

# THE MURDER OF LITTLE MARY PHAGAN

Mary Phagan

NEW HORIZON PRESS  
Far Hills, New Jersey

FAIR USE NOTICE: The digitizers are making this material available in an effort to advance understanding of environmental, political, human rights, economic, democracy, scientific, and social justice issues, etc. We believe this constitutes a 'fair use' of any such copyrighted material as provided for in section 107 of the US Copyright Law. In accordance with Title 17 U.S.C. Section 107, the material in this file is made available without profit to those who have expressed a prior interest in receiving the included information for limited, individual research and educational purposes, and has been given limited access via **password protection**. For more information go to: <http://www.law.cornell.edu/uscode/17/107.shtml>. If any user wishes to use copyrighted material from this file for purposes that go beyond 'fair use', he/she must obtain permission from the copyright owner.

Copyright © 1987 by Mary Phagan/Kean

Grateful acknowledgement is made by the author to the following:

To the Atlanta Historical Society for excerpts from *Atlanta and Its Environs*, Volume 2, 1954, by Franklin Garrett.

To the *Atlanta Journal and Constitution* for articles dealing with the Mary Phagan/Leo Frank case, 1913-1987.

To the *Augusta Chronicle-Herald* for the statement by Justice Randall Evans, Jr. which appeared in the May 15, 1983 edition.

To Henry Bowden for use of material from his paper on Leo Frank, which appeared in 1945.

To Tom Watson Brown for use of material from *Notes on the Case of Leo Max Frank and Its Aftermath*, 1982; from personal letters; and from *Watson's Magazine*, August 1915 edition (Jeffersonian Publishing Company).

To the Christian Theological Seminary, Indianapolis, Indiana, successor to the Butler University School of Religion, publisher of *The Shane Quarterly*, for the excerpt from the letter of Dr. Luther Otterbein Bricker which appeared in the April 1943 edition (IV:2) of *The Shane Quarterly*.

To the *East Cobb Neighbor*, Marietta, Georgia, for use of the article, "Jewish Leaders Seek Exoneration for Frank," which appeared in the April 6, 1982 edition.

To the Georgia State Board of Pardons and Paroles for the letter of Silas Moore dated January 17, 1983; and for the *Decisions* dated December 22, 1983 and March 16, 1986.

To George H. Keeler for statements of O. B. Keeler on the Leo M. Frank case, 1913-1915.

To Stewart Lewengrub, Southeast Regional Director of the Anti-Defamation League, for his letter to James Phagan of March 21, 1974.

To the *Nashville Tennessean* for articles dealing with the Mary Phagan/Leo Frank case, 1982-1986, especially the Special News Section on the Mary Phagan/Leo Frank case appearing in the March 7, 1982 edition, and the article, "Little Mary Phagan Is Not Forgotten," which appeared in the September 5, 1983 edition.

To Sandra Roberts of the *Nashville Tennessean* staff, for personal letters dated April 6, 1982, April 14, 1982, and April 22, 1982.

To the University of North Carolina Press for the use of excerpt from *I Can Go Home Again* by Arthur Gray Powell, published in 1943.

All rights reserved. No part of this work may be reproduced or transmitted by any means, electronic or mechanical, including photocopy and recording, or by any informational or retrieval system, except as may be expressly permitted by the 1975 Copyright Act or in writing from the publisher. New Horizon Press, P.O. 669, Far Hills, New Jersey 07931.

Library of Congress Cataloging in Publication Data Phagan, Mary  
The murder of little Mary Phagan.

1. Murder—Georgia—Atlanta—Case studies.

2. Phagan, Mary, d. 1913. 3. Frank, Leo, 1884-1915. I. Title.

HV6534.A7P46 1987 364.1'523'09758231 87-31263

ISBN 0-88282-099-7

# ACKNOWLEDGEMENT

I gratefully acknowledge the following individuals for giving me the oral history of my family: Mary Richards Phagan; Annabelle Phagan Cochran, Lily Phagan Baswell; John Phagan Durham; and to J. C. Girthrie, childhood friend of my grandfather.

The author gratefully acknowledges Lisa Sorrels, who helped me research, edit, and rewrite my manuscript and gave me emotional support. To Tom Watson Brown, great-grandson of Tom Watson and Bill Kinney, Senior Editor of The Marietta Daily Journal, I acknowledge their assistance in the preparation of the trial and lynching material.

I also gratefully acknowledge these individuals for granting me interviews: Franklin Garrett, Historian, Atlanta Historical Society; George Keeler, son of O. B. Keeler, Mariettan who covered the trial for the Atlanta Georgian; Michael H. Wing, Member of the State Board of Pardons and Paroles; Stuart Lewengrub, Southeast Regional Director of the Anti-Defamation League; Betty Cantor, Associate Director of Southeast office of the Anti-Defamation League; Charles Wittenstein; Southern Counsel of the Anti-Defamation League.

And lastly to Bernard and my friends for their love and encouragement.

To Daddy  
and  
William Joshua Phagan, Jr. (1898–1973)  
Michael Robert Phagan (1959–1982)

# CONTENTS

|                                |           |
|--------------------------------|-----------|
| Introduction                   | xi        |
| Chapter 1                      |           |
| "ARE YOU, BY ANY CHANCE ... ?" | 1         |
| Chapter 2                      |           |
| THE LEGACY                     | 9         |
| Chapter 3                      |           |
| MY SEARCH BEGINS               | 44        |
| Chapter 4                      |           |
| THE CASE FOR THE PROSECUTION   | 65        |
| Chapter 5                      |           |
| THE CASE FOR THE DEFENSE       | 104       |
|                                | <i>ix</i> |
| <i>x</i>                       |           |
| <i>Contents</i>                |           |
| Chapter 6                      |           |
| SENTENCING AND AFTERMATH       | 148       |
| Chapter 7                      |           |
| THE COMMUTATION                | 166       |
| Chapter 8                      |           |
| THE LYNCHING                   | 212       |
| Chapter 9                      |           |
| REVERBERATIONS                 | 234       |

|   |     |
|---|-----|
| Chapter 10                                |     |
| ALONZO MANN'S TESTIMONY                   | 240 |
| Chapter 11                                |     |
| THE PHAGANS BREAK THEIR VOW<br>OF SILENCE | 259 |
| Chapter 12                                |     |
| APPLICATION FOR PARDON: 1983              | 270 |
| AFTERWORD: PARDON                         | 311 |

# INTRODUCTION

I placed a single red rose on the grave. My finger traced over the name Mary Phagan. The epitaph was one I knew by heart.

IN THIS DAY OF FADING IDEALS  
AND DISAPPEARING LAND MARKS  
LITTLE MARY PHAGAN'S HEROISM  
IS AN HEIRLOOM THAN WHICH  
THERE IS NOTHING MORE PRECIOUS  
AMONG THE OLD RED HILLS OF  
GEORGIA.  
SLEEP, LITTLE GIRL; SLEEP IN  
YOUR HUMBLE GRAVE BUT IF THE  
ANGELS ARE GOOD TO YOU IN  
THE REALMS REYOND THE TROU  
BEL [sic] SUNSET AND THE CLOUDED  
STARS, THEY WILL LET YOU  
KNOW THAT MANY AN ACHING HEART IN  
GEORGIA BEATS FOR YOU, AND  
MANY A TEAR FROM EYES UNUSED  
TO WEEP, HAS PAID TRIBUTE  
TOO SACRED FOR WORDS.

Looking up, I saw an old couple trudge up the grassy hill towards the grave. I stood up and turned to meet them. "Can I help you?" I inquired.

*xi*

*xii*  
*Introduction*

The lady wore a light blue dress with a matching striped jacket and white sandals. Her brown eyes were framed by glasses and her hair was gray. I guess she was in her mid- to late eighties. Her husband also had brown eyes and gray hair, balding a little on top. Twin-like, they were almost color-coordinated: he wore a light gray wool suit and pale blue shirt. He must have been around ninety years old, and he walked with a cane. He towered over her.

Somehow, from the way they carried themselves, I knew their questions would be different. Not the usual, "Do you know where the grave of little Mary Phagan is?" "Are you, by any chance, related to little Mary Phagan?" "How do you feel about the murder of little Mary Phagan?"

They seemed to be lost in remembering, too.

The lady looked at me with concern and intensity, and finally spoke: "It was on April 26, 1913, Confederate Memorial Day, that little Mary Phagan was murdered in downtown Atlanta. Not many people celebrate Confederate Memorial Day anymore. Not many native born here anymore."

She turned her head slightly, and her eyes swept over Mary Phagan's gravestone. "We remember different times. Times long ago. Times that don't come back except for her story."

She paused and added, "We were there. And little Mary Phagan's story remains with us. All the sadness and some of the hate—we felt it. Yes, times were different all right. A lot of murders happen today. But they don't symbolize something like hers did. We were one of her kind, hard-working and striving to have a decent life. We made it, but she didn't."

For the first time, she looked closely at me. "You look a lot like her," she said, her voice faltering.

*xiii*

*Introduction*

I nodded sadly. "My name is Mary Phagan. Little Mary Phagan was my greataunt."

For a moment the couple stared at me in disbelief, and then they wrapped their arms around me to comfort me. "Yes," the old woman said, "I can see the resemblance now." Breaking the embrace, she patted my shoulder gently. For a while, we were silent and then, as daylight faded, they politely excused themselves.



# Chapter 1

## "ARE YOU, BY ANY CHANCE...?"

After they left, I stood there feeling again all the conflicting emotions which I could not resolve or forget. My mind spun back fifteen years.

I was thirteen. We were living in Charleston, South Carolina, where my father, the First Sergeant of the 17th Air Transport Squadron, was stationed. Mr. Henry, my eighth-grade science teacher at R. B. Stall High School, registered astonishment when I told him my name was Mary Phagan. "You know," he said, "there was a little girl who was murdered in Atlanta years and years ago who had the same name as you. Are you, by any chance, related to her?"

I told him I didn't know.

That conversation disturbed me. I became curious. Was there really another Mary Phagan?

During recess some of my classmates taunted me. "Are you that dead girl's reincarnation?" Another called out, "Are you the little girl who had been murdered?" and ran away.

I cried all the way home from school. My father happened to be home. "What's wrong?" he asked when he saw my tear-stained face.

1

2

### *The Murder of Little Mary Phagan*

"I want to know who the little girl named Mary Phagan that was murdered was," I said, trembling. "Am I related to her?"

He put his arm around my shoulders, walked me into the kitchen, and sat me down at the table in the sunny alcove.

He poured two glasses of milk, brought them to the table, and sat opposite me. The afternoon sun played up the reddish tints in his light brown hair, worn in a severe military crewcut, and glinted off his military-issue glasses.

"Yes, you are related to little Mary Phagan," he said solemnly. "She was your grandfather's sister. She would have been my aunt. You are her greatniece and are named for her."

Gently, he told me the outline of the story of Mary Phagan. That she had caught the English Avenue Street Car the morning of Saturday, April 26, 1913, Confederate Memorial Day, to go to the National Pencil Company where she had worked in downtown Atlanta to pick up her wages of \$1.20. She had made plans to stay and watch the parade. Governor Joseph M. Brown and other dignitaries were to share the reviewing stand. It was a legal holiday that the South still celebrated then. The War Between the States had been over for only forty-eight years. There were still some surviving Confederate veterans.

"That day would change the lives of everyone it touched.

"Tom Watson would reflect the mood of us Georgians in his magazine and newspaper. He would be elected to the United States Senate, and his statue

placed in front of the Georgia State Capital Building. Solicitor Hugh M. Dorsey would ride right into the Governorship of Georgia.

As my father leaned back, the sunlight turned his hazel eyes to green. "Your grandmother Fannie Phagan

3

*"Are You, By Any Chance ... ?"*

Coleman remembered that day the rest of her life," he said. "Little Mary was dressed in a lavender dress that her Aunt Lizzie had made for her. She carried a parasol and a German silver mesh bag. She had ribbons in her hair that tied her long reddish hair up. She was a beautiful young child—" my father paused, "—like you.

"Little Mary entered the pencil factory about noon that day," he continued. "What happened then, no one will ever really know. Newt Lee, the night watchman, found her body in the basement next to the coal bin that Sunday morning at about 3:00 a.m. She had been brutally raped and murdered. Newt Lee was a Negro, and, remember, in 1906 Atlanta had one of the country's worst race riots. So right then he feared for his life. He would have been afraid to lie even if he had wanted to. He ran up to the telephone and called the police. Two notes were found by her body but Mary did not write these notes, according to Grandmother Fannie.

"Grandmother Fannie had been expecting Mary back home that evening after the parade. Sundown came and still no little Mary. My stepgrandfather went downtown to try to locate anyone that could give him information on little Mary's whereabouts. No luck. It would be the next day, the twenty-seventh of April, before they were told that little Mary had been found dead. The family was terrified. Shocked. She was so young. And she'd been violated.

"Little Mary's body was taken to Bloomfield's, a local undertaker, which was also used as Atlanta's morgue. The funeral was held that Tuesday, April 29, 1913. Her casket was surrounded by flowers—the flowers were expressions of the whole state's sympathy to the family. She was laid to rest that day in Marietta City cemetery.

"Leo Frank, the supervisor of the factory, was charged with the murder. His trial started on the twenty-eighth day of July that year. The case became famous

4

*The Murder of Little Mary Phagan*

because it was reportedly the first time in the history of Georgia and the South that a black man's testimony helped to convict a white man."

Looking closely at me, my father realized that I did not understand all he was telling me. And so he simplified the story as much as he could.

As soon as we got up from the table I went upstairs to my room and examined what I saw in my mirror: Pretty? Was I?

Satisfied with my father's explanation, I relaxed a bit. It was just a coincidence that Mr. Henry, my science teacher, had known the story of little Mary Phagan, I told myself. I was positive that I would never be asked that question again.

That was in 1968. My father decided to retire from the United States Air Force after serving some twenty-two years in that same year. Then he went to work for the United States Post Office as a letter carrier in Charleston.

During my summer vacation that year I went to Chicago to visit relatives with my grandmother, Frances Petullo Mastandrea, who had lived with us for five years. A few weeks after our arrival in Chicago, my parents called to say the

family was moving to Atlanta. "Our family is in Atlanta," my father said, "and my parents are getting older. I want us to know them as we do Grandma Frances."

He was right. We never really knew any of our family. And I was ready to settle down and live somewhere for more than a couple of years. I was excited as we arrived at our new home in DeKalb County, on the outskirts of metropolitan Atlanta and close enough to my grandparents in Atlanta.

It was a nice suburb in which to raise a family, and the high school, Shamrock, was the best the area had to offer.

When school began, I soon learned that making

5

*"Are You, By Any Chance ... ?"*

friends might be difficult: most of the cliques had gone to school together since kindergarten. That was hard for me to imagine. I had never had a friend more than a few years; to have a lifetime friend seemed impossible.

The first day, the teachers called out our names, glancing at each student in order to associate names and faces. To my amazement, most of my teachers asked me that question: "Are you, by any chance, related to little Mary Phagan who was murdered here in Atlanta? Are you her namesake?"

I was horrified. What was the truth about my great-aunt? Who knew the whole story?

I decided to ask my grandfather, William Joshua Phagan, Jr. about his little sister. Of all people in our family, he'd be the one to know about the pretty girl for whom I'd been named.

But my grandfather was beginning to show his age then. His light blue eyes reflected the continual tiredness he felt. His balding head glittered in the sunlight. He'd had a stroke earlier and his communication skills were hampered, so I decided to wait until the right moment to ask him my questions.

One day, to everyone's surprise, my grandfather came out with little Mary's picture and pointed to me. As he looked at the picture and then me, he sobbed, and as he tried to find the words, nothing came out but low sobs and wailings. I knew then I could never ask him any questions about little Mary.

I decided to ask my father if he could tell why he named me after little Mary.

And he was ready for the question. "I had determined, almost from the day your mother and I were married, that we would name our first girl child after your greataunt, little Mary Phagan. This was my tribute to my father. Little did I realize the impact this would have on you.

6

*The Murder of Little Mary Phagan*

And, yes, I wonder if I knew then what I know today if I would have named you after little Mary.

"Your greataunt had been born on June 1 and you on June 5. As soon as you were big enough, I would take you with me on Saturday morning when my friends and I went out for coffee. You were my constant companion when I was not out flying, and I took a great deal of pleasure in teaching you the things that all young children have to learn. A wife, a child, flying, what more could a man want?"

"Some of my friends would from time to time make comments about your size. You have always been petite, and it seemed you were taking after your greataunt, little Mary: she never was to be over four feet eleven inches. In sheer desperation, I would ask, 'Well, what do you expect out of Shetland Ponies, stallions?' This method worked with the adults.

"When you were about four years old, you bore a striking resemblance to your greataunt, little Mary. But at that early age, it made no difference or impression on you."

When I was four and a half, in January, 1959, my father had asked for reassignment and was assigned to the 1608 Military Air Transport Wing in Charleston, South Carolina. When we arrived in Charleston, he was assigned to the 17th Air Transport Squadron. He continued:

"The interest your name caused when we signed you up for kindergarten was unreal. People would come up to us and sing 'The Ballad of Mary Phagan.' They would tell me stories that I had never heard before. Then the questions would come: what relationship we were and had our daughter been named for little Mary? They would exclaim about what a pretty little girl you were and that you looked just like little Mary."

In January 1960 my father was presented with an Individual Flying Safety Award and was assigned to the

7

*"Are You, By Any Chance ... ?"*

1503rd Air Transport Wing in Tachikawa Air Base, Japan. By then I had a sister and two brothers.

"Tachikawa was our home for the next three years," he told me. "These years we were flying mostly into Korea and the Phillipines. During this time, few questions were asked about little Mary.

"I extended my tour for another year in order to go to Hawaii. During those years out of the country, little Mary had gently slipped to the rear of my mind. In December 1964 I was promoted to Master Sergeant. Now it was time to return to the continental United States, which we did in July 1965.

"Your life took a turn then that I had not foreseen. The day you came home from school crying and asking me about little Mary was a day I would never forget. I had mixed emotions. I wanted you to know your legacy, but on the other hand, I became frightened for you. I had hoped that you would never encounter discourteous people and I feared that your legacy would submit you to t is.

Daddy continued, "You carry a proud name, one that is instantly recognized not only here in Georgia but all across this great country of ours. Hold your head high, stand proud, face the world, let them know that you are Mary Phagan, the greatniece of little Mary Phagan."

It was then I learned that a vow of silence had been kept by our family for close to seventy years. It had been imposed on us by Fannie Phagan Coleman, Mary Phagan's mother, at the time of little Mary's death.

The murder, the trial of Leo Frank, and his lynching has deeply affected the lives of all involved. All the principals in the trial are dead now—and the obituary of each of them mentioned their connection to the murder of little Mary Phagan.

My family had hoped that the lynching of Leo Frank would be the final ending of the horrible tragedy; that

8

*The Murder of Little Mary Phagan*

they could finally continue their lives; that the pain would ease. It hasn't.

The legacy left to me is a difficult one but I have had to accept it. Until recently, I discussed little Mary Phagan only if I was asked: "Are you by any chance related to little Mary Phagan?" But, to my surprise, I have been asked that question all my life—both inside and outside of Georgia.

## Chapter 2

# THE LEGACY

And, as my father said, my legacy is a proud one. And if, as he'd exhorted me, I was going to let the world know that I was Mary Phagan, greatniece of little Mary Phagan, I wanted to find out everything I could about my namesake—and our family.

By age fifteen, I was certain of one thing: my life would be shaped by my relationship to little Mary Phagan. And I was excited about discovering my legacy. I got the desire to read everything I could on the case.

My mother and I went to Atlanta's Archives to discover more. My mother, like me, was unaware of the family history, especially concerning little Mary, and she, too, wanted to learn more. When we signed in at the Archives, the librarian looked stunned. Again, I was asked that question: "Are you, by any chance, related to little Mary Phagan?"

I told her I was and she directed us to a smaller room which contained photographs of the history of Georgia. One of these photographs was the frightening picture of Leo Frank hanging. For me, this was the final catalyst.

Once I had seen that picture, I attempted to read everything—books, newspaper articles, even the Brief of Evidence. The information was difficult and, being only a teenager, I found it hard to understand and digest. It raised more questions for me. Again I turned to my father for answers.

This time my questions were more direct. I wanted to know everything about the family, the trial of Leo Frank, and the lynching.

And this time his answers were deeper and more complete.

"My great-great-grandparents, William Jackson Phagan and Angelina O'Shields Phagan, made their home in Acworth, Georgia. Their land off Mars Mill Road was also home to their children: William Joshua, Haney McMellon, Charles Joseph, Reuben Egbert, John Marshall, George Nelson, Lizzie Mary Etta, John Harvell, Mattie Louise, Billie Arthur, and Dora Ruth. Two other children had died during childbirth.

"These children grew up to be very close to one another. Their father, W.J., believed that that was what the family unit was meant to be: by depending on each other and furthering their education, he was sure, the Phagans would get far ahead in the world.

"The eldest son, William Joshua, loved the land and farmed with his father. On December 27, 1891, he married Fannie Benton. The Reverend J.D. Fuller presided over the Holy Bans of Matrimony for them in Cobb County, Georgia. W.J. gave them a portion of the land and a home of their own, and Fannie and William Joshua farmed the land together. They, too, became successful farmers.

"Around 1895, W.J. moved the family to Florence, Alabama. William Joshua and Fannie, now with two young children, Benjamin Franklin and Ollie Mae, moved with them.

"The family's new home, purchased from General Coffee, had been a hospital during the War Between the States. The house needed extensive renovation, but posed no financial burden on the family. W.J., Angelina, and their children lived in the main house; the young couple's new home was not far away.

"The years in Alabama were good for them, especially

11

*The Legacy*

for William Joshua and Fannie. They had two more children, Charles Bryan and William Joshua, Jr. They continued to farm the land.

"In February of 1899, William Joshua Phagan died of measles. Fannie, who was then six months pregnant, was left with their four young children. She was devastated but kept her courage up: she knew the child she was carrying could be in danger. On June 1, Mary Anne Phagan was born to Fannie in Florence, Alabama.

"Fannie remained in Alabama long enough for her and her baby daughter to gain their strength. Then she moved her family back home to Georgia, where she planned to live with her widowed mother, Mrs. Nannie Benton, and her brother, Rell Benton."

"Why did she move away from her husband's family, when they'd been so good to her?" I asked.

"Oh," my father smiled, "I don't believe she was so much moving *away* from her husband's kin as she was moving *back* to her own kin. Anyway, hang on," he grinned at me. "Thing is, it turned out that the families weren't separated in the end, after all."

He shifted in his chair. "Well, anyway, Fannie probably also figured there'd be more opportunities in a densely populated—well, relatively densely populated—area. Notice I didn't say city. 'Cause Marietta was far from that, then. What it was was a country town with a population of about three thousand five hundred. And Southern society was changing rapidly: the younger generation did not know the high feelings of the War Between the States and Reconstruction. The War and its aftermath no longer dominated society and politics.

"The square in Marietta was the center of every aspect of life. It was an arena of sorts for social, political, and agricultural activities and the center of transportation and communication for both residents and visitors.

"Then—see what I meant?—W.J. Phagan moved his

12

*The Murder of Little Mary Phagan*

family back to Georgia as well. The death of his eldest son so bereaved him that the family could no longer remain in Alabama. He purchased a log home and land on Powder Springs Road in Marietta. W.J. also provided Fannie with a home for her and her five children to live in. He saw to it that they had no hardships.

"About 1907 the last of the Phagan family left Alabama and returned to Georgia. Reuben Egbert and his family moved back to their native state and remained there for the rest of their lives. W.J. kept an eye on all his children and his grandchildren, and by 1910 had all of them nearby him, as well as financially secure, in Marietta.

"Fannie Phagan and her children appreciated what W.J. was doing for them, but they also felt the desire to support their family themselves. So sometime after 1910 Fannie Phagan and four of her five children moved to East Point—Atlanta—

Georgia, where she started a boarding house, and the children found jobs in the mill. Charlie Joseph, the middle child, decided he wanted to continue farming and moved in with his Uncle Reuben on Powder Springs Road in Marietta. Around that time Mary found work at the National Pencil Company in Atlanta.

"The Phagan family remained close with relatives in Marietta. Every so often one of Mary's aunts—Lizzie, Ruth, or Mattie—would ride the trolley from Marietta Square to East Point to pick up Mary and bring her to W.J.'s house. The family always loved having Mary there, especially her female cousins, Willie and Lily. When the 'cousins got together—usually in the summer, when school was out—they played games—hide and seek, hopscotch, dolls and house. But Mary's favorite game was house. The girls would clear a clean spot in the shade, place rocks in it for chairs, and then decorate the 'inside' of the 'house' using limbs from trees or other big branches already on the ground. Their 'house' would show the distinct rooms—

13

*The Legacy*

kitchen, bedroom, bathroom, etc. But usually in the bed-room they would have a babydoll. Dolls were different back then. Most of them had stuffed bodies but their heads were called 'China.' When they would push the babydoll in its carriage, one foot would fly up! The girls could always be heard giggling and laughing together. They cherished those times together. And especially since visits were getting fewer.

"Usually, Aunt Lizzie would make the girls their clothes. How excited they got! They loved new things, just like everyone else. Sometimes Aunt Lizzie would take them to Marietta Square for a shopping trip. They'd get on the trolley where it began—Atlanta Street. Remember, the Square was the center of activity and the girls de-lighted in seeing things 'downtown.' Sometimes they would just ride the trolley car.

"Even though Mary stayed busy at W.J.'s, she always found time to drop Grandmother Fannie a note."

Here my father stopped and took a postcard Mary had written to her mother: it was postmarked Marietta, Georgia, June 16, 1911, 6:00 p.m.:

Hello Mama,  
How are you?  
I got here all O.K.  
I would have wrote sooner  
but I hadn't thought about it.  
Willie is up here.  
Aunt Lizzie has got my gingham  
dress made. I am  
going to have my picture made soon.

Your  
baby,  
Mary

14

*The Murder of Little Mary Phagan*

We were both deeply touched by the way Mary had signed the card.

"On February 25, 1912, Fannie married J.W. Coleman, a cabinet maker. He was a good man and accepted her children as his own. And they all liked him and accepted him as their stepfather.

"They moved to J.W.'s house at 146 Lindsey Street in Atlanta near Bellwood, a white working-class neighborhood.

"Well, Coleman didn't have much money, but he wasn't considered poor by any means. After marrying Fannie, he requested that her youngest child, Mary, quit work at the Pencil Company and continue her education. But Mary liked her work at the factory and didn't really want to quit.

"Eventually, Fannie's eldest, Benjamin Franklin, who worked as a delivery boy for a general merchandise store, joined the Navy. Ollie Mae became a saleslady for Rich's Department Store. William Joshua, Jr., continued to work in the mills. They didn't seem to mind working at all, because they were earning money."

"Why did anyone mind?" I asked.

"Oh, mill life was anything but easy then." He looked out the window. "The conditions were awful; mills were filthy and lint was everywhere. Child labor laws weren't enacted 'til years later. Small children were hired as sweepers and were whistled at to keep moving. My mother, Mary Richards Phagan, was eleven years old when she became a spinner at the mills. She was so small, she was one of the first to be run away from the 'officials'—the labor representatives—when they came by. It was hotter than the hinges of Hades, and cotton was always flying through the air. In fact, the flying lint eventually became a term for those who worked in the mills: lint-heads."

"Okay, Daddy," I interrupted. "But life in Atlanta

15

*The Legacy*

must have been more exciting than life in Marietta—or Alabama."

"Cobb County itself had a county population of twenty-five thousand. There were no paved roads in Marietta and Cobb County, including the square in Marietta. People used wagons and carriages; virtually no one owned an automobile then. If they chose to travel the twenty-five miles to Atlanta, they used the N.C. & St. L. Railroad or the electric streetcar line.

"Telephone service had come in some twenty-five years earlier—about 1890, or so. Water and electricity had only been available for five years.

"Cobb was considered an agricultural county and had practically no industries. In late autumn, the square in Marietta was filled with cotton bales. Throughout the summer it was filled with vegetables.

"Justice, law, and order were other areas that were vastly different then. After the War Between the States, the antagonism between those upholding the federal judicial system and those who wanted more local control of the courts led to night riders and lynchings. Men settled their differences immediately. It became a way of life.

"Atlanta in 1913 still hadn't reached a half million in population—but it wanted to. It was a mule center and railroad town. But it had grown significantly since 1865.

"Oh, there was light industry, including the National Pencil Company at 37-39 Forsyth Street. Mills were the most numerous, and a few breweries.

"Life in 1913 was casual and slow. Folks got most of their news from local newspapers, which printed 'extra' editions for late-breaking stories.

"Sanitary conditions were terrible. The facilities were few and far between and were located outside. Sanitation workers were called 'honey dippers.' Typhoid fever was all over the place.

"Boys wore knee pants until they completed gram-

16

*The Murder of Little Mary Phagan*



mar school. Women wore high laced high-heeled shoes and bloomers made of the same material as their dresses.

"There were no frozen foods. People had streak of lean and perhaps some beef for stew. Hogs were plentiful. Biscuits and milk gravy were staples. They had apples and oranges occasionally, but raisins had seeds in them.

"Photography was all over—not just in the newspaper. Tintype, most usually.

"For recreation, most entertained themselves. There was a form of baseball, 'peg,' that they played in quiet streets or in vacant lots. Movie theaters ran silent films on weekends, especially around the mill neighborhoods. The Grand Theater, the Bijou, and the Lakewood Amusement Park helped people forget their daily drudgery.

"The South hadn't really recovered from the ravages of the War Between the States and Georgia was no exception. The economy was shifting from the land to industry. Families were resettling from small towns and farms into the urban areas. Wives and children were often forced to work in factories to help the family survive.

"Mary Phagan was a beautiful little girl with a fair complexion, blue eyes, and dimples. Her hair was long and reddish brown and fell softly about her shoulders. Since she was well developed, she could have passed for eighteen. Her family all called her Mary rather than her full name of Mary Anne.

"Mary was Grandmother Fannie's youngest child. Your grandfather says that she had a bubbly personality and was the life of their home. Mary was jovial, happy, and thoughtful toward others. When she was with her family, she'd show her affection for them by sitting in their laps and hugging them.

"The last Phagan family gathering was a 'welcome home' for Uncle Charlie. There the family had begun to notice how beautiful Mary was. Lily, her cousin, who is still living, tells me that she envied Mary a particular

dress she had on. It was called a 'Mary Jane dress'—long, with a gathered skirt and fitted waist. Lily and her sister Willie were 'skinny,' and Mary's dress looked better because she was 'heavier' than them. They both wanted their dresses to look like Mary's did on them.

"Early in April, Mary was rehearsing for a play she was in at the First Christian Church. The play was 'Sleeping Beauty,' and of course Mary played the role of Sleeping Beauty. Your grandfather tells me that he would take Mary to the church and watch her rehearse. The scene where Sleeping Beauty is awakened by a kiss always made him and Mary giggle. She would watch her brother with her eyes half-closed, and then begin to giggle when he cracked a smile. It seemed that that scene took an eternity to rehearse."

I could picture Mary on the stage playing the little Sleeping Beauty. "April twenty-sixth was Confederate Memorial Day, a Saturday, and a holiday complete with a parade and picnic. Mary planned to go up to the National Pencil Company to pick up her pay and then watch the parade. She told Grandmother Fannie she'd be home later that afternoon. One of the last things she did was to iron a white dress for Bible School on Sunday. She was a member of the Adrial Class of the First Christian Bible School, and she wanted to look her best so she might win the contest given by the school.

"She was excited about the holiday, though, and wore her special lavender dress, lace-trimmed, which her Aunt Lizzie had made for her, they tell me. Her undergarments included a corset with hose supporters, corset cover, knit underwear, an undershirt, drawers, a pair of silk garters, and a pair of hose. She

wore a pair of low-heeled shoes and carried a silver mesh bag made of German silver, a handkerchief, and a new parasol.

"At 11:30 a.m. she ate some cabbage and bread for lunch. She left home at a quarter to twelve to go to the

18

*The Murder of Little Mary Phagan*

pencil factory. She was to pick up her pay of \$1.20, a day's work." My father sighed and looked out the window.

"When Mary had not returned home at dusk, your great-grandmother began to worry. It was late, and she had no idea where Mary could be. Her husband went downtown to search for Mary. He thought perhaps she had used her pay to see the show at the Bijou Theater and waited there for the show to empty, but found no sign of her.

"He returned home and suggested to Fannie that Mary must have gone to Marietta to visit her grandfather, W.J. Since they had no telephone, they couldn't communicate with the family to verify that Mary was with them. Fannie sort of accepted this explanation, since she knew how Mary loved her grandfather. It did seem plausible that she could be with the family in Marietta. But Fannie, being a mother, spent a restless night."

My father paused, stared into the middle distance. I could see my grandfather pointing to Mary's photograph, then to me, then sobbing almost uncontrollably. My father continued.

"The next day, April 27, 1913, Grandmother Fannie's worst fears were confirmed. Helen Ferguson, their friend and neighbor, came to the house to tell them she had received a phone call about Mary. Their Mary had been found murdered in the basement of the National Pencil Company.

"The company, a four-story granite building plus basement, was located at 37-39 Forsyth Street. It employed some one hundred people, mostly women, who distributed and manufactured pencils. Its windows were grimy. It was dirty. It had little ventilation. Most of the workers were paid twelve cents an hour. It was in fact a sweat shop of the northern, urban variety.

"Mary worked in its second floor metal room fixing metal caps on pencils by machine. Her last day of work

19

*The Legacy*

had been the previous Monday. She was told not to report back until a shipment of metal had arrived.

"Her body was discovered at three o'clock in the morning on April twenty-seventh, in the basement of the pencil company by the night watchman, Newt Lee. Her left eye had apparently been struck with a fist; she had an inch-and-a-half gash in the back of the head, and was strangled by a cord which was embedded in her neck."

He shook his head sadly. "Her undergarments were torn and bloody and a piece of undergarment was around her hair, face, and neck. It appeared that her body had been dragged across the basement floor; there were fragments of soot, ashes, and pencil shavings on the body and drag marks leading from the elevator shaft.

"There didn't seem to be any skin fragments or blood under her fingernails, which indicated she hadn't inflicted any harm on whoever did it.

"Two scribbled notes were found near her body. They were on company carbon paper."

Here, my father got up and walked across the room to the secretary against the far wall, opened the desk flap, reached in and retrieved a sheet of paper, and returned to his chair near the window. He handed me the sheet. It was a photostatic copy of two nearly-illiterate notes:

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

he said he wood love me and land doun play like night witch did it but that long tall black negro did buy his slef.

My father sat silently while I read the notes. When he continued, his voice was almost hoarse. "When they went up to tell William Jackson Phagan—now, that's your

20

*The Murder of Little Mary Phagan*

grandfather's grandfather, he said—my daddy remembered it word for word: 'The living God will see to it that the brute is found and punished according to his sin. I hope the murderer will be dealt with as he dealt with that tender and innocent child. I hope that he suffers anguish and remorse in the same measure that she suffered pain and shame. No punishment is too great for him. Hanging cannot atone for the crime he has committed and the suffering he as caused both too victim and relatives.' "

My father swallowed hard a couple of times. After a while he continued.

"Mary was buried that following Tuesday," he said. He suddenly began to quote the newspaper account of little Mary's funeral service. He'd committed it to memory. " 'A thousand persons saw a minister of God raise his hands to heaven today and heard him call for divine justice. Before his closed eyes was a little casket, its pure whiteness hidden by the banks and banks of beautiful flowers. Within the casket lay the bruised and mutilated body of Mary Phagan, the innocent young victim of one of Atlanta's blackest and most bestial crimes.'

" 'L. M. Spruell, B. Awtrey, Ralph Butler, and W. T. Potts were the pallbearers. They carried the little white casket on their shoulders into the Second Baptist Church, a tiny country church. Every seat had been taken within five minutes, every inch of the church was occupied and hundreds were standing outside the church to hear the sermon.'

"The choir sang 'Rock of Ages,' but what everyone heard was Grandmother Fannie, wailing as if her heart would break.

"And," my father added, "it probably did."

"The light of my life has been taken,' she cried, 'and her soul was as pure and as white as her body.'

"The whole church wept before the completion of the hymn. The Reverend T.T.G. Linkous, Pastor of Christian

21

*The Legacy*

Church at East Point, prayed with those at the Second Baptist Church."

My father continued the words that must be etched in his heart:

" 'Let us pray. The occasion is so sad to me—when she was but a baby. I taught her to fear God and love Him—that I don't know what to do.'

"With tears gushing from his eyes, he found the strength to continue. "We pray for the police and the detectives of the City of Atlanta. We pray that they may perform their duty and bring the wretch that committed this act to justice. We pray that we may not hold too much rancor in our hearts—we do not want

vengeance—yet we pray that the authorities apprehend the guilty party or parties and punish them to the full extent of the law. Even this is too good for the imp of Satan that did this. Oh, God, I cannot see how even the devil himself could do such a thing."

" 'Fannie Phagan Coleman controlled her crying when he spoke of the criminal and W.J. Phagan, Mary's grandfather, exclaimed: "Amen."

" ' "I believe in the law of forgiveness. Yet I do not see how it can be applied in this case. I pray that this wretch, this devil, be caught and punished according to the man-made, God-sanctioned laws of Georgia. And I pray, oh, God, that the innocent ones may be freed and cleared of all suspicion."

"With hearing this, Mary's Aunt Lizzie let out a piercing scream and collapsed and she was taken home," my father interjected.

" "Mothers," Dr. Linkous declared, "I would speak a word to you. Let this warn you. You cannot watch your children too closely. Even though their hearts be as clean and pure as Mary Phagan's, let them not be forced into dishonor and into the grave by some heartless wretch, like the guilty man in this case."

22

*The Murder of Little Mary Phagan*

" "Little Mary's purity and the hope of the world above the sky is the only consolation that I can offer you," he said, speaking directly to the bereaved family. "Had she been snatched from our midst in a natural way, by disease, we could bear up more easily. Now, we can only thank God that though she was dishonored, she fought back the fiend with all the strength of her fine young body, even unto death."

