

Notes on the Case
of
Leo Max Frank
and
Its Aftermath

by
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TABLE OF CONTENTS

A Summary of the Case of Leo Max Frank and Its Aftermath	1
Factors Which Contributed to Frank's Conviction	2
Notes Found Near Mary Phagan's Body	3
Diagram of National Pencil Company Building Showing Prosecution's Reconstruction of Murder	4
Map of Second Floor of National Pencil Company Factory Showing Leo Frank's Office, Mary Phagan's Work Place and Site of Murder	5
Review of Trial by Atlanta Newspaper Reporter Present Throughout Proceedings	6
Discussion of 1982 Affidavit of Alonzo Mann	7

A SUMMARY OF THE CASE OF

LEO MAX FRANK

AND ITS AFTERMATH

Life in Atlanta of 1913 was neither the best of times nor the worst of times. It was an era far different from the Atlanta that we know today. Full of boosterism, yearning to achieve its first half-million population level, a bustling commercial and distribution center, Atlanta had grown significantly since the close of the War. Indeed, it had begun to accumulate a smattering of light industry, including the National Pencil Company located at 37-39 Forsyth Street. This four-story building, plus basement, employed some 100 people, mostly female, in the manufacture and distribution of pencils, variously known as "Magnolias," "Jeffersons" and the like. It was poorly ventilated, dirty, its windows clouded over by grime. Its laborers were paid a rate of \$.10 per hour for ten and twelve-hour days, plus a half day on Saturday. Wages were hourly and paid only when work was available. It was, in short, a sweat shop of the Northern urban variety.

Georgia, like the rest of the South, had not recovered from the ravishes of the Civil War. Confederate currency and government obligations had been repudiated. Uncompensated emancipation, which had destroyed the bulk of the South's capital investment, tremendous property destruction, an incredible toll of life (exceeding percentage wise that of any of the European powers of World War I or World War II), high tariffs, discriminatory freight rates and redemption of Northern green-backs in gold left little hope for capital accumulation or for the the establishment of heavy industry in the South. Indeed, Southern states were forced to contribute to Union veteran pensions,

while carrying Confederate veteran benefits alone. This reduction of the South to colonial status had the inevitable effect of resettling families from small towns and farms into urban areas where wives and children were forced to work to help the family survive. One of these was the family of 13-year old Mary Phagan, which had moved from Marietta, the home of her childhood, to the Bellwood section of Atlanta. Mary had taken employment at the National Pencil Company, working in its second floor metal room fixing metal caps on pencils by machine. Her last day of work in the fatal week ending April 26, 1913, was Monday, when she was told not to report back to work until a shipment of metal had arrived. On Saturday, April 26, she set forth from home to collect the wages due her, some \$1.20 for Monday's work at the usual Saturday paytime of noon at the Company. It was her intention to watch the Confederate Memorial Day parade that afternoon before returning home. Her Sunday plans included participation in her Baptist church's bible contest. An unusually attractive child, Mary was seen leaving the trolley car and heading for the company at or shortly after noon. Her body was discovered at about 3:00 a.m. the next morning in the basement of the company by the night watchman, Newt Lee. She had been struck, apparently by a fist, about the left eye, had suffered a nearly simultaneous 1 1/2-inch gash running from "down to up" in the back of the head (the blow had apparently rendered her unconscious but had not fractured the skull) and had been strangled by a cord which was embedded in her throat with her tongue protruding some inch and a half from

her mouth. She had been raped, her undergarments were torn and bloody and a piece of undergarment had been wrapped around her head. She had been bitten on her shoulder and breast. Her body had apparently been dragged across the basement floor, judging by the fragments of soot, ashes and pencil shavings on the body and by the drag marks leading from the elevator shaft to her final resting place. There was no evidence, such as skin fragments or blood under her fingernails that she had inflicted any harm on her assailant. Two notes scribbled on Company order carbon forms were found near the body, reading as follows:

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

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.

Interrogation of Newt Lee by the detectives revealed that he had arrived for work at 4:00 p.m. on Saturday as ordered by the factory superintendent, Leo M. Frank, found the doors locked, let himself in with his pass key but was sent away by Frank who, unexpectedly walked over to Lee, "bustling out of his office," rather than ordering Lee to report to him as Frank customarily did. He sent Lee away from the factory, ordering him not to report until 6:00 p.m. Lee did as he was told, returning at the later hour, and shortly after was followed by J. N. Gantt, a white former employee of the Company

who was also a friend of the Phagan family. Again, Frank appeared startled and frightened to see Gantt who, after some objection was ultimately allowed into the factory in the company of Lee to retrieve a pair of shoes that Gantt had left behind.

Frank thereafter left the factory, but called back at 7:00 p.m. to inquire of Lee if everything at the factory was "all right." This type of call was without precedent by Frank. Lee testified that he checked the basement during his rounds every hour, but that because the single gas jet had been turned down quite low, he did not discover the body until he proceeded to the Negro bathroom in the basement at about 3:00 a.m. Lee called the police who arrived in ten minutes, accompanied by an Atlanta Constitution reporter who was sleeping off a hangover in the police car. Lee also called Frank's house but got no response. An early investigation discovered the notes which were read out loud. No blood was found near the ground or the sawdust around the body.

Later in the morning about 6:30 a.m., Frank was reached by telephone by the police, repeated earlier calls by both Lee and the police not having been answered. When collected by the detectives, Frank appeared extremely nervous, asked to eat his breakfast before leaving and denied knowledge of a "little girl" named Mary Phagan. He repeatedly asked for a cup of coffee. One of the detectives suggested a shot of whiskey but was told Frank's father-in-law had drunk it all the night before for his indigestion. At the morgue, Frank scarcely looked

at the body, would not enter the room where it lay and continued to be in a nervous, agitated state. Arriving at the factory, Frank consulted his time book and reported, "Yes, Mary Phagan worked here. She was here yesterday to get her pay."

"I will tell you about the exact time she left here. My stenographer left about 12:00 and a few minutes after she left, the office boy left and Mary came in and got her pay and left."

Later at the coroner's inquest, Frank would swear under oath that he heard Mary Phagan come into his office Saturday "between 12:05 and 12:10, maybe 12:07", looked up and gave her her pay, and when she asked if the metal had arrived (so that Mary would know whether to come to work on Monday) he replied, "I don't know."

Mary Phagan's machine was next to the dressing room and, in going to the bathroom, the men who worked on the second floor had to pass within two or three feet of it.

Pinkerton Agency Detective Scott had been assured by Frank that from the time he arrived at the factory from his visit to Montag Brothers office Saturday morning until 12:50 p.m., the time he went upstairs to the fourth floor of the factory, he had been inside of his office the entire time. Frank repeated under questioning that he was inside his office "every minute" from 12:00 to 12:30. Again, on Monday morning, April 28, Frank told the Chief of the Atlanta detectives that "the office boy and the stenographer were with me in the office until noon. They left about 12:00 or a little after."

At the factory Sunday morning, Frank confirmed that the time slips punched by Lee were correct. However, the following day he announced that the time slips contained errors. When Frank arrived at police headquarters for further questioning on Monday morning, he was preceded by his attorneys, Luther Rosser and Herbert Haas, who had evidently been contacted Sunday. Frank advised the police that both Lee and Gantt had been at the factory at 6:00 p.m., thus causing their arrest. On Tuesday night, Frank acceded to the police suggestion that he confront

Lee alone, which he did, but announced that he was unable to change Lee's story. Frank's assertion that the time sheet had not been punched correctly would have given Lee an hour to have gone to his house and come back. At Lee's house, a blood-stained shirt was found under a barrel of clothing.

During his conference with Lee, when rejoined by the detectives, Frank was "very squirmy in his chair, crossing one leg after the other and didn't know where to put his hands; he was moving them up and down his face . . . he breathed very heavily and took deep swallows and hesitated somewhat."

Frank advised Harry Scott, superintendent of the local branch of the Pinkerton Detective Agency, who was employed by Frank for the pencil factory (but under the licensing requirements of the City of Atlanta had to work in conjunction with the Atlanta police department, revealing to them all evidence it uncovered) that Gantt "knew Mary Phagan very well." According to Pinkerton Chief Scott, "Frank seemed to lay special stress on it at the time."

When the factory opened for work again early Monday morning, a machinist promptly reported that he had found a blood spot at the west end of the dressing room on the second floor which had not been there Friday. The spot was described as being four or five inches in diameter with little spots trailing behind from the rear, six or eight in number. They were discovered between 6:30 and 7:00 a.m. Kaskoline or pot ash was smeared over the spots. In addition, hair was found on the handle of a bench lathe, swinging down on the handle of the machine whose operator had used it

until quitting time on Friday, April 25, at 5:30 p.m. The piece of work on which the operator had been working was still in the machine undisturbed.

The discovery of the new blood spots was corroborated by the sweeper who swore that the spots were not present at closing time on Friday. A female worker corroborated the presence of the blood spots, describing them as being "as big as a fan" in front of the girls' dressing room, and swore the spots had not been there Friday. In addition, it was pointed out that strands of cord of the type used to strangle Mary Phagan hung near the dressing room, readily available for bundling up pencils.

In time, Frank himself was arrested about 11:30 a.m. Tuesday morning, April 29. Again, it was reported that his hands were quivering very much and that he was very pale.

