memoirs. Relating how he knew of Frank's innocence, the attorney, A. L. Henson, claimed that Conley had confessed to his lawyer that he had been drinking in the factory basement on the day of the murder. According to Henson, Conley had also recalled having seen a girl approach him on the main floor, remembered struggling with her, and then his mind

¹AG, June 6, 1913, p. 1; June 10, 1913, p. 1.

went blank. When Conley revived, he was sitting opposite a dead girl in the factory basement, but could not remember anything that had transpired in the previous few hours.¹

Henson's narrative fits well with that of Freeman's tale and the story published in the Georgian, but if his version is correct, one wonders why Conley's lawyer had not made this information public in 1914, when he announced his belief in Conley's guilt.

¹Allen Lumpkin Henson, Confessions of a Criminal Lawyer (New York, 1959), p. 63. Other facts reported by Henson vary from contemporary reports and I cannot vouch for his accuracy. In an interview with Samuel A. Boorstein, on October 12, 1953, John Slaton admitted that he had been told by one of Hugh Dorsey's law partners, that Jim Conley's lawyer believed that Conley committed the murder. Memo of a conversation had by Boorstein with Slaton, Anti-Defamation League files, Leo Frank folder, New York City.

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¹The original stenographic transcript of the trial does not seem to be in existence any more. The Brief of Evidence, however, was certified by both the prosecution and the defense as being an accurate record of the proceedings of the trial. It does not include any of the questions asked by the attorneys, nor does it record any of the spontaneous outbursts of the courtroom spectators.

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Personal Communications

A. Interviews

- Alexander Brin, in Boston, August 15, 1964. Mr. Brin covered the Frank case for the Boston Traveler in 1915.
- Harold Davis, in Atlanta, January 24, 1964. Mr. Davis is an editor of The Atlanta Journal.

Alexander Miller, in the offices of the Anti-Defamation League, New York City, September 15, 1964. Mr. Miller was at one time the regional director of the Anti-Defamation League in Atlanta. In 1953 he sponsored a study of the Leo Frank case.

McLellan Smith, in Washington, April 2, 1964. Mr. Smith covered the Frank case as a cub reporter for The Atlanta Georgian. He was at the press table during the trial.

B. Telephone Conversations

Marjorie Merlin Cohen, February 9, 1964, New York City. Mrs. Cohen was interested in the Frank case as a graduate student in Georgia. She was refused access to the records of the case by Rabbi David Marx.

Franklin Garrett, in Atlanta, January 24, 1964. Mr. Garrett is the author of Atlanta and Environs, and one of the best versed people on Atlanta's history.

Wilbur Kurtz, January 24, 1964, in Atlanta. Mr. Kurtz has resided in Atlanta since 1913. He is a student of the city's history and extremely well versed in the subject.

Louise Samuels, October 19, 1963. Mrs. Samuels is co-author of Night Fell on Georgia.

C. Letters from:

Irving M. Engel, February 19, 1964. Mr. Engel is a former President of the American Jewish Committee.

Ralph McGill, January 28, 1964. Mr. McGill is publisher of The Atlanta Constitution.

Harry Golden, January 24, 1966. Mr. Golden has written about Frank in his book, A Little Girl Is Dead.

Alton DuMar Jones, May 21, 1964. Mr. Jones' Ph.D. dissertation is "Progressivism in Georgia."

Merlo J. Pusey, March 3, 1963. Mr. Pusey has written the definitive biography of Charles Evans Hughes.

DeWitt H. Roberts, February 14 and 19, 1964. Mr. Roberts did a study of the Frank case for the Atlanta office of the Anti-Defamation League in 1953.

McLellan Smith, February 24, 1964. Mr. Smith covered the Frank case as a reporter for The Atlanta Georgian.

Alden Todd, January 19, 1964. Mr. Todd has written a book on the confirmation of Louis D. Brandeis to the United States Supreme Court.