" ' "All that I can say is God bless you. You have my heartfelt sympathy. That is all that I can do, for my heart, too, is full to overflowing."

"Mary's grandfather, W.J. Phagan, sat motionless as ' the tears streamed down his face while the brothers of Mary—Benjamin, Charlie, and William Joshua—comforted their sister, Ollie.' "

My father continued in his own words. "After the sermon, they opened the little white casket and the crowd viewed the body of the little girl with a mutilated and bruised face. The tears watered the flowers that surrounded her."

"They carried the casket out to the cemetery. J.W. practically carried Grandmother Fannie out; Dr. Linkous helped. Mary's sister, Ollie, and her brother Ben, now a sailor on the United States ship Franklin, were behind them, while the smaller brothers, Charlie and Joshua, brought up the rear."

The account of the funeral service went on:

" "Earth to earth, ashes to ashes, dust to dust. The Lord bath given, the Lord bath taken, blessed be the name of the Lord,' but no words expressed by Dr. Linkous could heal the wounds in their hearts, and as the first shovel of earth was thrown down into the grave, Fannie Phagan Coleman broke down completely and wailed: "She was taken away when the spring was coming—the spring that was so like her. Oh, and she wanted to see the spring. She loved it—it loved her. She played with it—it was a

23

*The Legacy*

sister to her almost." She took the preacher's handkerchief and walked to the edge of the grave and waved the hand-kerchief. "Goodbye, Mary, goodbye. It's too big a hole to put you in, though. It's so big—big, and you were so little—my own little Mary." ' "

My father stopped. The papers slid to the floor. His eyes were filling up.

I stopped, too. Bursting as I was with questions about the trial of Leo Frank and its aftermath, I could not bring myself to cause my father further pain that day. I felt guilty for the upset the memories he'd dredged up on my behalf had already caused him.

As if reading my thoughts, he turned to me: "It's all right, Mary. You *should* know the whole story. But—" he'd blinked back the tears, but his smile was tremulous—"not today."

A few days later, we sat down again. This time I started right off with the questions:

"Daddy, how did Grandmother Fannie stand up while the trial was going on?"

He told me that she was to be the first witness called to the witness stand. She tried to compose herself; her tears were flowing freely down her cheeks and she was sobbing as she gave her statement:

"I am Mary Phagan's mother. I last saw her alive on the 26th of April, 1913, about a quarter to twelve, at home, at 146 Lindsey Street. She was getting ready to go to the pencil factory to get her pay envelope. About 11:30, she had lunch, then she left home at a quarter to twelve. She would have been fourteen years old on the first day of June, she was fair complected, heavy set, very pretty, and was extra large for her age. She had on a lavender dress trimmed in lace and a blue hat. She had dimples in her cheeks.'

24

*The Murder of Little May Phagan*

"When Sergeant Dobbs described the condition of Mary's body when they found her in the basement, when he stated that she had been dragged across the floor, face down, that was full of coal cinders, and this was what had caused the punctures and holes in her face, Grandmother Fannie had to leave the courtroom," my father said.

Now it was I who had to compose myself. I was now starting to feel the pain and agony that all the family had felt for years.

"When the funeral director, W.H. Gheesling, gave his testimony, he stated that he moved little Mary's body at four o'clock in the morning on April 27, 1913. He stated that the cord she had been strangled with was still around her neck. There was an impression of about an eighth of an inch on the neck, her tongue stuck an inch and a quarter out of her mouth."

"Daddy, *was* Mary bitten on her breast?"

"Yes, but there was no way to prove it because certain documents have mysteriously disappeared."

"Who besides Grandmother Fannie attended the trial?"

"Other than Grandmother Fannie, all the immediate family, including your grandfather and Mary's stepfather, were present every day. Mary's mother and sister were the only women, along with Leo Frank's wife and mother, who were permitted in the courtroom each day."

"Daddy, why didn't you tell me about Leo Frank's religious faith?"

"His religious faith had nothing to do with his trial." "What does anti-Semitic mean?"

"It means hatred of the Jews."

I was surprised that people could hate each other because of their faith. "How do you become prejudiced?" I asked.

"You have to be taught to be prejudiced, to walk, talk, just about everything in life that is worth anything. Preju-

dice, I found out, isn't worth a nickel, but can cost you a lifetime of grief and sorrow."

"Daddy, what about the courtroom atmosphere?"

"According to your great-grandmother, Judge Leonard Roan maintained strict discipline in his court at all times and would not tolerate any disturbance. Judge Roan had the authority to make a change of venue if he in any way felt threatened: he made no change of venue. Neither Leo Frank or his lawyers asked for a change of venue.

"The newspapers gave a daily detailed report on the court proceedings, and there were many 'extras' printed each day. Not one newspaper ever reported any of the spectators shouting 'Hang the Jew' nor did I ever hear that any member of our family made that or any similar statement. Judge Roan was considered by all to be more than fair. The Atlanta Bar held him in high esteem for his ability in criminal law. Otherwise he would have never been on the bench."

"Was Leo Frank defended well?"

"Leo Frank's lawyers were the best that money could buy. He had two of the best criminal lawyers in the South, Luther Rosser and Reuben Arnold. I have been told that Rosser's fee ran well over fifteen thousand dollars. In those years that was a small fortune. These lawyers were the most professional and brilliant lawyers the South had to offer. But the defense these brilliant lawyers were to offer was not good enough to offset Hugh Dorsey's tactics. If there was any brilliance at that trial, it was Hugh Dorsey's. The people of Georgia were so impressed by him that he was later rewarded with the biggest prize in state politics: he was elected governor of Georgia."

"What was meant by Leo Frank being a Northerner and a capitalist? Did these facts have any bearing on the trial?"

My father reminded me about the War Between the States, what had caused it, and that it had been over for

26

*The Murder of Little Mary Phagan*

only forty-eight years by 1913. He explained how the carpetbaggers had come South to run the country and the awfulness of life under their rule. From that time on, he said, anyone from the North was called a Northerner.

"Leo Frank was born in Texas, but shortly thereafter his family moved to Brooklyn, New York. He was a graduate of Cornell University and he was given the job of superintendent of the National Pencil Company. As for being a capitalist, he did come from a family that was wealthy by the standards of those days. But, as my father pointed out, the hope of any aspiring productive person is to become a capitalist in his own right. In 1913, however, it meant a lifestyle that few people could maintain. And that bred resentment."

Then I asked, "What is a pervert?"

My father made me get the dictionary and look up the meaning with him. I was not satisfied with the meaning. My father then explained that sexual perversion is something our society does not accept as normal.

Today, this charge will outrage any segment of society. In 1913, anyone who dared to make that charge had better have been prepared to die for it.

"Daddy, why did Governor Slaton commute Leo Frank's sentence?"

"This is one question that our family still asks today. We do not accept Governor Slaton's explanation in his order. There had to be something else. No man will willingly commit political suicide; but he did just that with the commutation order. I've done some research on my own, but I know no more today than my grandmother did back in 1915. I've found certain things about Governor Slaton that are hard to accept but are facts.

"The Atlanta newspapers of 1913 show the law firm of Rosser & Brandon, 708 Empire, and the law firm of Slaton & Phillips, 723 Grant Building, as merging. Then the 1914 Atlanta Directory shows the law firm of Rosser,

27

*The Legacy*

Brandon, Slaton & Phillips, 719—723 Grant Building. They were also listed in the Atlanta Directory in 1915 and 1916. Slaton was a member of the law firm that defended Leo Frank.

"Governor Slaton was a man that Georgia loved and admired until June 21st, 1915. Then love turned to hate. The people believed that Governor Slaton had been bought. His action caused the people of Georgia to take the law into their own hands, to form a vigilante group and seek justice that they believed had been denied them.

"Governor Slaton had Leo Frank moved from Atlanta for his own protection. He was moved to the Milledgeville Prison Farm, just south of Macon. The vigilante group travelled by car, Model T Fords, and removed Frank from prison. All of them were respected citizens. They called themselves the 'Knights of Mary Phagan' and this group later became the impetus for the modern Klu Klux Klan.

"Remember, there were no paved roads in those days. This trip was made at night. Not one guard was hurt, not one shot was fired, not one door was forced. The prison 'was opened to them. Many in Georgia felt that justice was being done! It was the intent of the vigilantes to take Leo Frank to the Marietta Square and hang him there. Dawn caught up with them before they could reach Marietta. They stopped in a grove not far from where little Mary was buried. Then they carried out his original sentence, 'to be hung by the neck until dead.' "

Shaken, I asked, "Daddy, were there any Phagans at the lynching?"

He gave me a simple answer. "No! And, everyone knew the identity of the lynchers. But not one man was charged with the death of Leo Frank, not one man was ever brought to trial."

The next question I asked upset him tremendously: "How do you feel about the lynching, Daddy?"

He related to me what his father had felt when he

28

*The Murder of Little Mary Phagan*

had talked about the lynching. Grandfather felt that justice had been served—and so did the rest of the family.

But I would not let up. "But how do *you* feel, Daddy?"

"I feel the same way my family did, justice prevailed." To understand the actions that these men took on August 17, 1915, I would have to try and transport myself to those times, he said. "You must try to understand what they felt, what would drive them to take the law into their own hands. You must not try to judge yesterday by today's standards. By doing this, you are second-guessing history and no one, but no one, has ever been able to do that."

"Daddy, how about Jim Conley? What part did he have in the death of little Mary Phagan?"

My father said that, reportedly, for the first time in the history of the South, a black man's testimony helped to convict a white man. The best criminal lawyers in the South could not break this semi-literate black man's story. The circumstantial evidence and Jim Conley's testimony caused Leo Frank's conviction for the murder of little Mary Phagan.

"Your grandfather told me—and this can be confirmed by my sister Annabelle—that he had met with Jim Conley in 1934, in our home, to discuss the

trial and the part Conley had played in helping Leo Frank dispose of the body of little Mary." My father became adamant: "There is no way my father would have let Jim Conley live if he believed that he had murdered little Mary."

My father then related the conversation that my grandfather told him had taken place. He said to Jim Conley, "Let's sit down and talk awhile, Jim."

And Jim said, "OK."

My grandfather then said, "I want to know how you helped Mr. Frank."

Jim said, "Well, I watched for Mr. Frank like before and then he stomped and whistled which meant for me to unlock the door and then I went up the steps. Mr. Frank

looked funny. He told me that he wanted to be with the little girl, she refused and he struck her and she fell. When I saw her, she was dead."

Grandfather asked, "But why did you help him if you knew it was wrong?"

And Jim said, "I only helped Mr. Frank because he was white and my boss."

"Were you afraid of Mr. Frank?" my grandfather asked.

Jim answered, "I was afraid if I didn't do what he told me—him being white and my boss, that I might get hanged. [At that time, it was common for blacks to be hanged.] So, I did as he told me." Grandfather then asked, "What did you do after you saw that little Mary was dead?"

There are, my father grinned, two versions of that meeting: his sister Annabelle's and his father's—my grandfather's.

The version my Aunt Annabelle told him was that she was coming out of a grocery store and saw their father, William Joshua Phagan, Jr., and a black man walking (she said "nigger") down Jefferson Street towards the house.

She said to her father:

"Daddy, what are you doing with that nigger man?" Grandfather said, "Now, don't you know who this is?"

"No, I don't," Annabelle said.

And Grandfather said, "This is Jim Conley."

"Oh, this is the man who helped kill Aunt Mary," she exclaimed.

Then Jim Conley said, "No, I didn't kill her but I helped Mr. Frank. I was to burn the body in the furnace but didn't."

They went inside the house and talked about an hour in the kitchen.

30

*The Murder of Little Mary Phagan*

Annabelle was in the other room watching her brothers (Jack and my father) and her sister Betty.

My father also remembers that his father continually questioned Jim Conley about why he helped Mr. Frank. He recalled that his father got emotional and at times had to hold back the tears.

Jim said, "I got scared. Like I said before, I had to help Mr. Frank—him being white and my boss. Mr. Frank told me to roll her in a cloth and put her on my shoulder, but she was heavy and she fell. Mr. Frank and I picked her up and went to the elevator to the basement. I rolled her out on the floor. Then Mr. Frank went up the ladder and I went on the elevator."

"Did Mr. Frank tell you to burn little Mary in the furnace?" my grandfather asked.

"Yes, I was to come back later but I drank some and fell asleep," Jim said.



Then Grandfather said, "Jim, I believe you because if I didn't I'd kill you myself." Then, my father recalls clearly, Grandfather and Jim Conley went out together for a drink.

That was all my father could remember.

"How is it, Daddy, that a black man would help someone dispose of a body?"

"Remember the times," my father said. "In those years, a black would do almost anything his boss told him to do. His life depended on whatever the white man decided. Lynchings were taking place almost daily in the South. Jim Conley was a black man in Atlanta in 1913, one who could read and write, but more importantly, he was not simple. He was a man who would do what any man would do to stay alive: he would mix the truth with lies self-consciously, knowing full well that his life was at stake." My father shook his head. "He would give four different affidavits.

"Here was a man that knew he was walking on a red-

31

*The Legacy*

hot bed of cinders. He knew that no matter which way he turned he would be burned. Conley returned to the pencil factory with the Atlanta detectives and showed them how he had found the body of little Mary in the metal room. How he had moved the body, tied up with some cloth, with the help of Leo Frank. How it took both of them to move her body to the elevator. Once in the basement, Conley said, he rolled the body out on the floor. Then he stated that Leo Frank went up the ladder, to be on alert for anyone coming into the factory."

Here I asked, "Does this explain why little Mary was dragged face down across the basement?"

"Yes," he said. "It seems logical in that one man could not carry her body without help. So she was dragged."

"But, Daddy, why would Jim Conley do this knowing full well that he was now mixed up in the murder of little Mary? He must have felt that his actions could cost him his life."

"Jim Conley did know what he was doing, but there were two factors that outweighed his sense of righteousness: fear and money! Fear of the white man and greed for money. And this is what he later told my father when they met."

The last thing I wanted to know was a question that my father had asked his father over twenty years ago. "Why has the Phagan family taken a vow of silence?"

"Grandmother Fannie made a request that everyone not talk to the newspapers. Her request was honored. It's that simple."

I thought over my father's words for quite some time. His was the Phagan family's story of little Mary Phagan.

It was some time before we sat down again to talk about the shadow of Mary Phagan and how her legacy had affected his life. But one summer morning my father sat down beside me wanting to talk about his grandmother—little Mary's mother.

32

*The Murder of Little Mary Phagan*

"I recollect that many times I woke up in Grand-mother Fannie's bed trying to figure out how I got there beside her. My grandmother and step-grandfather, I've been told, loved me very much, and they would come to our house and while I was asleep, would take me in their loving arms, and take me home with them.

"Their daughter, Billie, my aunt, would have been little Mary's half-sister. Billie was a teenager whom I remember as a beautiful girl, who showed me a lot of love and care. It was Billie's job to take care of me while I was staying with my

grandparents. She was as firm as she was beautiful. To her I was a small brother. At lunch time, I was given the choice of a sandwich or soup. Billie would allow me to have mustard on my sandwich and to this day each time I eat a sandwich with mustard on it, I think of Billie.

"Grandfather Coleman had a small country store with a gas pump, and one of my greatest pleasures was when I was turned loose in that treasure house and was allowed to have anything that I wanted. What treasures I saw in that country store! It can only be appreciated by another child. What to choose was the biggest problem I had to face in those early years, and sometimes I would spend a whole minute, which to me was a lifetime. Grand-father Coleman was always there to guide me and help me in making my choice. Over fifty years have passed but those days are vivid to me now as they were then.

"Grandmother Fannie was a very special person to me. I remember her talking to me about her daughter, little Mary. I could never understand why there were tears in her eyes when she talked about little Mary.

"It's very hard on a small child to watch one's grand-mother cry and not being able to understand what's really going on. I took what I felt was the only course open to me: I put my arms around her and told her that I loved

33

*The Legacy*

her. Then, more tears flowed and she hugged me even harder."

My father stopped and sat, his chin in his hand, looking out the window. I could hear the calls of the birds clearly.

"Daddy," I said, "if you want to stop—"

"No," he said, "I don't want to stop." He went on.

"In 1937 my parents bought their first home in Atlanta, 760 Primrose Street Southwest. It had three bed-rooms, a living room, kitchen, and dining room connected to it and one bathroom with no shower. My dad worked in the cotton mills as a weaver and my mother opened a hamburger, hot dog, and sandwich stand on the corner of Hunter and Butler Street which was only a half of a block from the 'big rock jail.' This was the same jail that Leo Frank was held in, known as 'The Tower.' I was a student at Slaton Grammar School, which was named after the father of the governor who had commuted Leo Frank's sentence to life imprisonment.

"Grandmother Fannie meant more and more to me as I was starting to understand what life is about. After all," his eyes twinkled, "it had to happen sometime! And the question was starting to come up, no matter where I was: 'Are you, by any chance, kin to little Mary Phagan?'

"'Of course,' I replied everytime, 'she was my aunt.' This generally resulted in more questions about little Mary. I would answer those questions the best I could from what I could remember from stories that I'd heard from members of my family. People would then relate them to me on what they had heard from their pasts. The one question they always asked was 'How did little Mary's mother take her daughter's death?' And this invariably brought a silence in the group of people around me. I came to understand that this question would cause adults to hang onto every word I said. And just as invariably I'd feel humongously sad as I tried to put into words how my

34

*The Murder of Little Mary Phagan*

grandmother felt. Time had not healed the loss of her daughter. And maybe it never would.

"Little Mary, you understand, was the youngest of five and because she was the last child, she was doted on by all, even her grandfather, W. J.

"Grandmother Fannie would describe to me how she would comb little Mary's hair and put it up in pigtails, dress her up in her finest clothes to go to church. A small child is always beautiful to its parents, but little Mary was *really* beautiful—and she was going to be a real beauty when she grew up. As she approached her teenage years, there was no doubt that she was going to be a beautiful young woman."

My father looked at me intently. "As I've said—and others have said—lots of times before: just like you."

A strange feeling began to rise inside me: a mixture of gratification—I'm *as lovely as she* was—pride—this *is my inheritance*—and apprehension. Not that I thought I'd meet the same fate as my namesake, of course, but I did wonder what reverberations there would be from our bond. The vow of silence notwithstanding, my name—and appearance—were already causing these reverberations.

I smiled at my father. "Whatever it is, I believe I can deal with it." He patted my shoulder and continued his memories.

"School was not mandatory back then, and all members of a family that were old enough to work in factories would do so. Money was not easy to come by. Little Mary did attend school and was a good student, according to my grandmother. She had a lively imagination and wanted all the things that any young girl wanted in those days: ribbons or a special comb for her hair. And while all monies went to help the family, her being the youngest allowed special favors.

"By the time I was eleven, I began to ask questions about my aunt. My best source of information was my

father, William Joshua Phagan, Jr., who was known to the family as 'Little Josh.' " My father broke into a grin. "No one ever accused the Phagans of being too tall. Anyway, I questioned him—as you're questioning me—about everything that had happened in those days. Tears would come to his eyes, too, and he would talk about his sister very slowly. They were only one year apart: he was born in January 1898, and little Mary was born in June 1899. He felt a lot of pride about being the older brother to his sister to whom he was a shining white knight. There were slow pauses. He took time to hold back his tears. I could feel the pain that he was experiencing—even though I didn't understand it then.

"Dad told me how Grandmother Fannie had everyone put on his or her best clothes for church on Sundays and how everyone had a hand in helping little Mary to dress up. How pretty she was and the pleasure it brought to see her dressed in her best clothes.

"I don't remember Ollie too well; we didn't visit too much in those days that Dad worked for the cotton mills. However, when we visited it was usually for the whole weekend. What times those were! When the Phagan family got together it was like a picnic, with all the food and stuff that was on hand to eat."

I tried to picture the family gathering in my mind. I concentrated very hard. I *wanted* to visualize the Phagans in a happy, relaxed atmosphere—playing, joking around, eating to their heart's content, and telling stories.

My father broke into my thoughts: "Before the first day was over, everyone would turn to the subject of little Mary. I would sit quietly and listen to the stories. Fascinated as I was, I could still feel the tension in the air as each would tell some small detail about little Mary. I came to know her not as an aunt but as a special person who had lost her life in a brutal attack by Leo Frank, who

*The Murder of Little Mary Phagan*

was convicted of that crime by a jury of his peers in a court of law in Fulton County, Georgia.

"Grandmother Fannie often told us about the death of her husband, William Joshua Phagan, who had fathered her five children. He had died in February, 1899. Life in those days was real rough on a widow with children. Then she would talk about J.W. Coleman, whom she married in 1912. This was the man I was to know as my grandfather. Then the stories would turn back to little Mary. And the tension would start to build up again.

"Grandmother would usually start her story about that Saturday, Confederate Memorial Day, when little Mary had left home to go to town for her wages and to see the parade. She would tell about her new lavender dress and silver mesh bag that she carried, the ribbons in her hair and her parasol. The area they lived in then—the Bellwood subdivision of the Exposition cotton mill area—is only a memory today: it's where Ashby Street crosses Bankhead Avenue and Ashby goes on into Marietta Street.

"By the time Grandmother got to where little Mary took the English Avenue streetcar that was to take her downtown to the National Pencil Company, her tears were usually too much for her, and her story would come to a close, since she could no longer continue. Members of the family would quietly take grandmother into the house so that she could compose herself. This always left me in a state of confusion.

"Later, the war came. Greatuncle Ben was in the Navy." My father sighed. "The Phagan family, like the rest of the country, began to drift apart. The war began to push everything else to the rear of our minds. People were starting to work as many as six days a week. Family gathering was to become a thing of the past. But my family still spoke about little Mary, about how pretty she had been, and all. I felt for the first time in my life that I

too had lost someone that was very real to me. For the first time I also came to feel what grief felt like.

"But gradually, there was less time for story-telling. My only source of information about little Mary then was my Dad. He would still talk about his sister to me, but these talks got fewer and farther between—although his grief never diminished and it was still hard for him to talk about little Mary.

"At the same time, my curiosity increased, since people would still ask me questions about little Mary. And there was still Fannie, too. Now more than ever, Grand-mother would tell me stories about little Mary, how pretty she was and the hopes she had for her. Even today when I look at little Mary's picture, I can see that my grand-mother was right about how pretty she was. I do believe that she would have grown into the beautiful woman that my grandmother expected her to be. The years had not stopped the pain and grief she felt, but perhaps they made them a little more bearable.

"In 1943, when I started junior high school, the old question was asked again: 'Are you, by any chance, kin to little Mary Phagan?' As I recall, the teacher was the first to ask, and then, as the week went on, children of my age would start to ask me questions that their families had asked them to ask me. Some even brought articles to school to show me. One kid brought a record, a 78 RPM, that had 'The Ballad of Mary Phagan' on it. Fiddling John Carson had written and recorded it. I had heard people sing this song all my life but this was the first time I had heard it on a record. Later in life, I was to come by this record for my

family. My mother had bought an RCA radio and record player in the later thirties. I had a collection of records. We held onto the record for years but somehow it was finally lost. We still have that RCA radio and record player, you know. It's in the basement. It doesn't work anymore, but one day I'll probably restore

38

*The Murder of Little Mary Phagan*

it—just in case I should find that record again of little Mary Phagan.

"During the war years women had to work in the plants and shipyards and they became a vital part of the work force. My older sister, Annabelle, went to work in the shipyards in Portland, Oregon. Even my mother went to work at the Bell Bomb Plant in Marietta, Georgia. Her name, Mary Phagan, really started questions about little Mary all over again. The stories she told us kids generated a closer feeling again with little Mary.

"In 1944, Europe was invaded and that was the beginning of the end of the war there. I joined the Navy in July of 1945, and in August I was sent to boot camp in San Diego, California. My name preceded me in the Navy, because by then books had been written and even movies had been made of little Mary's murder. 'Death in the Deep South,' a fictional book about the murder and its after-math was made into a movie. The movie was called 'They Don't Forget,' and Lana Turner played the part of little Mary. But the names were changed. And the Phagan family remained silent.

"I had learned to play golf at Piedmont Park where I had worked as a caddie, and to my surprise, I was invited to play golf with a group of civilian and naval personnel. Then I found out why I'd been invited. They pelted me with questions about little Mary. What I thought about the case and how did the Phagans feel about the way the public as a whole had treated us. I was only seventeen years old, but I was well versed in the way my family felt, and I managed to give fairly noncommittal replies.

"Later, when my shipmates on the U.S.S. Major DE796 began to ask me questions about little Mary, I turned out to be a storehouse of information on that subject, but again stayed noncommittal as to the family's feelings. I was to serve aboard another DE, the U.S.S.

39

*The Legacy*

Fieberling, for about two years, until she was decommissioned.

"Grandmother Fannie passed away in 1947, while I was in the Navy. I made the trip home for her funeral. But when I arrived home, she had already been buried. She was laid to rest beside her daughter, little Mary Phagan. The peace she couldn't find in life she found, I hope, in death.

"Sometime later I met your mother in Chicago. The year was 1952. It was love at first sight!"

He leaned back in his chair, and his face was suffused in light. His smile was happy and tender. Things hadn't changed much as far as my parents' feelings for each other went.

"Anyway," he smiled, "at the time I was flying to London out of Warner-Robbins Air Force Base in Macon. Being a Georgia boy from Atlanta, I went out of my way to meet all the civilian flight line mechanics at Warner Rob-bins in Macon. Depot bases use civilian flight line mechanics so that there will be a more stable work force.

"Little Mary had slipped to the back of my mind over the years. When the flight line mechanics learned my name, they began to question me about little

Mary. Again, I was reminded of her. All the mechanics and other personnel made sure that I shared lunch with them. They all wanted to hear about little Mary Phagan. Most of them had stories that they had heard from their parents and grandparents to tell about little Mary. It was beginning to dawn on me that little Mary was more than just a passing fancy to Georgians of all walks of life. It was part of their history, like it or not, and they wanted to hear firsthand what the Phagans felt and how they responded to their questions. Unknown to me at that time, this renewed interest in little Mary was to play a major role in the life of another little girl who would be born in June of 1954, but that was almost two years in the future.

40

*The Murder of Little Mary Phagan*

"Well, the wedding—and it was a *huge* one—was in 1953, and we spent our honeymoon in St. Augustine, Florida. Uncle Frank loaned us his car so that we could drive down. We were gone for about seven days, after which we started back to Chicago. The plan was to leave your mother until such time as I could find an apartment for us in Moses Lake, Washington State, where I'd been transferred.

"When I arrived back at Larson Air Force Base, I was informed that I had been selected to attend Flight Engineer School at Chanute Air Force Base in Rantoul, Illinois. Joy heaped upon joy and my cup runneth over! Your mother and I could be together after all! The school was to last for six months.

"We found an apartment near the University of Illinois, in Champaign-Urbana. This break allowed us time to learn more about each other and how we would spend the years to come.

"It was about this time that the question was asked again about my name by other student Flight Engineers: 'Are you, by any chance, kin to little Mary Phagan?' I had not told your mother the story of little Mary.

"I was transferred back to the past again. How did my family feel, especially my grandmother? I had become used to these questions and without breaking stride, I would answer them and continue on with the story that had become a part of my life. I could never understand this interest in a murder that had happened way back in 1913, but of course, tragedy has a way of capturing the interest of its audience as the story teller retells the story from firsthand information.

"As you well know," my father twinkled, "you were born in June of 1954. Phyllis, your sister, came along in 1956.

"By this time, I had accumulated over two thousand hours of flying in Alaska and was considered to be a cold

41

*The Legacy*

weather expert. Personally, I've always felt that anyone who had flown in the Arctic and survived was a cold weather expert. We were now under a new command, the Military Air Transport Service; undoubtedly the best and biggest airlift armada in the world. We were redesignated the 62nd Military Airlift Wing on January 8, 1956, 'M.A.T.S., the Backbone of Deterrence.' It was our motto and creed.

"We were now flying all over the world, in all kinds of trouble spots where there was dire need for airlift. And once again, I found that my name rang bells with those people who were familiar with little Mary Phagan. I got all kinds of messages asking about her past and what relationship I was to her. They followed me wherever I flew, but more so when I was to fly in the South, where my family's history was well known.

"Your brother James was born in November 1957, during the Lebanon-Beirut troubles which our Wing was flying into.

"By the time you were about four years old, you bore a striking resemblance to your greataunt, little Mary.

"In January 1959 I asked for reassignment and was assigned to the 1608 Military Air Transport Wing in Charleston, South Carolina. When we arrived in Charleston, I was assigned to the 17th Air Transport Squadron.

"The interest your name caused when we signed you up for kindergarten was unreal. People would come up to us and sing 'The Ballad of Mary Phagan.' They told me stories that I had never heard before. Then the questions would come: what relationship we were and how had our daughter been named for little Mary? They would say, 'My, what a pretty girl!' and 'She looks just like little Mary.'

"Your brother Michael was born in September 1959, in Charleston. Soon after that, we all went to Japan and Hawaii, and returned to the continental U.S. in 1964, to

42

*The Murder of Little Mary Phagan*

Charleston. And it was there that Mr. Henry, your eighth-grade teacher, asked you if you were related to little Mary Phagan. That must have been pretty difficult for you, Mary."

I nodded, unable to speak.

"But I'm proud that you want to understand your heritage."

There are always two—or more—sides to everything. Clearly, the Phagan family believed in Leo Frank's guilt. But my father again encouraged me to research and investigate the facts for myself. He told me that the trial record spoke for itself. He also pointed out that for my own peace of mind I would have to interpret the facts myself to the best of my ability and to draw my own conclusions.

What was Atlanta really like in 1913? I still wondered: Did Leo Frank get a fair trial? Did the shouts that came through the open windows in the courtroom have any influence on the jury? Did his being Jewish affect the trial outcome? Why were eleven witnesses who were employed at the National Pencil Company not cross-examined by the defense as to Frank's lascivious conduct? Was Jim Conley the actual criminal?

These unanswered questions remained with me throughout my high school years. At the same time that my resolve to learn all I could about my greataunt intensified, my aspirations as to a future career became both evident and important to me. I wanted to teach blind and visually impaired children. I began exploring opportunities. And my senior year was especially gratifying. Since I finished classes early in the day, I was allowed to leave campus for joint-enrollment at a college or for employment, and my counselor, Mrs. Drury, had discovered that McLendon Elementary School, not far from the high school campus, would love to have me as a volunteer.

43

*The Legacy*

I spent ten hours a week at McLendon, and it made my mind up definitely: I was going to teach the blind and visually impaired.

The star in my crown that year was the award I received from the DeKalb County Rotary Clubs: the Youth Achievement Award. I was the very first recipient

of this award, and the only disappointment was that my blind students couldn't read it. But I read it to them.

I'd applied to and been accepted at Flagler College in St. Augustine, Florida. I was to start classes in September, 1972.

And, yes, at that moment I hoped that the story of little Mary Phagan would be left behind.

So I consciously left the unanswered questions in Atlanta. But my subconscious was still busy with them, and they came with me to Florida, "haunting" me even as I was sleeping.

## Chapter 3

# MY SEARCH

# BEGINS

The dream was always the same. The funnel-shaped cloud was the largest I had seen, and it was heading directly for me and those I love. Miraculously, my brother Michael found a cave in which we could be safe. The cloud destroyed everything in its path, but those in the cave remained safe. Screaming and sweating, I would awaken with my heart palpitating—and then realize that it was only a dream. But I became afraid to sleep for fear that the dream would come back. And it did. Again and again.

The story of little Mary Phagan had indeed followed me to Florida.

A history professor asked me, "Are you, by any chance, related to little Mary Phagan?" Then several classmates quizzed me about the story.

I decided that I had to know the answers to the questions that haunted me. I just had to know. I couldn't be Mary Phagan without this shadow of my past. It was my history, my legacy. And I had to answer those questions.

I became friends with Amy. Amy was Jewish, and, as with all friends, religion came up between us. Amy and I exchanged our beliefs and answered the "why's" of our faiths. There were no barriers between us. Once a group

44

45

*My Search Begins*

of us were talking, and someone asked me in front of Amy that question: "Are you, by any chance, related to little Mary Phagan?"

"Yes," I replied.

"Wasn't Leo Frank a Jewish man?" she persisted.

I told her "yes," again. But Amy never mentioned the story of little Mary Phagan, and I never told her. I never felt obliged to tell her more; it didn't have anything to do with our friendship. We were best friends and that was that.



My family delighted in my friendship with Amy and her family. During one Christmas vacation my Dad related to me how he had become part of a Jewish family. For the first time I realized why I had always called this particular couple Grandma and Grandpa—and still do.

It happened around Christmastime in 1952. My Dad had just been promoted to Staff Sergeant and was flying out of the Warner Robbins Air Force Base in Macon, Georgia.

"As Christmas approached, we geared up to make flights back east to provide transportation for all the Military Services," he explained. "Plans were made that each flight would make certain strategic stops to drop off troops and pick them up after Christmas and bring them back to Larson Air Force Base. On December 20, 1952, there was a fatal crash that took the lives of about eighty-seven young military men. It was the worst military air disaster in history.

"Airplane crashes are terrible in more ways than one: they create havoc in the loss of lives and materials, and they put men to a test that they cannot survive. The dead men must be escorted home for burial. The escorts are called Color Guards. They are hand picked as a rule, versed in the nature of life at its worst. Each family that has lost a loved one will have a thousand questions to ask the Color Guard. He will have no answers and must rely

46

*The Murder of Little Mary Phagan*

on his own ability to handle the situation. And no two will be the same. Some Color Guards will break under the pressure, particularly if they were friends. One of the crew members on the flight was my close friend, Robert Jacobs. He was a radio operator whose position was on the flight deck with the pilot, co-pilot, navigator, and flight engineer. All of these crew members perished in that crash. I knew them all. Tears still come to my eyes when I think about it and how many lives it claimed.

"Brigadier General H.W. Bowman, commander of the 62nd Troop Carrier Wing (H), and Lt. Colonel Roland K. McCoskrie, commander of 7th Troop Carrier Squadron, suffered only as commanders can suffer when they lose men in a tragic accident.

"As in any accident, the clean up crew was mostly volunteers; these men are true heroes. At times some even risk their lives in trying to save others. It took over three days just to recover all the bodies. And then there was the horrible task of identifying some of the bodies. Preparations and transportation arrangements were made, and then came the selection of the Color Guards. There was no Jewish man to escort our radio operator. One would have to be selected from another squadron, someone who did not even know his name, unless someone in our squadron would step forward to be his Color Guard. With head held high, tears in my eyes, my heart about to burst, I took that step forward. I could not allow a stranger to escort my friend and fellow crew member home to his parents. In my mind, that would hurt them even more.

"I felt that I would break under that pressure when I presented the American flag to Mr. and Mrs. Jacobs at the gravesite. I did! When I presented the flag to them, I could hardly talk for the tears rolling down my cheeks: 'This flag is presented to you by a grateful nation in remembrance of your loved one.' For one moment, time stood still for three broken hearts, the parents and mine became

47

*My Search Begins*

one in grief. They invited me home to say the Kaddish, a memorial prayer, for their son. I became an adopted 'son,' and to this day I call them Mom and Dad

and you children call them Grandma and Grandpa. Every Mother's Day, I send flowers to my friend's mother. She's a very special person.

"They asked me questions I had no answers for, except the simple truths and personal knowledge that I had of their son. Of course they wanted to know 'why.' I explained that their son was one of the best and the best always are selected for the tough flights. I don't think that I would have the guts to do that job again. I was to receive four letters of appreciation and commendation: one from the Jewish War Veterans of the U.S.; one from Brigadier General H.W. Bowman, Commanding General 62nd Troop Carrier Wing (H); one from Colonel Richard Jones, Commanding Officer 62nd Troop Carrier Group (H); and one from Lt. Colonel Roland K. McCoskrie, Commanding Officer 7th Troop Carrier Squadron (H). These letters are still in my personal folders today.

"Life takes a pause and then continues on!"

After two years at Flagler, both Amy and I felt that it wasn't offering the programs that we needed for our careers. We both transferred to Florida State University in Tallahassee, Florida, during the summer of 1974.

I worked hard, and in August of 1977, I received my Master of Science in the College of Education Program at Florida State University with honors. And what was even more exciting was I already had a job: I was to be the Consultant/Itinerant Teacher for the Visually Impaired for the Griffin Cooperative Educational Service in Griffin, Georgia. I would be going back home.

I began at the agency the first week of September. I was introduced to the various superintendents of the sys-

48

*The Murder of Little Mary Phagan*

tems in which I would be responsible for setting up the vision program. Several of the superintendents asked me that question: "Are you, by any chance, related to little Mary Phagan?" One of them privately called me in his office and sang me "The Ballad of Mary Phagan" by Fiddling John Carson of Blue Ridge, Georgia:

*Little Mary Phagan went to town one day,  
And went to the pencil factory  
to see the big parade.  
She left her home at eleven,  
And kissed her mother goodbye,  
Not one time did the poor child think  
that she was going to die.  
Leo Frank met her, with a brutal heart we know,  
He smiled and said, "Little Mary,  
Now you will go home no more."  
He sneaked along behind her,  
Till she reached the metal room,  
He laughed and said, "Little Mary,  
you have met your fatal doom."  
She fell upon her knees, and to  
Leo Frank she pled,  
He took his stick from the trash pile  
And hit her across the head.  
The tears rolled down her rosy cheeks,*

*While the blood flowed down her back,  
But still she remembered telling her mother  
What time she would be back.*

*He killed little Mary Phagan--  
it was on a holiday--  
And he called on Jim Conley to take her body away.  
He took her to the basement,  
She was bound hand and feet,  
And down in the basement little Mary  
lay asleep.*



Angelina Phagan with her daughters and grandchildren.  
Mary Phagan is at right on her lap.



Ollie Mae and Mary Phagan (Mary is on right).

Ollie Mae and Mary Phagan (Mary is on right).



The farm Fannie Phagan moved to after the death of William Joshua.