Frank repeatedly stated:

"She (Mary Phagan) came in between 12:05 and 12:10, maybe 12:07 to get her pay envelope, her salary. I paid her and she went out of the office."

The police obtained a statement from Mineola McKnight, the Negro cook in the Frank-Selig home. She was questioned at length and then signed an affidavit in the presence of and attested by her attorney, G. F. Gordon.

Among other things, she recited in the affidavit that when Frank came home that Saturday night he was drunk and that he talked wildly and threatened to kill himself, forcing his wife to sleep on the floor.

On the next Saturday, Atlanta detectives received a windfall in the appearance of Monteen Stover. She explained

she had come for her pay, not having collected it on April 26 because of Frank's absence from his office.

"It was five minutes after 12:00. I was sure Mr. Frank would be in his office, so I stepped in. He wasn't in the outer office so I stepped into the inner one. He wasn't there either. I thought he might have been somewhere around the building so I waited. I went to the door and peered further down the floor among the machinery. I couldn't see him there."

"I stayed until the clock hand was pointing exactly to ten minutes after 12:00. Then I went downstairs. The building was quiet and I couldn't hear a sound. I didn't see anybody . . ."

At the Coroner's Inquest, Frank (under oath) generally repeated his story of his whereabouts on April 26, including Mary Phagan's arrival and departure from his office shortly after noon, and the following exchange took place:

"Were you out of the office from the time the noon whistles blew until Quinn came in?" (c. 12:25)

"No."

At the Coroner's Inquest, Monteen Stover testified "I was at the factory at five minutes after 12:00 that day. I stayed there five minutes and left at ten minutes after twelve. I went there to get my money. I went into Mr. Frank's office, he was not there. I did not see or hear anyone in the building. The door to the metal room was closed. I looked at the clock

on my way up. I went from the first office into the second office."

At the conclusion of the Coroner's Inquest on May 8, the jury returned a verdict of murder at the hands of a person or persons unknown. Frank and Lee were returned to custody in Fulton Tower. On May 24, Solicitor General Hugh A. Dorsey, Sr., asked for a true bill against Frank after evidence had been presented to the grand jury. The jury accordingly returned a no bill against Lee and an indictment against Frank, charging him with first-degree murder.

The case of The State of Georgia against Leo M. Frank came on for trial at Atlanta in Fulton County Superior Court on July 28, 1913. Presiding was the Honorable L. S. Roan, a veteran jurist of wide experience and respect. Solicitor General Dorsey appeared for the State assisted by Special Assistant Frank A. Hooper, Sr., and Assistant Solicitor E. A. Stephens. Frank was represented initially by Ruben A. Arnold, Luther Rosser, Stiles Hopkins and Herbert Haas. Dorsey never evidenced any doubt of Frank's guilt nor did apparently the general population of Atlanta which had been following the story in the vivid newspaper accounts. One informal poll indicated that four of five Atlantans responding held this view. The courtroom was daily crowded with extra persons waiting in line in the morning to find a place. However, there was no report in the daily papers nor in the accounts and motions of the various attorneys during or after the trial of any "mob" influencing the jury by external noise or otherwise, until the

final day of the announcement of the verdict. Even then, affidavits of court officials and the jurors themselves rebutted the suggestion that they had heard or been influenced by demonstrations or other noises, nor was a mistrial or change of venue sought by defense counsel during the trial.

The State's case simply put was that Frank had previously seduced and taken indecent liberties with a number of other young factory girls and had made unsuccessful advances on Mary Phagan. Frank had refused to send her pay envelope home on Friday by a fellow employee and hence knew that she was coming into the factory sometime on Saturday after 12:00. Frank had trained and now utilized again the factory's Negro sweeper, Conley, to act as a lookout to see that he was not interrupted during his immoral activities in the factory. Mary Phagan arrived in Frank's second-floor office shortly after noon on Saturday to collect her pay, was lured to the metal room by Frank and was there assaulted and murdered. During the time of the assault, Monteen Stover arrived at Frank's office at 12:05, checked out both offices and found them empty and then left precisely at 12:10. Thereafter, at approximately 12:15, Frank called Conley to the metal room to assist him in moving Mary Phagan's body to the basement via the elevator. Thereafter, they returned to the second floor office where Frank dictated the notes for Conley to transcribe. Frank then went home for lunch, returned to the office, and remained there until 6:00 p.m., waiting for Conley to return to burn the body.

A jury was selected in four hours. All were white male

and subjected to the usual disqualifications on the basis of having already formed conclusions with regards to the case and having reservations about capital punishment. Both sides had the right to strike for bias, plus ten peremptory strikes for the state and twenty peremptory strikes for the defense. All jurors were residents of Atlanta, except W. M. Jeffries who resided in Bolton. Their average age was 35 years and five months. They were lodged at the Kimball House during the trial.

Leo Frank Trial Jury

C. J. Basshart	24	Single	Pressman	Atlanta
A. H. Henslee	36	Married	Head Salesman Buggy Co.	Atlanta
J. F. Higdon	42	Married	Building Contractor	Atlanta
W. M. Jeffries	33	Married	Real Estate	Bolton
M. Johenning	46	Married	Shipping Clerk	Atlanta
W. F. Medcalf	36	Married	Mailer	Atlanta
J. T. Ozburn	36	Married	Optician	Atlanta
Frederick V. L. Smith	37	Married	Paying Teller	Atlanta
D. Townsend	23	Married	Paying Teller	Atlanta
F. E. Windburn	39	Married	Railroad Claims Agent	Atlanta
A. L. Wiseby	43	Married	Cashier	Atlanta
M. S. Woodward	34	Married	Cashier-King Hardware	Atlanta

The elements of evidence earlier described in the detectives' reports and at the Coroner's Inquest were introduced in the trial, but I will not repeat them here.

Testimony set forth that, besides the ruptured hymen, the victim's vagina definitely showed evidence of violence before death as evidenced by internal bleeding. The epithelium was pulled loose from the inner walls and completely detached in some places. The violence that produced this condition had occurred before death.

Mineola McKnight's husband--she was the Frank-Selig maid--gave testimony that Frank came home about 1:30 p.m., did not eat lunch and left the house after only 5 or 10 minutes.

The State star witness, of course, was James Conley, the stocky Negro factory handyman. He testified that he had worked in the pencil factory for a little over two years; that on Friday afternoon at about 3:00 Frank came to him on the fourth floor where he was working and requested him to come to work the fateful Saturday morning because there would be work for him to do on the second floor. Upon arriving at work, he testified that Frank said, "You are a little early for what I want you to do for me, but I want you to watch like before, like you have been doing on the rest of the Saturdays."

Then Conley explained this conversation by reciting that he had stayed on the first floor on various Saturdays and on Thanksgiving Day in 1912 to watch while Frank and "some young lady" were "chatting" on the second floor. He said that he and Frank had worked out a signal code by which Frank would stomp

on the floor for Conley to lock the hall door and would later whistle for Conley to unlock the door so the girl could get out of the factory.

Conley testified that while keeping watch he observed the comings and goings of various people upon the return of Frank from Montag Brothers. He identified Mary Phagan as entering the building and going upstairs; that he heard footsteps going towards Frank's office and then the footsteps of two people going toward the metal room; that he subsequently heard a woman scream and heard no further sounds. He then recited the arrival of Monteen Stover, her trip upstairs, her return downstairs and departure. Next, he heard someone run out of the metal room and then "tiptoe" back into it. He then dozed off to sleep, but was awakened by Frank's stomping. He locked the door and remained downstairs until he heard Frank's whistle. He then went upstairs where he saw Frank standing at the door of his office in an agitated condition with a red face and "looked funny out of his eyes." In one of his hands, Frank was holding a piece of white cord like that used to strangle Mary Phagan. Frank then recited to Conley "she came into my office a little while ago and wanted to know something about her work and I went back there to see if the little girl's work had come, and I wanted to be with the little girl and she refused me and I struck her. I guess I struck her too hard and she fell and hit her head against something and I do not know how bad she got hurt." To this Conley reported that Frank added, "Of course, you know I ain't built like other men." Conley then testified that he followed Frank's orders to go the metal room and bring the body out. He reported that he found a girl lying on the floor with a

rope around her neck and another piece of cloth tied around her head, apparently to catch the blood. He testified that the clock at that point read four minutes to one. Conley then reported that he wrapped the body in a piece of cloth, but dropped it near the dressing room. He then, with Frank's help, carried the body to the elevator, the two of them lowered the elevator to the basement and rolled the body out onto the floor and left it. They then went upstairs to Frank's office where Frank dictated the notes. Frank then reportedly told Conley, "Why should I hang? I have wealthy people in Brooklyn." To Conley's question about his own future, Frank reportedly replied, "Don't you worry about anything, you just come back to work on Monday morning like you don't know anything and keep your mouth shut. If you get caught, I'll get you out on bond and send you away. You can come back this evening and do it" (i.e., dispose of the body by burning it in the furnace). Conley then reported that he proceeded to get drunk, and went home to sleep, rather than returning to the factory. However, he further testified that the next time he saw Frank was on the Tuesday morning following the murder, again on the fourth floor of the factory. Frank advised, Conley swore, "Keep your mouth shut. If you had come back here Saturday and done what I told you, there wouldn't have been any trouble."