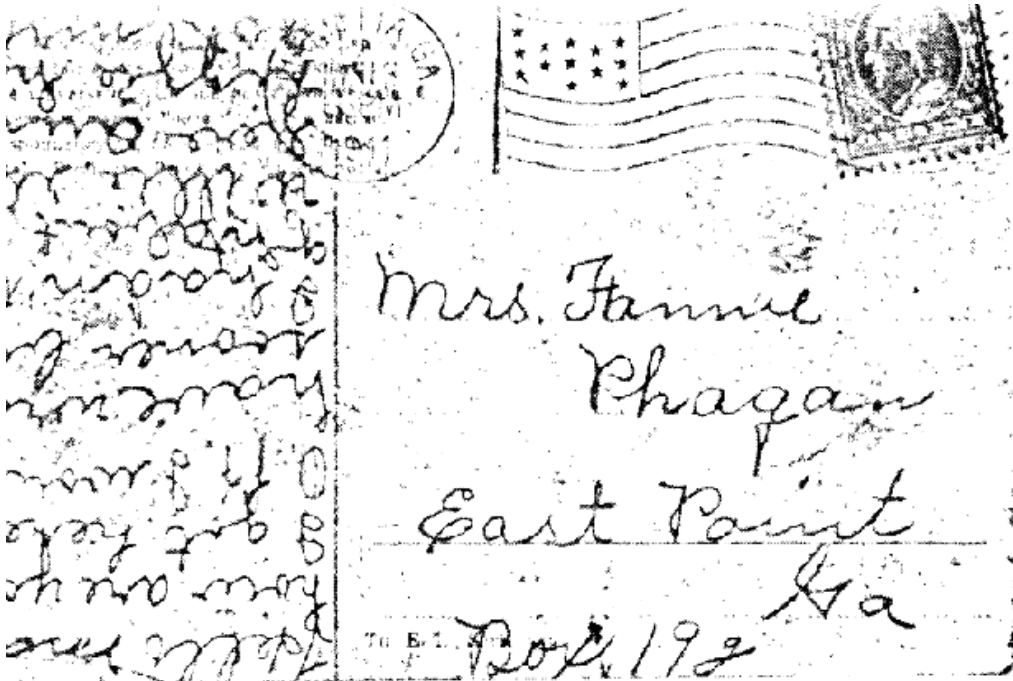


William Joshua and Fannie Phagan.



The Marietta-Atlanta trolley in 1913.  
The Marietta-Atlanta trolley in 1913.





A postcard Mary Phagan sent to her mother in 1911.

A postcard Mary Phagan sent to her mother in 1911.

*Newt Lee was the watchmen—  
 when he went to wind his key,  
 Down in the basement,  
 little Mary he could see.  
 He called for the officers—their  
 names I do not know.  
 They came to the pencil factory  
 Says "Newt Lee, you must go."*

*They took him to the jailhouse,  
 They locked him in a cell,  
 But the poor innocent negro  
 Knew nothing for to tell.*

*I have a notion in my head that  
 when Frank comes to die,  
 And stands the examination in  
 the courthouse in the skies,  
 He will be astonished at the questions  
 The angels are going to say  
 of how he killed little Mary on one holiday.*

*Come all you good people  
 wherever you may be,  
 And supposing little Mary  
 belonged to you or me.*

*Her mother sat a weeping—she  
 weeps and mourns all day—  
 She prays to meet her darling in a  
 better world some day.  
 Little Mary is in Heaven, while  
 Leo Frank is in jail,  
 Waiting for the day to come when  
 he can tell his tale.*

*Judge Roan passed the sentence  
 And you bet he passed it well;*

50

*The Murder of Little Mary Phagan*

*Solicitor Hugh M. Dorsey  
 sent Leo Frank to hell.*

*Now, God Bless her mother.*

He told me that his mother had sung the ballad throughout his childhood. He had never forgotten a word. While he was singing the ballad, I realized that little Mary Phagan was me too—not a separate entity—and I could not evade our relationship. Nor did I want to.

I was ready to search for answers to those haunting questions. Now I had to know if what my father taught me was accurate and factual. I began extensive research. I looked again at the Brief of Evidence, reference books, and the newspaper accounts in a different way, a critical way. I read everything I could find on the economic, political, social and psychological climate of the South in 1913.

By the time little Mary Phagan was murdered, the Civil War had been over only forty-eight years. Today, other parts of the country accuse Southerners of "still fighting the Civil War." To an extent that is true. It was true to an even greater extent in 1913.

The focus of Southern society was tradition—which also meant opposition to change. And the commitment to tradition was often manifested in a loyalty on the part of Southerners to "their own kind" which usually resulted in a paranoid suspicion of outsiders.

Another strong part of this tradition is the esteem in which white women, and particularly young white girls, are held. Southerners have always had a fear—whatever its origins—of assaults upon women.

The industrialization which began in the last part of the nineteenth century centered on the cities, and it was in the rural areas that the commitment to tradition held most strongly. But life in rural areas was difficult—very difficult for most of the poorer people. So they emigrated to urban areas.

51

### *My Search Begins*

Apparently, life wasn't much better in the cities, although the opportunities to make money were far greater, and it was especially dreary in Atlanta. Those who came in from the country to find work in the mills and factories were white tenant farmers and they lived for the most part in the bleak factory slums which surrounded Atlanta's industrial sections. Just as Grand-mother Fannie Phagan Coleman was preparing to move her fatherless children from Alabama back to Atlanta/ Marietta around 1908 or 1909, about a third of Atlanta's population had no water mains or sewers. Two years before little Mary Phagan was slain, between fifty and seventy-five percent of the schoolchildren of Atlanta suffered from anemia, malnutrition, and heart disease. In 1906, 22,000 out of a population of 115,000 were held by the police for disorderly conduct or drunkenness. That year, one of the worst race riots in memory broke out in Atlanta, and the newspapers seized upon stories—true or not—of Negro assaults on white women.

Wages were low in the mills and factories and the normal workday began at 6:00 a.m. and ended at 6:00 p.m. Mary Phagan had earned only ten cents an hour at the National Pencil Company. Children were exploited—especially in the cotton mills.

I thought of my father's description of his grand-mother Mary Richards Phagan, whom the factory bosses would hide from the labor inspectors.

It was probably inevitable that family and community ties, another bulwark of tradition, began to weaken, despite people's struggles to hold onto them, and they grew increasingly resentful of those whom they considered to be their exploiters.

I realized, as my research began to clarify a lot of things for me, that little Mary Phagan, white, pretty, well-liked, just short of fourteen, a laborer in a factory or "sweat shop," came to stand for what was good, pure,

52

*The Murder of Little Mary Phagan*

sweet and exploited about the South. And that Leo Frank, a Northerner, a Jew, superintendent, part owner of the factory, and well-to-do, would have fit perfectly the idea of the outsider which Southerners traditionally held in such suspicion and the exploiter of whom they were growing increasingly resentful. The entire family believed that he killed Mary Phagan. So did I.

On April 28, 1913, Leo Frank sent a telegram to Adolph Montag in New York:

Atlanta, Ga. Apr. 28, 1913

Mr. Adolph Montag,  
c/o Imperial Hotel, New York.

You may have read in Atlanta papers of factory girl found dead Sunday morning in cellar of pencil factory. Police will eventually solve it. Assure my uncle I am all right in case he asks. Our company has case well in hand.

Leo M. Frank

On April 29, 1913, three days after little Mary Phagan's body was discovered, the Atlanta *Georgian* reported that four suspects were being held. The headline read: "IS THE GUILTY MAN AMONG THOSE HELD?"

These men were:

1. A black night watchman, who is thought to know much more about the crime than he has told, but who has not been regarded as the perpetrator.
2. A former street car conductor for whom a strong alibi has never been established, and from whom suspicion is shifting.
3. A black elevator boy, who has never been held as a material witness, but against whom no evidence has been obtained.

53

*My Search Begins*

4. A former employee of the National Pencil Company was located at the Plant Saturday and identified as being the "man with a little girl on Saturday night." In neither the conductor's nor the elevator boy's case do police place much dependence on the so-called identifications.

All of these men were cleared. At that time, neither Leo Frank, the factory superintendent, nor Jim Conley, the pencil factory janitor, appeared on the list. Leo Frank was at police headquarters that day but police were quoted as saying, "Frank is not under arrest," but that "he was under police guard for his own personal safety," and that "there are no charges against him."

What led to the eventual arrest of Leo Frank, the factory superintendent?

When Newt Lee, the night watchman who discovered the body of little Mary Phagan, was questioned by the police, he stated that he had been at the factory on April 26, 1913, and that when he began working at the pencil factory, Mr. Frank had told him to report at 6:00 p.m. on weekdays and at 5:00 p.m. on Saturdays. He said that, on Friday, the 25th of April, Leo Frank told him, "Tomorrow is a holiday and I want you to come back at four o'clock. I want to get off a little earlier than I have been getting off." Frank had plans to go to the baseball game with his brother-in-law. The game started at 4:00 p.m. Newt Lee said that he arrived at the factory at about three or four minutes before four. He then told the detectives:

The front door was not locked. I pushed it open, went on in and got to the double door there. I was paid off Friday night at six o'clock. It was put out that everybody would be paid off then. Every Saturday when I get off he gives me the keys at twelve o'clock, so that if he happened to be gone when I get back there at five or six o'clock I could get in, and every Monday

54

*The Murder of Little Mary Phagan*

morning I return the keys to him. The front door had always been unlocked on previous Saturday afternoons. After you go inside and come up about middle ways of the steps, there are some double doors there. It was locked on Saturday when I got there. Have never found it that way before. I took my key and unlocked it. When I went upstairs I had a sack of bananas and I stood to the left of that desk like I do every Saturday. I says like I always do "Alright Mr. Frank" and he come bustling out of his office. He had never done that before. He always called me when he wanted to tell me anything and said, "Step here a minute, Newt." This time he came up rubbing his hands and says, "Newt, I am sorry that I had you come so soon, you could have been at home sleeping, I tell you what you do, you go out in town and have a good time." He had never let me off before that. I could have laid down in the shipping room and gone to sleep, and I told him that. He says, "You needs to have a good time. You go downtown, stay an hour and a half, and come back your usual time at six o'clock." I then went out the door and stayed until about four minutes to six. When I came back the doors were unlocked just as I left them and I went and says, "Alright, Mr. Frank," and he says, "What time is it?" and I says, "It lacks two minutes of six." He says, "Don't punch yet, there is a few worked today and I want to change the slip." It took him twice as long this time than it did the other times I saw him fix it. He fumbled putting it in, while I held the lever for him and I think he made some remark about he was not used to putting it in. When Mr. Frank put the tape in I punched and I went downstairs. While I was down there Mr. Gantt came from across the street from the beer saloon and says, "Newt, I got a pair of old shoes that I want to get upstairs to have fixed." I

55

*My Search Begins*

says, "I ain't allowed to let anybody in here after six o'clock." About that time Mr. Frank come bustling out of the door and run into Gantt unexpected and he jumped back frightened. Gantt says, "I got a pair of old shoes upstairs, have you any objection to my getting them?" Frank says, "I don't think they are up there, I think I saw the boy sweep some up in the trash the other day." Mr. Gantt asked him what sort they were and Mr. Frank says "tans." Gantt says, "Well, I had a pair of black ones too." Frank says, "Well, I don't know," and he dropped his head down just so. Then he raised his head and says, "Newt, go with him and stay with him and help him find them" and I went up there with Mr. Gantt and found them in the shipping room, two pair, the tans and the black ones. Mr. Frank phoned me that night about an hour after he left, it was sometime after seven o'clock. He says, "How is everything?" and I says, "Everything is all right so far as I know," and he says "Goodbye."

There is a light on the street floor just after you get in the entrance to the building. The light is right up here where that partition comes across. Mr. Frank told me when I first went there, "Keep that light burning bright, so the officers can see in when they pass by." It wasn't burning that day at all. I lit it

at six o'clock myself. On Saturday I always lit it, but weekdays it would always be lit when I got there. On Saturdays I always got there at five o'clock. This Saturday he got me there an hour earlier and let me off later. There is a light in the basement down there at the foot of the ladder. He told me to keep that burning all the time. It has two little chains to it to turn on and turn off the gas. When I got there on making my rounds at seven o'clock on the 26th of April, it was burning just as low as you could turn it, like a lightning bug. I left it Saturday morning burn-

56

*The Murder of Little Mary Phagan*

ing bright. I made my rounds regularly every half hour Saturday night. I punched on the hour and punched on the half and I made all my punches. The elevator doors on the street floor and office floor were closed when I got there on Saturday. They were fastened down just like we fasten them down every other night. When three o'clock came I went down the basement and when I went down and got ready to come back I discovered the body there. I went down to the toilet and when I got through I looked at the dust bin back to the door to see how the door was and it being dark I picked up my lantern and went there and I saw something laying there which I thought some of the boys had put there to scare me, then I got out of there. I got up the ladder and called up the police station. It was after three o'clock . . . I tried to get Mr. Frank on the telephone and was still trying ... I guess I was trying about eight minutes.

L. S. Dobbs, Sergeant of Police, and J. N. Starnes, City Officer, went to the National Pencil Factory after receiving the call from Newt Lee. They discovered the notes under the sawdust, a hat without ribbons on it, paper and pencils, and a shoe near the boiler; a bloody handkerchief about ten feet further from the body towards the rear on a sawdust pile.

While Dobbs was reading the notes—"and land down play like night"—when he said the word "night," Lee said, "That means the night watchman."

J. N. Starnes finally reached Frank by telephone around 6:30 a.m. and sent Boots (W.W.) Rogers with John R. Black after him. The earlier calls made by Lee and the police had not been answered.

Boots Rogers and Mr. Black said they found Frank extremely nervous and that he asked to eat his breakfast before leaving—a request the police denied him. Frank also denied knowledge of a little girl named Mary Phagan.

57

*My Search Begins*

They then took Frank to the morgue. They stated that he scarcely looked at the body and would not enter the room where it lay. He continued to be agitated and nervous. Upon arriving at the factory, he consulted his time book and reported, "Yes, Mary Phagan worked here, and she was here yesterday to get her pay."

He then told the police, "I will tell you about the exact time she left here. My stenographer left about twelve o'clock, and a few minutes after she left, the office boy left, and Mary came in and got her money and left."

Further questioning revealed that Frank maintained he was inside his office "every minute" from noon to 12:30. On Sunday, he confirmed to the police that the time slips punched by Newt Lee were correct, but the next day he said the time slips contained errors.

Frank appeared at police headquarters on Monday morning with his attorneys Luther Z. Rosser and Herbert Haas, who evidently had been contacted on Sunday.

Frank advised police that Newt Lee and J. M. Gantt had been at the factory and that Gantt "knew Mary Phagan very well." This led to their arrests.

On Monday morning, April 28, when the factory opened, R. P. Barrett, a machinist, reported that he found blood spots near a machine at the west end of the dressing room on the second floor which had not been there Friday. Hair was also found on the handle of a bench lathe and strands of cords of the type that were used to strangle Mary Phagan were hung near the dressing room.

Leo Frank was arrested on Tuesday, April 29, and incarcerated in the Fulton Tower. The police said his hands were quivering and that he was pale. He again reported that Mary Phagan came in "between 12:05 and 12:10, maybe 12:07, to get her pay envelope, her salary." He stated, "I paid her and she went out of the office."

Later that evening Frank had a conversation with Newt Lee, who was handcuffed to a chair. Newt Lee

58

*The Murder of Little Mary Phagan*

reported that when Frank came in, he dropped his head and looked down. They were all alone and Lee said, "Mr. Frank, it's mighty hard for me to be handcuffed here for something I don't know anything about."

Frank said, "That's the difference, they have got me locked up and a man guarding me."

Lee then asked, "Mr. Frank, do you believe I committed that crime," and he said, "No, Newt, I know you didn't, but I believe you know something about it."

Lee then said, "Mr. Frank, I don't know a thing about it, no more than finding the body."

Frank said, "We are not talking about that now, we will let that go. If you keep that up we will both go to hell."

The police had also learned that Frank refused to send Mary Phagan's pay home with Helen Ferguson, a friend. Then, not too long after Leo Frank's indictment and Jim Conley's statements, the police also obtained a statement from Minola McKnight, the black cook in the Frank home. She reported that when Frank came home that Saturday, he was drunk, talked wildly, and threatened to kill himself, thus forcing his wife to sleep on the floor. Minola's sworn statement was witnessed by her lawyer, George Gordon.

Yet, three days later Mrs. McKnight publicly repudiated her affidavit, claiming that she had signed it to obtain release from the police. It seems that while her original statement made the front page of the newspapers, her repudiation was printed unobtrusively on an inside page.

Other questions nagged at me. My family maintained that Mary Phagan had been violated. What did the medical evidence disclose? Was the blood found on her legs and underwear the result of rape or menstrual blood? Was undisputable evidence of rape found?

*Had* she been bitten on the breasts? X-rays of her body had apparently shown teeth indentations on her

59

*My Search Begins*

neck and shoulder. Where were the X-ray records? Were the marks made by Leo Frank's teeth? Did Solicitor Dorsey have Mary's body exhumed a second time to check the marks against X-rays of Leo Frank's teeth?

Was Leo Frank a "pervert," as the state attempted to establish? The state had certainly enough people to state on the witness stand that he'd made sexual overtures to the female employees at the factory.

But does that mean—did the answers to any of my questions mean—that Leo Frank killed Mary Phagan?

On the Saturday following the murder, Monteen Stover, a fellow worker at the factory with Mary Phagan, came forward to tell the police that she had come for her pay on April 26 but was unable to collect it because Frank was absent from his office.

Monteen informed the police that "it was five minutes after twelve. I was sure that 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 to ten minutes after twelve. Then I went downstairs. The building was quiet, and I couldn't hear a sound. I didn't see anybody."

On April 30, 1913 a coroner's inquest began. Leo Frank repeated his story concerning his whereabouts on April 26. A point of contention between the police, the coroner, and Frank was Frank's physical location when the whistles blew. Since Saturday was Confederate Memorial Day, police argued that no whistles blew. Leo Frank had difficulty establishing his whereabouts during that time frame.

60

*The Murder of Little Mary Phagan*

Monteen Stover repeated the testimony which she had reported to the police at the coroner's inquest. On May 8, 1913 the jury returned a verdict of murder at the hands of a person or persons unknown. Both Frank and Lee were returned to the Fulton Tower.

Why did people feel it was Leo Frank, rather than Newt Lee, who was responsible for the murder?

Some who have studied the Mary Phagan case seem to feel that many people in Atlanta—including the police and the Fulton County Solicitor-General, Hugh Dorsey—demanded Leo Frank's indictment and conviction because of his status as an outsider.

Moreover, the Atlanta Police Department had a series of unsolved murders on their hands and were desperate for a conviction. They were also pressured by the public, who vociferously demanded that Mary Phagan's assailant be discovered.

Then there was Jim Conley. On rounding up witnesses from the National Pencil Company, they apparently paid special attention to Jim Conley, who had been seen washing a shirt at a faucet in the factory, thereby causing an anonymous informer to suggest to the police that there could have been blood on the shirt.

Conley apparently began by lying: he told the police he could neither read nor write, but he could do both. Over the next few weeks he gave four affidavits—the last of which helped convict Leo Frank—each of which told a different version than the previous one. Yet it was largely on his testimony that Leo Frank was found guilty of murder. Could Jim Conley have been the culprit?

It would have been easy to convict Jim Conley, a semi-literate, poor, friendless Negro with a chain gang record. Leo Frank, on the other hand, a white man with allegedly rich relatives, would be another story: he could raise sufficient



funds to defend himself vigorously and effectively. Why did they home in on Leo Frank?

61

*My Search Begins*

Some writers, such as Harry Golden in his book *A Little Girl Is Dead*, feel that many Atlantans were grossly anti-Semitic and accused Frank of the murder because he was Jewish.

Luther Otterbein Bricker, who was the pastor of the First Christian Church in Bellwood where Mary Phagan went to Bible school, described the high feelings which ran through Atlanta regarding the murder of little Mary Phagan in a letter to a friend dated May 26, 1942 which he allowed to be published in 1943.

The letter states his impression upon hearing of the murder:

But, when the police arrested a Jew, and a Yankee Jew at that, all of the inborn prejudice against the Jews rose up in a feeling of satisfaction, that here would be a victim worthy to pay for the crime.

From that day on the newspapers were filled with the most awful stories, affidavits and testimonies, which proved the guilt of Leo M. Frank beyond the shadow of a doubt. The police got prostitutes and criminals, on whom they had something, to swear anything and everything they wanted them to swear to. And reading these stories in the paper day by day, there was no doubt left in the mind of the general public but that Frank was guilty. And the whole city was in a frenzy. We were all mad crazy, and in a blood frenzy. Frank was brought to trial in mob spirit. One could feel the waves of madness which swept us all.

Had I been a member of the jury that tried Frank I would have assented to the verdict of guilty, for the jury did exactly as I wanted it to and I applauded the verdict.

It has also been said that Solicitor-General Hugh Dorsey had strong feelings about Leo Frank's guilt, and through the years there has been much speculation on

62

*The Murder of Little Mary Phagan*

what brought about Dorsey's certainty that Frank was guilty.

In a 1948 study of the Mary Phagan-Leo Frank case, Henry L. Bowden reported a discussion with Hugh Dorsey that seems to shed light on the prosecutor's feelings about Leo Frank. Bowden had, in conversation with Dorsey, asked him just what it was that had made him suspicious of Frank, and Dorsey reportedly replied that someone had planted a bloody shirt in a well on the property where Newt Lee lived, and that as he and several of the force, including Boots Rogers, the local detective who according to Dorsey was the best detective around, were riding out to the property to check on the shirt, Rogers described to Dorsey Leo Frank's "extreme" uneasiness and nervousness when confronted with the murder at the factory. This, Dorsey related, had led him to be suspicious of Frank.

Dorsey stated further to Bowden that he had arranged that all the detectives and operatives on the case reported to him directly rather than to the police force, and that the two advantages of this were that the papers were not informed of every little thing that the investigation disclosed and, moreover, that defense counsel were kept in complete ignorance as to what Dorsey's evidence consisted of and were therefore unable to prepare defenses in advance to such evidence.

Dorsey sought Frank's indictment for the following reasons: Frank had sent Newt Lee away at 4:00 p.m. and then called the factory at 7:00 p.m. (which Lee claimed Frank had never done before) to check that things were all right. Frank had not answered Newt Lee's or Captain Starnes's telephone calls. He hadn't wanted to come to the factory. He had said he couldn't tell if Mary Phagan worked at the factory since he didn't know the names of most of the factory girls (later at the office he was able to

tell the exact time Mary had come for her pay on Saturday). Frank had then accused J. M. Gantt of being intimate with Mary Phagan, although earlier Frank had said he hadn't known her. The police officers who had taken Frank to the mortuary recalled his extreme nervousness. They now considered this emotional agitation important, as well as the fact that Frank had inquired about their finding Mary Phagan's pay envelope.

At the inquest, J. W. Coleman stated: "Mary often said things went on at the factory that were not nice and that some of the people there tried to get fresh. She told most of those stories to her mother." Yet the defense for Frank never asked Fannie Phagan Coleman any direct questions about this. Of course, the state had other witnesses and perhaps chose not to upset the mother any more than was necessary.

Additional information which seemed to point to Leo Frank's guilt was his failure to throw suspicion on Conley who testified that he helped Frank dispose of the body and his concealment of his ballgame date.

Most importantly, Dorsey felt that Frank's cook, Minola McKnight's, first statement was true:

Sunday, Miss Lucile said to Mrs. Selig that Mr. Frank didn't rest so good Saturday night; she said he was drunk and wouldn't let her sleep with him, and she said she slept on the floor on the rug by the bed because Mr. Frank was drinking. Miss Lucile said Sunday that Mr. Frank told her Saturday night that he was in trouble, and that he didn't know the reason why he would murder, and he told his wife to get his pistol and let him kill himself. I heard Miss Lucile say that to Mrs. Selig, and it got away with Mrs. Selig mighty bad, she didn't know what to think. I haven't heard Miss Lucile say whether she believed it or not. I don't know why Mrs. Frank didn't come to see her husband, but it was a pretty good while before she

would come to see him, maybe two weeks. She would tell me "Wasn't it mighty bad that he was locked up." She would say: "Minola, I don't know what I am going to do."

The affidavit of Monteen Stover following the coroner's verdict added credence to Dorsey's suspicions that Frank was the murderer, since Miss Stover reported that she got to the office at 12:05 p.m. to get her pay, and Frank wasn't there. This contradicted Frank, who had said he was continuously in his office from 12:00 noon on.

Dorsey also weighed heavily the record and comments of the jury which pointed to their theory that the murder took place on an upper floor of the factory and that the body was taken to the basement with the intention of burning it. There were other comments by jury members on the factory being used by Frank for immoral purposes and his relations with some of the female employees.

Not yet sure of whom the actual murderer was, Dorsey had indictment forms drawn up for both Leo Frank and Newt Lee. On May 24, however, after the last testimony was heard, he asked for a true bill against Frank. The jury complied and returned an indictment charging Leo Frank with first degree murder.

## Chapter 4

# THE CASE FOR THE PROSECUTION

Because the ninety-degree heat had already begun to take its toll, the Honorable Leonard Strickland Roan ordered the windows and doors thrown open when he convened the Leo Frank case in the temporary Atlanta court-room on July 28, 1913, at 10:00 a.m. The two hundred and fifty seats in the courtroom were packed full. Outside, crowds milled, spilling over onto Pryor and Hunter Streets.

Twenty officers guarded the courtroom. Judge Roan, an experienced and able jurist, who had served as the presiding judge in almost all of the murder trials in the Stone Mountain area, was determined that strict decorum would be observed inside his courtroom. Although various accounts tell that the words "Hang the Jew" were shouted by the crowd outside, jurors, bailiffs, clerks, and court officials claimed that there were no disturbances or crowd noises until the verdict was announced.

The jurors, all white men and Atlanta residents, were chosen within three hours of the first morning of the trial. One hundred and forty-four people were drawn. Fifty-four were excused; thirty-seven because they confessed an already-formed opinion, three because they were over sixty, fourteen because they opposed capital punishment. The

defense used eighteen of its twenty strikes without a cause while the prosecution used seven of the ten it was allowed. The twelve men chosen were: C.J. Basshart (Pressman), A.H. Henslee (Head Salesman, Buggy Co.), J.F. Higdon (Building Contractor), W.N. Jeffries (Real Estate), M. Jochenning (Shipping Clerk), W.F. Medcalf (Mailer), J.T. Ozburn (Optician), Frederic V.L. Smith (Paying Teller), D. Townsend (Paying Teller), F.E. Windburn (Railroad Claims Agent), A.L. Wiseby (Cashier), M.S. Woodward (Cashier, King Hardware). They were lodged at the Old Kimball House and not allowed to read the newspapers or talk with their families concerning the trial.

The chief prosecutor, Solicitor-General Hugh A. Dorsey, according to the newspapers, was handsome and forceful. At forty-two, he was Solicitor General for the Fulton County courts. Fully convinced of Frank's guilt, he was assisted by Frank Arthur Hooper, a successful corporate attorney who had volunteered his services, and Edward A. Stephens, Assistant Solicitor General.

Leo Frank was defended by Atlanta's two well-known trial lawyers, Luther Z. Rosser who, according to the *Atlanta Constitution*, was the "most persuasive and most domineering lawyer in Atlanta in the art of examining witnesses" and Reuben Arnold, "best known attorney in Georgia," and "one of the ablest criminal lawyers in the South," according to the *Atlanta Journal*. They were assisted by Stiles Hopkins and Herbert Haas.

In his opening argument for the prosecution, Special Assistant Solicitor Hooper described the state's case against Frank. According to his outline, Mary Phagan had died as a result of a premeditated rape by the defendant, Leo Frank. It was alleged that Frank had seduced and taken liberties with other young factory girls and had made unsuccessful advances to Mary Phagan. Several surviving family members have said that Frank harassed Mary Phagan and that she went home and told her

67

*The Case for the Prosecution*

mother. Several former National Pencil Company employees who are still living, but wish that their names not be disclosed, have also alleged that they heard Frank sexually harass Mary Phagan.

According to the state, Frank expected Mary Phagan to come to the factory on the Saturday she died, because a fellow employee had asked Frank for Mary's pay envelope earlier and he refused to give it to her. The state contended that Jim Conley had previously acted as a lookout for Frank, so Frank's immoral activities would not be discovered, and Frank had told Conley to work on April 26. Assistant Solicitor Hooper then sketched in the state's contention that Frank was alone in the office, gave Mary Phagan her pay envelope, whereupon she asked him if the metal for her work had come. Saying he didn't know, Frank followed Mary to the metal room and made sexual overtures to her. She repulsed him and he knocked her down and, while she was unconscious, raped her. Then, fearful of the consequences, he strangled her. Thereafter, he went up to the fourth floor to get the workers out of the building and called Conley, confessing "that he guessed he had struck her too hard." With Conley, Frank dragged the body to the basement and made plans for Conley to burn it later. He gave Conley two dollars and fifty cents and then two hundred dollars, but later had Conley return the money, promising he would give it back to Conley after Conley disposed of the body.

As Hooper went over the outline of the rest of the state's case, he singled out the expected testimony of Monteen Stover, who he claimed would contradict Frank's contention that he had been in his office continuously from 12:00 p.m. to 12:45 p.m.

Testimony began that Monday afternoon as Mrs. J.W. Coleman (Fannie Phagan Coleman), the mother of little Mary Phagan, testified. Dressed in a black mourning dress and heavy veil which she threw back, she spoke in a low

68

*The Murder of Little Mary Phagan*

voice, telling that she last saw her daughter alive on April 26, 1913, at their residence, 146 Lindsey Street, about a quarter to twelve, before Mary went to the

pencil factory to get her pay. Tearfully, she described her daughter and the clothing she was wearing.

A court officer drew forth a suitcase which had been hidden behind several chairs.

Standing in front of the mother, he undid the satchel and lifted out the dress and shoes that Mary Phagan had worn when her mother last saw her. The officer first laid the dress upon the witness stand, almost under the mother's feet and placed the shoes beside it. Everyone had leaned forward when the satchel had been brought from behind the chairs; everyone, the lawyers, the audience, the jury, waited as the torn clothing and shoes were placed close to Mary's mother for her identification.

After the most hurried glance at the clothing, which almost touched the hem of her dress, Mrs. Coleman covered her eyes with a palm fan and began to sob. This was how Fannie Phagan Coleman, without speaking, identified the clothing of her murdered daughter.

At that time, few women attended a court trial except for those who were related either to the victim or to the defendant. Fannie Phagan Coleman and Ollie Mae Phagan, little Mary's sister, as well as her brothers, all attended the trial, as did Lucille Selig Frank, Frank's wife, and Mrs. Rae Frank, his mother. When asked for her thoughts by a reporter for the *Atlanta Journal* on the first day's proceedings of the trial, Fannie Phagan Coleman said: "I would rather not talk about it . . . I don't want to express an opinion." It was this profession of silence which caused the rest of the Phagan family not to speak of the trial for the next seventy years.

On that day, Ollie Mae Phagan agreed: "I'm like my mother in not wanting to talk about the trial. The trial is almost more than my mother can bear. She was the

youngest of us—Mary, I mean—she was the life of our home. Now everything is different."

Among the testimonies that proved especially damaging to Frank was that of Newt Lee, the night watchman who usually worked weekdays from 6:00 p.m. to 6:00 a.m., but on Saturdays began work at 5:00 p.m. He reported that on the Saturday of the murder he got to the factory at 4:00 p.m.:

On the 26th day of April, 1913, I was night watchman at the National Pencil Factory. I had been night watchman there for about three weeks. When I began working there, Mr. Frank carried me around and showed me everything that I would have to do. I would have to get there at six o'clock on weekdays, and on Saturday evenings I have to come at five o'clock. On Friday the 25th of April, he told me "Tomorrow is a holiday and I want you to come back at four o'clock. I want to get off a little earlier than I have been getting off." I got to the factory on Saturday about three or four minutes before four. The front door was not locked. I pushed it open, went on in and got to the double door there. I was paid off Friday night at six o'clock. It was put out that everybody would be paid off then. Every Saturday when I got off he gives me the keys at twelve o'clock, so that if he happened to be gone when I get back there at five or six o'clock I could get in, and every Monday morning I return the keys to him. The front door has always been unlocked on previous Saturday afternoons. After you go inside and come up about middle ways of the steps, there are some double doors there. It was locked on Saturday when I got there. Have never found it that way before. I took my key and unlocked it.

When I got upstairs I had a sack of bananas and I stood to the left of that desk like I do every Saturday.

70

*The Murder of Little Mary Phagan*

I says like I always do "Alright Mr. Frank," and he come bustling out of his office. He had never done that before. He always called me when he wanted to tell me anything and said "Step here a minute, Newt." This time he came up rubbing his hands and says, "Newt, I am sorry that I had you come so soon, you could have been at home sleeping. I tell you what you do, you go out in town and have a good time." He had never let me off before that. I could have laid down there in the shipping room and gone to sleep, and I told him that. He says, "You need to have a good time. You go down town, stay an hour and a half and come back your usual time at six o'clock. Be sure and be back at six o'clock." I then went out the door and stayed until about four minutes to six. When I came back the doors were unlocked just as I left them and I went and says, "Alright Mr. Frank," and he says, "What time is it?" and I says, "It lacks two minutes of six." He says, "Don't punch yet, there is a few worked today and I want to change the slip." It took him twice as long this time than it did the other times I saw him fix it. He fumbled putting it in, while I held the lever for him and I think he made some remark about he was not used to putting it in. When Mr. Frank put the tape in I punched and I went on down-stairs. While I was down there Mr. Gantt came from across the street from the beer saloon and says, "Newt, I got a pair of old shoes that I want to get upstairs to have fixed." I says, "I ain't allowed to let anybody in here after six o'clock." About that time Mr. Frank come busting out of the door and run into Gantt unexpected and he jumped back frightened. Gantt says, "I got a pair of old shoes upstairs, have you any objection to my getting them?" Frank says, "I don't think they are up there, I think I saw the boy sweep some up in the trash the other day." Mr. Gantt

71

*The Case for the Prosecution*

asked him what sort they were and Mr. Frank says "tans." Gantt says, "Well, I had a pair of black ones too." Frank says, "Well, I don't know," and he dropped his head down just so. Then he raised his head and says, "Newt, go with him and stay with him and help him find them," and I went up there with Mr. Gantt and found them in the shipping room, two pair, the tans and the black ones. Mr. Frank phoned me that night about an hour after he left, it was sometime after seven o'clock. He says, "How is every-thing?" and I says, "Everything is all right so far as I know," and he says, "Goodbye." No, he did not ask anything about Gantt. Yes, that is the first time he ever phoned to me on a Saturday night.

There is a light on the street floor just after you get in the entrance to the building. The light is right up here where that partition comes across. Mr. Frank told me when I first went there, "keep that light burning bright, so the officers can see in when they pass by." It wasn't burning that day at all. I lit it at six o'clock myself. On Saturdays I always lit it, but weekdays it would always be lit when I got there. On Saturdays I always got there at five o'clock. This Saturday he got me there an hour earlier and let me off later. There is a light in the basement down there at the foot of the ladder. He told me to keep that burning all the time. It has two little chains to it to turn on and turn off the gas. When I got there on making my rounds at seven o'clock on the 26th of April, it was burning just as low as you could turn it, like a lightning bug. I

left it Saturday morning burning bright. I made my rounds regularly every half hour Saturday night. I punched on the hour and punched on the half and I made all my punches. The elevator doors on the street floor and office floor were closed when I got there on Saturday. They were fas-

72

*The Murder of Little Mary Phagan*

tened down just like we fasten them down every other night. When three o'clock came I went down the basement and when I went down and got ready to come back I discovered the body there. I went down to the toilet and when I got through I looked at the dust bin back to the door to see how the door was and it being dark I picked up my lantern and went there and I saw something laying there which I thought some of the boys had put there to scare me, then I walked a little piece towards it and I seen what it was and I got out of there. I got up the ladder and called up [the] police station. It was after three o'clock. I carried the officers down where I found the body. I tried to get Mr. Frank on the telephone and was still trying when the officers came. I guess I was trying about eight minutes. I saw Mr. Frank Sunday morning at about seven or eight o'clock. He was coming in the office. He looked down on the floor and never spoke to me. He dropped his head right down this way. Mr. Frank was there and dint say nothing while Mr. Darley was speaking to me. Boots Rogers, Chief Lanford, Darley, Mr. Frank and I were there when they opened the clock. Mr. Frank opened the clock and said—the punches were all right, that I hadn't missed any punches. I punched every half hour from six o'clock until three o'clock, which was the last punch I made. I don't know whether they took out that slip or not. On Tuesday night, April 29th, at about ten o'clock I had a conversation at the station house with Mr. Frank. They handcuffed me to a chair. They went and got Mr. Frank and brought him in and he sat down next to the door. He dropped his head and looked down. We were all alone. I said, "Mr. Frank, it's mighty hard for me to be handcuffed here for something I don't know anything about." He said, "What's the difference, they have got me locked up

73

*The Case for the Prosecution*

and a man guarding me." I said, "Mr. Frank, do you believe I committed that crime," and he said, "No, Newt, I know you didn't, but I believe you know something about it." I said, "Mr. Frank, I don't know a thing about it, no more than finding the body." He said, "We are not talking about that now, we will let that go. If you keep that up we will both go to hell." Then the officers both came in. When Mr. Frank came out of his office that Saturday he was looking down and rubbing his hands. I have never seen him rubbing his hands that way before.

When Defense Attorney Rosser cross-examined Lee, the witness said that the locked double doors inside the entrance to the building were unlocked when he came back.

Next the prosecution called to the stand Sergeant L.S. Dobbs. He testified:

On the morning of April 27, about 3:25, a call came from the pencil factory that there was a murder up there. We went in Boots Rogers's automobile and when we arrived, the door was locked. We knocked and in about two minutes the Negro came down the steps and opened the door and said a woman was murdered in the basement. We went through a scuttle

hole, a small trapdoor. The Negro led the way back in the basement about 150 feet to the body.

The girl was lying on her face, not directly lying on her stomach, with the left side up just a little. We couldn't tell by looking at her whether she was white or black, only by her golden hair. They turned her over, and her face was full of dirt and dust. They took a piece of paper and rubbed the dirt off her face, and we could tell then that it was a white girl. I pulled up her clothes, and could tell by the skin of the knee that it was a white girl. Her face was punctured, full of

74

*The Murder of Little Mary Phagan*

holes, and swollen and black. She had a cut on the left side of her head as if she had been struck, and there was a little blood there. The cord was around her neck, sunk into the flesh. She also had a piece of her underclothing around her neck. The tongue was protruding just the least bit. The cord was pulled tight, and had cut into the flesh, and tied just as tight as it could be. The underclothing around the neck was not tight.

There wasn't much blood on her head. It was dry on the outside. I stuck my finger under the hair, and it was a little moist.

This scratch pad was lying on the ground, close to the body. I found the notes under the sawdust, lying near the head. The pad was lying near the notes. They were all right close together.

On cross-examination, Dobbs testified:

Newt Lee told us it was a white woman.

There was a trash pile near the boiler, where this hat was found, and paper and pencils down there, too. The hat and shoe were on the trash pile. Everything was gone off it, ribbons and all.

The place where I thought I saw someone dragged was right in front of the elevator, directly back. The little trail where I thought showed the body was dragged, went straight on down where the girl was found. It was a continuous trail.

It looked like she had been dragged on her face by her feet. I thought the places on her face had been made by dragging. That was a dirt floor, with cinders on it, scattered over the dirt.

Back door was shut, staple had been pulled. The lock was locked still. It was a sliding door, with a bar across the door, but the bar had been taken down. It looked like the staple had been recently drawn.

75

*The Case for the Prosecution*

I was reading one of the notes to Lee, with the following words, "A tall, black negro did this; he will try to lay it on the night," and when I got to the word "night," Lee says, "That means the night watchman."

On Dorsey's re-direct examination, Dobbs testified that "A man couldn't get down that ladder with another person. It is difficult for one person to get through that scuttle hole. The back door was shut; staple had been pulled.

"The sign of dragging . . . started east of the ladder. A man going down the ladder to the ear of the basement, would not go in front of the elevator where the dragging was.

"The body was cold and stiff. Hands folded across the breast.

"I didn't find any blood on the ground, or on the sawdust, around where we found the body."



Further re-direct examination revealed that Dobbs had found the handkerchief on a sawdust pile, about ten feet from the body. When he was shown the handkerchief on re-cross examination, he stated: "It was bloody, just as it is now." Later recalled for the state, Dobbs revealed that "The trap-door leading up from the basement was closed when we got up there."

City Officer John N. Starnes was the next important state's witness. He testified,

I reached the factory between five and six o'clock on April 27th. I called up the superintendent, Leo Frank, and asked him to come right away. He said he hadn't had any breakfast. He asked where the night watchman was. I told him to come, and if he would come, I would send an automobile for him.

I didn't tell him what had happened, and he didn't ask me.

When Frank arrived at the factory, a few minutes

76

*The Murder of Little Mary Phagan*

later, he appeared to be nervous, he was in a trembling condition. Lee was composed at the factory, he never tried to get away.

That first morning of the trial, Starnes stated that "I saw splotches that looked like blood about a foot and a half, or two feet, from the end of the dressing room, some of which I chipped up. It looked like splotches of blood and something had been thrown there and in throwing it had spread out and splattered.

"I chipped two places off the back door, which looked like they had bloody fingerprints.

"It takes not over three minutes to walk from Marietta Street, at the corner of Forsyth, across the viaduct, and through Forsyth Street, down to the factory."

Starnes further testified, "I could not give the words of the telephone conversation between me and Frank be-cause I could be mistaken as to the words he used."

Concerning the splotches, he said, "I don't know if they were blood."

Another witness, W. W. ("Boots") Rogers testified:

After Starnes's telephone conversation, John Black and I went to Frank's residence where Mrs. Frank answered the door. Mr. Black asked, 'Is Frank in?' Mr. Frank stepped into the hall through the curtain partly dressed and asked if anything happened at the factory. When Mr. Black didn't answer, Mr. Frank said, 'Did the night watchman call up and report anything to you?'

Mr. Black then asked him to finish dressing and go to the factory to see what had happened.

Frank said that he thought he dreamt in the morning, about three o'clock, about hearing the telephone ring.

Frank seemed to be extremely nervous and was rubbing his hands and asked for a cup of coffee. After

77

*The Case for the Prosecution*

we got in the automobile, one of the officers asked Frank if he knew a little girl named Mary Phagan.

Frank asked, "Does she work at the factory?"

Then I said, "I think she does," and Frank stated, "I cannot tell whether she works there or not, until I look at my payroll book. I know very few of the girls that work there. I pay them off, but I very seldom go back in the factory."

Frank's references to not knowing Mary Phagan were later to take on added significance.

We went to the undertaking establishment but I did not see Frank look at the corpse, I did see him step away into a side room. After the morgue, we went to the pencil factory where Frank opened the safe, consulted his time book and said: "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 twelve o'clock, and a few minutes after she left, the office boy left, and Mary came in and got her pay and left."

He then wanted to see where the girl was found. Mr. Frank went around to the elevator, where there was a switch box on the wall, and put the switch in. The box was not locked. As to what Mr. Frank said about the murder, I don't know that I heard him express himself, except down in the basement.

The officers showed him where the body was found, and he made the remark that it was too bad, or something like that.

On re-cross examination, Rogers stated that "No one could have seen the body at the morgue unless he was somewhere near me. I was inside and Mr. Frank never came into that little room, where the corpse lay." On re-direct examination he stated that, "When the face was

78

*The Murder of Little Mary Phagan*

rueled toward me, Mr. Frank stepped out of my vision in the direction of Mr. Gheesling's sleeping room." John Black was sworn and stated:

We didn't know it was a white girl or not until we rubbed the dirt from the child's face, and pulled down her stocking a little piece. The tongue was not sticking out; it was wedged between her teeth. She had dirt in her eye and mouth. The cord around her neck was drawn so tight it was sunk in her flesh, and the piece of undershirt was loose over her hair.

She was lying on her face with her hands folded up. One of her eyes was blackened. There were several little scratches on her face. A bruise on the left side of her head, some dry blood in her hair.

There was some excrement in the elevator shaft. When we went down on the elevator, the elevator mashed it. You could smell it all around. He had come with Boots Rogers to Frank's residence:

Mrs. Frank came to the door; she had on a bathrobe. I stated that I would like to see Mr. Frank and about that time Mr. Frank stepped out from behind a curtain. Frank's voice was hoarse and trembling and nervous and excited. He looked to me like he was pale. He seemed nervous in handling his collar; he could not get his tie tied, and talked very rapid in asking what had happened. He kept insisting on a cup of coffee.

When we got into the automobile, Mr. Frank wanted to know what had happened at the factory, and I asked him if he knew Mary Phagan, and told him she had been found dead in the basement. Mr. Frank said he did not know any girl by the name of Mary Phagan, that he knew very few of the employees. [This was the second time, according to testimony at

79

*The Case for the Prosecution*

the trial, that Frank had denied knowing Mary Phagan].

In the undertaking establishment, Mr. Frank looked at her; he gave a casual glance at her, and stepped aside; I couldn't say whether he saw the face

of the girl or not. There was a curtain hanging near the room, and Mr. Frank stepped behind the curtain.

Mr. Frank stated, as we left the undertaker's that he didn't know the girl, but he believed he had paid her off on Saturday. He thought he recognized her being at the factory Saturday by the dress that she wore.

At the factory, Mr. Frank took the slip out, looked over it, and said it had been punched correctly.

On Monday and Tuesday following, Mr. Frank stated that the clock had been mispunched three times.

I saw Frank take it out of the clock and went with it back toward his office.

When Mr. Frank was down at the police station, on Monday morning Mr. Rosser and Mr. Haas were there. Mr. Haas stated, in Frank's presence, that he was Frank's attorney. This was about eight, or eight thirty Monday morning. That's the first time he had counsel with him.

On Tuesday night, Mr. Scott and myself suggested to Mr. Frank to talk to Newt Lee. They went into a room, and stayed about five or ten minutes, alone. I couldn't hear enough to swear that I under-stood what was said. Mr. Frank said that Newt Lee stuck to the story that he knew nothing about it.

Mr. Frank stated that Mr. Gantt was there on Saturday evening, and that he told Lee to let him get the shoes, but to watch him, as he knew the surroundings of the office.

[After this conversation Gantt was arrested.]

80

*The Murder of Little Mary Phagan*

Mr. Frank was nervous Monday; after his release, he seemed very jovial.

On Tuesday night, Frank said at the station house, that there was nobody at the factory at six o'clock but Newt Lee, and that Newt Lee ought to know more about it, as it was his duty to look over the factory every thirty minutes.

On cross-examination, Black said, "After the visit to the morgue, the party went to the factory, where Frank got the book, ran his finger down until he came to the name of Mary Phagan, and said: 'Yes, this little girl worked here and I paid her \$1.20 yesterday.'

"We went all over the factory. Nobody saw that blood spot that morning."

Frank's attorney, Mr. Haas, told Black to go out to Frank's house, and search for the clothes he had worn the week before and his laundry as well. Frank went with them and showed them the dirty laundry.

Black went on: "I examined Newt Lee's house. I found a bloody shirt at the bottom of a clothes barrel there, on Tuesday morning, about nine o'clock."

On re-direct examination by Dorsey, Black stated that Frank said, "After looking over the time sheet, and seeing that it had not been punched correctly, that it would have given Lee an hour to have gone out to his house and back."

The next person to take the stand had been arrested by the police in their preliminary investigation of the murder. J. M. Gantt testified that he was shipping clerk at the pencil factory and that Frank discharged him on April 7 for an alleged shortage in the payroll.

"I have known Mary Phagan since she was a little girl, and Mr. Frank knew her too.

"One Saturday afternoon, she came in the office to have her time corrected, by me, and after I had gotten

81

*The Case for the Prosecution*

through with her, Mr. Frank came in and said: 'You seem to know Mary pretty well.' "

On two occasions after Gantt was discharged, he went back to the factory where, he said, "Mr. Frank saw me both times. He made no objections to my going there.

"One girl used to get the pay envelope for another, with Frank's knowledge."

Gantt swore that Mr. Frank discharged him because he refused to make good the \$2.00 shortage in the payroll which he said he knew nothing about. He then described Frank's behavior Saturday when he went for his shoes:

I stood at the front door and when Frank saw me he kind of stepped back, like he was going to go back, but when he looked up and saw I was looking at him, he came on out, and I said, "Howdy, Mr. Frank," and he sorter jumped again.

I asked permission to get my shoes. Frank hesitated, inquired the kind of shoes, was told they were tans, and stated that he thought he had a Negro sweep them out. I said I left a black pair as well and Frank studied a little bit and told Newt to go with me, and stay with me till I got my shoes. Mr. Frank looked pale, hung his head, and kind of hesitated and stuttered, like he didn't like me in there, somehow or another.

On cross-examination Gantt revealed that when he testified at the coroner's inquest he did not testify about Frank having known Mary Phagan very well.

Mrs. J. R. White, whose husband worked at the factory, testified that she went to the factory at 11:30 to see her husband and stayed until 11:50. She returned about 12:30 and, she said, "Mr. Frank was in the outside office standing in front of the safe. I asked him if Mr. White had gone back to work; he jumped, like I surprised him, and turned and said, 'Yes.' I then went upstairs to see Mr.

82

*The Murder of Little Mary Phagan*

White. At about one o'clock, Frank came up to the fourth floor and told me that if I wanted to get out by three o'clock, I had better come down as he was going to leave the factory and that I had better be ready to leave as soon as he got his coat and hat.

"As I was going down the steps, I saw a Negro sitting on a box, close to the stairway on the first floor.

"Mr. Frank did not have his coat or hat on when I passed out."

In a later statement about which there was much conjecture, Mrs. White swore "I saw a Negro sitting between the stairway and the door, about five or six feet from the foot of the stairway. I wouldn't be able to identify him."

Harry Scott was sworn in. "I am the superintendent of the local branch of the Pinkerton Detective Agency and work with John Black, city detective. I was employed by Frank for the National Pencil Company. On Monday, April 28th, I witnessed, along with Mr. Darley and a third party, Frank telling his detailed accounts of his movements the Saturday before. He told of going to Montag and the coming of Mrs. White to the factory."

Scott related that Frank said that Mary Phagan came into the factory at 12:10 p.m. to draw her pay. She had been laid off the Monday previous, and she was paid \$1.20. "He paid her off in his inside office, where he was at his desk, and when she left his office and went into the outer office she had reached the outer office door leading into the hall, and turned around to Mr. Frank, and asked if the metal had come yet. Mr. Frank replied that he didn't know. Mary Phagan, he thought, reached the stairway, and he heard voices, but he couldn't distinguish whether they were men or girls talking."

Harry Scott's next words about Leo Frank created a stir in the courtroom.

83

*The Case for the Prosecution*

He (Frank) stated during our conversation with him that Gantt knew Mary Phagan very well, that he was familiar and intimate with her. He seemed to lay special stress on it at the time. He said that Gantt paid a good deal of attention to her. As to whether anything was said by any attorney of Frank's as to our suppressing any evidence as to this murder, it was the first week in May when Mr. Pierce and I went to Mr. Herbert J. Haas's office in the Fourth National Bank Building and had a conference with him as to the Pinkerton Agency's position in the matter. Mr. Haas stated that he would rather we would submit our reports to him first before we turned it over to the police and let them know what evidence we had gathered. We told him we would withdraw before we would adopt any practice of that sort, that it was our intention to work in hearty co-operation with the police.

I saw the place near the girls' dressing room on the office floor, fresh chips had already been cut out of the floor.

After Frank was arrested Scott asked Frank to see if he could use his influence with Newt Lee since he was his employer and try to get Lee to tell what he knew. Lee and Frank were put in a private room and:

When about ten minutes was up, Mr. Black and I entered the room and Lee hadn't finished his conversation with Frank; and was saying: "Mr. Frank, it is awful hard for me to remain handcuffed to this chair," and Frank hung his head the entire time the Negro was talking to him, and finally, after about thirty seconds, he said, "Well, they have got me, too." After that, we asked Mr. Frank if he had gotten any-thing out of the Negro and he said, 'No, Lee still sticks to his original story.'

84

*The Murder of Little Mary Phagan*

Mr. Frank was extremely nervous at that time. He was very squirmy in his chair, crossing one leg after the other, and didn't know where to put his hands; he was moving them up and down his face, and he hung his head a great deal of the time while the Negro was talking to him. He breathed very heavily, and took deep swallows, and hesitated somewhat. His eyes were about the same as they are now.

That interview between Lee and Frank took place shortly after midnight, Wednesday, April 30th. On Monday afternoon, Frank said to me that the first punch on Newt Lee's slip was 6:33 p.m., and his last punch was 3 a.m. Sunday. He didn't say anything at that time about there being any error in Lee's punches. Mr. Black and I took Mr. Frank into custody about 11:30 a.m. Tuesday, April 29th.

His hands were quivering very much, he was very pale. On Sunday, May 3rd, I went to Frank's cell at the jail with Black, and I asked Mr. Frank if, from the time he arrived at the factory from Montag Bros., up until 12:50 p.m., the time he went upstairs to the fourth floor, was he inside of his office in the entire time, and he stated, "Yes."

Then I asked him if he was inside his office every minute from twelve o'clock until 12:30, and he said, "Yes."

I made a very thorough search of the area around the elevator and radiator, and back in there. I made a surface search; I found nothing at all. I found no ribbons or purse, or pay envelope, or bludgeon or stick. I spent a

great deal of time around the trap door, and I remember running the light around the doorway, right close to the elevator, looking for splotches of blood, but I found nothing.

When Luther Rosser questioned him, Scott admitted that he did not give the defense attorney the details in his reports of Mr. Frank's movements, about his statement

85

*The Case for the Prosecution*

about Gantt being familiar with Mary Phagan, and told the attorney that he did not hear Lee but stated now that he did hear the last words of Lee, and the description of Frank's extreme nervousness.

After Lee, the next damaging testimony was given by Monteen Stover, a pretty girl with dark hair who was about the same age as Mary Phagan. Her allegations contradicted Frank's claim about being in his office continually Mrs. Stover swore:

I worked at the National Pencil Company prior to April 26, 1913. I was at the factory at five minutes after twelve on that day. I stayed there five minutes and left at ten minutes after twelve. I went there to get my money. I went in Mr. Frank's office. He was not there. I didn't see or hear anybody in the building. The door to the metal room was closed. I had on tennis shoes, a yellow hat, and a brown rain coat. I looked at the clock on my way up, it was five minutes after twelve and it was ten minutes after twelve when I started out. I had never been in his office before. The door to the metal room is sometimes open and sometimes closed.

On cross-examination she revealed:

I didn't look at the clock to see what time it was when I left home or when I got back home. I didn't notice the safe in Mr. Frank's office. I walked right in and walked right out. I went right through into the office and turned around and came out. I didn't notice how many desks were in the outer office. I didn't notice any wardrobe to put clothes in. I don't know how many windows are in the front office. I went through the first office into the second office. The factory was still and quiet when I was there. I am fourteen years old and I worked on the fourth floor of

86

*The Murder of Little Mary Phagan*

the factory. I knew the paying-off time was twelve o'clock on Saturday and that is why I went there. They don't pay off in the office, you have to go up to a little window they open.

Albert McKnight, the husband of Frank's cook, Minola McKnight (whose statement to the police concerning Frank's condition the night of the murder had further aroused police suspicions of Frank), testified that "Between one and two o'clock on Memorial Day I was at the home of Mr. Frank to see my wife. He came in close to one thirty. He did not eat any dinner. He came in, went to the sideboard of the dining room, stayed there a few minutes and then he goes out and catches a car. Stayed there about five or ten minutes."

On cross-examination, McKnight stated that he saw Frank in the mirror in the corner and that you could look through the mirror and see in the sitting room and in the dining room. He did not see the Seligs, but heard Mr. Selig talking and he did not see Mrs. Frank or Mrs. Selig through the mirror. He couldn't tell who was in the dining room without looking through the mirror.

Miss Helen Ferguson, a friend of the murdered girl, testified that she saw "Mr. Frank Friday, April 25, about seven o'clock in the evening and asked for Mary Phagan's money. Mr. Frank said, 'I can't let you have it,' and before he said anything else I turned around and walked out. I had gotten Mary's money before, but I didn't get it from Mr. Frank."

On cross-examination, Miss Ferguson stated that she had gotten Mary's money before and she did not remember if Mr. Schiff was in the office or not when she asked Frank for Mary's money and that it had been some time since she asked for Mary's pay by number.

Three medical experts were sworn in. Doctors Claude Smith, J. W. Hurt, and F. H. Harris, had very different

contentions about the question of Mary Phagan's rape. All agreed there had been a savage struggle after which the girl was strangled.

According to the undertaker, W. H. Gheesling, "There was a two and one-half inch wound on the back of the victim's head exposing part of the skull. Her hair was clotted with blood, and a tight cord indenting the flesh was drawn around the neck. Blood, urine, and some discharge stained her panties which had been cut or torn at the seam."

The county physician, Dr. J. W. Hurt, testified, "The head wound was induced by a blunt-edged instrument and occurred before death. She died of strangulation."

Although Dr. Hurt said he found blood on her genitals, he contended there was no evidence of violence to the vagina.

This finding was in direct contradiction to that of Dr. H. F. Harris, the medical examiner. He stated, "Besides a ruptured hymen, Mary Phagan's vagina showed evidence of violence before death due to the internal bleeding. The epithelium was pulled loose from the inner walls and detached in some places."

Dr. Harris stated that this violence occurred before death. Nowhere in the testimony can it be found that Mary Phagan was bitten on her breast, although the report of such a bite surfaced many years later when in 1964, Pierre Van Passen, who had studied the evidence and X-rays of the Frank case in 1922, reported that he found X-ray pictures showing the girl had been bitten on the left shoulder and neck before strangulation, and that, moreover, those indentations did not correspond to the X-rays of Leo Frank's teeth.

Having examined Mary's stomach contents, Dr. Harris asserted that she had eaten her last meal of bread and cabbage approximately one half to three quarters of an hour before she died.

C.B. Dalton, the man whom Jim Conley alleged brought women, with Leo Frank, to the factory for immoral purposes, took the stand:

I know Leo M. Frank, Daisy Hopkins, and Jim Conley. I have visited the National Pencil Company three, four, or five times. I have been in the office of Leo M. Frank two or three times. I have been down in the basement. I don't know whether Mr. Frank knew I was in the basement or not, but he knew I was there. I saw Conley there and the night watchman, and he was not Conley. There would be some ladies in Mr. Frank's office. Sometimes there

would be two, and sometimes one. May be they didn't work in the mornings and they would be there in the evenings.

Later, on cross-examination, he mentioned Daisy Hopkins again:

I don't recollect the first time I was in Mr. Frank's office. It was last fall. I have been down there one time this year but Mr. Frank wasn't there. It was Saturday evening. I went in there with Miss Daisy Hopkins. I saw some parties in the office but I don't know them. They were ladies. Sometimes there would be two and sometimes more. I don't know whether it was the stenographer or not. I don't recollect the next time I saw him in his office. I never saw any gentle-men but Mr. Frank in there. Every time I was in Mr. Frank's office was before Christmas. Miss Daisy Hopkins introduced me to him. I saw Conley there one time this year and several times on Saturday evenings. Mr. Frank wasn't there the last time. Conley was sitting there at the front door. When I went down the ladder Miss Daisy went with me. We went back by the trash pile in the basement. I saw an old cot and a stretcher.

89

*The Case for the Prosecution*

On re-direct examination, Dalton stated that "Frank had Coca-Cola, lemon and lime, and beer in his office. When re-cross examined, he admitted that he had served time in the chain gang in 1894 for stealing. But he claimed in later re-direct testimony that it had been almost twenty years since he had been in trouble.

Mell Stanford, who had worked for Frank for two years, testified that he swept the whole floor in the metal room on Friday, April 25. "On Monday thereafter, I found a spot that had some white haskoline over it, on the second floor, near the dressing room that wasn't there Friday when I swept. The spot looked to me like it was blood with dark spots scattered around."

On cross-examination, Stanford said that he "moved everything and swept everything. I swept under Mary's and Barrett's machine."

Finally, it was the testimony of the state's star witness, Jim Conley, a short, stocky black man who was a sweeper at the factory, that stunned the jury with his findings. He testified:

I had a little conversation with Mr. Frank on Friday, the 25th of April. He wanted me to come to the pencil factory that Friday morning, that he had some work on the third floor he wanted me to do . . . Friday evening about three o'clock Mr. Frank came to the fourth floor where I was working and said he wanted me to come to the pencil factory on Saturday morning at eight thirty; that he had some work for me to do on the second floor. I had been working for the pencil company a little over two years . . . I got to the pencil factory about eight-thirty on April 26th. Mr. Frank and me got to the door at the same time. Mr. Frank walked to the inside and I walked behind him and he says to me, "Good morning," and I says, "Good morning, Mr. Frank." He says, "You are a little early

90

*The Murder of Little Mary Phagan*

this morning," and I says, "No sir, I am not early." He says, "Well, you are a little early to do what I wanted you to do for me, and I want you to watch for me like you have been doing the rest of the Saturdays." I always stayed on the first floor like I stayed the 26th of April and watched for Mr. Frank, while he and a young lady would be up on the second floor chatting. I don't know what



they were doing. He only told me they wanted to chat. When young ladies would come there, I would sit down at the first floor and watch the door for him. I couldn't exactly tell how many times I have watched the floor for him previous to April 26th, it has been several times that I watched for him, but there would be another young man, another young lady during the time I was at the door. A lady for him and one for Mr. Frank. Mr. Frank was alone there once, that was Thanksgiving Day. I watched for him. Yes, a woman came there Thanks-giving Day, she was a tall, heavy-built lady. I stayed down there and watched the door just as he told me the last time, April 26th. He told me when the lady came he would stomp and let me know that was the one and for me to lock the door. Well, after the lady came and he stomped for me I went and locked the door as he said. He told me when he got through with the lady he would whistle and for me then to go and unlock the door. That was last Thanksgiving Day, 1912. On April 26th, me and Mr. Frank met at the door. He says, "What I want you to do is to watch for me today as you did other Saturdays," and I says, "All right." I said, "Mr. Frank, I want to go to the Capital City Laundry to see my mother," and he said, "By the time you go to the laundry and come back to Trinity Avenue stop at the corner of Nelson and Forsyth Street until I go to Montag's." I don't know exactly what time I got to the corner of Nelson and

91

*The Case for the Prosecution*

Forsyth Streets but I came there sometime between ten o'clock and ten thirty. I saw Mr. Frank as he passed by me, I was standing on the corner, he was coming up Forsyth Street toward Nelson Street. He was going to Montag's factory. While I was there on the corner he said, "Ha, ha, you are here, is yer." And I says, "Yes, sir, I am right here, Mr. Frank." He says, "Well, wait until I go to Mr. Sig's, I won't be very long, I'll be right back." I says, "All right, Mr. Frank, I'll be right here." I don't know how long he stayed at Montag's. He didn't say anything when he came back from Montag's but told me to come on. Mr. Frank came out Nelson Street and down Forsyth Street towards the pencil factory and I followed right be-hind. As we passed up there the grocery store, Albert-son Brothers, a young man was up there with a paper sack getting some stuff out of a box on the sidewalk, and he had his little baby standing by the side of him, and just as Mr. Frank passed by him, I was a little behind Mr. Frank, and Mr. Frank said something to me and by him looking back at me and saying some-thing to me, he hit up against the man's baby, and the man turned around and looked to see who it was, and he looked directly in my face, but I never did catch the idea what Mr. Frank said. Mr. Frank stopped at Curtis' Drug Store, corner Mitchell and Forsyth Street, went in to the soda fountain. He came out and went straight on to the factory, me right behind him, when we got to the factory, we both went on the inside, and Mr. Frank stopped me at the door, and when he stopped me at the door, he put his hand on the door and turned the door and says, "You see, you turn the knob just like this and there can't no-body come in from the outside," and I says, "All right," and I walked back to a little box back there by the trash barrel. He told me to push the box up

92

*The Murder of Little Mary Phagan*

against the trash barrel and sit on it, and he says, "Now there will be a young lady up here after awhile, and me and her are going to chat a little," and he says, "Now, when the lady comes, I will stomp like I did before," and he says,

"That will be the lady, and you go and shut the door," and I says, "All right, sir." And he says, "Now, when I whistle I will be through, so you can go and unlock the door and you come upstairs to my office then like you were going to borrow some money from me and that will give the young lady time to get out." I says, "All right, I will do just as you say," and I did as he said. Mr. Frank hit me a little blow on my chest and says, "Now, whatever you do, don't let Mr. Darley see you." I says, "All right, I won't let him see me." Then Mr. Frank went upstairs and he said, "Remember to keep your eyes open," and I says, "All right, I will Mr. Frank." And I sat there on the box and that was the last I seen of Mr. Frank until up in the day sometime. The first person I saw that morning after I got in there was Mr. Darley, he went upstairs. The next person was Miss Mattie Smith, she went on upstairs, then I saw her come down from upstairs. Miss Mattie walked to the door and stopped, and Mr. Darley comes on down to the door where Miss Mattie was, and he says, "Don't you worry, I will see that you get that next Saturday." And Miss Mattie came on out and went up Alabama Street and Mr. Darley went back upstairs. Seemed like Miss Mattie was crying, she was wiping her eyes when she was standing down there. This was before I went to Nelson and Forsyth Street. After we got back from Montag Brothers, the first person I saw come along was a lady that worked on the fourth floor, I don't know her name. She went on up the steps. The next person that came along was the Negro drayman, he went on upstairs. He was a peg-legged fellow, real

93

*The Case for the Prosecution*

dark. The next I saw this Negro and Mr. Holloway coming back down the steps. Mr. Holloway was putting on his glasses and had a bill in his hands, and he went out towards the wagon on the sidewalk, then Mr. Holloway came back up the steps, then after Mr. Darley came down and left, Mr. Holloway came down and left. Then this lady that worked on the fourth floor came down and left. The next person I saw coming there was Mr. Quinn. He went upstairs, stayed a little while, and then came down. The next person that I saw was Miss Mary Perkins, that's what I call her, this lady that is dead, I don't know her name. After she went upstairs I heard footsteps going towards the office and after she went in the office, I heard two people walking out of the office and going like they were coming down the steps, but they didn't come down the steps, they went towards the metal department. After they went back there, I heard the lady scream, then I didn't hear no more, and the next person I saw coming in there was Miss Monteen Stover. She had on a pair of tennis shoes and a rain coat. She stayed there a pretty good while, it wasn't so very long either. She came back down the steps and left. After she came back down the steps and left, I heard somebody from the metal department come running back there upstairs, on their tiptoes, then I heard somebody tiptoeing back towards the metal department. After that I dozed off and went to sleep. Next thing I knew Mr. Frank was up over my head stamping and then I went and locked the door, and sat on the box a little while, and the next thing I heard was Mr. Frank whistling. I don't know how many minutes it was after that I heard him whistle. When I heard him whistling I went and unlocked the door just like he said, and went up the steps. Mr. Frank was standing up there at the top of the steps

94

*The Murder of Little Mary Phagan*

and shivering and trembling and rubbing his hands like this. He had a little rope in his hands and 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 come 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 back flat on her back with a rope around her neck. The cloth was also tied around her neck and part of it was under her head like to catch blood. I noticed the clock after

95

*The Case for the Prosecution*

I went back there and found the lady was dead and came back and told him. The clock was four minutes to one. 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. I didn't hear what Mr. Frank said and I came on up there to hear what he said. He was standing on the top of the steps, like he was going down the steps, and while I was back in the metal department I didn't understand what he said, and I came back there to understand what he did say, and he said to go and get a piece of cloth to put around her, and I went and looked around the cotton box and got a piece of cloth and went back there. The girl was lying flat on her back and her hands were out this way. I put both of her hands down, they went down easily, and rolled her up in the cloth and taken the cloth and tied her up, and started to pick her up, and I looked back a little distance and saw her hat and piece of ribbon laying down and her slippers and I taken them and put them all in the cloth and I ran my right arm through the cloth and tried to bring it up on my shoulder. The cloth was tied just like a person that was going to give out clothes on Monday, they get the clothes and put them on the inside of a sheet and take each corner and tie the four corners together, and I run my right arm through the cloth after I tied it that way and went to put it on my shoulder, and I found I couldn't get it on my shoulder, it was heavy and I carried it on my arm the best I could, and when I got away from the little dressing room that was in the metal department, I let her fall, and I was scared and I kind of jumped, and I said, "Mr. Frank, you will have to help me with this girl, she is heavy," and he came and caught her by the feet

96

*The Murder of Little Mary Phagan*

and I laid hold of her by the shoulders, and when we got her that way I was backing and Mr. Frank had her by the feet, and Mr. Frank kind of put her on me, he was nervous and trembling, and after we got her a piece from where we got her at, he let her feet drop and then he picked her up and we went on the elevator, and he pulled down on one of the cords and the elevator wouldn't go, and he said, "Wait, let me go in the office and get the key," and he went in the office and got the key and come back and unlocked the switch box and the elevator went down the basement, and we carried her out and I opened the cloth and rolled her out there on the floor, and Mr. Frank turned around and went on up the ladder, and I noticed her hat and slipper and piece of ribbon and I said, "Mr. Frank, what am I going to do with these things?" and he said, "Just leave them right there," and I taken the things and pitches them over in front of the boiler, and after Mr. Frank had left I goes on over to the elevator and he said, "Come on up and I will catch you on the first floor," and I got on the elevator and started it on to the first floor, and Mr. Frank was running up there. He didn't give me time to stop the elevator, he was so nervous and trembly, and before the elevator got to the top of the first floor Mr. Frank made the first step on to the elevator and by the elevator being a little down like that, he stepped down on it and hit me quite a blow right over about my chest and that jammed me up against the elevator and when we got near the second floor he tried to step off before it got to the floor and his foot caught on the second floor as he was stepping off and that made him stumble and he fell back sort of against me, and he goes on and takes the keys back to his office and leaves the box unlocked. I followed him into his private office and I sat down and he corn-

97

*The Case for the Prosecution*

menced to rubbing his hands and began to rub back his hair and after a while he got up and said, "Jim," and I didn't say nothing, and all at once he happened to look out of the door and there was somebody coming, and he said, "My God, here is Emma Clark and Corinthia Hall," and he said, "Come over here, Jim, I have got to put you in this wardrobe," and he put me in this wardrobe, and I stayed there a good while and they come in there and I heard them go out, and Mr. Frank come there and said, "You are in a tight place," and I said, "Yes," and he said, "You done very well." So after they went out and he had stepped in the hall and had come back he let me out of the wardrobe, and he said, "You sit down," and I went and sat down, and Mr. Frank sat down. But the chair he has was too little for him, or too big or it wasn't far enough back or something. He reached on the table to get a box of cigarettes and a box of matches, and he takes a cigarette and a match and hands me the box of cigarettes and I lit one and went to smoking and I handed him back the box of cigarettes, and he put it back in his pocket and then he took them out again and said, "You can have these," and I put them in my pocket, and then he said, "Can you write," and I said, "Yes, sir, a little bit," and he taken 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 wrote on the next page there, and he looked at that and kind of liked it and he said that was all right. Then he reached over and got another piece of paper, a green

98

*The Murder of Little Mary Phagan*

piece, and told me what to write. He took it and laid it on his desk and looked at me smiling and rubbing his hands, and then he pulled out a nice little roll of greenbacks, and he said, "Here is two hundred dollars," and I taken the money and looked at it a little bit and I said, "Mr. Frank, don't you pay another dollar for that watchman, because I will pay him myself," and he said, "All right, I don't see what you want to buy a watch for either, that big fat wife of mine wanted me to buy an automobile and I wouldn't do it." And after awhile Mr. Frank looked at me and said, "You go down there in the basement and you take a lot of trash and burn that package that's in front of the furnace," 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. He said, "There's no need of my going down there," and I said, "Mr. Frank, you are a white man and you done it, and I am not going down there and burn that myself." He looked at me 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, I was coming to

*The Case for the Prosecution*

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," and I said, "All right, I will be back in about forty minutes." Then I went down over to the beer saloon across the street and I took the cigarettes out of the box and there was some money in there and I took that out and there was two paper dollar bills in there and two silver quarters and I took a drink, and then I bought me a double header and drank it and I looked around at another colored fellow standing there and I asked him did he want a glass of beer and he said "No," and I looked at the clock and it said twenty minutes to two and the man in there asked me was I going home, and I said "Yes," and I walked south on Forsyth Street to Mitchell and Mitchell to Davis, and I said to the fellow that was with me, "I am going back to Peters Street," and a Jew across the street that I owed a dime to called me and asked me about it, and I paid him that dime. Then I went on over to Peters Street and stayed there awhile. Then I went home and I taken fifteen cents out of my pocket and gave a little girl a nickel to go and get some sausage and then I gave her a dime to go and get some wood, and she stayed so long that when she came back I said, "I will cook this sausage and eat it and go back to Mr. Frank's," and I laid down across the bed and went to sleep, and I didn't get up no more until half past six o'clock that night, that's the last I saw of Mr. Frank that Saturday. I saw him next time on Tuesday, on the fourth floor when I was sweeping. He walked up and he said, "Now remember, keep your mouth shut," and I said, "All

right," and he said, "If you'd come back on Saturday and done what I told you to do with it down there, there wouldn't have been no trouble." This conversation took place between ten and eleven o'clock Tuesday. Mr. Frank knew I could write a little bit, because he always gave me tablets up there at the office so I could write down what kind of boxes we had and I would give that to Mr. Frank down at his office and that's the way he knew I could write. I was arrested on Thursday, May 1st, Mr. Frank told me just what to write on those notes there. The girl's body was lying somewhere along there about #9 on that picture [State's Exhibit A]. I dropped her somewhere along #7. We got on elevator on the second floor. The box that Mr. Frank unlocked was right around here on side of elevator. He told me to come back in about forty minutes to do that burning. Mr. Frank went in the office and got the key to unlock the elevator. The notes were fixed up in Mr. Frank's private office. I never did know what became of the notes. I left home that morning about seven or seven-thirty. I noticed the clock when I went from the factory to go to Nelson and Forsyth Streets, the clock was in a beer saloon on the corner of Mitchell Street. It said nine minutes after ten. I don't know the name of the woman who was with Mr. Frank on Thanksgiving day. I know the man's name was Mr. Dalton. When I saw Mr. Frank coming towards the factory Saturday morning he had on his raincoat and his usual suit of clothes and an umbrella. Up to Christmas I used to run the elevator, then they put me on the fourth floor to clean up. I cleaned up twice a week on the first floor under Mr. Holloway's directions. The lady I saw in Mr. Frank's office Thanksgiving Day was a tall built lady, heavy weight, she was nice looking, she had on a blue looking dress with white dots on it and a graying

looking coat with kind of tails to it. The coat was open like that and she had on white slippers and stockings. On Thanksgiving Day Mr. Frank told me to come to his office. I have never seen any cot or bed down in the basement. I refused to write for the police the first time. I told them I couldn't write.

Defense Attorney Rosser spent three days attacking Conley's testimony. Conley never changed his story and cheerfully admitted to having lied on numerous occasions, including those statements submitted to police prior to his full confession in late May. Conley also admitted to a number of arrests that 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. Rosser was able to show that Conley had a poor memory about everything except the murder and was repeatedly denounced by those who knew him as a "dirty, filthy, black, drunken, lying nigger."

Those who believe Leo Frank guilty of the murder of little Mary Phagan are convinced that Jim Conley could not have possibly fabricated the involved, detailed account of what had happened, as well as withstood the hours of cross-examination.

O.B. Keeler, a native Mariettan, reporter, and journalist who covered the trial for the *Atlanta Georgian*, claimed it would have been impossible for Conley to invent such testimony, and the *Atlanta Constitution* reported: "No such record has ever been made in a criminal court case in this country. 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

102

*The Murder of Little Mary Phagan*

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. The Negro withstood the fire and Frank's attorneys are seeking to have the evidence expunged from the records."

As I continued to read the evidence, I realized that the long litany of witnesses called by the state was to be superseded only by the long litany of witnesses called by the defense. Indeed, some witnesses seemed to be called by the wrong side. One state witness, Holloway, gave testimony which supported defense contentions. Holloway testified, "I am the day watchman for the factory and I forgot to lock the elevator on Saturday when I left at 11:45." He admitted that he had previously sworn twice that he did leave the elevator locked: once in the affidavit he gave to Solicitor-General Dorsey and at the coroner's inquest.