Conley testified that he had observed Frank in compromising positions in his office and in the back room with different women in positions that gave Conley to understand what Frank had meant by stating that he was "not built like other men." Conley also identified a man named Dalton and a woman named

Daisey Hopkins as being people who had participated in sexual encounters in company with Frank.

On cross-examination, Conley cheerfully admitted to having lied on numerous occasions, including the statements submitted to police prior to his full confession in late May. He said that his denial of knowledge of the murder was to protect Frank, because Frank was a white man, his boss and had been good to him. Conley also admitted to a number of previous arrests which had resulted in fines of nominal amounts for drunkenness or disorderly conduct and one sentence of thirty days for an altercation with a white man.

Subsequently, Dalton appeared and swore that he and Frank had frequently had sexual encounters with women at the factory, with Conley acting as "look-out". On cross-examination, Dalton admitted that he had once been convicted and served a term for larceny. Other witnesses testified to Frank's making propositions to women, harassing female employees, etc.

The defense produced nearly 200 witnesses in an effort to corroborate Frank's statement as to where he was during the time schedule he had outlined and to discredit the state's witnesses. In addition, so as to offset the testimony concerning sexual liaisons in the factory as well as Frank's alleged misconduct with female employees, it was determined to establish Frank's good character which, of course, carried with it the opportunity for the prosecution to introduce subsequent evidence as to Frank's bad reputation and character. These witnesses generally bore out Frank's story but left unaccounted for the time between noon and 12:45. Cross-examination developed that all

of them were either employees of Montag Brothers, National Pencil Company, relatives by marriage of Frank's, or Frank's close friends. The statement by Lemmy Quinn, a factory foreman, who had appeared in a later version of Frank's story as being in his office at 12:20, was effectively demolished on cross-examination and by the testimony of subsequent witnesses who reported that he advised them that he had visited Frank prior to 12:00 in the factory.

Various witnesses, associates of Frank at Cornell University, in Brooklyn and Atlanta, testified as to his general good character as an upright and law-abiding citizen. Forty-nine women employees at the pencil factory testified that his general reputation and his reputation for moral rectitude were good. One witness on cross-examination, however, did testify to Frank's frequently coming into the women's dressing room and staring at the girls while they changed clothes. Frank submitted a lengthy unsworn statement on the stand, which added little beyond the statements he had already made to the detectives, police and at the coroner's inquest. He did attempt to excuse his absence when Monteen Stover testified she had come to the office by stating that he might have "inadvertently left to answer a call of nature."

On rebuttal, the State called more than 70 witnesses. A friend of Mineola McKnight's husband as well as her attorney, George Gordon, testified that Mineola had told them she made a complete and true statement to the police of everything she knew which was contained in the damaging affidavit referring to Frank's drinking on the night of the murder, sleeping restlessly and threatening to kill himself with a pistol. Two witnesses

who had come to the factory to obtain their sons' money testified of the presence of the Negro at the stairs on the first floor of about the same size of Conley but whom they could not positively identify.

Fourteen witnesses testified that Dalton's reputation for truth was good. Eight testified that Daisy Hopkins' reputation for truth and veracity was bad in a prosecution attempt to rebut her assertion that she did not know Frank and had never been to the factory with Dalton. Three witnesses testified that they had frequently seen Frank talk to the victim and call her by her first name. Others testified to seeing him touch her and attempt to intercept her for conversation. Testimony was introduced that her machine was just a few feet from the men's second floor restroom.

As the climax of the prosecution's rebuttal, 20 girls, former employees of the pencil company, testified emphatically that Frank's reputation for lascivious conduct was bad. None were cross-examined, allowing their testimony to stand unchallenged. Solicitor Dorsey had, of course, hoped for cross-examination of these female witnesses by the defense, which would have permitted Dorsey to get testimony into the record about specific incidents of immoral conduct by Frank.

The prosecution's witness Monteen Stover testified that she waited in Frank's offices between 12:05-12:10 p.m. and looked in vain for Frank in both offices. She heard no sounds in the building. She verified the time by the time clock on the wall fronting onto Frank's office.

"It was five minutes after twelve. I was sure Mr. Frank would be in his office, so I stepped in. He wasn't in the outer office so I stepped into the inner one. He wasn't there either. I thought he might have been somewhere around the building so I waited. I went to the door and peered further down the floor among the machinery. I couldn't see him there."

"I stayed until the clock hand was pointing exactly to ten minutes after 12. Then I went downstairs. The building was quiet and I couldn't hear a sound. I didn't see anybody . . ."

Monteen further testified that she intended to go to the ladies dressing room, inside the metal room, but when she tried the door, she found it locked.

This summarizes the bulk of the evidence introduced in the case. There was more than sufficient evidence presented whereby a reasonable jury could reasonably find Frank guilty beyond a reasonable doubt of murder, which was their sole charge. Undoubtedly, the damaging testimony as to Frank's character and sexual misconduct colored their conclusion with regards to the murder.

Night Witch

Among some of the bits of nonsense expressed concerning the Frank trial was that of Henry A. Alexander, one of Frank's legion of attorneys, who, in a short pamphlet attempting to prove that Conley had written the notes found beside Mary Phagan's body without dictation or coaching from Frank, went into some detail that "nigt witch" was a deliberate spelling and referred to a negro superstition about night witches, which logically would not have been well known to Frank.

Regardless, at the time the notes were discovered and read in the factory basement early in the morning of April 28, when the detectives read the words "nigt witch" on two separate occasions, Newt Lee brightly volunteered "that's me." In addition, when Conley was directed to write "night watchman" by police during his interrogation, he promptly wrote down "nigt witch", reciting that that was his nickname for the night watchman whom Conley had never met, and thus, could not know that he was in fact a tall, slim black Negro.

Incomplete List of Evidence
Pointing to Frank's Guilt

1. Frank's demeanor at time of arrest.
2. Sending Lee away at 4:00 p.m.
3. Calling Lee at 7:00 p.m.
4. Frank's denial of knowledge of identity of Mary Phagan.
5. Testimony of cook and husband as to Frank's distraught condition on night of crime.
6. Frank's attempts to throw suspicion on Lee and Gantt.
7. Frank's failure to throw suspicion on Conley.
8. Frank's failure to tell authorities that Conley could write.
9. Frank's refusal to have confrontation with Conley.
10. Frank's misstatement under oath at coroner's inquest about whistles blowing at noon (holiday--no whistles blew).
11. Frank's misstatement under oath at coroner's inquest as to never leaving office between 12:00 p.m. and 12:45 p.m.--refuted by Monteen Stover's sworn testimony.
12. Frank's changing his answer to Mary Phagan's metal supply question from "I don't know" to "No".
13. Frank's refusal to be cross-examined after making two unsworn statements at trial.
14. Statements of witnesses as to Frank's knowledge of Mary Phagan, location of her machine, and Frank's harassment of her.
15. Introduction of unchallenged testimony as to Frank's bad character for lasciviousness by twenty former female employees of Company--no cross examination by Frank's counsel.
16. Testimony of other witnesses as to Frank's pattern of sexual misconduct.
17. Conley's testimony as to events of April 26 and as to previous sexual episodes of Frank and others.

18. Bloodstains on floor in metal room.
19. Hair on lathe in metal room.
20. Twine which strangled Mary Phagan present on second floor.
21. Frank's refusal to send pay home to Mary Phagan by friends on Friday afternoon.
22. Frank's cancellation of baseball game date.
23. Belief of Frank's guilt by private detectives, Atlanta police and Dorsey staff.
24. Belief of Conley's story by private detectives, Atlanta police and Dorsey staff.

The Atlanta Constitution reported as follows as to prosecution witness Conley's demeanor:

"No such record has ever been made in a criminal court case in this county. . . . Conley may be telling the truth in the main, or he may be lying altogether. He may be the real murderer or he may have been an accomplice after the fact. Be these things as they may, he is one of the most remarkable Negroes that has ever been seen in this section of the country. His nerve seems unshakable. His wit is ever ready. . . . As hour by hour the attorneys for the defense hammered away and failed to entrap the Negro, the enormity of the evidence became apparent. Finally came the virtual confession of the defense that they had failed to entrap the Negro and they asked that the evidence be stricken from the records. All over the city 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."

No Mob Influence

Evidencing the absence of any threatening mob, at no time did defense counsel, either Rosser or Arnold, move for a mistrial or for a change of venue, nor apparently was the latter ever seriously considered. Nor did Judge Roan, who had the power under Georgia law to change the venue on his own motion, make such a determination, which he clearly would have done if confronted with a mob or mob influence.

After the trial, jurors signed affidavits that they had not been influenced by any outside crowd or crowd noise and various bailiffs and marshalls and court officials likewise swore by affidavit that there had been no undue crowd influence, even during the last days of the trial.

No newspaper or other contemporary account of the trial reports the presence of a mob calling for Frank's death, as is so often erroneously claimed by Frank's proponents.

Prejudice

It is generally recognized by commentators that Atlanta and most of the South was infected with little sentiment that could be generally termed to be Anti-Semitism in 1913. However, there was friction between the Sephardic and German Jews who arrived in the South in the 18th and early 19th centuries and the Jewish latecomers from Poland and Russia who arrived around the turn of the century, as evidenced by their separate social clubs, separate synagogues and resistance to inter-marriage between members of the groups. Nor did the Atlanta

newspapers, although sensationalizing the trial at every turn--particularly the revelations of the sexual abuses inflicted on the victim and the steadily unraveling store of Frank's sexual peccadillos and those of others utilizing the convenience of the National Pencil Factory facilities for liaisons--dwell on Frank's ethnic or religious background. Counsel for the State was studious in avoiding raising the topic of Frank's religious and racial background, although ultimately referring to it in Dorsey's summary, following the repeated references by Rosser and Arnold in their summaries to Frank's being Jewish.

However, the defense constantly harped on racial attitudes toward blacks. Conley was repeatedly denounced on cross-examination, and in summary, as a "dirty, lying nigger" who, along with all others of his race, was incapable of telling an honest story. One instance highlighting this attitude was the examination of evidence pertaining to the bloody shirt found in Newt Lee's belongings. It was rejected as significant because of a) the blood stains being smeared on both sides of the shirt and b) acceptance by both sides that the shirt had not been worn because of the absence of "the smell of the nigger" in the armpits of the shirt, the State's witness and Rosser vying for levels of expertise in identifying the smell of "African sweat".

Rosser summarized:

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

"The thing that arises in this case to fatigue my indignation is that men born of such parents should believe the statement of Conley against the statement of Frank. Who is Conley? Who was Conley as he used to be and as you have seen him? He was a dirty, filthy, black, drunken, lying nigger."

Dorsey summarized:

"I say to you here and now that the race from which that [Frank] man comes is as good as our race. His ancestors were civilized when ours were cutting each other up and eating human flesh; his race is just as good as ours,--just so good but no better. I honor the race that has produced a Disraeli,--the greatest Prime Minister that England has ever produced; I honor the race that produced Judah P. Benjamin,--as great a lawyer as ever lived in America or England, because he lived

in both places and won renown in both places. I honor the Strauss brothers,--Oscar, the diplomat, and the man who went down with his wife by his side on the Titanic. I roomed with one of his race at college; one of his race is my partner. I served with old man Joe Hirsch on the Board of Trustees of the Grady Hospital. I know Rabbi Marx but to honor him, and I know Doctor Sonn, of the Hebrew Orphans' Home and I have listened to him with pleasure and pride.

"But, on the other hand, when Becker wished to put to death his bitter enemy, it was men of Frank's race he selected. Abe Hummel, the lawyer, who went to the penitentiary in New York, and Abe Reuf, who went to the penitentiary in San Francisco; Schwartz, the man accused of stabbing a girl in New York, who committed suicide, and others that I could mention, show that this great people are amenable to the same laws as you and I and the black race. They rise to heights sublime, but they sink to the depths of degradation.

"Gentlemen, every act of that defendant proclaims him guilty. Gentlemen, every word of that defendant proclaims him responsible for the death of this little factory girl. Gentlemen, every circumstance in this case proves him guilty of this crime. Extraordinary? Yes, but nevertheless true, just as true as Mary Phagan is dead. She died a noble death, not a blot on her name. She died because she wouldn't yield her virtue to the demands of her superintendent. I have no purpose and have never had from the beginning in this case that you oughtn't to have, as an honest, upright citizen of

this community. In the language of Daniel Webster, I desire to remind you "that when a jury, through whimsical and unfounded scruples, suffers the guilty to escape, they make themselves answerable for the augmented danger to the innocent."

"Your Honor, I have done my duty. I have no apology to make. Your Honor, so far as the State is concerned, may now charge this jury,--this jury who have sworn that they were impartial and unbiased, this jury who, in this presence, have taken the oath that they would well and truly try the issue formed on this bill of indictment between the State of Georgia and Leo M. Frank, charged with murder of Mary Phagan; and I predict, may it please Your Honor, that under the law that you give in charge and under the honest opinion of the jury of the evidence produced, there can be but one verdict, and that is: We the jury find the defendant, Leo M. Frank, guilty! GUILTY! GUILTY!!"

These words were uttered by Dorsey at noon as church bells tolled and factory whistles blew, reminding all of the hour of the victim's death.

The trial had lasted twenty-nine days in court, a Georgia record. Conley had been on the witness stand longer than any witness in state history. The stenographic record alone ran to 1,080,060 words, and the trial was reputedly the most expensive in Georgia history.

After charging the jury, Judge Roan, in the interest of caution, requested both counsel to agree that the defendant not be present in the courtroom to receive the jury's verdict,

in case the verdict should prove to be one of acquittal, creating a public disturbance. The State militia was alerted and defendant's counsel, both Rosser and Arnold, agreed to Frank's absence from the courtroom, as well as their own. Dorsey acceded, after both Rosser and Arnold promised that Frank's absence would not be used as a basis for an appeal. Assistant prosecutor Hooper was assured by Judge Roan that Frank's consent to this procedure was being obtained.

The jury deliberated for four hours, before returning a guilty verdict.

After the verdict was announced, there was no demonstration within the courtroom, although when the news spread to the large crowd outside, there was rejoicing. Dorsey, upon emerging from the courtroom building, was seized and passed bodily over the heads of the crowd to his office across the street.

Frank was then sentenced on August 26 to be hanged at Fulton Tower on October 10, 1913.

Then the following series of appellate moves began:

Motion for new trial, denied by Judge Roan on October 31, 1913.

Roan's ruling was unanimously affirmed by the Georgia Supreme Court on February 17, 1914. Two judges dissented on the question of the admissibility of Conley's testimony as to Frank's sexual perversion, but concurred in the result, finding the evidence in question not sufficient to alter the verdict of guilty.

On March 7, 1914, Frank was resentedenced to die on April 17, 1914.

April 16, 1914--stay of execution obtained on extraordinary motion for new trial based on newly discovered evidence. This motion for new trial was denied by Superior Court Judge Ben H. Hill on May 8, 1914. The denial was unanimously affirmed by the Georgia Supreme Court on October 14, 1914.

A motion to set aside the verdict on motion (based on absence of defendant at reception of verdict) was then made (despite the agreement of Frank's counsel). It was denied on June 6, 1914. This denial was unanimously affirmed by the Georgia Supreme Court on November 14, 1914. A writ of error was taken to the U.S. Supreme Court, and was denied on December 7, 1914.

On December 9, 1914, Frank was sentenced for the third time to be hanged, on January 22, 1915.

An application for Writ of Habeas Corpus was then carried to the U.S. Supreme Court. It was dismissed on April 19, 1915, by vote of 7-2.

On May 31, 1915 a hearing was held before State Prison Commission, which then affirmed the sentence of death on June 9, 1915, by a two-to-one vote.

Gov. Slaton's commutation was announced on June 21, 1915, although this information had been leaked previously. On the night of June 20, 1915, Frank had been shipped secretly to the State Prison at Milledgeville.

Few people in the North had heard of the Frank case until after the trial ended, again rebutting the notion abroad today that bloodthirsty, anti-Semitic mobs roamed the streets of

Atlanta during the trial, demanding Frank's conviction and intimidating the jury. After the conviction, however, Frank's Atlanta friends (Frank had been head of the local B'nai B'rith chapter) reported to Northern counterparts a feeling that Frank had been a victim of anti-Semitism. Louis Marshall, president of the American Jewish Community, directed that his group assist, but 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."

"There is only one way of dealing with this matter . . . and that is in a quiet, unobtrusive matter, to bring influence to bear on the Southern press."

At length, Frank's supporters decided to raise a constitutional issue based on the absence of Frank at the rendering of the verdict. Since defense attorneys Rosser and Arnold had promised prosecutor Dorsey that this would not be used as part of a future appeal, new counsel was retained for this motion. Northern newspapers, particularly including the New York Times, were also brought into the case, but with the admonishment that they should print nothing ". . . which would arouse the sensitiveness of the Southern people and engender the feeling that the North is criticizing the courts or the people of Georgia." Unfortunately, for Frank, this admonition was not followed and vitriolic exchanges between Northern and Southern press followed, helping to make conviction of Frank an article of faith for Southerners. Belief in Frank's innocence became the litmus test

in the Jewish community for anti-Semitism. If one believed Frank innocent, he might not be anti-Semitic, but if one believed Frank guilty or even proven guilty, then by definition he must be anti-Semitic.

In addition to the activities of the American Jewish Committee, Albert D. Lasker, a Jewish advertising "genius" contributed his services. These efforts, besides fund raising, including the placing of favorable stories for Frank, even though in exaggerated form, in newspapers around the country, obtaining resolutions of legislatures, statements of individuals, etc., urging Frank's pardon and denouncing Georgia and Georgians as prejudiced brutes.

Suddenly, on March 10, 1914, the Atlanta Journal voiced itself editorially. Having contributed so much to Frank's conviction by the sensational coverage of its news stories published in competition with the Hearst-owned Atlanta Georgian afternoon paper, the Journal now editorially called for a new trial. Announcing that ". . . cheers for the prosecuting counsel were irrepressible in the courtroom throughout the trial and on the streets unseemly demonstrations and condemnations of Frank were heard by the judge and jury. The judge was powerless to prevent these outbursts in the courtroom and the police were unable to control the crowd outside"--events which the Journal had not reported during the course of the trial. The outburst of criticism from other papers in the South led the Journal not to speak out again on Frank's behalf for another year.