On cross-examination, he stated "Frank got back from Montag's at about eleven o'clock and he was in his office on the books. When I was leaving at eleven forty-five, I saw Corinthia Hall and Emma Clark were coming toward the factory.

"I had seen blood spots on the floor but I did not remember having seen the blood spots Barrett found."

Holloway went on, "I have never seen Frank speak to Mary Phagan." Further, he said, "The cords like that used to strangle Mary Phagan could be found all over the place. They came on the bundles of slats that are tied around the pencils. It was Barrett who discovered the blood, hair, and pay envelope."

His explanation of the difference between his former testimony about the elevator and that at the trial was: "I sawed a plank for Mr. Denham and Mr. White on the

103

*The Case for the Prosecution*

fourth floor and forgot about it. When I remembered that I sawed the plank, I recollected I had forgotten to lock the elevator."

Despite these few contradictions at this point, I could not help feeling that my family's assessment of Leo Frank's guilt was true. But I turned my attention to the defense's case and promised myself I would be fair in assessing the evidence.

## Chapter 5

# THE CASE FOR THE DEFENSE

Perhaps the most important element of Leo Frank's defense concerned time. If, as Jim Conley testified, Mary Phagan had come to the pencil factory before Monteen Stover, she had to arrive there before 12:05. Ms. Stover testified that was the time she arrived. But the motorman and conductor of the trolley asserted that Mary Phagan had gotten off at 12:10. Either Conley or Stover was incorrect. Most witnesses, including Conley, agreed that it would have taken, at best, one half hour for the murder and movement of the body to the cellar, the writing of the murder notes, and Conley's hiding in the wardrobe, to occur. But there were only thirty minutes, between 12:00 and 12:30, that Frank's time was not accounted for.

Had Frank enough time to commit the murder and move the body? It was a question that many people, including me, asked themselves over and over again.

Thinking over that anomaly, I felt weary. How difficult it was seventy years later to understand the meaning of these inconsistencies. Yet, difficult as it was, I was determined to go on to try to piece together from the newspapers' accounts, the trial transcript, and the evidence my family had gathered the real truth about my greataunt's death.

104

105

*The Case for the Defense*

Making that resolution once again, I returned to the transcript and Leo Frank's contentions.

According to his pre-trial statements, Frank had gotten to the factory on the day of the murder at 8:30 a.m. At approximately 9:40, he had gone to Montag Brothers and returned to the factory at 10:55. He left the factory at 12:45 or 12:50, going home for lunch. At about 3:00 he returned, staying at the factory until 6:00. Upon going home at 6:25, he had dinner, was visited by some friends, and went to sleep about 10:30. He learned of the murder the next morning.

The defense called more than twenty witnesses to corroborate Frank's version of when the murder happened, where Frank had been, and at what time.

The first two witnesses, W. H. Matthews, motorman, and W. T. Hollis, conductor of the English Avenue car, testified that Mary Phagan got on at Lindsey Street at about 11:50 and was alone. The scheduled arrival time was seven and a half after twelve and the car was running on time on April 26.

On cross-examination, Hollis admitted that the English Avenue car time schedule was a hard one to maintain and that the company could suspend men for running ahead of time.

Then Herbert Schiff, assistant superintendent of the pencil factory, testified to the system of business, the preparation of the financial sheet, the procedure for paying off employees, and how the pencils are made. He remembered paying off



Helen Ferguson and said he was the one, not Frank, who paid off on Friday, April 25. "Helen Ferguson did not ask for Mary Phagan's pay Friday, April 25." He also stated, "There was no bed, cot, lounge, or sofa anywhere in the building." And later said, "I have never seen Mr. Frank talk to Mary Phagan." On cross-examination, Schiff said that "On Monday, Mrs. White claimed she saw a Negro man."

106

*The Murder of Little Mary Phagan*

Among the witnesses to testify about Frank's action on that Saturday were:

Miss Mattie Hall, stenographer for Montag, the company Frank alleged he visited on Saturday morning, who testified that "I finished my work, left around 12:02 and punched the clock."

Although she admitted she testified differently at the inquest, she testified that Frank did not make up the financial sheet that Saturday morning.

Miss Corinthia Hall swore that she was the forelady for the factory and got there Saturday around 11:35 a.m. with Mrs. Emma Clark Freeman. Frank was in his office when they left around 11:45. On cross-examination she testified that she and Mrs. Freeman met Lemmie Quinn at the Greek Cafe. He told then that he had just finished seeing Frank.

Mrs. Freeman's testimony gave evidence to the same effect.

Miss Magnolia Kennedy swore that she was behind Helen Ferguson and Helen Ferguson did not ask for Mary Phagan's pay envelope.

On cross-examination, she stated: "Barrett called my attention to the hair. It looked like Mary's. My machine was right next to Mary's. Mary's hair was a light brown, kind of sandy color." She did not see the blood spots on the floor, but, she said, "You could plainly see the dark spots and white spot over it ten or twelve feet away."

Wade Campbell, another employee, was the brother of Mrs. White, who told him about seeing the Negro on Saturday. "I saw the spots they claim was blood. I couldn't say whether it was blood or not."

On cross-examination, he said, "It is not unusual to see spots all over the metal room floor." Further, he stated, "I have never seen Frank talk to Mary Phagan."

Lemmie Quinn, foreman of the factory, testified that one hundred women worked at the factory: "We have some

107

*The Case for the Defense*

blood spots quite frequently when people get their hands cut." However, he said, "I noticed the blood spots at the ladies' dressing room on Monday." Further, he declared, "I was in the office and saw Mr. Frank between 12:20 and 12:25."

Several witnesses later testified that Quinn advised them he had visited Frank prior to noon in the factory the Saturday of the murder.

Harry Denham, one of the carpenters on the fourth floor, testified that he was hammering about forty feet from the elevator. "I am sure that the elevator did not run that day, as I could have seen the wheels moving and heard the noise." He completed his work about 3:00 p.m. and left.

A testimony that caused further speculation was that of Minola McKnight, the cook for the Seligs, who testified:

I work for Mrs. Selig. I cook for her. Mr. and Mrs. Frank live with Mr. and Mrs. Selig. His wife is Mrs. Selig's daughter. I cooked breakfast for the family on April 26th. Mr. Frank finished breakfast a little after seven o'clock. Mr.

Frank came to dinner about twenty minutes after one that day. That was not the dinner hour, but Mrs. Frank and Mrs. Selig were going off to the two o'clock car. They were already eating when Mr. Frank came in. My husband, Albert McKnight, wasn't in the kitchen that day between one and two o'clock at all. Standing in the kitchen door you can-not see the mirror in the dining room. If you move up to the north end of the kitchen, where you can see the mirror, you can't see the dining room table. My husband wasn't there all that day. Mr. Frank left that day sometime after two o'clock. I next saw him at half past six at supper. I left about eight o'clock. Mr. Frank was still at home when I left. He took supper with the rest of the family. After this happened the detectives

108

*The Murder of Little Mary Phagan*

came out and arrested me and took me to Mr. Dorsey's office, where Mr. Dorsey, my husband, and an-other man were there. I was working at the Seligs when they come and got me. They tried to get me to say that Mr. Frank would not allow his wife to sleep that night and that he told her to get up and get his gun and let him kill himself, and that he made her get out of bed. They had my husband there to bull-doze me, claiming that I had told him that. I had never told him anything of the kind. I told them right there in Mr. Dorsey's office that it was a lie. Then they carried me down to the stationhouse in the patrol wagon. They came to me for another statement about half past eleven or twelve o'clock that night and made me sign something before they turned me loose, but it wasn't true. I signed it to get out of jail, because they said they would not let me out. It was all written out for me before they made me sign it.

On cross-examination she was shown a copy of her original statement and said:

I signed that statement, but I didn't tell you some of the things you got in there. I didn't say he left home about three o'clock. I said somewhere about two. I did not say he was not there at one o'clock. Mr. Graves and Mr. Pickett, of Beck & Gregg Hardware Co., came down to see me. A detective took me to your [Hugh Dorsey's] office. My husband was there and told me that I had told him certain things. Yes, I denied it. Yes, I wept and cried and stuck to it. When they first brought me out of jail, they said they did not want anything else but the truth, then they said I had to tell a lot of lies and I told them I would not do it. That man sitting right there [pointing to Mr. Campbell] and a whole lot of men wanted me to tell lies. They wanted me to witness to what my husband was

109

*The Case for the Defense*

saying. My husband tried to get me to tell lies. They made me sign that statement, but it was a lie. If Mr. Frank didn't eat any dinner that day I ain't sitting in this chair. Mrs. Selig never gave me no money. The statement that I signed is not the truth. They told me if I didn't sign it they were going to keep me locked up. That man there [indicating] and that man made me sign it. Mr. Graves and Mr. Pickett made me sign it. They did not give me any more money after this thing happened. One week I was paid two week's wages.

Finally, when the defense requested her she declared:

None of the things in that statement is true. It's all a lie. My wages never have been raised since this thing happened. They did not tell me to keep quiet. They [the Seligs] always told me to tell the truth and it couldn't hurt.

Mrs. A. P. Levy testified that she saw Frank get off the trolley car on Memorial Day between one and two o'clock. Her cross-examination stated that it was definitely 1:20 because she was looking at the clock.

Mrs. M. G. Michael of Athens testified that she saw Frank at two o'clock that day and observed nothing unusual about him. Her husband, Jerome Michael, stated that he saw Frank between one and two o'clock and noticed absolutely nothing unusual about him. "No scratches, bruises, marks, and no nervousness."

Mrs. Hennie Wolfsheimer swore to the same thing. She was Frank's aunt and was corroborated by Julian Loeb, a cousin to Mrs. Frank, as well as by Cohen Loeb and H. J. Hinchey.

Emil Selig, Frank's father-in-law, testified to Leo Frank's natural conduct:

110

*The Murder of Little Mary Phagan*

My wife and I live with Mr. Frank and his wife. The kitchen in our house is next to the dining room. There is a small passage way between them. The sideboard in the dining room is in the same position now as it has always been. Mr. Frank took breakfast before I did on April 26th and left the house before I breakfasted. I got back home to dinner at about 1:15. My wife and Mrs. Frank were eating then. They told me in the morning to come home a little sooner, that they wanted to go to Grand Opera that afternoon and have dinner a little earlier than usual, and I came home a little earlier. Mr. Frank came in after I did, about 1:20. There was nothing unusual about him. No scratches or bruises about him. He sat down to his meal. The ladies left us while he was still eating. I don't know what Mr. Frank did after dinner. I went out to the chicken yard. Mr. Frank was still in the hall when I got back. I laid down and went to sleep. I did not see him when he left. I saw him about 6:30 that evening. Mrs. Frank and Mrs. Selig had not yet gotten back. They came in a short while. We ate supper about seven o'clock. I noticed nothing unusual about him at supper. We finished supper about seven twenty-five. Mr. Frank sat in the hall and read. A party of our friends came to the house and played cards after supper. Frank and his wife did not play. They don't play poker. They play bridge. He was reading in the hall while we were playing. He came in one time while we were playing and said he read a story about a baseball umpire's decision and he was laughing. Frank answered the doorbell several times that evening when the guests came. He and his wife went to bed before the company left, about ten or ten-thirty. He came to the door and told us goodnight and went upstairs. His wife went up shortly afterwards.

111

*The Case for the Defense*

Mrs. Rhea Frank, Frank's mother, took the stand. On cross-examination, she stated, "Leo does not have any rich relatives in Brooklyn." Later she said,

As to what my means of support are, we have about \$20,000, out at interest, my husband and I, at six per cent. We own the house we live in. We have a \$6,000 mortgage on it. The house is worth about \$10,000. My husband is doing nothing. He is not in good health. Up to a year ago he was a traveling salesman. These are the only relatives my son has in Brooklyn. Mr. Moses Frank, my brother-in-law, generally spends a Sunday with us in Brooklyn,

before he sails for Europe. He spends Sunday with us in Brooklyn and has dinner with us. He was not in Brooklyn on April 26th. He is supposed to be very wealthy. I don't know how much cash my husband has in [the] bank. A few hundred dollars possibly. My husband is 67 years old. He is broken down from hard work and in very poor health. He was too unwell to come down here.

C. F. Urssenbach, Frank's brother-in-law, said he had an engagement with Frank to go to the ballgame on Saturday, but Frank called and cancelled it.

L. Strauss testified that he was at the Selig home Saturday night playing cards and that Frank sat in the hall reading.

Sig Montag, the treasurer of the factory, testified to Frank's coming to him Sunday morning after the murder and he looked all right. He went to the pencil factory that morning, and he called Mr. Haas, his personal counsel.

In total, the defense produced nearly two hundred witnesses, all white and principally from Atlanta, who largely corroborated Frank's version of what had happened the day of the murder 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

112

*The Murder of Little Mary Phagan*

alleged misconduct with female employees, the defense 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 alleged bad reputation and character.

Jim Conley's reputation and past experiences, including his drinking habits, problems with the law, and history of petty theft and disorderly conduct, were heavily attacked by the defense lawyers and witnesses. The core of this focus was the question: could Jim Conley be believed?

Mrs. Rebecca Carson, a forelady at the pencil factory, testified that the elevator was noisy when it ran and that Jim Conley told her on Monday he was so drunk the previous Saturday he did not know where he was or what he did. She also stated that she overheard Jim say that "Frank is innocent as an angel; and when my mother said 'The murderer will be the Negro Mrs. White saw sitting on a box at the foot of the stairs,' Jim dropped his broom quick and didn't finish sweeping."

Mrs. E. M. Carson testified that she saw blood spots around the ladies dressing room three or four times later she recalled that Conley said, "Mr. Frank is as innocent as you is, and I know you is." She told Conley that "Whenever they find the murderer of Mary Phagan it's going to be the 'nigger' that was sitting near the elevator when Mrs. White went upstairs." "Further," she said, "I would not believe Conley on oath."

Miss Mary Pirk, another forelady at the factory, testified "I talked with Jim Conley the Monday after the murder. I accused him of the murder and he took his broom and walked right out of the office." She swore that she wouldn't believe Jim on oath.

On cross-examination, Miss Pirk stated that she did not tell Frank of her suspicions and that she suspected Jim "because he looked and acted so differently."



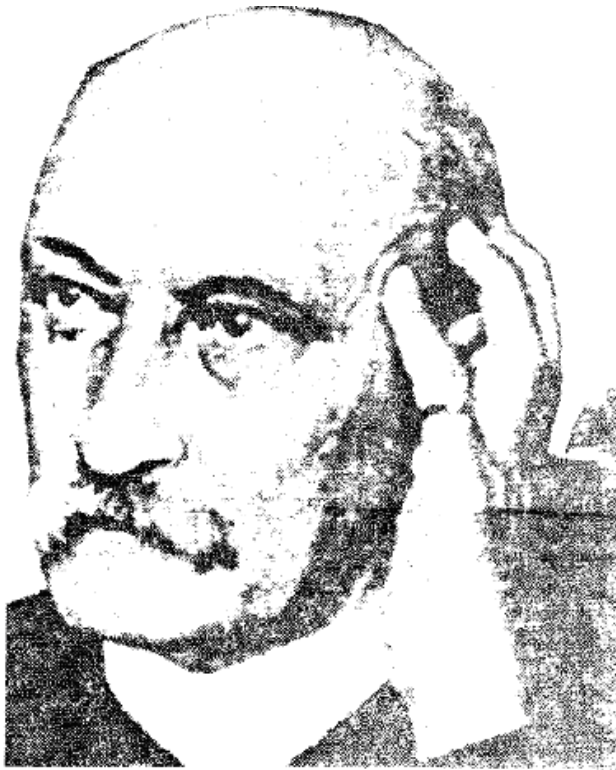
**JIM CONLEY**  
JIM CONLEY



Luther Z. Rosser, Jr.  
Solicitor General Hugh Dorsey



Alonzo Mann  
Alonzo Mann



Judge Leonard Strickland Roan  
Tom Watson



*The Case for the Defense*

I accused Jim before I saw the blood at the ladies' dressing room. It was all smeared over with some kind of white stuff. It covered about two feet in area. I mentioned it to the girls before Jim was arrested. I am not sure whether it was before or after. It was after the Coroner's inquest. I have seen several spots in the factory that looked like that spot many times. All kinds of spots. I have seen spots before that looked like that. I don't know exactly when. My opinion is that Mr. Frank is a perfect gentleman. I always found him to be one in my dealings with him. I have never heard any of the girls say anything about him.

Another important defense witness was Daisy Hopkins. She had been named by Jim Conley as one of the girls Dalton and Frank brought to the factory for immoral purposes:

I am a married woman. I worked in the factory from October 1911 to June 1st, 1912. I worked in the packing department on the second floor. Mr. Frank never spoke to me when he would pass. I never did speak to him. I've never been in his office drinking beer, Coca-Cola, or anything else. I know Dalton when I see him. I never visited the factory with him, I never have been with him until I went to his to see Mrs. Taylor, who lived with him then. That was the only place I have ever seen him. I never have been to the factory on Saturday or any other day. I never introduced him to Mr. Frank. There isn't a word of truth in that. I have never gone down in the basement with this fellow, Dalton. I don't even know where the basement is at all. I have never been anywhere in the factory, except at my work.

It was brought out under cross-examination by Dorsey that Mrs. Hopkins had been arrested but not tried for fornication. She said:

114

*The Murder of Little Mary Phagan*

I have never been in jail. Mr. W.W. Smith got me out of jail. Somebody told a tale on me, that's why I was put in jail. I don't know what they charged me with, they accused me of fornication.

On redirect examination, she stated:

I never was tried. I never had to pay anything except my lawyer's fee, which I paid to Mr. William Smith. I never was taken to court.

Miss Dora Small testified that she worked at the factory and saw Jim Conley on the fourth floor Tuesday. "I did not see Frank talk to Conley," she said. Later, she said, "Jim worried me with money so he could buy a newspaper, and every time he heard a newsboy yell 'Extra!' Jim would go to me and beg to see the paper before I finished reading." She continued by stating that Conley's reputation for truth and veracity was bad.

Miss Julia Fuss said, after being sworn in, "I work on the fourth floor of the factory and I talked to him (Conley) Wednesday morning after the murder. He told me he believed Mr. Frank was just as innocent as the angels from heaven." Further she said, "Jim was never known to tell the truth."

On cross-examination, she testified that Frank came up the stairs Tuesday where Conley was but she did not see them talking.

In all, forty-nine women employees at the pencil factory testified that Leo Frank's general reputation and his reputation for moral rectitude was good.

No one realized when Alonzo Mann, Frank's office boy, testified that it would be his revelations sixty-nine years later which brought the Leo Frank-Mary Phagan murder case once again into national prominence.

I am office boy at the National Pencil Company. I began working there April 1, 1913. I sit sometimes in the outer office and stand around in the outer hall. I

115

*The Case for the Defense*

left the factory at half past eleven on April 26th. When I left there Miss Hall, the stenographer from Montag's, was in the office with Mr. Frank. Mr. Frank told me to phone Mr. Schiff and tell him to come down. I telephoned him, but the girl answered the phone and said he hadn't got up yet. I telephoned once. I worked there two Saturday afternoons of the weeks previous to the murder and stayed there until half past three or four. Frank was always working during that time. I never saw him bring any women into the factory and drink with them. I have never seen Dalton there. On April 26, I saw Holloway, Irby, McCrary and Darley at the factory. I didn't see Quinn. I don't remember seeing Corinthia Hall, Mrs. Freeman, Mrs. White, Graham, Tillander, or Wade Campbell. I left there eleven-thirty.

Despite Jim Conley's allegations that Leo Frank had said, "You know I ain't built like other men;" several physicians who examined Frank during his incarceration testified that he was anatomically normal. Other physicians tried to ascertain more precisely the exact time of Mary Phagan's death by giving their opinions on the digestive processes entailed after Mary's last meal, but they were largely unsuccessful as there was much difference of opinion.

Fifty-six associates of Frank at Cornell University, in Brooklyn, and in Atlanta testified as to his general good character as an upright and law-abiding citizen.

Georgia law in 1913 stipulated that no defendant could be sworn to testify for himself. Judge Roan read Frank the law: "In criminal procedure the prisoner will have the right to make to the court and jury such statement in the case as he shall deem proper in his defense. It shall be not under oath and shall have such force as the jury shall think right to give it. They may believe it in

116

*The Murder of Little Mary Phagan*

preference to sworn testimony. The prisoner shall not be compelled to answer any questions on cross-examination. He should feel free to decline to answer. Now you can make such statements as you see fit." Concluding the defense's case, Frank submitted a lengthy statement on the stand and he refused to be cross-examined. He spoke for four hours:

Gentlemen of the Jury: In the year 1884, on the 17th day of April, I was born in Paris, Texas. At the age of three months, my parents took me to Brooklyn, New York, and I remained in my home until I came South, to Atlanta, to make my home here. I attended the public schools of Brooklyn, and prepared for college at Pratt Institute, Brooklyn, New York. In the fall of 1902, I entered Cornell University, where I took the course in mechanical engineering, and graduated after four years, in June, 1906. I then accepted a position as draftsman with the B.F. Sturtevant Company, of High Park, Massachusetts. After remaining with this firm for about six months, I returned once more to my home in Brooklyn, where I accepted a position as testing engineer and draftsman with the National Meter Company of Brooklyn, New York. I remained in this position until about the middle of October, 1907, when, at the invitation of some citizens of Atlanta, I came South to confer with them in

reference to the starting and operation of a pencil factory, to be located in Atlanta. After remaining here for about two weeks, I returned once more to New York, where I engaged passage and went to Europe. I remained in Europe nine months. During my sojourn abroad, I studied the pencil business, and looked after the erection and testing of the machinery which had been previously contracted for. The first part of August, 1908, I returned once more to America, and immedi-

*The Case for the Defense*

ately came South to Atlanta, which has remained my home ever since. I married in Atlanta, an Atlanta girl, Miss Lucile Selig. The major portion of my married life has been spent at the home of my parents-in-law, Mr. and Mrs. E. Selig, at 68 East Georgia Avenue. My married life has been exceptionally happy—indeed, it has been the happiest days of my life. . . .

On my arrival at the factory, I found Mr. Holloway, the day watchman, at his usual place, and I greeted him in my usual way; I found Alonzo Mann, the office boy, in the outer office. I took off my coat and hat and opened my desk and opened the safe, and assorted the various books and files and wire trays containing the various papers that were placed there the evening before, and distributed them in their proper places about the office. I then went out to the shipping room and conversed a few minutes with Mr. Irby, who at that time was shipping clerk, concerning the work which he was going to do that morning, though, to the best of my recollection, we did no shipping that day, due to the fact that the freight offices were not receiving any shipments, due to its being a holiday. I returned to my office and looked through the papers, and assorted out those which I was going to take over on my usual trip to the General Manager's office that morning. . . . Of all the mathematical work in the office of the pencil factory, this very operation, this very piece of work that I have now before me, is the most important, it is the invoices covering shipments that are sent to customers, and it is very important that the prices be correct, that the amount of goods shipped agrees with the amount which is on the invoice, and that the terms are correct, and that the address is correct, and also in some cases, I don't know whether there is one like that here, there are freight deductions, all of

*The Murder of Little Mary Phagan*

which have to be very carefully checked over and looked into, because I know of nothing else that exasperates a customer more than to receive invoices that are incorrect; moreover, on this morning, this operation of this work took me longer than it usually takes an ordinary person to complete the checking of the invoices, because usually one calls out and the other checks, but I did this work all by myself that morning, and as I went over these invoices, I noticed that Miss Eubanks, the day before, had evidently sacrificed accuracy to speed, and every one of them was wrong, so I had to go alone over the whole invoice, and I had to make the corrections as I went along, figure them out, extend them, make deductions for freight, if there were any to be made, and then get the total shipments, because, when these shipments were made on April 24th, which was Thursday, this was the last day of our fiscal week, it was on this that I made that financial sheet which I make out every Saturday after-noon, as has been my custom, it is on this figure of total shipments I make that out, so necessarily it would be the total shipments for the week that had to be

figured out, and I had to figure every invoice and arrange it in its entirety so I could get a figure that I would be able to use. . . .

I started on this work, as I said, and had gone into it in some detail, to show you the carefulness with which the work must be carried out. I was at work on this one at about nine o'clock, as near as I remember, Mr. Darley and Mr. Wade Campbell, the inspector of the factory, came into the outer office, and I stopped what work I was doing that day on this work, and went to the outer office and chatted with Mr. Darley and Mr. Campbell for ten or fifteen minutes, and conversed with them, and joked with them, and while I was talking to them, I should figure about

119

*The Case for the Defense*

nine fifteen, a quarter after nine, Miss Mattie Smith came in and asked me for her pay envelope, and for that of her sister-in-law and I went to the safe and unlocked it and got out the package of envelopes that Mr. Schiff had given me the evening before, and gave her the required two envelopes, and placed the remaining envelopes that I got out, that were left over from the day previous, in my cash box, where I would have them handy in case others might come in, and I wanted to have them near at hand without having to jump up and go to the safe every time in order to get them; I keep my cash box in the lower drawer on the left hand side of my desk. After Miss Smith had gone away with the envelopes, a few minutes, Mr. Darley came back with the envelopes, and pointed out to me an error in one of them, either the sister-in-law of Miss Mattie Smith, she had gotten too much money, and when I had deducted the amount that was too much, that amount balanced the payroll, the error in the payroll that I had noticed the night before, and left about five or ten cents over; those things usually right themselves anyhow. I continued to work on those invoices, when I was interrupted by Mr. Lyons, Superintendent of Montag Brothers, coming in, he brought me a pencil display box that we call the Panama assortment box, and he left it with me, he seemed to be in a hurry, and I told him if he would wait for a minute I would go over to Montag Brothers with him, as I was going over there; and he stepped out to the outer office, and as soon as I come to a convenient stopping place in the work, I put the papers I had made out to take with me in a folder, and put on my hat and coat and went to the outer office, when I found that Mr. Lyons had already left. Mr. Darley left with me, about nine thirty-five or nine forty, and we passed out of the factory, and stopped

120

*The Murder of Little Mary Phagan*

at the corner of Hunter and Forsyth Streets, where we each had a drink at Cruickshank's soda fount, where I bought a package of favorite cigarettes, and after we had our drink, we conversed together there for some time, and I lighted a cigarette and told him good-bye, as he went in one direction, and I went on my way then to Montag Brothers where I arrived, as nearly as may be, at ten o'clock, or a little after; on entering Montag Brothers, I spoke to Mr. Sig Montag, the General Manager of the business, and then the papers which I collected, which lay on his desk, I took the papers out and transferred them into the folder, and distributed them at the proper places at Montag Brothers. I don't know just what papers they were, but I know there were several of them, and I went on chatting with Mr. Montag, and I spoke to Mr. Matthews, and Mr. Cross, of the Montag Brothers, and after that I spoke to Miss Hattie Hall, the pencil company's stenographer, who stays at Montag Brothers, and

asked her to come over and help me that morning; as I have already told you, practically every one of these invoices was wrong, and I wanted her to help me on that work, and in dictating the mail; in fact, I told her I had enough work to keep her busy that whole afternoon if she would agree to stay, but she said she didn't want to do that, she wanted to have at least half a holiday on Memorial Day. I then spoke to several of the Montag Brothers' force on business matters and other matters, and after that I saw Harry Gottheimer, the sales manager of the National Pencil Company, and I spoke at some length with him in reference to several of his orders that were in work at the factory, there were two of his orders especially that he laid special stress on, as he said he desired to ship them right away, and I told him I didn't know how far along in process of manu-

121

*The Case for the Defense*

facture the orders had proceeded, but if he would go back with me then I would be very glad to look for it, and then tell him when we could ship them, and he said he couldn't go right away, he was busy, but he would come a little later, and I told him I would be glad for him to come over later that morning or in the afternoon, as I would be there until about one o'clock, and after three. I then took my folder and returned to Forsyth Street alone. On arrival at Forsyth Street, I went to the second or office floor, and I noticed the clock, and it indicated five minutes after eleven o'clock. I saw Mr. Holloway there, and I told him he could go as soon as he got ready, and he told me he had some work to do for Harry Denham and Arthur White, who were doing some repair work up on the top floor, and he would do the work first. I then went into the office, I went into the outer office, and found Miss Hattie Hall, who had preceded me over from Montag's, and another lady who introduced herself to me as Mrs. Arthur White, and the office boy; Mrs. Arthur White wanted to see her husband, and I went into the inner office, and took off my coat and hat, and removed the papers which I had brought back from Montag Brothers in the folder, and put the folder away. It was about this time that I heard the elevator motor start up and the circular saw in the carpenter shop, which is right next to it, running. I heard it saw through some boards, which I supposed was the work that Mr. Holloway had referred to. I separated the orders from the letters which required answers, and took the other material, the other printed matter that didn't need immediate attention. I put that in various trays, and I think it was about this time that I concluded I would look and see how far along the reports were, which I use in getting up my financial report every Saturday

122

*The Murder of Little Mary Phagan*

afternoon, and to my surprise I found that the sheet which contains the record of pencils packed for the week didn't include the report for Thursday, the day the fiscal week ends; Mr. Schiff evidently, in the stress of getting up, figuring out, and filling the envelopes for the payroll on Friday, instead of, as usual, on Friday and half the day Saturday, had evidently not had enough time. I told Alonzo Mann, the office boy, to call up Mr. Schiff, and find out when he was coming down, and Alonzo told me the answer came back over the telephone that Mr. Schiff would be right down, so I didn't pay any more attention to that part of the work, because I expected Mr. Schiff to come down any minute. It was about this time that Mrs. Emma Clark Freeman and Miss Corinthia Hall, two of the girls who worked on the fourth floor, came in, and asked permission

to go upstairs and get Mrs. Freeman's coat, which I readily gave, and I told them at the same time to tell Arthur White that his wife was downstairs. A short time after they left my office, two gentlemen came in, one of them a Mr. Graham, and the other the father of a boy by the name of Earle Burdette; these two boys had gotten into some sort of trouble during the noon recess the day before, and were taken down to police headquarters, and of course didn't get their envelopes the night before, and I gave the required pay envelopes to the two fathers, and chatted with them at some length in reference to the trouble their boys had gotten into the day previous. But just before they left the office, Mrs. Emma Clark Freeman and Miss Corinthia Hall came into my office and asked permission to use the telephone, and they started to the telephone, during which time these two gentlemen left my office. But previous to that, when these two gentlemen came in, I had gotten Miss Hattie Hall in and dictated what mail I had to

123

*The Case for the Defense*

give her, and she went out and was typewriting the mail; before these girls finished the typewriting of these letters and brought them to my desk to read over and sign, which work I started. Miss Clark and Miss Hall left the office, as near as may be, at a quarter to twelve, and went out, and I started to work reading over the letters and signing the mail . . .

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

She had left the plant hardly five minutes when

124

*The Murder of Little Mary Phagan*

Lemmie Quinn, the foreman of the plant, came in and told me that I could not keep him away from the factory, even though it was a holiday; at which I smiled and kept on working. He first asked me if Mr. Schiff had come down and I told him he had not and he turned around and left. I continued work until I finished this work and these requisitions and I looked at my watch and noticed that it was a quarter to one. I called my home up on the telephone, for I knew that my wife and my mother-in-law were going to the matinee and I wanted to know when they would have lunch. I got my house and Minola answered the phone and she answered me back that they would have lunch immediately and for me

to come right on home. I then gathered my papers together and went upstairs to see the boys on the top floor. This must have been, since I had just looked at my watch, ten minutes to one. I noticed in the evidence of one of the witnesses, Mrs. Arthur White, she states it was twelve thirty-five that she passed by and saw me. That is possibly true; I have no recollection about it; perhaps her recollection is better than mine; I have no remembrance of it; however, I expect that is so. When I arrived upstairs I saw Arthur White and Harry Denham who had been working up there and Mr. White's wife. I asked them if they were ready to go and they staid they had enough work to keep them several hours. I noticed that they had laid out some work and I had to see what work they had done and were going to do. I asked Mr. White's wife if she was going or would stay there as I would be obliged to lock up the factory, and Mrs. White said, No, she would go then. I went down and gathered up my papers and locked my desk and went around and washed my hands and put on my hat and coat and locked the inner door to my

125

*The Case for the Defense*

office and locked the doors to the street and started to go home.

Now, gentlemen, to the best of my recollection from the time the whistle blew for twelve o'clock until a quarter to one when I went upstairs and spoke to Arthur White and Harry Denham, to the best of my recollection, I did not stir out of the inner office; but it is possible that in order to answer a call of nature or to urinate I may have gone to the toilet. Those are things that a man does unconsciously and can not tell how many times not when he does it. Now, sitting in my office at my desk, it is impossible for me to see out into the outer hall when the safe door is open, as it was that morning, and not only is it impossible for me to see out, but it is impossible for people to see in and see me there.

I continued on up Forsyth to Alabama and down Alabama to Whitehall where I waited a few minutes for a car, and after a few minutes a Georgia Avenue car came along; I took it and arrived home at about one twenty. When I arrived at home, I found that my wife and my mother-in-law were eating their dinner, and my father-in-law had just sat down and started his dinner. I sat down to dinner and before I had taken anything, I turned in my chair to the telephone, which is right behind me and called up my brother-in-law to tell him that on account of some work I had to do at the factory, I would be unable to go with him, he having invited me to go with him out to the ballgame. I succeeded in getting his residence and his cook answered the phone and told me that Mr. Ursenbach had not come back home. I told her to give him a message for me, that I would be unable to go with him. I turned around and continued eating my lunch, and after a few minutes my wife and mother-in-law

126

*The Murder of Little Mary Phagan*

finished their dinner and left and told me goodbye. My father-in-law and myself continued eating our dinner, Minola McKnight serving us. After finishing dinner, my father-in-law said he would go out in the back yard to look after his chickens and I lighted a cigarette and laid down. After a few minutes I got up and walked up Georgia Avenue to get a car. I missed the ten minutes to two car and I looked up and saw in front of Mr. Wolfsheimer's residence, Mrs. Mickle, an aunt of my wife who lives in Athens, and there were several ladies there and I went up there to see them and after a few minutes Mrs. Wolfsheimer came out of the house and I waited there until I saw that I could catch the car. I got on

the car and talked to Mr. Loeb on the way to town. The car got to a point about the intersection of Washington Street and Hunter Street and the fire engine house and there was a couple of cars stalled up ahead of us, the cars were waiting there to see the memorial parade; they were all banked up. After it stood there a few minutes as I did not want to wait, I told Mr. Loeb that I was going to get out and go on as I had work to do. So I went on down Hunter Street, going in the direction of Whitehall and when I got down to the corner of Whitehall and Hunter, the parade had started to come around and I could not get around at all and I had to stay there fifteen or twenty minutes and see the parade.

Then I walked on down Whitehall on the side of Mr. M. Rich & Bros. Store towards Brown and Allens; when I got in front of M. Rich & Bros. store, I stood there between half past two and a few minutes to three o'clock until the parade passed entirely; then I crossed the street and went on down to Jacobs and went in and purchased twenty five cents worth of cigars. I then left the store and went on down Alabama Street to Forsyth Street and down Forsyth

127

*The Case for the Defense*

Street to the factory. I unlocked the street door and then unlocked the inner door and left it open and went on upstairs to tell the boys that I had come back and wanted to know if they were ready to go, and at that time they were preparing to leave. I went immediately down to my office and opened the safe and my desk and hung up my coat and hat and started to work on the financial report, which I will explain. Mr. Schiff had not come down and there was additional work for me to do.