These efforts and the sudden announcement from the Journal at last brought into the lists Tom Watson. He had been sought by both defense counsel and the prosecution to participate in the Frank trial. Watson had reigned as the premier criminal lawyer in the state but, after his defeat for Vice President on the Populist ticket in 1896, had devoted much of his time to writing history and editing, i.e., writing most of the contents of his weekly newspaper, the Jeffersonian, and his monthly publication, Watson's Monthly Magazine. He immediately launched a vigorous counter-attack against those criticizing the results of the Frank case and in the coming months reviewed in thorough detail the evidence of Frank's guilt presented in the case and castigated those supporting Frank. While not hesitating to refer to Frank as "a Jew pervert" on frequent occasions, his vitriol was directed more to Frank's being a member of and having access to wealth, thereby denying justice to the family of a "poor factory girl", a view shared by a substantial majority of the Georgia population.

The fact that the Atlanta Journal was Hoke Smith's political organ did not, of course, endear its editorial opinions to Watson, and he saw the paper's demand for a new trial as an effort by Smith to drag the case into politics. Repeatedly, Watson asked two central questions, "Does a Jew expect extraordinary favors of immunities because of his race?" and "Who is paying for all of this?" Mary Phagan was described as "a daughter of the people, of the common clay, of the blouse and overall, of those who earn 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."

Employment of the William Burns agency by the Frank supporters after the trial proved to have a negative effect which further enflamed the State of Georgia. A Burns' operative, Mr. Tobie, had earlier been retained by members of the Phagan family and their neighbors to investigate the murder and discover the murderer. After some weeks of investigation, Tobie at length resigned from the matter, but announced that he, like Scott of the Pinkerton Agency, the detectives of the Atlanta police department and Dorsey's staff, had concluded that Frank was the guilty party. In May of 1915, Burns brushed aside this previous employment and the conclusion of his operative, and announced repeatedly that he had discovered new evidence and could identify the true murderer. Burns' attempt to obtain renunciation of trial testimony by prosecution witnesses at the trial was met by recusals of the renunciations. Evidence was presented in court that Burns had bribed witnesses to give false testimony in this regard and at length the Burns' connection was dropped, having done severe damage to the Frank cause, particularly in demonstrating the huge sums of money being raised and spent to save Frank. Estimates of these funds have run as high as \$450,000. In addition, Burns admitted on a cross-examination at the hearing on extraordinary motion for new trial that he had never read the testimony of the trial and that, except for the now repudiated affidavits of witnesses, he had obtained no other evidence to absolve Frank of guilt in the crime. One of Frank's attorneys thereafter wrote ". . . 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."

The basis for the extraordinary motion was Frank's absence from the courtroom at the announcement of the jury's verdict, even though his counsel had pledged to Dorsey that this question would not become the basis for an appeal. Both Georgia and U.S. Supreme Courts unanimously upheld the denial of this motion.

Later, the U.S. Supreme Court denied the last judicial avenue, a Writ of Habeas Corpus, with Justices Holmes and Hughes dissenting on the basis that a lower court hearing should have been held to determine the validity of the defense affidavits asserting mob pressure on the jury, but expressing no opinion as to the truth of these affidavits.

Next, the Frank supporters began to seek a pardon or commutation of Frank's sentence to life imprisonment, first through the Pardon and Parole Commission which, however, voted down Frank's motion by a vote of two-to-one. Thereafter, petitions, letters and editorials, most of which emanated from outside the State of Georgia, urging the commutation of Frank's sentence poured into Governor John M. Slaton's office, and were estimated to reach 100,000 in number.

Slaton had been a name partner of the Rosser law firm since May of 1913 and is so listed in the newspaper announcements of the day and in the Atlanta City Directories of 1914, 1915, and 1916, even though he was then serving as Governor

of the State. This conflict was readily seized upon by Watson and the public was reminded of it repeatedly after Slaton decided to commute Frank's sentence to life imprisonment. Frank's latest death sentence had been set for June 22, 1915, with Slaton scheduled to go out of office on June 26, 1915, to be succeeded by Nat Harris. Slaton could have granted a reprieve and let Harris determine the petition for commutation, a move which many anticipated. However, Slaton and others perceived that Harris would deny the petition. Accordingly, Slaton moved with dispatch, heard argument of counsel, reviewed materials and issued his ruling on June 22, the day after Frank had been secretly removed from Fulton County Tower to the state prison farm at Milledgeville.

Slaton's Commutation Order

First, Slaton himself denied that mob influence or racial prejudice had entered into the jury's verdict:

"MOBS

The jury found the defendant guilty and with the exception of demonstration outside the courtroom, there was no disorder.

Hence, it will be seen that nothing was done which courts of any state could correct through legal machinery. A court must have something more than an atmosphere with which to deal, and especially when that atmosphere has been created through the processes of evidence in disclosing a horrible crime. Our

Supreme Court, after carefully considering the evidence as to demonstrations made by spectators, declared them without merit, and in this regard the orderly processes of our tribunals are not subject to criticism.

RACIAL PREJUDICE

"The charge against the State of Georgia of racial prejudice is unfair. A conspicuous Jewish family in Georgia is descended from one of the original colonial families of the state. Jews have been presidents of our Boards of Education, principals of our schools, Mayors of our cities, and conspicuous in all our commercial enterprises."

Basing his order on doubt as to the proof of guilt beyond a reasonable doubt, Slaton reviewed the evidence and history of the various appeals, then announced with some sophistry:

"This case has been marked by doubt. The trial judge doubted. Two judges of the Court of Georgia doubted. One of the three Prison Commissioners doubted."

In fact, none of the four appellate judges had expressed doubt as to the defendant's guilt, simply dissents as to legal procedure.

After commutation, Slaton was repeatedly burned in effigy, a mob attacked his Buckhead home and he was hounded out of the State, not to return for years and never to hold public office again in Georgia, despite his continued interest and one unsuccessful Senate race against Richard Russell in the 1930's, in which Slaton carried only one of Georgia's 159 counties.

Then Atlanta Mayor James Woodward attending a conference of mayors in San Francisco stated:

"People throughout the United States have obtained their ideas of the Frank case from a poisoned and subsidized press. There is not a member of the jury that tried Leo M. Frank who would change his decision if put to the test again. Georgia's people cannot be classed with tramps, hoodlums, bandits, and lawbreakers. But every avenue of law had been exhausted and the judgments of the courts set aside by one man and the people felt it was up to them to take the law into their hands. We people of Georgia deplore this deed, but when it comes to a woman's honor there is no limit we will not go to avenge and protect. I have known Jack Slaton thirty years. I have been friends with him, and while I hate to say it, I would not advise him to return to Georgia for a year, if ever. The bulk of the people may believe he did what he thought was right, but I am afraid there are some who will resent his acts throughout all the years to come."

Tom Watson wrote:

"It was the snob governor of high society, gilded Club life, and palatial environment that proved to be the rotten pippen in our barrel. . . .
With splendid integrity our whole system withstood

the attacks of Big Money until at length nothing was left but the perfidy of a governor who, in the interest of his client, betrayed a high office and a great people."

At Milledgeville, Frank was treated as a low-security risk prisoner, to use today's terms, and had a generally easy life until some four weeks after his arrival when William Creal, a fellow prisoner, cut Frank's throat while the latter slept.

Governor Nat Harris later wrote in his autobiography:

"We met him and when I asked Creal who and what caused him to commit the act, he replied:

'It was impressed on me that the presence of Frank here was a disgrace to the penitentiary. No one guilty as he is should have been allowed here, and I thought I was acting with the sanction of heaven when I tried to get rid of him.'"

Harris continued:

"I reached the conclusion that he [Creal] had expected his conduct would be so well approved by a large class of citizens outside the penitentiary that they immediately would ask the governor to pardon him if he killed Frank.

"When I went to examine him after the attack made on Frank by the convict, Creal, I went into his room while the doctor was dressing the wound. The gash extended from ear to ear and was so frightful in appearance that I wondered at his being alive. While the doctor was washing the wound, Frank coughed, and I asked the doctor immediately with a good deal of sympathy in my voice,

"Won't that wound attack his lungs before it heals?"

"When I asked this, Frank laughed--a queer sort of laugh--a laugh that showed at least to me a hard, careless heart and the doubt which I had about his guilt was lessened greatly as I heard the laugh and looked into his face. I could not help the impression. Looking back on it now, I do not see why I had been impressed but I felt then that the man was undoubtedly a hardened criminal or a reckless prisoner . . ."

Frank hovered between life and death for some time but was on the road to recovery, when at about 11:00 p.m., on August 16, 1915, a group of about 25 men from Marietta, not bothering to wear masks nor carry rifles, broke into the prison farm, encountering little resistance or difficulty, handcuffed Frank, and removed him to their motorcade within five minutes. No pursuit was launched. All telephone and telegraph lines from the prison had been cut except for a long distance line to Augusta. The men were later described by the Dean of the Atlanta Theological Seminary as "a band of men, sober, intelligent, of established good name and character--good American citizens" whose leader was "as reputable a name as you would ever hear in a lawful community. He was a man honored and respected." It is reported that this leader was the then Solicitor of the Superior Court Circuit in which Cobb County lay.

The remaining telephone line was utilized to alert sheriffs in county seats along the possible return routes to Marietta.

From several of these places, the local sheriff replied: "The parties have just passed through on their way north in automobiles", no effort being made to intercept the motorcade. Driving all night, the group stopped outside Marietta, near Frey's Mill, and hung Frank on a large oak tree close to the home where Mary Phagan had grown up. Frank was reported to have confessed on the drive to Marietta that "The nigger [Conley] told the truth but he did not tell all of the truth." He also was reported to have said, when asked if he wished to confess to the rape and murder of Mary Phagan before being hung, "I think more of my wife and mother than I do of my life," a somewhat enigmatic response.

In time, attempts to mutilate the body were quelled by Judge Newton Morris and the body was removed to Atlanta for embalming. Although members of the lynch mob were apparently well known in the area, little effort was made to bring them to trial and a coroner's inquest jury concluded that Leo Frank died "at the hand of persons unknown."

Tom Watson editorialized:

"The ominous triune combination which has so rapidly given our country a foreign complexion, is made up of Priest, Capitalist, and Jew. The Priest wants the illiterate papal slave of Italy, Poland and Hungary; the Capitalist wants cheap labor; and the Jew wants refuge from the race-hatred which he himself has engendered throughout Europe.

As yet, the South has not been deluged by the foreign flood; as yet, our native stock predominates, and the old ideals persist. With us, it is, as yet, dangerous for an employer of

young girls to assume that he buys the girl, when he hires her. A Jew from the North, coming South to act as boss over 100 girls, may fall into a fatal mistake by forgetting that he is no longer in Boston, Philadelphia, Chicago or New York. When such a Jew comes to Georgia, he is sure to run into trouble if he acts as though he believed he had a right to carnally use the persons of the girls who work for him.

"That was the mistake made by Leo Frank, and it cost him his life.

"And the mistake made by Jews throughout the Union, was that they made Frank's case a race issue, in total, contemptuous and aggressive disregard of the question of guilt. They arrogantly asserted, and kept on asserting, that he had not had a fair trial, without ever offering a scintilla of evidence to prove it.

"They tried to "run over" the people and the Courts of Georgia, and we wouldn't let them do it.

"That's all."

FACTORS WHICH CONTRIBUTED
TO FRANK'S CONVICTION

List of Certain Evidence
Pointing to Frank's Guilt

1. Frank's demeanor on night of murder, the morning after and at time of his arrest.
2. Sending night watchman Lee away at 4:00 p.m. on day of murder.
3. Calling night watchman Lee at 7:00 p.m. on night of murder.
4. Frank's denial of knowledge of identity of Mary Phagan.
5. Testimony of Selig family cook and her husband as to Frank's distraught condition on night of crime.
6. Frank's attempts to throw suspicion on Lee and Gantt.
7. Frank's failure to throw suspicion on Conley.
8. Frank's failure to tell authorities that Conley could write.
9. Frank's refusal to have confrontation with Conley.
10. Frank's misstatement under oath at Coroner's inquest about whistles blowing at noon (holiday--no whistles blew).
11. Frank's misstatement under oath at Coroner's inquest as to never leaving office between 12:00 and 12:45--refuted by Monteen Stover's sworn testimony.
12. Frank's changing his reported answer to Mary Phagan's metal supply question from "I don't know" to "No".
13. Frank's refusal to be cross-examined after making two unsworn statements at trial.
14. Testimony of witnesses as to Frank's knowledge of Mary Phagan, location of her machine, and Frank's harassment of her, despite his denial of knowing her or her name.
15. Introduction of unchallenged testimony as to Frank's bad character for lasciviousness by twenty former female employees of Company--no cross examination by Frank's counsel.
16. Testimony of other witnesses as to Frank's pattern of sexual misconduct.
17. Conley's testimony as to events of April 26 and as to previous sexual episodes of Frank and others.

18. Bloodstains on floor in metal room across hall from Frank's office.
19. Hair on lathe in metal room across hall from Frank's office.
20. Twine of type which strangled Mary Phagan present on second floor.
21. Frank's refusal to send her pay home to Mary Phagan by friends on Friday afternoon before murder.
22. Frank's cancellation of baseball game date.
23. Belief of Frank's guilt by private detectives, Atlanta police and Dorsey staff.
24. Belief of Conley's story by private detectives, Atlanta police and Dorsey staff.

NOTES FOUND NEAR
MARY PHAGAN's BODY

37 & 39 SOUTH FORSYTH ST.

ATLANTA, GA. 190

PUT THIS ORDER NUMBER ON YOUR BILL.

Bell Phone Main 171.

Order No. 1918

man that negro

fire down he did

that I went to make

water and to push in

down the whole

along tall negro dog

that he is a waste

long bloom to be rich

in light, to fill with

he made he read here me
land down play like the
night it did it
but that long tall black
negro did by his self



DIAGRAM OF NATIONAL PENCIL COMPANY BUILDING
SHOWING PROSECUTION'S RECONSTRUCTION OF MURDER

THE ATLANTA GEORGIAN

Read for Profit--GEORGIAN WANT ADS--Use for Results

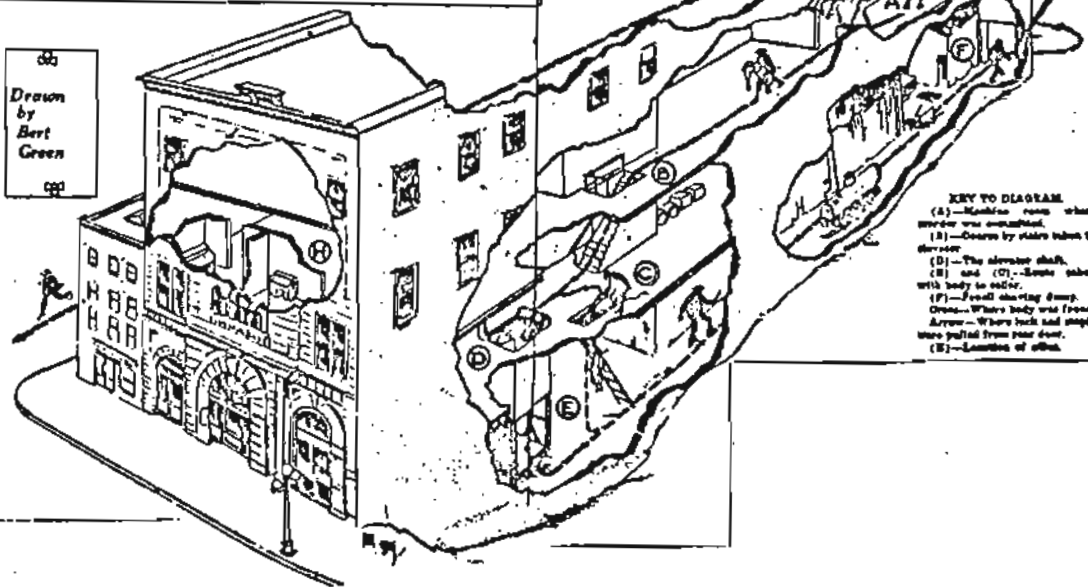
VOL. XI. NO. 230.

ATLANTA, GA., FRIDAY, MAY 23, 1913.

2 CENTS EVERYWHERE "55.7"

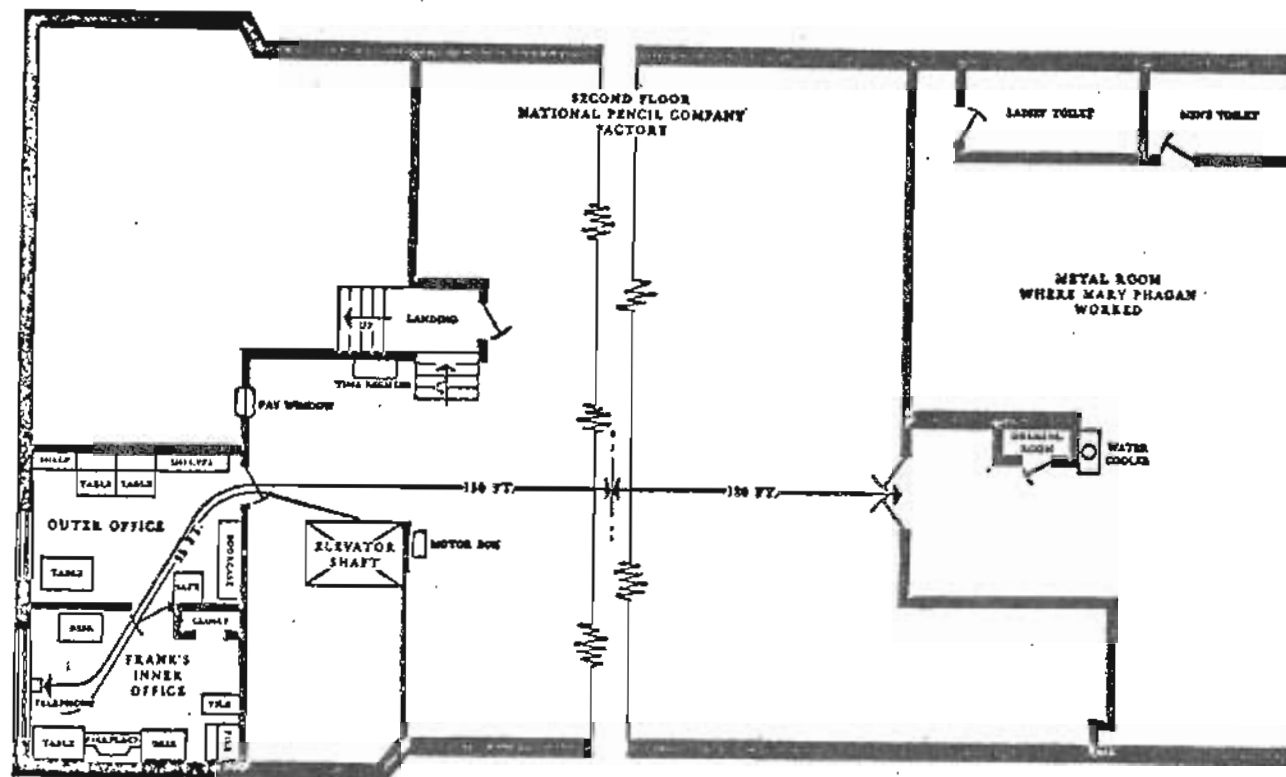
THE GEORGIAN ARTIST'S DIAGRAM OF PENCILFACTORY USED BEFORE GRAND JURY TO EXPLAIN PHAGAN SLAYING

PLAN OF THE BUILDING WHERE TRAGEDY OCCURRED, SHOWN
BY ARTIST WHO STUDIED IT CAREFULLY.