In a few minutes after I started to work on the financial sheet, which I am going to take up in a few minutes, I heard the bell ring on the time clock outside and Arthur White and Harry Denham came into the office and Arthur White borrowed \$2.00 from me in advance on his wages. I had gotten to work on the financial sheet, figuring it out, when I happened to go out to the lavatory and on returning to the office, the door pointed out directly in front, I noticed Newt Lee, the watchman, coming from towards the head of the stairs, coming towards me. I looked at the clock and told him the night before to come back at four o'clock for I expected to go to the baseball game. At that time Newt Lee came along and greeted me and offered me a banana out of a yellow bag which he carried, which I presume contained bananas; I declined the banana and told him that I had no way of letting him know sooner that I was to be there at work and that I had changed my mind about going to the ballgame. I told him that he could go if he wanted to or he could amuse himself in any way that he saw fit for an hour and a half, but to be sure and be back by half past six o'clock. He went off down the stair-case leading out and I returned to my office. Now, in reference to Newt Lee, the watchman, the first night he came there to watch, I personally took him around

128

*The Murder of Little Mary Phagan*

the plant, first, second, and third floors and into the basement, and told him that he would be required, that it was his duty, to go over that entire building every half hour; not only to completely tour the upper four floors but to go down to the basement; and I specially stressed the point that that dust bin along here was one of the most dangerous places for a fire and I wanted him to be sure and go back there every half hour and to be careful how he held his lantern. I told him it was a part of his duty to look after and lock that back



door and he fully understood it, and I showed him the cut-off for the electric current and told him in case of fire that ought to be pulled so no fireman coming in would be electrocuted. I explained everything to him in detail and told him he was to make that tour every half hour and stamp it on the time card and that that included the basement of the building. . . . Now, on one of these slips, Newt Lee would register his punches Saturday night, and on Sunday night he would register his punches on the other. His punches on Monday night would be registered on two new slips that would be put into the clock on Monday night. As I was putting these time slips into the clock, as mentioned, I saw Newt Lee coming up the stairs, and looking at the clock, it was as near as may be six o'clock—looking straight at the clock; I finished putting the slip in and went back to wash up, and as I was washing, I heard Newt Lee ring the bell on the clock when he registered his first punch for the night, and he went downstairs to the front door to await my departure; after washing, I went downstairs—I put on my hat and coat—got my hat and top coat and went downstairs to the front door. As I opened the front door, I saw outside on the street, on the street side of the door, Newt Lee in conversation with Mr. J. M. Gantt, a man that I had

129

*The Case for the Defense*

let go from the office two weeks previous. They seemed to be in discussion, and Newt Lee told me that Mr. Gantt wanted to go back up into the factory, and he had refused his admission, because his instructions were for no one to go back into the factory after he went out, unless he got contrary instructions from Mr. Darley or myself. I spoke to Mr. Gantt, and asked him what he wanted, he said he had a couple of pairs of shoes, black pair and tan pair, in the shipping room. I told Newt Lee it would be all right to pass Gantt in and Gantt went in, Newt Lee closed the door, locking it after him—I heard the bolt turn in the door. I then walked up Forsyth Street to Alabama, down Alabama to Broad Street, where I posted the two letters, one to my uncle, Mr. M. Frank, and one to Mr. Pappenheimer, a few minutes after six, and continued on my way down to Jacobs Whitehall and Alabama Street store, where I went in and got a drink at the soda fount, and bought my wife a box of candy. I then caught the Georgia Avenue car and arrived home about six twenty-five. I sat looking at the paper until about six-thirty when I called up at the factory to find out if Mr. Gantt had left. I called up at six-thirty because I expected Newt Lee would be punching the clock on the half hour and would be near enough to the telephone to hear it and answer it at that time. I couldn't get Newt Lee then, so I sat in the hall reading until seven o'clock, when I again called the factory; this time I was successful in getting Newt Lee and asked him if Mr. Gantt had gone again; he said, "Yes," I asked if everything else was all right at the factory; it was, and then I hung up. . . . The next day, Sunday, April 27th, I was awakened at something before seven o'clock, by the telephone ringing. I got out of bed—was tight asleep, it awakened me—but I got out of bed, put on a bathrobe and

130

*The Murder of Little Mary Phagan*

went down to answer the telephone, and a man's voice spoke to me over the phone and said—I after-wards found out this man that spoke to me was City Detective Starnes—said "Is this Mr. Frank, Superintendent of the National Pencil Company?" I said, "Yes, sir," he says, "I want you to come down to the factory right away," I says, "What's the trouble, has there been a fire?" He says, "No, a tragedy, I want you to come down right away," I says, "All right," he

says, "I'll send an automobile for you," I says, "All right," and hung up and went upstairs to dress. I was in the midst of dressing to go with the people who should come for me in the automobile, when the automobile drove up, the bell rang, and my wife went downstairs to answer the door. She had on—just had a night dress with a robe over it. I followed my wife—I wasn't completely dressed at that time—didn't have any trousers and shirt on—I went downstairs—followed my wife in a minute or two. I asked them what the trouble was, and the man who I afterwards found out was Detective Black, hung his head and didn't say anything. Now, at this point, these two witnesses, Mr. Rogers and Mr. Black, differ with me on the place where the conversation occurred—I say, to the best of my recollection, it occurred right there in the house in front of my wife; they say it occurred just as I left the house, in the automobile; but be that as it may, this is the conversation: They asked me did I know Mary Phagan, I told them I didn't, they said to me, "Didn't a little girl with long hair hanging down her back come up to your office yesterday sometime for her money—a little girl who works in the tipping plant?" I says, "Yes, I do remember such a girl coming up to my office, that worked in the tipping room, but I didn't know her name was Mary Phagan." "Well, we want you to come down right away with us to the

131

*The Case for the Defense*

factory," and I finished dressing; and as they had said they would bring me right away back, I didn't have breakfast, but went right on with them in the automobile, made the trip to the undertaking establishment very quickly—I mean, they made the trip downtown very quickly, and stopped at the corner of Mitchell and Pryor Streets, told me they were going to take me to the undertaker's first, that they wanted me to see the body and see if I could identify the little girl. I went with them to the undertaking establishment and one of the two men asked the attendant to show us the way into where the body was, and the attendant went down a long dark passageway with Mr. Rogers following, then I came, and Black brought up the rear; we walked down this long passageway until we got to a place that was apparently the door to a small room—very dark in there, the attendant went on and suddenly switched on the electric light, and I saw the body of the little girl. Mr. Rogers walked in the room and stood to my right, inside of the room. I stood right in the door, leaning up against the right facing the door, and Mr. Black was to the left, leaning on the left facing, but a little to my rear, and the attendant, whose name I have since learned was Mr. Chessling, [sic] was on the opposite side of the little cooling table to where I stood—in other words, the table was between him and me; he re-moved the sheet which was covering the body, and took the head in his hands, turned it over, put his finger exactly where the wound in the left side back of the head was located—put his finger right on it; I noticed the hands and arms of the little girl were very dirty—blue and ground with dirt and cinders, the nostrils and mouth—the mouth being open—nostrils and mouth just full of sawdust and swollen, and there was a deep scratch over the left eye on the forehead;

132

*The Murder of Little Mary Phagan*

about the neck, there was twine—a piece of cord similar to that which is used at the pencil factory and also a piece of white rag. After looking at the body, I identified that little girl as the one that had been up shortly after noon the day previous and got her money from me. We then left the undertaking

establishment, got in the automobile, and rode over to the pencil factory. Just as we arrived opposite the pencil factory, I saw Mr. Darley going into the front door of the pencil factory with another man, whose name I didn't know; we went up to the second floor, the office floor, I went into the inner office, hung up my hat, and in the inner office, I saw the night watchman, Newt Lee, in the custody of an officer, who I think was Detective Starnes—the man who had phoned me. I then unlocked the safe and took out the payroll book and found that it was true that a little girl by the name of Mary Phagan did work in the metal plant, and that she was due to draw \$1.20, the payroll book showed that, and as the detective had told me that someone had identified the body of that little girl as that of Mary Phagan, there could be no question but that it was one and the same girl. The detectives told me then they wanted to take me down in the basement and show me exactly where the girl's body was found, and the other paraphernalia that they found strewn about; and I went to the elevator box—the switch box, so that I could turn on the current, and found it open. . . . However, I turned on the switch, started the motor, which runs the elevator, then Mr. Darley and half dozen more of us and the detectives got on the elevator; I got on the elevator and I started to pull the rope to start the elevator to going, and it seemed to be caught, and I couldn't move it, I couldn't move it with a straight pull, and couldn't get it loose, so I jumped out, we all got off, and I asked Mr. Darley to

133

*The Case for the Defense*

try his hand—he's a great deal larger man and a great deal stronger man than I was—so he was successful in getting it loose—it seemed like the chain which runs down in the basement had slipped a cog and gotten out of gear and needed somebody to force it back; however, Mr. Darley was successful in getting it loose, and it started up, and I got on and the detectives got on and I caught hold of the rope and it worked all right.

In the basement, the officers showed us just about where the body was found, just beyond the partition of the Clark Woodenware Company, and in behind the door to the dust bin, they showed us where they found the hat and slipper on the trash pile, and they showed us where the back door, where the door to the rear was opened about eighteen inches. After looking about the basement, we all went upstairs and Mr. Darley and myself got some cords and some nails and hammer and went down the basement again to lock up the back door, so that we could seal the factory from the back, and nobody would enter. After returning upstairs, Mr. Darley and myself accompanied Chief Lanford on a tour of inspection through the three upper floors of the factory, to the second floor, to the third floor and to the fourth floor, we looked into each bin, and each partition, and each dressing room and looked into that very dressing room that has figured so prominently in this trial, and neither Mr. Darley nor myself noticed anything peculiar on that floor, nor did Sergeant Lanford, Chief of the Atlanta detectives, notice anything peculiar. . . .

Now, gentlemen, I have heard a great deal, and have you, in this trial, about nervousness, about how nervous I was that morning. Gentlemen, I was nervous, I was completely unstrung, I will admit it; imag-

134

*The Murder of Little Mary Phagan*

ine, awakened out of my sound sleep, and a morning run down in the cool of the morning in an automobile driven at top speed, without any food or breakfast, rushing into a dark passageway, coming into a darkened room, and

then suddenly an electric light flashed on, and to see that sight that was presented by that poor little child; why, it was a sight that was enough to drive a man to distraction; that was a sight that would have made a stone melt; and then it is suspicious, because a man who is ordinary flesh and blood should show signs of nervousness. Just imagine that little girl, in the first blush of young womanhood, had had her life so cruelly snuffed out, might a man not be nervous who looked at such a sight? Of course I was nervous; any man would be nervous if he was a man. We went with the officers in the automobile, Mr. Rogers was at the driving wheel, and Mr. Darley sat next to him, I sat on Mr. Darley's lap, and in the back was Newt Lee and two officers. We rode to headquarters very quickly and on arrival there Mr. Darley and I went up to Chief Lanford's office where I sat and talked and answered every one of their questions freely and frankly, and discussed the matter in general with them, trying to aid and to help them in any way that I could. It seemed that, that morning the notes were not readily accessible, or for some other reason I didn't get to see them, so I told them on leaving there that I would come back that afternoon, which I ultimately did; after staying there a few minutes, Mr. Darley and myself left, and inasmuch as Mr. Darley hadn't seen the body of the little girl, we went over to Bloomfield's on Pryor Street and Mitchell, and when we went into the establishment, they told us somebody was busy with the body at that time and we couldn't see it, and we started to leave, when we met a certain person with whom we made

135

*The Case for the Defense*

arrangements to watch the building, because Newt Lee was in custody at that time... .

I was working along in the regular routine of my work, in the factory and about the office, and a little later Detectives Scott and Black came up to the factory and said: "Mr. Frank, we want you to go down to headquarters with us," and I went with them. We went down to headquarters and I have been incarcerated every since. We went down to headquarters in an automobile and they took me up to Chief Lanford's office. I sat up there and answered any questions that he desired, and I had been sitting there sometime when Detective Scott and Detective Black came back with a bundle under their arm. They showed me a little piece of material of some shirt, and asked me if I had a shirt of that material. I looked at it and told them I didn't think I ever had a shirt of that description. In the meantime they brought in Newt Lee, the night watchman, brought him up from a cell and showed him the same sample. He looked at it and immediately recognized it; he said he had a shirt like that, but he didn't remember having worn it for two years, if I remember correctly, that is what he said. Detectives Scott and Black then opened the package they had and disclosed the full shirt [State's Ex. F] of that material that had all the appearance of being freshly stained with blood, and had a very distinct odor. Newt Lee was taken back to the cell. After a time Chief Lanford came over to me and began an examination of my face and of my head and my hands and my arms. I suppose he was trying to hunt to see if he could find any scratches. I stayed in there until about twelve o'clock when Mr. Rosser came in and spoke to the detectives, or to Chief Beavers. After talking with Chief Beavers he came over to me and

136

*The Murder of Little Mary Phagan*

said to me that Chief Beavers thought it better that I should stay down there. He says: "He thinks it better that you be detained at headquarters, but if you desire, you don't need to be locked up in a cell, you can engage a supernumerary policeman who will guard you and give you the freedom of the building." I immediately acquiesced, supposing that I couldn't do anything else, and Mr. Rosser left. Now, after this time, it was about this time they took me from up-stairs down to the District Sergeant's desk and detective Starnes—John N. Starnes, I think his name is—came in and dictated from the original notes that were found near the body, dictated to me to get a sample of my handwriting. I wrote this note at the dictation of Mr. Starnes [State's Ex. K], which was given to me word by word, and of course I wrote it slowly. When a word was spelled differently they usually stopped—take this word "buy" for instance, the detective told me how that was spelled so they could see my exact letters, and compare with the original note. Now I had no hesitation in giving him a specimen of my handwriting. Now, this photograph is a reproduction of the note. You see, J. N. Starnes in the corner here, that is detective Starnes, and then is dated here. I put that there myself so I would be able to recognize it again, in case they tried any erasures or anything like that. It is a photographic reproduction of something that was written in pencil, as near as one can judge, a photographic reproduction of the note that I wrote. Detective Starnes then took me down to the desk sergeant where they searched me and entered my name on the book under a charge of suspicion. Then they took me back into a small room and I sat there for awhile while my father-in-law was arranging for a supernumerary police to guard me for the night. They took me then to a room on the top

137

*The Case for the Defense*

of the building and I sat in the room there and either read magazines or newspapers and talked to my friends who came to see me until—I was about to retire at midnight. I had the cover of my cot turned back and I was going to bed when Detective Scott and Detective Black, at midnight, Tuesday, April 29th, came in and said: "Mr. Frank, we would like to talk to you a little bit. Come in and talk to us." I says, "Sure, I will be only too glad to." I went with them to a little room on the top floor of the headquarters. In that room was Detective Scott and Detective Black and myself. They stressed the possibility of couples having been let into the factory at night by the night watchman, Newt Lee. I told them that I didn't know anything about it, that if I had, I certainly would have put a stop to it long ago. They said: "Mr. Frank, you have never talked alone with Newt Lee. You are his boss and he respects you. See what you can do with him. We can't get anything more out of him, see if you can." I says: "All right, I understand what you mean; I will do my best," because I was only too willing to help. Black says: "Now put it strong to him, put it up strong to him, and tell him to cough up and tell all he knows. Tell him that you are here and that he is here and that he better open up and tell all he knows about happenings at the pencil factory that Saturday night, or you will both go to hell." Those were the detective's exact words. I told Mr. Black I caught his meaning, and in a few minutes afterwards Detective Starnes brought up Newt Lee from the cell room. They put Newt Lee into a room and hand-cuffed him to a chair. I spoke to him at some length in there, but I couldn't get anything additional out of him. He said he knew nothing about couples coming in there at night, and remembering the instructions Mr. Black had given me I said: "Now, Newt, you are

138

here and I am here, and you had better open up and tell all you know, and tell the truth and tell the full truth, because you will get us both into lots of trouble if you don't tell all you know," and he answered me like an old Negro: "Before God, Mr. Frank, I am telling you the truth and I have told you all I know." And the conversation ended right there. Within a minute or two afterwards the detectives came back into the room, that is, Detective Scott and Detective Black, and then began questioning Newt Lee, and then it was that I had my first initiation into the third degree in Atlanta police department. The way that fellow Black cursed at that poor old Negro, Newt Lee, was something awful. He shrieked at him, he hollered at him, he cursed and did everything but beat him. Then they took Newt Lee down to a cell and I went to my cot in the outer room. . . .

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

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

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

The story as to women coming into the factory

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

I have no rich relatives in Brooklyn, New York. My father is an invalid. My father and mother together are people of very limited means, who have barely enough upon which to live. My father is not able to work. I have no relative who has any means at all, except Mr. M. Frank who lives in Atlanta, Georgia.

Nobody has raised a fund to pay the fees of my attorneys. These fees have been paid by the sacrifice in part of the small property which my parents possess.

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

On rebuttal, the state called more than seventy witnesses. A friend of Minola McKnight's husband and the maid's attorney, George Gordon, testified that Minola said she made a complete and true statement to the police of everything she knew. Her damaging affidavit referred to Frank's drinking on the night of the murder, sleeping restlessly, and threatening to kill himself with a pistol.

Two witnesses, O. Tillander and E. K. Graham, who had come to the factory to obtain their sons' money, testified they saw a Negro about the same size as Conley at the stairs on the first floor but swore they could not positively identify him.

Fourteen witnesses testified that Dalton's reputation for truth was good. In a prosecution attempt to rebut Daisy Hopkins's assertion that she did not know Frank and had never been to the factory with Dalton, eight

140

*The Murder of Little Mary Phagan*

witnesses testified that the woman's reputation for truth and veracity was bad.

Three witnesses testified that they had seen Frank talk to Mary Phagan frequently 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 on the same floor as Frank's office.

At the climax of the prosecution's rebuttal, twenty women, former employees of the pencil company, testified that Frank's reputation for lascivious conduct was bad. None were cross-examined so their testimony went unchallenged. Since they were not cross-examined, Dorsey was unable to examine them as to the details on which they based their conclusions as to Frank's bad character. Three residents of homes for unwed mothers, formerly employees of the factory, had been called by the state to testify as to Frank's bad character, but Judge Roan did not permit the jury to hear their testimony.

An example of the testimony by Nellie Wood:

Q. Do you know Mr. Frank?

A. I worked for him two days.

Q. Did you observe his conduct toward the girls?

A. His conduct didn't suit me very much.

Q. You say he put his hands on you; is that all he ever did?

A. Well, he asked me, one evening—I went into his office, and he got too familiar and too close.

Q. Did he put his hands on you?

A. Well, I did not let him complete what he started. I resisted him.

Q. Did he put his hands on your breast?

A. No, but he tried to.

Q. Well, did he make any attempts on your lower limbs?

141

*The Case for the Defense*

A. Yes, sir.

Q. And on your dress?

A. Yes, sir.

Defense Attorney Arnold argued to the jury: "We are not trying this case on whether you or I or Frank have been perfect in the past. This is a case of murder. Let him who is without sin cast the first stone." But this evidence provided the motive for the crime.

In their closing arguments, Frank's counsel asserted that Frank could not have committed the murder, moved the body, and dealt with Jim Conley as the sweeper alleged in the thirty to forty-five minutes Frank was unable to account for. For three and one-half hours, defense attorney Luther Rosser pleaded for Frank's life:

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 imagination 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. Who was it that made this dirty nigger come up here looking so slick? Why didn't they let you see him as he was? They shaved him, washed him, and dressed him up. Gentlemen of the jury, the charge of moral perversion against a

142

*The Murder of Little Mary Phagan*

man is a terrible thing for him, but it is even more so when that man has a wife and mother to be affected by it. Dalton, even Dalton did not say this against Frank. It was just Conley.

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

Reuben Arnold then addressed the jurors: "If Frank hadn't been a Jew, there never would have been any prosecution against him," he said, and called the case against Frank "the greatest frame-up in the history of the state." He then compared the case with the case of Captain Alfred Dreyfus, the French soldier and Jewish descendant who had been condemned to Devil's Island through a racial conspiracy.

There were two witnesses who quoted anti-Semitic remarks of others. T.Y. Brent, sworn for the defendant in sur-rebuttal, said: "I have heard George Kendley on several occasions express himself very bitterly towards Leo Frank. He said he felt in this case just as he did about a couple of 'niggers' hung down in Decatur: that he didn't

143

*The Case for the Defense*

know whether they had been guilty or not but somebody had to be hung for killing those street car men and it was just as good to hang one nigger as another, and that Frank was nothing but an old Jew and they ought to take him out and hang anyhow." S.L. Asher, sworn for the defendant in sur-rebuttal, said: "About two weeks ago I was coming to town between five and ten minutes to one on the car and there was a man who was talking very loud about the Frank case and all of a sudden he said, 'They ought to take that damn Jew out and hang him anyway.' I took his number down to report him."

Solicitor-General Hugh Dorsey's summation was much longer. He spoke until court adjourned, six more hours on Saturday and three Monday morning. Dorsey said:



I say to you here and now that the race from which that man comes in 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 as good but no better.

I honor the race that 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.

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 law 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 have listened to him with pleasure and pride.

But, on the other hand [he then related crimes

144

*The Murder of Little Mary Phagan*

that had been committed by Jews] these 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 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 a honest, upright citizen.

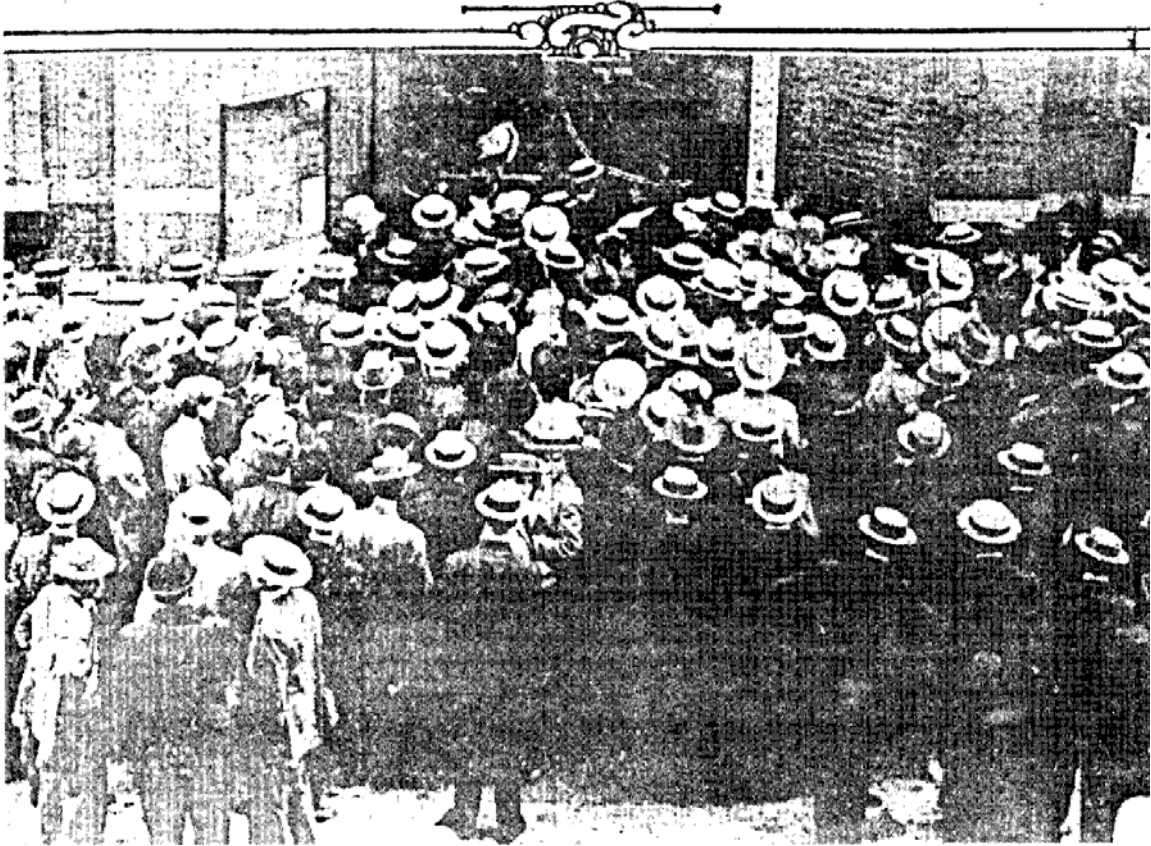
In the language of Daniel Webster, I desire to remind you "that when a jury, through whimsical and unfounded scruples, suffers the guilt of escape, they make themselves answerable for the augmented danger to the innocent."

Your honor, I have done my duty. I have no apology to make. There can be but one verdict, and that is: We the jury find the defendant, Leo M. Frank, guilty, GUILTY! GUILTY!

As Dorsey uttered these words, the noon church bells tolled and the factory whistles blew, reminding all of the hour of Mary Phagan's death.

Before Fulton Superior Court Judge L.S. Roan charged the jury, he asked to see all counsel in his chambers where he showed them letters from the editors of three of Atlanta's newspapers predicting the results of Leo Frank's acquittal. "Gentlemen," said Roan, "I think we know. The defendant would be lynched." He requested

*Impatient Crowd Waiting for Doors to Open for Frank*



Crowds outside the Atlanta court building during the trial.



Lucille and Leo Frank during the trial.  
Lucille and Leo Frank during the trial.

July 6

# Conley Leaving Courtroom After Testimony

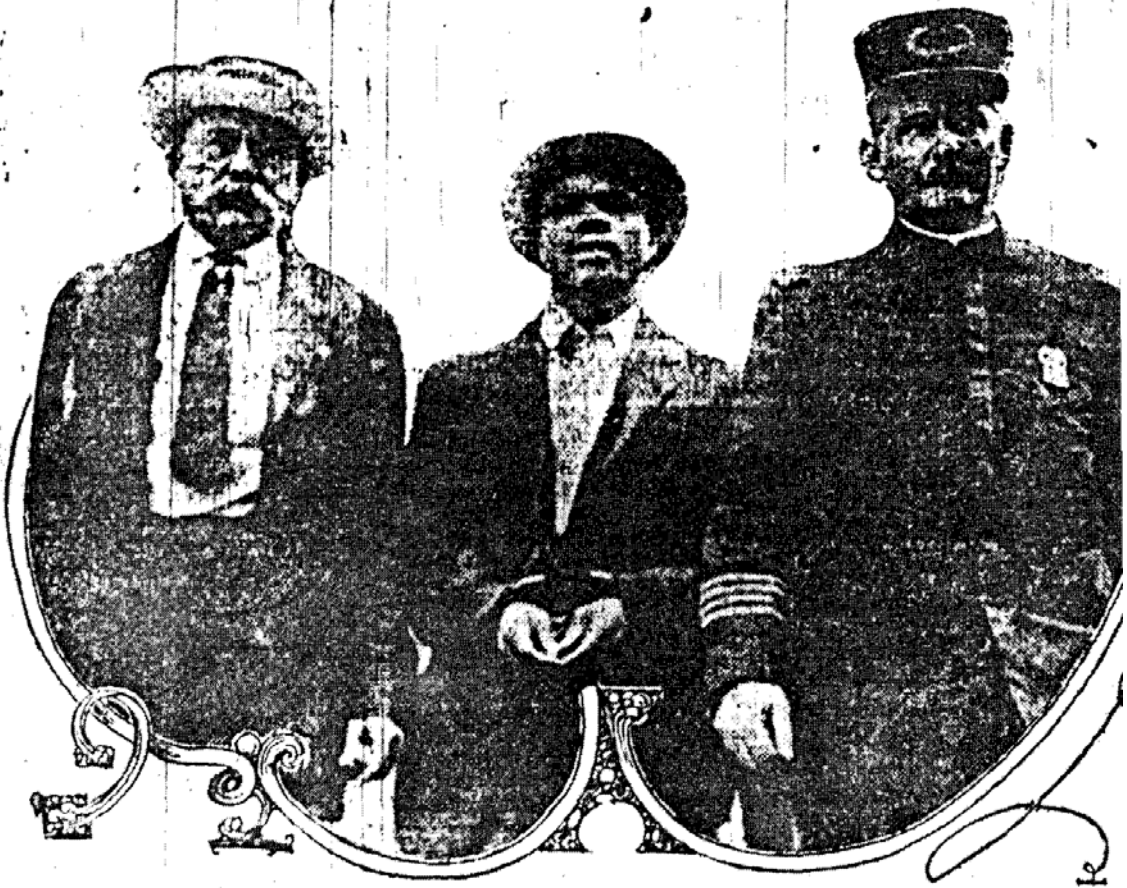


Photo by Phoebe B. Price, Staff Photographer.

Left to right:  
L. Beavers.

Left to right: Chief of Detectives Newport Lanford, Jim Conley and Chief of Police James L. Beavers.



The trial. Leo Frank, seated between his wife and mother, is in front of the judge's bench. Attorney's Reuben Arnold and Luther Rosser, Jr., are seated at the adjacent table. Solicitor-General Hugh Dorsey, standing to the rear of the table, addresses the court.

145

*The Case for the Defense*

that both counsel agree that the defendant not be present in the courtroom when the jury told their verdict in case of acquittal. The state militia was alerted. The defense counsel agreed to Frank's absence as well as their own. Solicitor-General Dorsey gave his consent only after Rosser and Arnold agreed that this absence would not be used as a basis for appeal.

Within four hours, the jury returned a guilty verdict. Dorsey wept as he polled the jury. A wild demonstration was begun by the large crowd outside the courtroom, but inside there was little demonstration. J. W. Coleman, little Mary's stepfather, walked over to the jury box with tears streaming down his face, and silently thanked each man on the jury with a grip of his hand. He then turned to Judge Roan, and shaking his hand, thanked him for the pains he had taken with the trial and for his fair dealing with all parties concerned.

He made the following statement to a *Constitution* reporter:

I want to say that I am entirely satisfied with the manner in which the trial has been conducted and also with the verdict returned.

I knew by looking at the faces of the jurors as they were chosen that they were all men who could be relied upon to give fair and careful consideration to each point and that they were of the high type of character who would give

their best efforts as citizens of this commonwealth without thought of themselves to determine the guilt or innocence of Leo Frank.

I would not, for any consideration, like to see an innocent man pay the death penalty, but I feel sure that anyone in the world who has kept up with the trial in all its phases and with every scrap of evidence submitted, would have found Frank guilty as these honorable gentlemen have done. I am deeply grateful to them and to Judge Roan.

146

*The Murder of Little Mary Phagan*

Hugh Dorsey, upon emerging from the courtroom building, was seized by the laughing, cheering, rejoicing crowd and passed bodily over the heads of the crowd to his office across the street.

Later, Fannie Phagan Coleman, who had been unable to attend court that day, told another *Constitution* reporter,

I could not begin to tell you how glad and relieved I feel now that it is all over.

For weeks I have felt that I just could not sleep another wink for thinking of that man Frank, and the possibility that he might escape the consequences of his crime. I have felt satisfied all the time that he was guilty, and the verdict of the jury is no surprise to me. They are good, noble men, and should be commended by all for doing their duty as they have done. I do not see how anyone who has read all the evidence could possibly think there is the smallest doubt as to Frank's guilt.

I have not been well for the last week, and my mother also has been sick, so you see I could not attend all the sessions of the court, but I have gone as often as possible, and I have read every line regarding the progress of the trial published in the papers. I hope that they will not be hard on that Conley Negro. Although he lied a great deal at first, he did turn round and tell the whole truth at last, and in my opinion, he should be let off with a light sentence.

The only real regret I feel about the entire trial is that I was unable to attend court this afternoon, and shake hands with each member of the jury and with Judge Roan. I will take the first opportunity of seeing every one of them and thanking them for the patient, careful consideration they have shown to everything connected with the trial any way.

147

*The Case for the Defense*

Rabbi Marx sat with Frank and his wife at the Fulton Tower awaiting the verdict. A friend told Frank the verdict. Unbelievably he exclaimed: "Guilty? My God, even the jury was influenced by mob law. I am as innocent as I was a year ago."

## Chapter 6

# SENTENCING AND AFTERMATH

Because Judge Roan feared a public uprising against Leo Frank, he secretly brought Frank and the other principals together in the courtroom for the formal sentencing. The sentence read:

Whereupon, it is considered, ordered and adjudged by the Court that the defendant, Leo M. Frank, be taken from the bar of this court to the common jail of the county of Fulton, and that he be safely there kept until his final execution in the manner fixed by law.

It is further ordered and adjudged by the Court that on the 10th day of October, 1913, the defendant, Leo M. Frank, shall be executed by the Sheriff of Fulton County in private, witnessed only by the executing officer, a sufficient guard, the relatives of such defendant and such clergymen and friends as he may desire, such execution to take place in the common jail of Fulton County and that said defendant, on that day, between the hours of ten o'clock a.m. and two o'clock p.m., be by the Sheriff of Fulton County hanged by the neck until he shall be dead, and may God have mercy on his soul.

In Open Court, this 26th day of April, 1913.

148

149

### *Sentencing and Aftermath*

Frank addressed the Court: "Your Honor, I say now as I have always said, I am innocent. Further than this, my case is in the hands of my counsel."

The trial of Leo Frank had been the longest and most expensive trial in Georgia history at that time. The steno-graphic record itself was 1,080,060 words. The state's star witness, Jim Conley, had been on the witness stand longer than any other witness in state history, and it was the first time that a black man's testimony helped to convict a white man.

Upon its conclusion Rosser and Arnold said: "We deem it not amiss to make a short statement, as the attorneys of Leo M. Frank to the public.

"The trial which has just occurred and which has resulted in Mr. Frank's conviction, was a farce and not in any way a trial. In saying this, we do not make the least criticism of Judge Roan, who presided. Judge Roan is one of the best men in Georgia and is an able and conscientious judge." (Judge Roan was Rosser's senior law partner from 1883 to 1886.)

"The temper of the public mind was such that it invaded the courtroom and invaded the streets and made itself manifest at every turn the jury made; and it was as impossible for this jury to escape the effects of this public feeling as if they had been turned loose and had been permitted to mingle with the people.

"In doing this we are making no criticism of the jury. They were only men and unconsciously this prejudice rendered any other verdict impossible.

"It would have required a jury of stoics, a jury of Spartans, to have withstood this situation.

"The time ought to come when this man will get a fair trial, and we profoundly believe that it will.

"The final judgment of the American people is a fair one. It is sometimes delayed in coming, but it comes. "We entered into this case with the profound conviction-

150

*The Murder of Little Mary Phagan*

tion of Mr. Frank's innocence. The result has not changed our opinion. Every step of the trial has intensified and fortified our profound conviction of his innocence."

A series of appellate moves followed.

Frank's lawyers began to prepare their appeal immediately after the sentencing. One hundred and three points were covered in this appeal, including affidavits about the alleged prejudice toward Leo Frank of two members of the jury, A. H. Henslee and M. Johenning. "They are going to break that Jew's neck," Henslee was quoted as saying to Dr. W. L. Ricker, who later swore an affidavit filed with Judge Roan prior to the trial. "He stated that Frank was guilty of murder," Ricker's testimony continued. The family of H. C. Lovenhard swore that on meeting Marcellus Johenning on the street before the trial he had told them "I know he is guilty."

Other points raised included the jurors being influenced by the crowd's demonstrations outside the court-room, that Conley's allegation of Frank's immoral activities should not have been allowed into evidence, and that the evidence did not support the verdict.

Solicitor-General Dorsey argued that the trial had been fair and countered with affidavits from eleven jurors who swore they did not hear or see demonstrations from crowds outside the courtroom and had reached their decisions solely because of the weight of the evidence. Both jurors who had been deemed prejudiced by the defense denied the charges.

Rosser and Arnold made a final plea to Judge Roan. Arnold said "It is the most horrible persecution of a Jew since the death of Christ."

On October 31, 1913, Judge Roan denied the defense's motion for a new trial, but he commented: "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 was enough."

151

*Sentencing and Aftermath*

The ruling was affirmed by the Georgia Supreme Court on February 17, 1914, by a unanimous decision. However, two judges, Beck and Fish, dissented on the question of admissibility of Jim Conley's testimony as to Frank's sexual perversion, but did not find the evidence in question sufficient cause to alter the guilty verdict.

Not long after the Georgia Supreme Court decision, the *Atlanta Journal* reported that the state biologist who examined the body of Mary Phagan had concluded after microscopic analysis that the hair found on the lathe which the prosecution had cited as a major factor in its case was not Mary Phagan's. The biologist told Solicitor-General Dorsey, who when later confronted by the *Journal's* reporters said "I did not depend on the biologist's testimony. Other witnesses in the case swore that the hair was that of Mary Phagan, and that sufficed to establish my point."

Several prosecution witnesses retracted their original testimony. The first was Albert McKnight, who now said he hadn't seen Frank the day of the murder; Mrs.



Nina Formby related that the police had filled her with liquor and unduly influenced her to invent the story that Frank had phoned her on the murder night asking for a room for himself and a girl. A third, George Epps, Jr., a friend of Mary Phagan's, now said he and Mary had not had a conversation aboard the trolley she rode to the factory on the day of her murder. Other witnesses conveyed that they had invented or lied about evidence because of the pressure brought by police detectives and/or Solicitor Dorsey. Later many of these same people repudiated their retractions.

In addition to repudiated testimony, the defense lawyers restudied every aspect of the Frank case. Henry Alexander, one of the defense team, made a study of the murder notes allegedly written by Conley at Frank's direction. Since these were written on old carbon pads, Alex-

152

*The Murder of Little Mary Phagan*

ander studied the dateline which read 190-. He concluded that the pads were at least four years old. They had been placed in the basement in 1912 along with the records of H.F. Becker, the master of machinery who signed them and was no longer employed by the company.

Mr. Alexander also alleged in a pamphlet that the words "night witch" in the note beside Mary Phagan's body, which had been interpreted to mean night watch or watchman by those who believed the notes had been written under the direction of a white man, actually referred to a Negro folk tale "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."

However, at the time the notes were discovered and read in the factory basement early in the morning of April 27, 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.

On March 7, 1914, Frank was resentenced to die. The scheduled date was April 17, 1914. The day before he was to hang, a stay of execution was obtained on an extraordinary motion for a new trial which was based on newly found evidence.

Three witnesses said the state's star witness, Jim Conley, the black floor sweeper, was the killer. They were Conley's ex-girlfriend, a federal prisoner, and Conley's own lawyer.

The celebrated private detective, William Burns, got an affidavit from Annie Maud Carter in New Orleans. This

153

*Sentencing and Aftermath*

affidavit stated that Jim Conley told her he had called Mary Phagan over as she left Frank's office with her pay envelope, hit her over the head, and pushed her over a scuttle hole in the back of the building.

Annie Maud Carter also said Conley told her he wrote the notes found by the body of Mary Phagan to put the suspicion on Newt Lee, the night watchman. She gave the Burns agency some love letters from Conley which the *Constitution* said were "so vile and vulgar" that they couldn't be published in the newspaper. The defense contended these love letters showed that Conley had "perverted passion

and lust." Among the lines pointed to by the defense as evidence of Conley's perversion were:

Give your heart to God and your ass to me.

Now baby if you don't get out on no bond or if you do get out on bond you have that right hip for me cause if you hold your fat ass on the bottom and make papa go like a kittycat 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 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.

Solicitor-General Dorsey returned Annie Maud Carter to Atlanta and put her in jail. Several days later she refuted the affidavit given to the Burns agency and said that her whole story was a lie. However, it was later alleged that Conley had definitely written the letters.

A black prisoner named Freeman told his story to the prison doctor who reported that Conley was the killer. Freeman said he and Conley were playing cards in the basement of the pencil factory and that Conley left to go up the ladder to the main floor.

Freeman said he had heard some muffled screams,

154

*The Murder of Little Mary Phagan*

saw Conley wrestling with someone, and became so scared that he fled. He later claimed that he saw Conley with a mesh bag containing the amount of Mary Phagan's pay, \$1.20.

Conley's court-appointed attorney, William Smith, thought Frank was innocent and made a public statement on October 2, 1914, saying so. He said that Conley's testimony was "a cunning fabrication," and thought Conley himself was probably the murderer. This extraordinary revelation, which went against the lawyer-client confidentiality privilege, was extolled by those who believed in Frank's innocence and castigated as being caused by bribery by those who believed him guilty. Smith revealed no new facts to support his beliefs but instead tried to show how the already known facts had been misinterpreted because of Conley's lies.

It has been said that Jim Conley confessed to William Smith, and a confession statement, allegedly by Conley, has been published, in, for one, *Confessions of a Criminal Lawyer* by Allen Lumpkin Henson, who worked in the Georgia Attorney General's office at the time of the Leo Frank trial.