Courtesy of The Atlanta Georg-
ian, May 23, 1913

MAP OF SECOND FLOOR OF
NATIONAL PENCIL COMPANY FACTORY
SHOWING LEO FRANK'S OFFICE,
MARY PHAGAN'S WORK PLACE
AND SITE OF MURDER



SECOND FLOOR OF THE NATIONAL PENCIL COMPANY FACTORY—PARTIAL FLOOR PLAN.

REVIEW OF TRIAL BY
ATLANTA NEWSPAPER REPORTER
PRESENT THROUGHOUT PROCEEDINGS

APPENDIX D

A Georgian's View

THE LETTER REPRINTED BELOW is located among the Julius Rosenwald Papers at the University of Chicago. It was written at the end of 1914 or the beginning of 1915 by a newspaper reporter for *The Atlanta Georgian*, identified solely as the "Old Police Reporter." The recipient of the letter is unknown. If it was not Julius Rosenwald, it might have been Albert Lasker or some other Northern Jew interested in obtaining Frank's freedom.

This letter is significant because it represents the views of a considerable number of knowledgeable Georgians who reached their conclusions on the basis of the evidence printed in the newspapers and related at the trial. The author, however, was particularly familiar with the case. He attended the trial, had a number of personal interviews with Leo Frank, and also had access to the prosecutor.

Dear Mr. _____

My personal opinion is that Leo M. Frank is guilty of the murder of Mary Phagan, committed after an attempted seduction—probably successful, and most likely of a perverted type. This opinion was formed during a close attendance at the trial and in the course of ten or twelve conversations with Frank after the dust of action had had some six months to settle.

As to the trial itself, our town seems to be getting in pretty bad with *Collier's*, the *Chicago Tribune*, and certain other publications. It seems we are pistol-toters and browbeaters of juries and all that sort of thing . . . I do not think Atlanta is getting a square deal in this matter. It is true there was a lot of excitement here during the trial. It is true there was a popular clamor

A Georgian's View

173

for a "goat." I think that is true in every city where any crime of especial horror is committed. It also is true there was some race prejudice in evidence; that the trial judge was a weak sister; that he was bullied lamentably by both sides during the trial, but notably by the defense; that the entire trial was under tension, so to speak. It has even been said that the Solicitor's closing speech was stopped early on Saturday afternoon and the case continued until Monday because a verdict was expected almost as soon as the jury got the case—and, it being Saturday, the town was well jammed with country people, who really were more worked up over the case than the city folk, if that is possible.

I am not certain of this last statement; but it is certain there was a lot of excitement; you recall the first Hyde trial, of course. Well, this was much like that, except for a more pronounced animosity against Frank than was in evidence against Hyde.

On the other hand, the *Tribune* and *Collier's* are guilty of gross exaggeration, particularly in detailing the conduct of the courtroom crowd. To my mind, the crowd was commendably quiet. The only break in the uniform good order was a ripple of applause, perhaps twice, when Dorsey, the Solicitor, entered the room toward the end of the trial. It was rebuked promptly. As to the "hands moving toward hip-pockets," and the "cries of 'If you let the Jew go, we'll hang him and you, too'"—there simply was none of that, and no excuse for the injection of such stuff into any account of the case.

The jury was unusually high-class in intelligence and in presumptive character. We have the sworn statements of each that his conclusion was the result of his own unbiased consideration of the evidence—but of course they would say that. They all maintain that they heard nothing of the so-called "demonstrations" outside the courthouse—cheering in the streets the last day of the trial, and so on. But it would be nearly impossible and out of reason that those men should not have sensed the public sentiment. Still, the Supreme Court said Frank had a fair trial; and the trial judge said so—qualifying his statement with his peculiar remark, which I heard him make, and which was clipped from the *Georgian* as I wrote it, and made into part of the court record:

"I am not convinced of the guilt or innocence of the defendant;

but I do not have to be convinced. The jury was convinced, and that is enough."

My impression at the time was that Judge Roan was merely trying to placate Luther Rosser, chief lawyer for the defense, to whom it is said the judge is a political debtor of some kind. The remark was part of Judge Roan's denial of a motion for a new trial before the case got up to the Supreme Court; and it was used for all it was worth in the plea to that body.

So you see it is ticklish business, when the trial judge himself is not convinced, but says the defendant had a fair trial according to law.

Frank is a well educated young man; a graduate of Cornell; a smooth, swift, and convincing speaker. If you have seen any good pictures of him, you will understand what I mean when I say that he looks like a pervert. It is a slightly significant fact, I think, that I sized him up as one the first time I saw him, before a whisper of the perversion testimony came out. . . . Others have told me they were impressed the same way. In strict confidence (that is, so far as any publication is concerned) Solicitor Dorsey told me of a fearful mass of testimony with which he said he was prepared to prove the perversion of the accused in the event the defense tried to back its character case to a finish, which it did not, refusing in every instance to cross-examine the witnesses put on by the state, who were (under the Georgia law) permitted on direct examination to answer no more than "Bad," to the state's question as to the character of the defendant.

As to Frank's being convicted on the unsupported testimony of a "black brute"—I think that is peculiarly unfair to a section of which it has been the stigma that the negro could never get a fair deal in a court of law.

I really am convinced that the State's case would have stood up without the negro Conley's testimony; and I know it to be a fact that Dorsey had practically finished what was to be his indictment case to the grand jury before Conley spilled a word. Whether Frank would have been indicted (Dorsey revised his case after Conley loosened up) is another question. At any rate, it is worth while to note these points:

1. That Leo Frank tried to fasten suspicion on two other negroes first, and never mentioned Conley until fairly pushed to it.

2. That Leo Frank knew Conley could write all the time, and was silent while knowing that Conley was denying he could write; the inference being that Frank was shielding Conley lest Conley should open up on him.

3. That the several untrue statements of Conley, of which so much is made by *Collier's*, were simply the efforts of the untutored Afro-American to shield his boss—and get the \$200 promised him by Frank. As soon as Conley saw he was getting into it himself, he promptly threw Frank overboard and came through with the goods.

4. That Frank never was able to account for his time during the half hour the state contends he was engaged with Mary Phagan.

That Frank, after seeing the girl's body the morning after the murder, and hearing the name, said he did not know if such a girl worked at the factory, and would have to look it up on the rolls, whereas it was shown that he had spoken to Mary Phagan frequently calling her by name.

These are only a few points. The "murder notes" are a queer business all to themselves. For my part, I do not undertake to say or guess if Frank dictated them to Conley, who certainly wrote them; or if the negro being ordered to dispose of the body by burning it, changed his mind and wrote the notes of his own volition.

But I will say that I heard Conley's evidence entire, and was impressed powerfully with the idea that the negro was repeating something he had seen; that was photographically fixed on his mind; perhaps you know something of the remarkable capacity for observing and recalling details exhibited by crude minds, especially in negroes. . . . Conley's story was told with a wealth of infinitesimal detail that I firmly believe to be beyond the capacity of his mind, or a far more intelligent one, to construct from imagination. . . . For example. . . . "And when we run the elevator back up to the office floor, it didn't quite get to the level, and Mr. Frank, he stumbled and like to fell down, and cussed, and brushed his pants off, this way." That sort of thing, all the way.

And the next day, with upwards of fifty typewritten pages of solid testimony to check him by, Luther Rosser tore into that

nigger, hour after hour, up and down and sidewise, misquoting his testimony, skipping about—every trick of a trained lawyer—and he did not shake that nigger once or make him contradict himself. It just stuck in my craw, Mr. X, that that nigger was telling something he had SEEN. . . .

Well, I've no idea you wanted all this stuff, but it's easy to write and maybe you will find something of interest in it. I have thought about it a good deal, and have come to the conclusion stated in Paragraph I; but I must say honestly that I am one of those persons who find it easier to hold a man guilty until he proves himself innocent than the vice versa laid down in our wonderful system of jurisprudence To go the whole route, my theory of the crime is that Frank is a pervert; that he kept after Mary Phagan until he dated her up, for that Decoration Day afternoon, in the "metal room" of the factory; that he frightened her by his unnatural behavior; and that either in the fright, or in the revulsion following the performance she began to cry and became hysterical, probably insisting, louder and louder, that she was going to "tell on him"—she was only a little girl, you know. . . . Then I can imagine Frank trying to pacify her; perhaps backed up against the locked door, imploring her to be quiet; perhaps she even attacked him in her frenzy to be away. Anyway, I imagine he tried to hold her, and she wrenched herself violently away, falling against a lathe and knocking herself unconscious Frank may have thought her dead; anyway, it was his last chance, for nothing but death would stop her story now So he made sure by strangling her And then, in the ghastly jangle of his nerves, he sought aid from his Man Friday—Jim Conley, who was watching below, as he testified he had watched many another Saturday afternoon while Frank "chatted" with women in the deserted factory.

It may be all wrong, Mr. X, but that's my honest opinion. It amounts to a conviction. I believe Frank to be guilty, and I think he had as fair a trial as could have been had with all the public stress of the case, which could not have been avoided in any way that I can see. Anyway, the Supreme Court said he had a fair trial, and so far as we poor mortals are concerned we have to take the findings of our highest courts as the ultimate truth. Leo Frank and Jim Conley and God know the truth of this thing.

Frank says one thing; Conley says another and more probable thing. God hasn't said anything yet—unless He speaks through juries and Supreme Courts. . . . Anyway, this is just my humble personal opinion, as you asked for it—and if I have been tiresome, I apologize heartily.

With best wishes to yourself and all the boys for the coming year, and all the rest of them, I am

Sincerely yours,

DISCUSSION OF
1982 AFFIDAVIT OF
ALONZO MANN

1982 Affidavit of Alonzo Mann

The affidavit produced in March of 1982 by 83-year old Alonzo M. Mann truly beggars belief. Mann was an office boy working in Leo Frank's second-floor office at the time of the murder and was called as a defense witness during Frank's murder trial. Mann testified at that trial that he worked with Frank in the latter's office during the morning of the April 26, 1913 murder and left the office at 11:30 a.m. He also testified as to his belief in Frank's good character. Frank testified that Mann left his office at or shortly after noon. (Mann's testimony was doubtless the correct one. Had he left Frank's office at or shortly after noon, he would have encountered Mary Phagan entering the building or ascending the stairs to the second floor.)

Of course, Mann's affidavit does not rise to the dignity of the trial testimony of Jim Conley which it is apparently intended to challenge. Conley testified under oath, pursuant to examination by the prosecution attorneys and was vigorously cross-examined for some three days by the very capable lead attorneys for Frank's defense team. Trial observers and counsel for both prosecution and defense agreed that Conley's testimony had not been broken by the cross-examination. It was a critical element, among many, in corroborating the circumstantial evidence and other evidence leading to Frank's conviction.

Among the questions which are raised by Mann's affidavit is: Why has he come forward only at this late date? He was interviewed in 1913 by the Atlanta police investigating the

crime and by defense counsel for Frank. If he had any information to shed on the crime such as he now purports to set forth in his affidavit, would it not have been extracted by skilled interrogators from a fourteen-year old boy? Would he not have volunteered it at that time? Mann's assertion that he was afraid of Conley and Conley's purported threat to kill him if he revealed what he saw that day hardly merits belief. Conley was arrested on the Tuesday after the crime (despite Frank's efforts to shield him) and remained in jail from that day throughout the trial and for a year after his own conviction for being an accomplice-after-the-fact in Mary Phagan's murder, leaving Mann in complete safety. In addition, Conley died in 1962, a fact which must have been known to Mann, hence, why his silence for the following twenty years?

Likewise, Mann's assertion that his mother's admonition to say nothing about what he had seen seems most unlikely to be followed by any fourteen-year old youth with the slightest semblance of conscience. Concealing evidence in a murder trial is, of course, a crime in itself. Mann purported to have a regard for Frank and after Frank's conviction, if not before, surely he would have come forward with whatever favorable evidence he had. In addition, Atlanta was covered by agents and operatives on behalf of Frank's defense before, during and for many months after the trial seeking out any scrap of information pertaining to the crime and Frank's conviction. Large sums of money were expended in this process, rewards were offered, and promises made.

Again, it cannot be believed that Mann would not have come forward during these well publicized searches.

Mann asserts that he saw Conley on the first floor of the building between the elevator shaft and the trap door to the basement, carrying a female body. Mann places himself between Conley and the front door which afforded him a ready way of escape. Mann knew that Frank was (or should have been) upstairs in the second floor office at the time; he also knew workmen were in the building on the upper floors--all affording ready means of assistance to him and to the victim. In addition, the streets outside the factory were teeming with the thousands of people who had assembled to watch the Confederate Memorial Day Parade which Mary Phagan had herself intended to observe. Mann had only to retrace his few steps to the front door and sound the alarm to produce numbers of rescuers who would have been more than eager to mete out punishment to Conley for what was at that time the most heinous offense in Georgia moral structure, the rape and murder of a white girl by a black male. Could any fourteen-year old boy in the Atlanta of 1913 be so craven or frightened as to not, even if he did not seek to help the victim personally, cry out for assistance from any of these sources? To pose the question is to answer it.

In short, Mann's affidavit lacks credibility.

Perhaps of greater significance is that Mann's recitation of the scene that he saw, i.e., Jim Conley carrying the body of a girl towards the trap door leading to the basement, is not inconsistent with the prosecution's case on which Frank's conviction was based, i.e., that Frank waited for Mary Phagan to

appear in his office for her pay, lured her into the metal room, assaulted her there, struck and killed her when she resisted his advances and, subsequently, called for Conley to come to the second floor, collect the body and remove it to the basement for incineration or later removal. If the scene that Mann now asserts took place, it varies from the prosecution's case so insignificantly as to be not worthy of any motion to this Board for a new review of Frank's case, much less a "posthumous pardon". In particular, it does not explain away all those other factors which pointed to Frank's guilt.

CONCLUSION

CONCLUSION

Leo M. Frank was guilty as charged. He had the motive, the means and the opportunity to commit the rape and murder of Mary Phagan.

Ample evidence was brought forth at his trial, including the three-day sworn testimony of his accomplice, to constitute more than enough evidence to convince a reasonable jury beyond a reasonable doubt of Frank's guilt. Frank was defended in his five-week long trial by the two finest trial lawyers in the Atlanta of that day, Rueben Arnold and Luther Z. Rosser. Rosser's former partner presided over the trial as judge, and his then current law partner was the Governor of Georgia who ultimately commuted Frank's sentence to life.

Neither of the two Fulton County Superior Court judges who heard the three motions for new trial, none of the members of the Georgia Supreme Court who affirmed Frank's conviction three times and none of the Justices of the U. S. Supreme Court who rejected Frank's appeals twice ever expressed in their opinions and rulings any doubt as to Frank's guilt.

There was no mob influence on the trial judge or the jury. All jurors signed affidavits to that effect, supported by affidavits from court staff in attendance at the trial. Neither Frank's defense attorneys nor the trial judge moved for mistrial or change of venue as surely they would have if mobs were present during the trial. The three Atlanta daily newspapers of 1913, the

Constitution, Journal and Georgian, locked in a fierce circulation competition and enjoying separate ownership, report no mobs during the five weeks of the trial. Franklin Garrett in his definitive Atlanta and Its Environs reports no mob. Conversations with persons who were in attendance at the trial, including two who later became judges in Atlanta, confirm the absence of mobs and mob influence. Indeed, even Governor Slaton in his commutation order went to some length to deny that mob influence or anti-Semitism influenced the guilty verdict.

Had Frank's accomplice, the black janitor, Jim Conley, committed the crime alone, in an Atlanta just seven years removed from the extensive race riots of 1906, he would not have tarried at the scene of the crime, returning to work day after day in the following week until ultimately arrested. His continued presence at the factory confirms and corroborates his testimony of belief in Frank's promises and ability to protect him.

Leo Frank was guilty and fairly convicted. Due process was had. It is long since time to put the Frank case to rest.

Tom Watson Brown
1982

ACKNOWLEDGMENTS

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The foregoing constitutes the bulk of a two-part address I delivered to the Symposium Club--a dinner-discussion group in Atlanta in 1982. Accordingly, it is not for sale or other general distribution.

Sources I have studied include the transcript of the trial as reprinted in the Atlanta Constitution during the five weeks of the 1913 trial, newspaper accounts of the Constitution, the Atlanta Journal and the Atlanta Georgian relating to the discovery of the body, the various investigations, the trial and the ensuing appeals, commutation and lynching. Printed works consulted include Dinnerstein, The Leo Frank Case (New York, 1968), Golden, A Little Girl is Dead (Cleveland, 1965), Francis X. Busch, The Leo Frank Case in Guilty or Not Guilty (New York, 1952), and various other books, articles, pamphlets, fictional and semi-fictional accounts of the trial.

The quoted materials relative to the efforts of the American Jewish Committee, as well as "Appendix D", come from Dinnerstein's book. Quoted materials as to testimony at the trial come from the Constitution's daily reprint of the trial transcript, and quoted materials of Tom Watson are from Watson's Magazine and his Weekly Jeffersonian. The quotation of Governor Harris is from his Autobiography (Macon, 1925). The map of the building and its second floor were printed in the Atlanta Georgian and reprinted in Dinnerstein's book, as were the photocopies of the notes found near Mary Phagan's body. The map of the factory's second floor is from Busch's article. I have also had conversations of varying lengths with lawyers who were present at the trial and lawyer-sons of others present and participating in the trial. My emphasis has, of course, been to rely on primary sources rather than on later recapitulations of the trial.