The chapter of Henson's book dedicated to the Frank case contains a third-hand, or perhaps fourth-hand, account of Conley's supposed confession.

However, Walter Smith, William Smith's son, in an article by Bob Montgomery for the *Atlanta Journal* in 1932 about Smith's father, denied the authenticity of Conley's "confession," but brought to light facts which had been previously undisclosed regarding William Smith's relationship to his client.

William Smith was reputed to be a very conscientious and ethical lawyer. His prime obligation was to his client. If he was charged to defend a man, he did his best to do so. And he did so in the case of Jim Conley. Smith had been appointed to defend Conley by the court and he

155

*Sentencing and Aftermath*

worked very closely with the prosecutor, Hugh Dorsey. From the beginning, Smith believed in Frank's guilt, as did just about everyone else. Before Jim Conley went on trial, Smith visited him in his cell and coached him in how to react in the courtroom when he was cross-examined by Frank's defense. Smith

acted out the style and gyrations of Luther Rosser to Conley so well, that when the actual trial was in session and Rosser began yelling at Conley and shaking his fist in Conley's face, Conley was not rattled in the least, but, on the contrary, seemed amused. Smith went to great lengths to defend Conley and to dig up facts against Frank.

At some point in the course of the trial, Smith began to doubt that his client had been telling the truth. Because he had an obligation to defend Conley, Smith tried to get him the lightest sentence possible. Conley was convicted as an accessory to the fact and sentenced to one year on the chain gang. Smith, having fulfilled his obligation to his client, and remembering the double jeopardy clause, which assured him that Conley could never be tried for the same crime again, felt morally and legally free to do some investigating and probing on his own. He increasingly felt that Frank was innocent, and that he himself was much responsible for Frank's conviction. And he tried to convince others of Frank's innocence. He felt that he had the blood of an innocent man on his hands.

He launched a thorough investigation which totally convinced him that Frank was innocent and that Conley was guilty. Smith went to Governor Slaton with his conclusions, and it is quite probable that Smith's story was important in helping Slaton reach the decision to commute Frank's sentence. Smith's conclusions were not made public for some time, but, when they were, he was not very popular. Public opinion went against Smith and his family. William Smith carried a gun for protection when he walked the streets of Atlanta. Smith's life was

156

*The Murder of Little Mary Phagan*

threatened in so many ways that he and his family were forced to leave Georgia, not to return for many years. He gave up criminal law completely, and for many years worked in a shipyard in New York as a detective for the Burns Agency. Many years later, he practiced civil law.

In the last years of his life, Smith's vocal cords were paralyzed and he could not speak. He carried a pad of paper on which to write messages. In the hospital room just before he died, William Smith was very weak, but he picked up a pad and scrawled the following letters: "In articles of death, I believe in the innocence and good character of Leo M. Frank."

None of this evidence was considered by the Superior Court because in 1906 a constitutional amendment had been passed that the only grounds for reversal of verdicts in the higher court of Georgia were errors of law. Ruling that new evidence was not an indication of procedural errors, on May 8, 1914, Superior Court Judge Ben H. Hill denied the defense motion for a new trial. This denial was affirmed unanimously on October 14, 1914, by the Georgia Supreme Court.

Even before Leo Frank's trial had ended, certain Jewish organizations and groups raised the issue of religious prejudice. Appeals for funds for Frank's defense were made through mailing circulars and newspaper advertisements throughout the country and particularly in the North. This aggravated the already strong feelings against Frank in Atlanta. And it resulted in a virtual re-enactment of the Civil War between Northern and Southern newspapers, which increased in intensity as the trial progressed.

At Frank's conviction and death sentence, virtually every Northern newspaper proclaimed a travesty of justice. Detectives and well-known attorneys were sent to Atlanta by some of the Northern newspapers to "review and investigate" the case: many concluded that Leo Frank was innocent, that the trial had been no trial at all.

157

*Sentencing and Aftermath*

*The New York Times* became interested in the case, but they were admonished to print nothing "which would arouse the sensitiveness of the Southern people and cause the feeling that the North is criticizing the courts of the people of Georgia." *The New York Times* and *Collier's Weekly* called for a new trial.

Mass rallies were held in United States cities and in London, Paris, and Frankfurt, calling for Frank's life to be spared. Thousands of letters, petitions, and telegrams were sent to Governor Slaton and soon-to-be Governor Nat Harris.

However, the vitriolic exchanges between the Northern and Southern press helped to make the conviction of Frank an article of faith for Southerners. At the same time, the belief in Frank's innocence became the litmus test in the Jewish community of Atlanta for anti-Semitism.

On March 10, 1914, the *Atlanta Journal* editorially called for a new trial. The *Journal* piece was titled "Frank Should Have a New Trial," and it said:

. . . The *Journal* cares absolutely nothing for Frank, or for those who were engaged in his defense or prosecution. If Frank is found guilty after a fair trial, he ought to be hanged and his case should be made a horrible example to those who would destroy human life, for generations to come. . . .

Leo Frank has not had a fair trial. He has not been fairly convicted and his death without a fair trial and legal conviction will amount to judicial murder.

We say this with a full understanding of the import of our words and the responsibility that rests upon us in making this appeal. We do so, not in disrespect for the court or the lawyers or the jury. They did the best they could with the lights before them. We honor them for faithfully performing a most unpleasant duty as they saw it.

158

*The Murder of Little Mary Phagan*

But this we do say without qualification: it was not within the power of human judges and human lawyers and human jurymen to decide impartially and without fear the guilt or innocence of an accused man under the circumstances that surrounded this 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. (When the jury returned the guilty verdict, Frank was not in the courtroom. He was at the Fulton Tower.) 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 and the police were unable to control the crowd outside.

So great was the danger that the Fifth Regiment of the National Guard was kept under arms throughout a great part of the night, ready to rush on a moment's warning to the protection of the defendant. The press of the city united in an earnest request to the presiding judge to not permit the verdict of the jury to be received on Saturday as 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. Under such indescribable conditions as these, Frank was tried and convicted. Was a fair trial, under these circumstances, possible?

The evidence on which he was convicted is not clear (the evidence was circumstantial, but on the strong side). Suppose he is hanged and it should

*Sentencing and Aftermath*

develop that the man was innocent as he claims? The people of this state would stand before the world convicted of murdering an innocent man by refusing to give him an impartial trial. Such a horrible thing is unthinkable. And yet it is possible; yea, an absolute certainty, that we are going to do that very thing unless the courts interfere.

Ought Frank to have a new trial? The question carries its own answer: Let Justice be done, though the Heavens fall.

The outbursts in the courtroom and that the police were unable to control the crowds outside were events that all three newspapers had not printed during the trial. The *Journal* remained quiet about these events for a year. The *Atlanta Georgian*, which also was silent during the trial, later called for a new trial.

This sudden announcement by the *Journal* brought Tom Watson into the controversy. Watson had been defeated for Vice President of the United States on the Populist ticket in 1896 and afterwards devoted most of his time to writing history and editing his weekly newspaper, the *Jeffersonian*, and his monthly publication, *Watson's Monthly Magazine*. He immediately launched a scathing attack against those criticizing the results of the Frank case. Watson referred to Frank as being a "Jew pervert." More of his vitriol was directed to Frank's being a member of and having access to wealth, thereby denying, he said, justice to the family of a "poor factory girl," a view shared by a substantial number of Georgia's population. In fact, an informal poll indicated that four out of five individuals believed in Frank's guilt.

The fact that the *Atlanta Journal* was edited by Watson's political enemy, Hoke Smith, did not endear its editorial opinions to Watson, and he claimed the paper's demand for a new trial was an effort by Smith to drag the

160

*The Murder of Little Mary Phagan*

case into politics. Repeatedly, Watson asked the questions, "Does a Jew expect extraordinary favors or immunities because of his race?" and "Who is paying for all this?" Watson described Mary Phagan 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 Burns Detective Agency by Frank supporters after the trial further inflamed Georgians. Burns offered a thousand-dollar reward to anyone who could provide evidence that Frank was a sexual pervert. No one came forward. The reward was increased to five thousand dollars. No one came forward. Burns also brought forth evidence given to him by the Reverend C.B. Ragsdale, pastor of the Atlanta Baptist Church, who told the story of overhearing two black men, one of whom confessed to killing "a little girl at the factory the other day." Later Ragsdale repudiated his statement.

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 several weeks of investigating, Tobie at length re-signed 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.

Dorsey alleged in court that Burns tried to bribe witnesses to give false testimony and finally Burns's connection was dropped.

The hearing on extraordinary motion for a new trial was based on the absence of Frank at the reception of the verdict. This absence was agreed on by the

defense, prosecutors, and Frank. This motion was denied on June 6, 1914, and the denial was affirmed unanimously by the

161

*Sentencing and Aftermath*

Georgia Supreme Court on November 14, 1914. On December 7, 1914, a writ of error was taken to the United States Supreme Court and was denied.

On December 9, 1914, Frank was sentenced to be hanged on January 22, 1915. Frank's attorneys then filed an application for a writ of habeas corpus to the United States Supreme Court. On April 19, 1915, this was dismissed by a seven-to-two vote and was the last judicial avenue for Frank. The two justices who dissented were Oliver Wendell Holmes and Charles Evans Hughes. They dissented 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. They wrote: "The single question in our minds is whether a petition *alleging* that the trial took place in the midst of a mob savagely and manifestly intent on a single result is shown on its face. . . . This is not a matter for polite presumptions. We must look the facts in the face. Any judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the enviroing atmosphere. . . .

"Of course we are speaking only of the case made by the petition, and whether it ought to be heard. Upon allegations of this gravity in our opinion it ought to be heard, whatever the decision of the state court may have been. . . . It may be that on a hearing a different complex-ion would be given to the judge's alleged request and expression of fear. But supposing the alleged facts to be true, we are of opinion that if they were before the Supreme Court [of Georgia] it sanctioned a situation upon which the Courts of the United States should act, and if for any reason they were not before the Supreme Court, it is our duty to act upon them now and to declare lynch law as little valid when practiced by a regularly drawn jury as when administered by one elected by a mob intent on death."

162

*The Murder of Little Mary Phagan*

The only hope left for Frank was Governor John Slaton. Frank's attorneys appealed to Slaton for a commutation of his sentence from hanging to life imprisonment. Slaton referred this request to the State Prison Commission and asked them to pass their recommendation to the governor. Meanwhile, Frank's attorneys filed an appeal for a clemency hearing before the three-man Georgia Prison Commission. The hearing date was scheduled for May 31, 1915.

On May 31, 1915, out-of-state and in-state delegations appeared to plead for Frank's life. They asked that his life be spared in the name of Georgia's honor, decency, and God. They had submitted voluminous documents to convince the Commission an error had been made. Included was a letter by Presiding Judge Leonard Roan written shortly before his death on March 23, 1915.

Tom Watson commented that Roan was "out of his mind." Some members of Roan's family doubted the authenticity of the letter for years. They indicate that at the time the letter was written, Judge Roan's physical and mental state were critical. They also stated that one of Frank's lawyers went to the sanitorium and it was at this time that the letter was written and signed by Roan. The family also felt that since Judge Roan refused Frank a new trial, the letter causes some questions. However, Roan's rational mental state was attested to by Dr. Wallace E. Brown, owner of the Berkshire Hills Sanitorium:

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss:

Personally appeared before the undersigned authority, Wallace E. Brown, who being duly sworn, deposes and says on oath, that he is owner and proprietor of the Berkshire Hills Sanatorium, that he has been a resident of North Adams, Massachusetts, prac-

163

*Sentencing and Aftermath*

tically all his entire life; that he is now serving his third term as mayor of the city of North Adams.

Deponent says that on Sunday, November 29, 1914, Judge L.S. Roan, of Atlanta, Ga., dictated to Mrs. Wallace E. Brown, who was then Miss Jane Dadie, a letter, a copy of which herinafter follows:

North Adams, Mass.  
December, 1914

Rosser & Brandon & R.R. Arnold,

Attys. for Leo M. Frank.

Gentlemen:—

After considering your communication, asking that I recommend executive clemency in the punishment of Leo M. Frank I wish to say, that at the proper time, I shall ask the Prison Commission to recommend, and the Governor to commute Frank's sentence to life imprisonment. This, however, I will not do until the defendant's application shall have been filed and the Governor and Prison Commission shall have had opportunity to study the record in the case.

It is possible that I showed undue deference to the opinion of the jury in this case, when I allowed their verdict to stand. They said by their verdict that they had found the truth. I was still in a state of uncertainty, and so expressed myself. My search for the truth, though diligent and earnest, had not been so successful. In the exercise of judicial discretion, restricted and limited, according to my interpretation of the decisions of the reviewing courts, I allowed the jury's verdict to remain undisturbed. I had no way of knowing it was erroneous.

After many months of continued deliberation I am still uncertain of Frank's guilt. This state of uncertainty is largely due to the character of the Negro

164

*The Murder of Little Mary Phagan*

Conley's testimony, by which the verdict was evidently reached.

Therefore I consider this a case in which the chief magistrate of the state should exert every effort in ascertaining the truth. The execution of any person, whose guilt has not been satisfactorily proven to the constituted authorities, is too horrible to contemplate. I do not believe that a person should meet with the extreme penalty of the law until the Court, Jury, and Governor shall all have been satisfied of that person's guilt. Hence, at the proper time, I shall express and enlarge upon these views directly to the Governor and Prison Commission.

However, if for any cause, I am prevented from doing this, you are at liberty to use this letter at the hearing.

Very truly

yours,

:SEAL

L.S. Roan

Deponent heard Judge Roan dictate the letter hereinbefore copied and saw him read and sign the same. Prior to the time Judge Roan dictated and signed said letter he had stated to deponent that he was not convinced of Frank's guilt, and that if executive clemency should ever be asked for Frank that he intended to recommend commutation.

Deponent says that Judge Roan became a patient in his sanatorium on the tenth day of July, 1914, and remained there as such until the twenty-first day of February, 1915.

During the entire time Judge Roan was a patient in said Sanatorium, there was positively no doubt that Judge Roan was mentally responsible in every respect.

Deponent is a practising physician of twenty-five years, having graduated from Bellevue Hospital Med-

165

*Sentencing and Aftermath*

ical College, New York City, and is now a resident of North Adams, Massachusetts.

(Signed) Wallace E.

Brown

Subscribed and sworn to before me, this fourth day of August, 1915, at North Adams, Massachusetts.

(Signed) C.T. Phelps

Notary Public

:SEAL

No one had spoken against commutation of Frank's sentence. Finally, the defense's long, hard fight seemed won. But the next morning, some fifty determined-looking men from Cobb County, where Mary Phagan's family lived, marched into the Prison Commission office and demanded the hearing be re-opened.

Included in the group were former Governor Joseph M. Brown and Herbert Clay, solicitor of the Blue Ridge Circuit. Clay spoke for hours against commutation, arguing that Georgia would be dishonored for all time if Frank were spared for his alleged abominable crime. The newspapers reported that "there was no doubting that they really believed with all their hearts" that Frank was guilty. The Commission re-opened the hearing.

The commissioners listened intently and said nothing. At the end of the re-opening, they issued a statement that they would offer their recommendation to Governor Slaton in a week.

By a two-to-one vote, on June 9, 1915, the commissioners refused to recommend commutation to Governor Slaton. It was now up to the governor.



## Chapter 7

# THE COMMUTATION

John Marshall Slaton had begun wrestling with the idea of commutation of Leo Frank's sentence long before June 1915. "Excepting in a general way," he wrote to a Chicago judge in December 1914, "I do not know the facts of the case and abstained from acquainting myself with them because I desire to remain open minded until the case comes before me, if it ever does." By April, 1915, however, he strongly doubted that anything to do with Frank would reach him before he left office in June. Only a week before he convened the extraordinary clemency hearing at his offices, he told people that he didn't think the case would reach him before he left office.

He received over one hundred thousand letters favoring commutation or pardon for Frank, and the Georgia as well as the national press reminded him—and the public—of his power of pardon and his responsibility to use it. Atlanta *Constitution* editors prepared a cartoon of a yellow chicken with Slaton's head with the caption, "Showing his yellow feathers," to be used in the event Slaton declined to hear Frank's commutation request.

Several governors and senators supported the request for Frank's pardon, but the support of prominent persons for pardons was—and is—far from unusual. Perhaps more

166

167

*The Commutation*

unusual was that the effort on behalf of Leo Frank came from leaders in every part of the country.

The North-South resentments and hostility revived with a vengeance. Newspapers throughout the country picked up on this development. Most outside Georgia were sympathetic to Leo Frank, and reopened their attacks on Georgia's anti-industrialist and anti-Semitic feelings, as well as its police incompetence. The *Baltimore Sun* termed the case "the American counterpart of the Dreyfus [affair]"; many newspapers reiterated that the jury had merely followed the vociferous demands of the crowds who stayed outside the courtroom during the trial. And of course they called for a pardon—or, at least, a commutation.

Georgians, and Atlantans particularly, resented this renewed intrusion into an affair in which they felt justice had been done. They became adamant against reexamining the conclusions of the trial.

When the Supreme Court rejected Frank's plea in April, 1915, his lawyers began working for executive clemency. They of course wanted a complete pardon, but in view of the series of court decisions, probably felt it wise to seek a commutation to life imprisonment.

And they undoubtedly felt that if and when Frank's innocence was established, sometime in the future, a complete pardon might be feasible.

They were advised that Frank's chances for commutation were better with the incumbent, Governor John Marshall Slaton, than with his successor, who would take over on June 26, 1915. John M. Slaton was highly regarded politically. He was said to be the most popular governor Georgia had since the Civil War. In 1914, while in office, he ran for the U.S. Senate. Judge Newt A. Morris and Solicitor Clay were looking ahead. They predicted that Slaton would end up with the Frank case and might commute his sentence.

168

*The Murder of Little Mary Phagan*

Judge Morris, through the Cobb Democratic Executive Committee, alleged that Slaton was a member of the law firm defending Frank. Slaton had been a name partner of the Rosser, Brandon, Slaton & Phillips law firm since May of 1913 and is so listed in the newspaper announcements of the day. This law partnership name was also listed in the Atlanta City Directories of 1914, 1915, and 1916, even though Slaton was then serving as governor. This conflict was readily seized upon by Tom Watson who said:

You must keep in your mind the astounding fact that he [Slaton] joined Rosser's firm, after that firm had been employed to defend Frank, and had publicly taken part in this case.

A Governor cannot practise law openly and in June, 1913, John M. Slaton was to be inaugurated for a term of two years.

Why, then, did he, in May, join a firm in which he could not openly act, until after June, 1915?

And why did Rosser, in May, 1913, take a partner whom he could not openly use, during the next two years?

The Cobb Democratic Executive Committee publicly called on Slaton to resign as governor or assure Georgians he would not commute Frank's sentence.

Slaton declined to do either, and his statement made state headlines.

Frank was now scheduled to hang on June 22, 1915. Slaton was to be succeeded by Nat Harris on June 26, 1915. Slaton could have granted a reprieve and let Harris determine the petition for commutation, a move which many had anticipated. However, he, and others, felt that Harris would deny the petition.

While speculations raged in Atlanta, Slaton retired to his home outside the city, carrying the full printed record

169

*The Commutation*

of the trial with him. He requested the Supreme Court ruling on the question of mob influence at the trial along with Justice Holmes's dissent. He requested specific citations to the trial record. He researched the official judgments of other appellate courts while trying to reach a balance between Georgia's judiciary integrity and mob rule.

In visiting the pencil factory, Slaton determined that Conley must have lied about using the elevator to carry Mary Phagan's body from the second floor to the basement: though Conley testified that he had defecated at the bottom of the shaft on Saturday morning, the detectives, while at the factory, found the excrement (along with an umbrella) uncrushed at the bottom of the shaft. Though this could have been used at the trial to show Conley's perjury, it was not until Slaton personally rode the elevator, determining that it indeed hit the bottom, that this evidence was brought to light. Slaton spent a great deal of time and attention studying the elevator. Much of the best evidence for Frank, Slaton later

stated in his official commutation order, came out after the trial, including that uncovered by himself.

Slaton shut himself in his library for the entire day on June 20, 1915, working on the Frank case. He had listened to Hugh Dorsey's and to Leo Frank's lawyers' arguments, as well as to a Marietta delegation headed by former Governor Joseph M. Brown.

It is said that he worked until 2:00 a.m. on June 21. His wife had stayed awake, waiting for him, and when he emerged from the library, asked him if he'd reached a decision.

"Yes," he is said to have replied, "and it may mean my death or worse, but I have ordered the sentence commuted."

Mrs. Slaton is said to have responded, "I would rather

170

*The Murder of Little Mary Phagan*

be the widow of a brave and honorable man than the wife of a coward."

He had taken the precaution of having Leo Frank removed from the Fulton Tower to the railroad station at one minute after midnight and onto a train to Macon, then by car to the Milledgeville Prison Farm.

Partly through his own detective work, and partly through his readings of the extensive documentation of the crime, John Slaton came to believe that Leo Frank was innocent. However, in public John Slaton made no declarations about Frank's innocence; he expressed his "doubts."

Slaton had in mind, also, that Judge Roan had publicly written to him: "It is possible that I showed undue deference to the jury in this case, when I allowed the verdict to stand," and that Roan asked Slaton to commute the sentence.

Later that day Slaton gave his statement to the press, announcing he was commuting Frank's sentence to life imprisonment.

The statement was very carefully worded to stand as nothing more substantial than the correction of a trial judge's error, to deny any extra-legal issues surrounding the case, and to assure the public that there was no mob influence on the trial, but that the atmosphere merely reflected the "disclosing of a horrible crime."

Executive Minutes June 21st, 1915

In Re Leo M. Frank, Fulton Superior Court, Sentenced to be Executed, June 22, 1915.

Saturday, April 26th, 1913, was Memorial Day in Georgia and a general holiday. At that time Mary Phagan, a white girl, of about fourteen years of age was in the employ of the National Pencil Company

171

*The Commutation*

located near the corner of Forsyth and Hunter Streets in the City of Atlanta. She came to the pencil factory a little after noon to obtain the money due her for her work on the preceding Monday, and Leo M. Frank, the defendant, paid her \$1.20, the amount due her and this was the last time she was seen alive.

Frank was tried for the offense and found guilty the succeeding August. Application is now made to me for clemency.

This case has been the subject of extensive comments through the newspapers of the United States and has occasioned the transmission of over one hundred thousand letters from various states requesting clemency. Many communications have been received from citizens of this state advocating or opposing interference with the sentence of the court.

I desire to say in this connection that the people of the State of Georgia desire the esteem and good will of the people of every state in the Union. Every citizen wishes the approbation of his fellows and a state or nation is not excepted. In the Preamble to the Declaration of Independence, Thomas Jefferson wrote that "When in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the Laws of Nature and Nature's God entitles them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

Many newspapers and multitudes of people have attacked the State of Georgia because of the conviction of Leo M. Frank and declared the conviction to have been through the domination of a mob and with no evidence to support the verdict. This opinion has been formed to a great extent by those who have not

172

*The Murder of Little Mary Phagan*

read the evidence and who are unacquainted with the judicial procedure in our state.

I have been unable to even open a large proportion of the letters sent me, because of their number and because I could not through them gain any assistance in determining my duty.

The murder committed was a most heinous one. A young girl was strangled to death by a cord tied around her throat and the offender deserves the punishment of death. The only question is to the identity of the criminal.

The responsibility is upon the people of Georgia to protect the lives of her citizens and to maintain the dignity of her laws, and if the choice must be made between the approbation of citizens of other states and the enforcement of our laws against offenders, whether powerful or weak, we must choose the latter alternative.

## MOBS

It is charged that the court and jury were terrorized by a mob and the jury were coerced into their verdict.

I expect to present the facts in this case with absolute fairness and to state conditions with regard only to the truth.

When Frank was indicted and the air was filled with rumors as to the murder and mutilation of the dead girl, there was intense feeling and to such extent that my predecessor, Governor Brown, stated in argument before me that he had the military ready to protect the defendant in the event any attack was made. No such attack was made and from the evidence that he obtained none was contemplated.

Some weeks after this, the defendant was put on trial. Georgia probably has the broadest provisions

173

*The Commutation*

for change of venue in criminal cases that exist in any state. Our law permits the judge to change the venue on his own motion, in the event he thinks a fair trial cannot be given in any county. The defendant can move for a change of venue on the same ground, and if it be refused, the refusal of the judge is subject to an immediate appeal to the Supreme Court, and in fact, the entire genius of our law demands a fair trial absolutely free from external influence.

Frank went to trial without asking a change of venue and submitted his case to a jury that was acceptable to him. He was ably represented by counsel of conspicuous ability and experience.

During the progress of the case, after evidence had been introduced laying the crime with many offensive details upon Frank, the feeling against him became intense. He was the general superintendent of the factory and Mary Phagan was a poor working girl. He was a Cornell graduate and she dependent for her livelihood upon her labor. According to a witness, whose testimony will subsequently be related more completely, when this girl came to get her small pay, since she only worked one day in the week, because of lack of material, this general superintendent solicited her to yield to his importunities and on her refusal slew her.

The relation of these facts anywhere and in any community would excite unbounded condemnation.

If the audience in the courtroom manifested their deep resentment to Frank, it was largely by this evidence of feeling beyond the power of a court to correct. It would be difficult anywhere for an appellate court, or even a trial court, to grant a new case which occupied thirty days, because the audience in the courtroom upon a few occasions indicated their sympathies. However, the deep feeling against Frank

174

*The Murder of Little Mary Phagan*

which developed in the progress of the evidence was in the atmosphere and regardless of the commission of those acts of which the court would take cognizance, the feeling of the public was strong.

Since Governor Brown has related secret history in his public argument before me, I may state that Friday night before the verdict was expected Saturday, I had the sheriff call at the Mansion and inquire whether he anticipated trouble. This was after many people had told me of possible danger and an editor of a leading newspaper indicated his anticipation of trouble. The sheriff stated he thought his deputies could avert any difficulty. Judge Roan telephoned me that he had arranged for the defendant to be absent when the verdict was rendered. Like Governor Brown, I entered into communication with the Colonel of the Fifth Regiment, who stated he would be ready if there were necessity.

I was leaving on Saturday, the day the verdict was expected, for Colorado Springs to attend the Congress of Governors, and did not wish to be absent if my presence was necessary. I have now the original order prepared by me at the time, in the event there were a necessity for it. I became convinced there would be slight change for any use of force and therefore filled my engagement in Colorado.

Judge Roan, in the exercise of precaution, re-requested that both counsel and defendant be absent when the verdict was rendered, in order to avoid any possible demonstration in the event of acquittal.

The jury found the defendant guilty and, with the exception of demonstration outside the court room, 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

175

*The Commutation*

an atmosphere with which to deal, and especially when that atmosphere has been created through the process 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 process of our tribunal 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.

#### THE FACTS IN THE CASE

Many newspapers and nonresidents have declared that Frank was convicted without any evidence to sustain the verdict. In large measure, those giving expression to this utterance have not read the evidence and are not acquainted with the facts. The same may be said regarding many of those who are demanding his execution.

In my judgment, no one has a right to an opinion who is not acquainted with the evidence in the case, and it must be conceded that the jury who saw the witnesses and beheld their demeanor upon the stand are in the best position as a general rule to reach the truth.

I cannot, within the short time given me to decide the case, enter into the details outlined in thou-

176

*The Murder of Little Mary Phagan*

sands of pages of testimony. I will present the more salient features, and have a right to ask that all persons who are interested in the determination of the matter, shall read calmly and dispassionately the facts.

#### THE STATE'S CASE

The state proved that Leo M. Frank, the general superintendent of the factory, was in his office a little after 12:00 o'clock on the 26th day of April, 1913, and he admitted having paid Mary Phagan \$1.20, being the wages due her for one day's work. She asked Frank whether the metal had come, in order to know when she could return for work. Frank admits this and so far as is known, he was the last one who saw her alive. At three o'clock the next morning (Sunday), Newt Lee, the night watchman, found in the basement the body of Mary Phagan strangled to death by a cord of a kind kept generally in the Metal Room, which is on Frank's floor. She had a cloth tied around her head which was torn from her underskirt. Her drawers were either ripped or cut and some blood and urine were upon them. Her eye was very black, indicating a blow, and there was a cut two and one-half inches in length about four inches above the ear and to the left thereof, which extended through the scalp to the skull. The County Physician who examined her on Sunday morning declared there was no violence to the parts and the blood was characteristic of menstrual flow. There were no external signs of rape. The body was not mutilated, the wounds thereon being on the head and scratches on the elbow, and a wound about two inches below the knee.

The State showed that Mary Phagan had eaten her dinner of bread and cabbage at 11:30 and had

caught the car to go to the pencil factory which would enable her to arrive at the factory within the neighborhood of about thirty minutes. The element of exact time will be discussed later.

Dr. Harris, the Secretary of the State Board of Health, and an expert in this line, examined the contents of Mary Phagan's stomach ten days after her burial and found, from the state of digestion of the cabbage and bread, that she must have been killed within about thirty minutes after she had eaten the meal.

Newt Lee, the Negro night watchman, testified that Frank had "told me to be back at the factory at four o'clock Saturday afternoon," and when he "came upstairs to report, Frank, rubbing his hands," met Newt Lee and told him to "go out and have a good time until six o'clock," although Lee said he would prefer to lie down and sleep. When Lee returned, Frank changed the slip in the time clock, manifesting nervousness and taking a longer time than usual.

When Frank walked out of the front door of the factory, he met a man named Gantt, whom he had discharged a short time before. Frank looked frightened, his explanation that he anticipated harm. Gantt declared he wished to go upstairs and get two pairs of shoes, which permission Frank finally granted, stating that he thought they had been swept out.

About an hour after this occurrence, Frank called up Lee over the telephone, a thing he had never done before, and asked him if everything was all right at the factory. Lee found the double inner doors locked, which he had never found that way before. Subsequently, when Lee was arrested and Frank was requested by the detectives to go in and talk to him in order to find what he knew, Lee says that Frank

178

*The Murder of Little Mary Phagan*

dropped his head and stated, "If you keep that up, we will both go to hell."

On Sunday morning at about three o'clock, after Newt Lee, the night watchman, had telephoned the police station of the discovery of the dead body and the officers had come up to the factory, they endeavored to reach Frank by telephone, but could not get a response. They telephoned at seven o'clock Sunday morning and told Frank that they wanted him to come down to the factory, and when they came for him, he was very nervous and trembled. The body at that time had been taken to the undertakers, and according to the evidence of the officers who took Frank by the undertaker's establishment to identify the girl, he (Frank) showed a disinclination to look at the body and did not go into the room where it lay, but turned away at the door.

Frank had made an engagement on Friday to go to the baseball game on Saturday afternoon with his brother-in-law, but broke the engagement, as he said in his statement, because of the financial statement he had to make up, while before the Coroner's Jury, he said he broke the engagement because of threatening weather.

The contention of the State, as will hereafter be disclosed, was that Frank remained at the factory Saturday afternoon to dispose of the body of Mary Phagan, and that that was the reason he gave Newt Lee his unusual leave of absence.

The cook's husband testified that on Saturday, the day of the murder, he visited his wife at the home of Mr. Selig, the defendant's father-in-law, where Frank and his wife were living, and that Frank came in to dinner and ate nothing. The Negro cook of the Seligs was placed upon the stand and denied that her husband was in the kitchen at all on that day. For

*The Commutation*

purposes of impeachment, therefore, the State introduced an affidavit from this cook taken by the detectives, and, as she claimed, under duress, which tended to substantiate the story of her husband and which affidavit declared that on Sunday morning after the murder, she heard Mrs. Frank tell her mother that Mr. Frank was drinking the night before and made her sleep on a rug and called for a pistol to shoot himself, because he (Frank) had murdered a girl. This affidavit was relevant for purposes of impeachment, although, of course, it had no legal probative value as to the facts contained therein. On the stand, the cook declared that she was coerced by her husband and detectives under threat of being locked up unless she gave it, and it was made at the Station House. The State proved it was given in the presence of her lawyer and said that her denial of the truth of the affidavit was because her wages had been increased by the parents of Mrs. Frank. No details are given as to where the conversation occurred between Mrs. Frank and her mother, nor is there any explanation as to how she happened to hear the conversation. It will be easily seen that the effect of the affidavit upon the jury might be great.

It is hard to conceive that any man's power of fabrication of minute details could reach that which [Jim] Conley showed, unless it be the truth.

The evidence introduced tended to show that on Sunday morning Frank took out of the time clock the slip which he had admitted at that time was punched for each half hour, and subsequently Frank claimed that some punches had been missed. The suggestion was that he had either manipulated the slip to place the burden on Lee, or was so excited as to be unable to read the slip correctly.

The State introduced a witness, Monteen Stover,

180

*The Murder of Little Mary Phagan*

to prove at the time when Mary Phagan and Frank were in the Metal Room, she was in Frank's office and he was absent, although he had declared he had not left his office. The State showed that the hair of Mary Phagan had been washed by the undertaker with pine tar soap, which would change its color and thereby interfere with the ability of the doctor to tell the similarity between the hair on the lathe and Mary Phagan's hair.

The State further showed that a cord of the character which strangled Mary Phagan was found in quantities on the Metal Room floor, and was found in less quantities and then cut up in the basement. As to this, Detective Starnes testified: "I saw a cord like that in the basement, but it was cut up in pieces. I saw a good many cords like that all over the factory."

Holloway testified: "These cords are all over the building and in the basement."

Darley testified to the same effect.

However, this contradicts the testimony that was presented to the jury for the solution.

The State claimed to the jury that witnesses for the defendant, under the suggestion of counsel in open court, would change their testimony so that it might not operate against the defendant.

I have not enumerated all the suspicious circumstances urged by the State, but have mentioned what have appeared to me the most prominent ones. Where I have not mentioned the more prominent ones, an inspection of record fails to maintain the contention.



It is contended that a lawyer was engaged for Frank at the Station House before he was arrested. This is replied to by the defense that a friend had engaged counsel without Frank's knowledge, and the lawyer advised Frank to make a full statement to the detectives.

## JIM CONLEY

The most startling and spectacular evidence in the case was that given by a Negro, Jim Conley, a man of twenty-seven years of age, and one who frequently had been in the chain gang. Conley had worked at the factory for about two years and was thoroughly acquainted with it. He had worked in the basement about two months and had run the elevator about a year and a half.

On May 1st [1913] he was arrested by the detectives.

Near the body in the basement had been found two notes, one written on brown paper and the other on a leaf of a scratch pad. That written on white paper in a Negro's handwriting showed the following:

"He said he wood love me and land down play like night witch did it but that long tall black negro did buy hisslef."

On the brown paper, which was the carbon sheet of an order headed "Atlanta, Ga.—, 190—," which hereafter becomes important, was written in a Negro's handwriting the following:

"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 was long sleam tall negro i wright while play with me."

The detectives learned about the middle of May that Conley could write, although at first he denied it. He made one statement and three affidavits which are more fully referred to in stating the defendant's case. The affidavits were introduced by the defendant under notice to produce.

By these affidavits there was admitted the substance of the evidence that he delivered on the stand, which in brief was as follows:

*The Murder of Little Mary Phagan*

Conley claimed that he was asked by Frank to come to the factory on Saturday and watch for him, as he previously had done, which he explained meant that Frank expected to meet some woman and when Frank stamped his foot Conley was to lock the door leading into the factory and when he whistled, he was to open it.

Conley occupied a dark place to the side of the elevator behind some boxes, where he would be invisible.

Conley mentioned several people, including male and female employees, who went up the steps to the second floor where Frank's office was located. He said that Mary Phagan went up the stairs and he heard a scream and then he dozed off. In a few minutes Frank stamped and then Conley unlocked the door and went up the steps. Frank was shivering and trembling and told Conley "I wanted to be with the little girl and she refused me and I struck her and I guess I struck her too hard and she fell and hit her head against something, and I do not know how bad she got hurt. Of course, you know I ain't built like other men."

Conley described Frank as having been in a position which Conley thought indicated perversion, but the facts set out by Conley do not demand such conclusion.

Conley says that he found Mary Phagan lying in the Metal Room some two hundred feet from the office, with a cloth tied about her neck and under the head as though to catch blood, although there was no blood at the place.

Frank told Conley to get a piece of cloth and put the body in it and Conley got a piece of striped bed tick and tied up the body in it and brought it to a place a little way from the dressing room and dropped it and then called on Frank for assistance in

183

*The Commutation*

carrying it. Frank went to his office and got a key and unlocked the switchboard in order to operate the elevator, and he and Conley rolled the body off the cloth. Frank returned to the first floor by the ladder, while Conley went by the elevator and Frank on the first floor got into the elevator and went to the second floor on which the office is located. They went back into Frank's private office and just at that time Frank said, "My God, here is Emma Clark and Corinthia Hall," and Frank then put Conley into the wardrobe. After they left Frank let Conley out and asked Conley if he could write, to which Conley gave an affirmative reply. Frank then dictated the letters heretofore referred to. Frank took out of his desk a roll of green-backs and told him, "Here is two hundred dollars," but after a while requested the money back and got it.

One witness testified she saw some Negro, whom she did not recognize, sitting at the side of the elevator in the gloom. On the extraordinary motion for new trial, a woman, who was unimpeached, made affidavit that on the 31st of May, through the newspaper report, she saw that Conley claimed he met Frank by agreement at the corner of Forsyth and Nelson Streets on the 26th of April, 1913, and she became satisfied that she saw the two in close conversation at that place on that date between ten o'clock and eleven o'clock.

Frank put his character in issue and the State introduced ten witnesses attacking Frank's character, some of whom were factory employees, who testified that Frank's reputation for lasciviousness was bad and some told that he had been seen making advances to Mary Phagan, whom Frank had professed to the detectives either not to have known, or to have been slightly acquainted with. Other witnesses testified

184

*The Murder of Little Mary Phagan*

that Frank had improperly gone into the dressing room of the girls. Some witnesses who answered on direct examination that Frank's reputation for lasciviousness was bad, were not cross-examined as to details, and this was made the subject of comment before the jury.

The above states very briefly the gist of the State's case, omitting many incidents which the State claims would confirm Frank's guilt when taken in their entirety.

DEFENSE

The defendant introduced approximately one hundred witnesses as to his good character. They included citizens of Atlanta, collegemates at Cornell, and professors of that college.

The defendant was born in Texas and his education was completed at the institution named.

The admission of Conley that he wrote the notes found at the body of the dead girl, together with the parts he admitted he played in the transaction, combined with his history and his explanation as to both the writing of the

notes and the removal of the body to the basement, make the entire case revolve around him. Did Conley speak the truth?

Before going into the varying and conflicting affidavits made by Conley, it is advisable to refer to some incidents which cannot be reconciled to Conley's story. Wherever a physical fact is stated by Conley, which is admitted, this can be accepted, but under both rules of law and of common sense, his statements cannot be received, excepting where clearly corroborated. He admits not only his participation as an accessory, but also glibly confesses his own infamy.

185

*The Commutation*

One fact in the case, and that of most important force in arriving at the truth, contradicts Conley's testimony. It is disagreeable to refer to it, but delicacy must yield to necessity when human life is at stake.

The mystery in the case is the question as to how Mary Phagan's body got into the basement. It was found one hundred and thirty-six feet away from the elevator and the face gave evidence of being dragged through dirt and cinders. She had dirt in her eyes and mouth. Conley testified that he and Frank took the body down to the basement in the elevator on the afternoon of April 26, 1913, and leaves for inference that Frank removed the one hundred and thirty-six feet toward the end of the building, where the body was found at a spot near the back door which led out towards the street in the rear. Conley swears he did not return to the basement, but went back up in the elevator, while Frank went back on the ladder, constituting the only two methods of ingress and egress to the basement, excepting through the back door. This was between one and two o'clock on the afternoon of April 26th.

Conley testified that on the morning of April 26th, he went down into the basement to relieve his bowels and utilized the elevator shaft for the purpose.

On the morning of April 27th at three o'clock, when the detectives came down into the basement by way of the ladder, they inspected the premises, including the shaft, and they found there human excrement in natural condition.

Subsequently, when they used the elevator, which everybody, including Conley, who had run the elevator for one and one-half years, admits only stops by hitting the ground in the basement, the elevator struck the excrement and mashed it, thus demonstrating that the elevator had not been used since

186

*The Murder of Little Mary Phagan*

Conley had been there. Solicitor-General Dorsey, Mr. Howard, and myself visited the pencil factory and went down on this elevator and we found it hit the bottom. I went again with my secretary with the same result.

Frank is delicate in physique, while Conley is strong and powerful. Conley's place for watching, as described by himself, was in the gloom a few feet from the hatchway, leading by way of ladder to the basement. Also he was [with]in a few feet of the elevator shaft on the first floor. Conley's action in the elevator shaft was in accordance with his testimony that he made water twice against the door of the elevator shaft on the morning of the 26th, instead of doing so in the gloom of his corner behind the boxes where he kept watch.

Mary Phagan in coming downstairs was compelled to pass within a few feet of Conley, who was invisible to her and [with]in a few feet of the hatchway. Frank could not have carried her down the hatchway. Conley might have done so with difficulty. If the elevator shaft was not used by Conley and Frank in

taking the body to the basement, then the explanation of Conley, who admittedly wrote the notes found by the body, cannot be accepted.

In addition there was found in the elevator shaft at three o'clock Sunday morning, the parasol, which was unhurt, and a ball of cord which had not been mashed.

Conley in his affidavits before the detectives testified he wrapped up the body in a crocus sack at the suggestion of Frank, but in the trial he testified he wrapped up the body in a piece of bed-tick "like the shirt of the Solicitor General." The only reason for such a change of testimony, unless it be the truth, was that a crocus sack, unless split open, would be

187

*The Commutation*

too small for that purpose. If he split open the crocus sack with a knife, this would suggest the use of a knife in cutting the drawers of the girl.

So the question arises, whether there was any bed-tick in the pencil factory, and no reason can be offered why bed-tick should be in the pencil factory. It has no function there. Had such unusual cloth been in the factory, it certainly must have been known, but nobody has ever found it.

Conley says that after the deed was committed, which everybody admits could not have been before 12:05, Frank suddenly said: "Here comes Emma Clark and Corinthia Hall," and put Conley in a wardrobe.

The uncontradicted evidence of these two witnesses, and they are unimpeached, was they reached the factory at 11:35 a.m. and left it at 11:45 a.m., and therefore this statement of Conley can hardly be accepted.

Conley says that when they got the body to the bottom of the elevator in the basement, Frank told him to leave the hat, slipper, and piece of ribbon right there but he'd "taken the things and pitched them over in front of the boiler" which was fifty-seven feet away.

Conley says that Frank told him when he watched for him to lock the door when he (Frank) stamped and to open the door when he whistled. In other words, Frank had made the approach to the girl and had killed her before he had signaled Conley to lock the door.

Conley says, "I was upstairs between the time I locked the door and the time I unlocked it. I unlocked the door before I went upstairs." This explanation is not clear, nor is it easy to comprehend the use of the signals which totally failed their purpose.

188

*The Murder of Little Mary Phagan*

It is curious during the course of the story that while Frank explained to Conley about striking the girl when she refused him and Conley found the girl strangled with a cord, he did not ask Frank anything about the use of the cord, and that subject was not mentioned.

The wound on Mary Phagan was near the top of the head and reached the skull. Wounds of that character bleed freely. At the place Conley says he found blood, there was no blood. Conley says there was a cloth tied around the head as though to catch the blood, but none was found there.

One Barrett says that on Monday morning he found six or seven strands of hair on the lathe with which he worked and which were not there on Friday. The implication is that it was Mary Phagan's hair and that she received a cut by having her head struck at this place. It is admitted that no blood was found there. The lathe is about three and one-half feet high and Mary Phagan is described as being chunky in build. A blow which would have forced her with

sufficient violence against the smooth handle of the lathe to have produced the wound must have been a powerful one since the difference between her height and that of the lathe could not have accounted for it. It was strange, therefore, that there was a total absence of blood and that Frank, who was delicate could have hit a blow of such violence.

Some of the witnesses for the State testified the hair was like that of Mary Phagan, although Dr. Harris compared Mary Phagan's hair with that on the lathe under a microscope and was under the impression it was not Mary Phagan's hair. This will be the subject of further comment.

Barrett and others said they thought they saw

189

*The Commutation*

blood near the dressing room, at which place Conley said he dragged the body.

Chief of Police Beavers said he did not know whether it was blood.

Detective Starnes said, "I do not know that the splotches I saw were blood."

Detective Scott says: "We went to the Metal Room where I was shown some spots supposed to be blood spots."

A part of what they thought to be blood was chipped up in four or five chips and Dr. Claude Smith testified that on one of the chips he found, under a microscope, from three to five blood corpuscles, a half drop would have caused it.

Frank says that the part of the splotch that was left after the chips were taken up was examined by him with an electric flash lamp, and it was not blood.

Barrett, who worked on the Metal floor, and who several witnesses declare claimed a reward because he discovered the hair and blood, said the splotch was not there on Friday, and some witnesses sustained him.

There was testimony that there were frequent injuries at the factory and blood was not infrequent in the neighborhood of the ladies' dressing room. There was no blood in the elevator.

Dr. Smith, the City Bacteriologist, said that the presence of blood corpuscles could be told for months after the blood had dried. All of this bore upon the question as to whether the murder took place in the Metal Room, which is on the same floor of Frank's office. Excepting near the Metal Room at the place mentioned where the splotches varied, according to Chief Beavers' testimony, from the size of a quarter to the size of a palm leaf fan, there was no blood whatever. It is to be remarked that a white substance

190

*The Murder of Little Mary Phagan*

called haskoline used about the factory was found spread over the splotches.

CONLEY'S AFFIDAVITS

The defense procured under notice one statement and three affidavits taken by the detectives from Conley and introduced them in evidence.

The first statement, dated May 18, 1913, gives a minute detail of his actions on the 26th day of April and specifies the saloons he visited and the whiskey and beer he bought, and minutely itemizes the denomination of the money he had and what he spent for beer, whiskey, and pan sausage. This comprehends the whole of Affidavit #1.

On May 24, 1913, he made for the detectives an affidavit in which he says that on Friday before the Saturday on which the murder was committed, Frank asked him if he could write. This would appear strange, because Frank well

knew he could write, and had so known for months, but according to Conley's affidavit Frank dictated to him practically the contents of one of the notes found by the body of Mary Phagan. Frank, then, according to Conley's statement, took a brown scratch pad and wrote on that himself, and then gave him a box of cigarettes in which was some money and Frank said to him that he had some wealthy relatives in Brooklyn, and "Why should I hang?"

This would have made Frank guilty of the contemplated murder on Friday which was consummated Saturday and which was so unreasonable, it could not be accepted.

On May 28, 1913, Conley made for the detectives another affidavit, which he denominates as "second and last statement." In that he states that on Satur-

191

*The Commutation*

day morning after leaving home he bought two beers for himself and then went to a saloon and won ninety cents with dice, where he bought two more beers and a half pint of whiskey, some of which he drank, and he met Frank at the corner of Forsyth and Nelson Streets and Frank asked him to wait until he returned.

Conley went over to the factory and mentioned various people whom he saw from his place of espionage going up the stairs to Mr. Frank's office. Then Frank whistled to him and he came upstairs and Frank was trembling and he and Frank went into the private office when Frank exclaimed that Miss Emma Clark and Corinthia Hall were coming and concealed Conley in the wardrobe. Conley said that he stayed in the wardrobe a pretty good while, for the whiskey and beer had gotten him to sweating. Then Frank asked him if he could write and Frank made him write at his dictation three times and Frank told him he was going to take the note and send it in a letter to his people and recommend Conley to them. Frank said, "Why should I hang?"

Frank took a cigarette from a box and gave the box to Conley, and when Conley got across the street, he found it had two paper dollars and two silver quarters in it, and Conley said, "Good luck has done struck me." At the Beer Saloon he bought one-half pint of whiskey and then got a bucket and bought fifteen cents' worth of beer, ten cents' worth of stove wood, and a nickel's worth of pan sausage and gave his old woman \$3.50. He did not leave home until about twelve o'clock Sunday. On Tuesday morning Frank came upstairs and told him to be a good boy. On Wednesday Conley washed his shirt at the factory and hung it on the steam pipe to dry, occasioning a

192

*The Murder of Little Mary Phagan*

little rust to get on it. The detectives took the shirt and, finding no blood on it, returned it.

On the 29th of May, 1913, Conley made another affidavit, in which he said that Frank told him that he had picked up a girl and let her fall and Conley hollered to him that the girl was dead, and Frank told him to go to the cotton bag and get a piece of cloth, and he got a big wide piece of cloth and took her on his right shoulder, when she got too heavy for him and she slipped off when he got to the dressing room. He called Frank to help and Frank got a key to the elevator and the two carried the body downstairs and Frank told him to take the body back to the sawdust pile, and Conley says he picked the girl up and put her on his shoulder, while Frank went back up the ladder.

It will be observed that the testimony and the appearance of the girl indicated that she was dragged through the cinders and debris on the floor of the basement, yet Conley says he took her on his shoulder.

The affidavit further states that Conley took the cloth from around her and took her hat and slipper, which he had picked up upstairs, right where her body was lying, and brought them down and untied the cloth and brought them back and "threwed them on the trash pile in front of the furnace." This was the time that Conley says Frank made the exclamation about Emma Clark and Corinthia Hall.

An important feature in this affidavit is as follows:

Conley states in it that Mr. Frank said: "Here is two hundred dollars," and Frank handed the money to him.

All of the affidavit down to this point is in typewriting; the original was exhibited to me. At the end



Governor John Marshall Slaton





The lynching of Leo Frank

The lynching of Leo Frank



The lynching site today



Marietta Square

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

It will be noticed that the first question which would arise would be, what became of the two hundred dollars? This could not be accounted for. Therefore,

when that query presumably was propounded to Conley, the only explanation was that Frank demanded it back.

The detectives had Conley for two or three hours on May 18th trying to obtain a confession; and he denied he had seen the girl on the day of the murder. The detectives questioned him closely for three hours on May 25th, when he repeated this story. On May 27th, they talked to him about five or six hours in Chief Lanford's office.

Detective Scott, who was introduced by the State, testified regarding Conley's statement and affidavits as follows:

"We tried to impress him with the fact that Frank would not have written those notes on Friday, that that was not a reasonable story. That it showed premeditation and that would not do. We pointed out to him why the first statement would not fit. We told him we wanted another statement. He declined to make another statement. He said he told the truth.

"On May 28th, Chief Lanford and I grilled him for five or six hours again, endeavoring to make clear several points which were farfetched in his statement. We pointed out to him that his statement would not do and would not fit, and he then made the statement of May 28th, after he had been told that his previous

194

*The Murder of Little Mary Phagan*

statement showed deliberation and could not be accepted. He told us nothing about Frank making an engagement to stamp and for him to lock the door, and told nothing about Monteen Stover. He did not tell us about seeing Mary Phagan. He said he did not see her. He did not say he saw Quinn. Conley was a rather dirty Negro when I first saw him. He looked pretty good when he testified here.

"On May 29th, we talked with Conley almost all day. 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 would not do. We tried to get him to tell about the little mesh bag. We tried pretty strong. He always denied ever having seen it. He denied knowing anything about the matter down in the basement in the elevator shaft. He never said he went down there himself between the time he came to the factory and went to Montag's. He never said anything about Mr. Frank having hit her, or having hit her too hard, or about tiptoes from the Metal Department. He said there was no thought of burning the body.

"On May 18th we undertook in Chief Lanford's office to convince him he could write, and we understood he said he could not write and we knew he could. We convinced him that we knew he could write and then he wrote."

In his evidence before the jury in the redirect examination, Conley thought it necessary to account for the mesh bag, and for the first time, said that "Mary Phagan's mesh bag was lying on Mr. Frank's desk and Mr. Frank put it in the safe." This is the first mention of the bag.

The first suggestion that was made of Frank being a pervert was in Conley's testimony. On the

195

*The Commutation*

stand, he declared Frank said, "He was not built like other men."

There is no proof in the record of Frank being a pervert. The situation in which Conley places him and upon Conley's testimony must that charge rest, does not prove the charge of perversion if Conley's testimony be true.

On argument before me, asked what motive Conley would have to make such a suggestion and the only reason given was that someone may have made him the suggestion because Jews were circumcised.

Conley in his evidence shows himself amenable to a suggestion. He says, "If you tell a story, you know you have got to change it. A lie won't work and you know you have got to tell the whole truth."

Conley, in explaining why his affidavits varied, said: "The reason why I told that story was I do not want to know that these other people passed by me for they might accuse me. I do not want people to think that I was the one that done the murder."

#### AUTHOR OF THE NOTES

Conley admits he wrote the notes found by the body of Mary Phagan. Did Frank dictate them? Conley swears he did. The State says that the use of the word "did" instead of "done" indicates a white man's dictation. Conley admits the spelling was his. The words are repeated and are simple, which characterizes Conley's letters. In Conley's testimony, you will find frequently that he uses the word "did" and according to calculation submitted to me, he used the word "did" over fifty times during the trial.

While Conley was in jail charged with being an accessory, there was also incarcerated in the jail a woman named Annie Maud Carter, whom Conley had

*196*  
*The Murder of Little Mary Phagan*

met at the court house. She did work in the jail and formed an acquaintance of Conley, who wrote to her many lengthy letters. These letters are the most obscene and lecherous I have ever read. In these letters, the word "did" is frequently employed. It will be observed that in Conley's testimony, he uses frequently the word "Negro," and in the Annie Maude Carter notes, he says: "I have a Negro watching you."

The Annie Maud Carter notes, which were powerful evidence in behalf of the defendant, and which tended strongly to show that Conley was the real author of the murder notes, were not before the jury.

The word "like" is used in the Mary Phagan notes, and one will find it frequently employed in Conley's testimony. The word "play" in the Mary Phagan notes, with an obscene significance, is similarly employed in the Annie Maud Carter notes. The same is true as to the words "lay" and "love."

In Conley's testimony, he used the words "make water" just as they are used in the Mary Phagan notes.

In Conley's testimony he says the word "hissself" constantly.

It is urged by the lawyers for the defense that Conley's characteristic was to use double adjectives.

In the Mary Phagan notes, he said "long tall negro, black," "long slim, tall negro."

In his testimony Conley used expressions of this sort. "He was a tall, slim build heavy man." "A good long side piece of cord in his hands."

Conley says that he wrote four notes, although only two were found. These notes have in them one hundred twenty-eight words, and Conley swears he wrote them in two and one-half minutes. Detective Scott swore he dictated eight words to Conley and it took him about six minutes to write them.

*The Commutation*

The statement is made by Frank, and that statement is consistent with the evidence in the record, that the information that Conley could write came from Frank when he was informed that Conley claimed he could not write. Frank says he did not disclose this before, because he was not aware Conley had been at the factory on the 26th of April, and therefore the materiality of ether Conley could write any more than any other Negro employee, had not been suggested to him. Frank says that he gave the information that Conley had signed receipts with certain jewelers, with whom Conley had dealings.

WHERE WERE THE NOTES WRITTEN

At the time of the trial, it was not observed that the Death Note written on brown paper was an order blank, with the date line "Atlanta, Ga.—, 190—." Subsequently, the paper was put under a magnifying glass and in blue pencil, it was found that one Becker's name was written there. He had been employed at the factory on the fourth floor. Investigation was made and Becker testified that he worked for the pencil factory from 1908 until 1912, and the order blank was #1018. During that entire time, he signed orders for goods and supplies. The brown paper on which the Death Note was written bears his signature, and at the time he left Atlanta in 1912, the entire supply of blanks containing the figures 190—, had been exhausted, and the blanks containing the figures 191—, had already been put in use. Becker makes affidavit that before leaving Atlanta, he personally packed up all of the duplicate orders which had been filled and performed their functions, and sent them down to the basement to be burned. Whether the order was carried out, he did not know.

198

*The Murder of Little Mary Phagan*

In reply to this evidence, the State introduced on the extraordinary motion, the testimony of Philip Chambers, who swears that unused order blanks entitled "Atlanta, Ga. —, 191—," were in the office next to Frank's office and that he had been in the basement of the factory and found no books or papers left down there for any length of time, but some were always burned up.

This evidence was never passed upon by the jury and developed since the trial. It was strongly corroborative of the theory of the defense that the Death Notes were written, not in Frank's office, but in the basement, and especially in view of the evidence of Police Sergeant Dobbs, who visited the scene of the crime on Sunday morning, as follows:

"This scratch pad was also lying on the ground close to the body. The scratch pad was lying near the notes. They were all right close together. There was a pile of trash near the boiler where this hat was found, and paper and pencils were down there, too."

Police Officer Anderson testified: "There are plenty of pencils and trash in the basement."

Darley testified: "I have seen all kinds of paper down in the basement. The paper that note is written on is a blank order pad. That kind of paper is likely to be found all over the building for this reason, they write an order and sometimes fail to get a carbon under it, and at other times, they change the order and it gets into the trash. That kind of pad is used all over the factory."

Over the boiler is a gas jet.

Another feature which was not known at the trial and which was not presented to the jury, but came up by extraordinary motion, was regarding the

hair alleged to have been found by Barrett on the lathe. The evidence on the trial of some of the witnesses was

199

*The Commutation*

that the hair looked like that of Mary Phagan. It was not brought out at the trial that Dr. Harris had examined the hair under the microscope and by taking sections of it and comparing it with Mary Phagan's hair, thought that on the lathe was not Mary Phagan's hair, although he said he could not be certain of it.

This, however, would have been the highest and best evidence.

The evidence as to the probability of the blank on which the death note was written being in the basement, and the evidence as to the hair, would have tended to show that the murder was not committed on the floor on which Frank's office was located.

THE TIME QUESTION

The State contended that Mary Phagan came to the office of Leo M. Frank to get her pay at some time between 12:05 and 12:10 and that Frank had declared that he was in his office the whole time.

It is true that at the coroner's inquest held on Thursday after the murder, he said he might have gone back to the toilet, but did not remember it. However, in some of his testimony, Frank said he had remained the whole time in his office. Monteen Stover swears that she came into Frank's office at 12:05 and remained until 12:10, and did not see Frank or anybody. She is unimpeached, and the only way to reconcile her evidence would be that she entered Frank's office, as she states, for the first time in her life, and did not go into the inner room, where Frank claimed to have been at work. If Frank were to work at his desk, he could not be seen from the outer room. Monteen Stover said she wore tennis shoes and her steps may not have attracted him.

200

*The Murder of Little Mary Phagan*

However, the pertinency of Monteen Stover's testimony is that Mary Phagan had to come to get her pay and Frank had gone with her back to the Metal Room and was in process of killing her while Monteen Stover was in his office, and this was at a time when he had declared he was in his office.

The evidence loses its pertinency if Mary Phagan had not arrived at the time Monteen Stover came. What is the evidence?

The evidence, uncontradicted, discloses that Mary Phagan ate her dinner at 11:30, and the evidence of the streetcar men was that she caught the 11:50 car, which was due at the corner of Forsyth and Marietta Streets at 12:07 and one-half. The distance from this place to the pencil factory is about one-fifth of a mile. It required from four to six minutes to walk to the factory, and especially would the time be enlarged, because of the crowds on the streets on Memorial Day.

While the streetcar men swear the car was on time, and while George Epps, a witness for the State, who rode with Mary Phagan, swears he left her about 12:07 at the corner of Forsyth and Marietta Streets, there is some evidence to the effect that the car arrived according to custom, but might have arrived two to three minutes before schedule time. If so, the distance would have placed Mary Phagan at the pencil factory sometime between 12:05 and 12:10. Monteen Stover looked at the clock and says she entered at 12:05. A

suggestion is made that the time clocks, which were punched by the employees, might have been fast. This proposition was met by W. W. Rogers, who accompanied the detectives to the scene of the murder on Sunday morning, and who testified, "I know that both clocks were running, and I noticed both of them had the exact time." Therefore, Monteen

201

*The Commutation*

Stover must have arrived before Mary Phagan, and while Monteen Stover was in the room, it hardly seems possible under the evidence, that Mary Phagan was at that time being murdered.

Lemmie Quinn testifies that he reached Frank's office about 12:20 and saw Mr. Frank. At 12:30, Mrs. J. A. White called to see her husband at the factory where he was working on the fourth floor, and left again before one o'clock.

At 12:50, according to Denham, Frank came up to the fourth floor and said he wanted to get out. The evidence for the defense tends to show that the time taken for moving the body' according to Conley's description, was so long that it could not have fitted the specific times at which visitors saw Frank. It will be seen that when Mrs. White came up at 12:30, the doors below were unlocked.

Another feature of the evidence is that the back door in the basement was the former means of egress for Conley, when he desired to escape his creditors among the employees. On Sunday morning, April 27th, the staple of this door had been drawn. Detective Starnes found on the door the marks of what he thought were bloody fingerprints, and he chipped off two pieces from the door, which looked like "bloody fingerprints." The evidence does not disclose further investigation as to whether it was blood or not.

The motive of this murder may be either robbery, or robbery and assault, or assault.

There is no suggestion that the motive of Frank would be robbery. The mesh bag was in Mary Phagan's hands and was described by Conley, in his redirect examination, at the trial for the first time. The size of this mesh bag I cannot tell, but since a bloody handkerchief of Mary Phagan's was found by her side, it was urged before me by counsel for the

202

*The Murder of Little Mary Phagan*

defense, that ladies usually carried their handkerchiefs in their mesh bags.

If the motive was assault, either by natural or perverted means, the physician's evidence, who made the examination, does not disclose its accomplishment. Perversion by none of the suggested means could have occasioned the flood of blood. The doctors testified that excitement might have occasioned it under certain conditions. Under the evidence, which is not set forth in detail, there is every probability that the virtue of Mary Phagan was not lost on the 26th of April. Her mesh bag was lost, and there can be no doubt of this. The evidence shows that Conley was as depraved and lecherous a Negro as ever lived in Georgia. He lay in watch and described the clothes and stockings of the women who went to the factory.

His story necessarily bears the construction that Frank had an engagement with Mary Phagan, which no evidence in the case would justify. If Frank had engaged Conley to watch for him, it could only have been for Mary Phagan, since he had made no improper suggestion to any other female on that day, and it was undisputed that many did come up prior to twelve o'clock, and whom could Frank have been expecting except Mary Phagan under Conley's



story? This view cannot be entertained, as an unjustifiable reflection on the young girl.

Why the Negro wrote the notes is a matter open to conjecture. He had been drinking heavily that morning, and it is possible that he undertook to describe the other Negro in the building so that it would avert suspicions.

It may be possible that his version is correct.

The testimony discloses that he was in the habit of allowing men to go into the basement for immoral purposes for a consideration, and when Mary Phagan

203

*The Commutation*

passed by him close to the hatchway leading into the basement and in the gloom and darkness of the en-trance, he may have attacked her. What is the truth we may never know.

#### JURY'S VERDICT

The jury which heard the evidence and saw the witnesses found the defendant, Leo M. Frank, guilty of murder. They are the ones, under our laws, who are chosen to weigh evidence and to determine its probative value. They may consider the demeanor of the witness upon the stand and in the exercise of common sense will arrive with wonderful accuracy at the truth of the contest.

#### JUDICIARY

Under our law, the only authority who can review the merits of the case and question the justice of a verdict which has any evidence to support it, is the trial judge. The Supreme Court is limited by the Constitution and the correction of errors of law. The Supreme Court found in the trial no error of law and determined as a matter of law, and correctly in my judgment, that there was sufficient evidence to sustain the verdict.

But under our judicial system, the trial judge is called upon to exercise his wise discretion, and he cannot permit a verdict to stand which he believes to be unjust. A suggestion in the order overruling a motion for a new trial, that the judge was not satisfied with the verdict, would demand a reversal by the Supreme Court.

In this connection Judge Roan declared orally from the bench that he was not certain of the defen-

204

*The Murder of Little Mary Phagan*

dant's guilt—that with all the thought he had put on this case, he was not thoroughly convinced whether Frank was guilty, or innocent—but that he did not have to be convinced—that the jury was convinced and that there was no room to doubt that—that he felt it his duty to order that the motion for a new trial be overruled.

This statement was not embodied in the motion overruling new trial.

Under our statute, in cases of conviction of murder on circumstantial evidence, it is within the discretion of the trial judge to sentence the defendant to life imprisonment (Code Section 63).

The conviction of Frank was on circumstantial evidence, as the Solicitor General admits in his written argument.

Judge Roan, however, misconstrued his power, as evidenced by the following charge to the jury in the case of the State against Frank:

"If you believe beyond a reasonable doubt from the evidence in this case that the defendant is guilty of murder, then, you would be authorized in that

event to say, 'We, the jury, find the defendant guilty.' Should you go further, gentlemen, and say nothing else in your verdict, the court would have to sentence the defendant to the extreme penalty of murder, to wit: 'To be hanged by the neck until he is dead.' "

Surely if Judge Roan entertained the extreme doubt indicated by his statement and had remembered the power granted him by the Code, he would have sentenced the defendant to life imprisonment.

In a letter written to counsel he says: "I shall ask the Prison Commission to recommend to the Governor to commute Frank's sentence to life imprisonment. It is possible that I showed undue deference to the jury in this case, when I allowed the verdict to

205

*The Commutation*

stand. They said by their verdict that they had found the truth. I was in a state of uncertainty, and so expressed myself. After many months of continued deliberation, I am still uncertain of Frank's guilt. This state of uncertainty is largely due by the character of the Conley testimony, by which the verdict was largely reached.

"Therefore, I consider this a case in which the Chief Magistrate of the State should exert every effort in ascertaining the truth. The execution of any person, whose guilt has not been satisfactorily proven, is too horrible to contemplate. I do not believe that a person should meet with the extreme penalty of the law, until the court, jury, and Governor shall have all been satisfied of that person's guilt. Hence, at the present time, I shall express and enlarge upon these views, directly to the Prison Commission and Governor.

"However, if for any cause I am prevented from doing this, you are at liberty to use this letter at the hearing."

It will thus be observed that if commutation is granted, the verdict of the jury is not attacked, but the penalty is imposed for murder, which is provided by the state and which the judge, except for his misconception, would have imposed. Without attacking the jury, or any of the courts, I would be carrying out the will of the judge himself in making the penalty that which he would have made it and which he desires it shall be made.

In the case of Hunter, a white man, charged with assassinating two white women in the City of Savannah, who was found guilty and sentenced to be hung, application was made to me for clemency. Hunter was charged together with a Negro with having committed the offense, and after he was convicted the

206

*The Murder of Little Mary Phagan*

Negro was acquitted. It was brought out by the statement of the Negro that another Negro who was half-witted committed the crime, but no credence was given to the story, and he was not indicted.

The Judge and Solicitor General refused to recommend clemency, but upon a review of the evidence, and because of the facts and at the instance of the leading citizens of Savannah, who were doubtful of the guilt of the defendant, I commuted the sentence, in order that there should be no possibility of an innocent man being executed. This action has met with the entire approbation of the people of Chatham County.

In the case of John Wright in Fannin County, two men went to the mountain home of a citizen, called him out and shot him and were trampling

on his body, when his wife, with a babe in her arms, came out to defend her husband. One of the men struck the babe with his gun and killed it. Wright was tried, found guilty, and sentenced to death. Evidence was introduced as to his borrowing a gun. His threats, his escape after the shooting occurred at the time he was an escapee from the Fannin County Jail under indictment for felony.

I refused to interfere unless the Judge, or Solicitor, would recommend interference, which they declined to do. Finally, when on the gallows the Solicitor General recommended a reprieve, which I granted, and finally, on recommendation of the Judge and Solicitor General, as expressed in my Order, I reluctantly commuted the sentence to life imprisonment. The doubt was suggested as to the identity of the criminal and as to the credibility of the testimony of a prejudiced witness. The crime was as heinous as this one and more so.

In the Frank case three matters have developed

207

*The Commutation*

since the trial which did not come before the jury, to wit: the Carter notes, the testimony of Becker, indicating that the death notes were written in the basement, and the testimony of Dr. Harris, that he was under the impression that the hair on the lathe was not that of Mary Phagan, and thus tending to show that the crime was not committed on the floor of Frank's office.

While defense made the subject an extraordinary motion for a new trial, it is well known that it is almost a practical impossibility to have a verdict set aside by this procedure.

The evidence might not have changed the verdict, but it might have caused the jury to render a verdict with the recommendation to mercy.

In any event, the performance of my duty under the Constitution is a matter of my conscience. The responsibility rests where the power is reposed. Judge Roan, with that awful sense of responsibility, which probably came over him as he thought of that Judge before whom he would shortly appear, calls to me from another world to request that I do that which he should have done. I can endure misconstruction, abuse, and condemnation, but I cannot stand the constant companionship of an accusing conscience, which would remind me in every thought that I, as Governor of Georgia, failed to do what I thought to be right. There is a territory "beyond A REASONABLE DOUBT and absolute certainty," for which the law provides in allowing life imprisonment instead of execution. This case has been marked by doubt. The trial judge doubted. Two judges of the Court of Georgia doubted. Two judges of the Supreme Court of the United States doubted. One of the three Prison Commissioners doubted.

In my judgment, by granting a commutation in

208

*The Murder of Little Mary Phagan*

this case, I am sustaining the jury, the judge, and the appellate tribunals, and at the same time am discharging that duty which is placed on me by the Constitution of the State.

Acting, therefore, in accordance with what I believe to be my duty under the circumstances of this case, it is ORDERED: That the sentence in the case

of Leo M. Frank is commuted from the death penalty to imprisonment for life. This 21st day of June, 1915.

/s/John M. Slaton

Governor

The reaction to the commutation was immediate and vociferous. Mass meetings of indignation were held in Cobb, Fulton, and other counties.

In Marietta a group hanged effigies of both Frank and Slaton in the city park. They put the sign "Our Traitor Governor" on the governor's effigy; he was labelled the "King of the Jews."

The first issue of Tom Watson's *Jeffersonian* proclaimed: "Our grand old Empire State HAS BEEN RAPED!" and went on in a no less ferocious vein of condemnation and denunciation of John Slaton.

According to Henry Bowden:

Soon after the governor had commuted the sentence a mob formed and marched to the State Capitol seeking the governor ostensibly to do him bodily harm. When they reached the Capitol they gathered in the house of representatives. Judge John J. Hart, brother-in-law of our own Federal Judge Samuel Sibley, tried to talk to them as a pacifist, but they howled him down. It so happened that Slaton was not in his office at the time and the crowd soon broke up and departed.

Still later a mob formed in Atlanta with the idea

209

*The Commutation*

of marching on the Governor at his home. Governor Slaton did not occupy the Governor's mansion which was then located on the site of the present Henry Grady Hotel, but being a native Atlantan he resided in his own home in which he now lives located at 2962 Peachtree Road, NW. Fearing violence, the governor called out the Governor's guards, part of the state militia. Capt. Stokes was the officer in charge while one of the Lts. in the outfit was Walter W. Foote who is a kinsman of Pollard Turman's wife Laura Troutman and who now lives in Decatur, Georgia at 239 Kings Highway. The troops stationed themselves around the governor's home at a respectable distance. Jefferson Davis McCord, ex-athletic director at Emory University, was a private in the militia stationed there. A dead line was drawn in the street in front of the house. Finally the marching mob reached the line of troops. Lt. Foote got up and tried to make a speech to the mob in an effort to discourage them from carrying out their apparent purpose of doing bodily harm to the governor. He was hit with a beer bottle. One smart aleck in the mob stepped across the dead line and the soldier stationed nearest to that point flattened his nose to his face with the butt of his rifle, but other than that there were no blows struck nor shots fired. During the entire proceedings the Governor was sitting on his porch playing cards with Messrs. Robert F. Maddox, J. K. Orr and John Eagan, his friends. The mob, which numbered about 1000 men, soon saw the situation and dispersed, although the militia remained on guard for about three days.

During that week, there were fierce outbursts of anti-Semitism. Jewish businessmen in Atlanta and in Marietta closed their shops. Some of Atlanta's well-to-do Jewish citizens checked into the city's hotels and stayed there for the better part of a week.

210

*The Murder of Little Mary Phagan*

Slaton insisted on attending Nat E. Harris's inauguration, despite threats on his life. The state floor house booed, hissed, and gave loud catcalls as Slaton handed over the seal of Georgia and commented, "Governor Harris, I know that during my term of Governor this great seal of our state has not been dishonored."

Slaton slipped out of Georgia, unharmed, the following week. He and his wife vacationed in the Adirondacks in New York, then embarked on an odyssey through the country—the Northeast, the Midwest, the far West—which lasted for years. They were, in effect, exiles. Many years went by before it was considered safe for the Slatons to return to Georgia.

Thirty years later, when his wife died, John Slaton again expressed his belief in Frank's innocence in a letter to his cousin:

March 15th, 1945

Dear Cousin Lamar:

I am deeply appreciative of your letter of condolence. Few people could have written such a letter. It was so descriptive of Sallie.

After forty-seven years I can say to you she never thought an evil thought or did an evil thing.

When the mob threatened my home and my life, on account of the Frank case, she was my strength and my fortress. If I heard a light step back of me, it was hers. She wished to be by my side.

She received multitudes of letters and anonymous telephone communications that if I prevented the execution of Frank I would be killed, and she said to me: "I would rather be the widow of an honorable man than the wife of a dishonorable one."

In my judgment Frank was as innocent as I, and it was a question whether through political ambition

211

*The Commutation*

I should shirk my duty as Governor and allow the State to commit a murder.

Sallie went with me to all the meetings of the American Bar Association, and Judge Arthur Powell said of her that she was the Queen of that Body.

I received telegrams and letters from all over the United States, from judges and leading members of the Bar, expressing appreciation of Sallie's wonderful character, her sweetness and dignity. One letter came from Portland, Maine, and another from Portland, Oregon.

She made her debut at Greenbriar, White Sulphur Springs, and her sponsor and chaperon with Miss Mildred Lee, the daughter of Robert E. Lee.

My wife represented the tender grace of a day which I fear is fast fading.

I have that faith that makes me believe we shall meet in a reunion where there is no separation.

I have written you this letter because of the remarkable sweetness and tenderness of yours. It would have made Sallie so happy to have read it in life.

Affectionately,

(signed) John M. Slaton

Give my love to Cousin Bessie.

(signed) J.M.S.

## Chapter 8

# THE LYNCHING

Leo Frank's removal from Fulton Tower to the Milledgeville Prison Farm was carried out with the utmost secrecy and efficiency.

A car pulled up in front of the main doors of the prison and kept its motor running. Reporters kept watch over it; they could not get information in any other way: the telephone lines into the prison had been disconnected. Meanwhile, Frank was removed from his cell, taken to the basement, and from there to a back alley where another car waited. That car took Frank and the sheriff and deputies escorting him to Atlanta's main railroad station, where they caught a train to Macon. They arrived in Macon at approximately 3:00 a.m. and drove the remaining twenty-five miles or so to Milledgeville.

Frank had lost a substantial amount of weight during his two years in Fulton Tower, and the general dankness there had undermined his health. At Milledgeville, he was put to work in the fields, and his health, along with his spirits, improved.

The warden at Milledgeville, James T. Smith, informed newsmen that he did not need the assistance of troops: he would be able to defend his prison against attack.

Within two weeks of Frank's arrival at Milledgeville,

212

213

*The Lynching*

Georgia newspapers gave prominent coverage to the unveiling of Mary Phagan's monument.

Shortly afterwards, the Knights of Mary Phagan met near her grave. They vowed to avenge little Mary's death. A few days later, there were rumors of a plan to kidnap and lynch Leo Frank. Governor Harris put the state police on alert. The plan was, for the moment, thwarted.

Compared to the previous two years, life in Milledgeville was comfortable for Leo Frank. His daily chores, which took place outside, usually took up only four or five hours; the rest of the day he spent in voluminous correspondence. Among those with whom he corresponded was Supreme Court Justice Oliver Wendell Holmes, and to him, as to others, Frank expressed his expectation that "right and justice would hold complete sway," and that he would be completely exonerated.

The idyll didn't last. On the night of July 17, approximately four weeks after Frank's sentence had been commuted to life, William Creen, a twice-convicted murderer, slashed Frank's throat with a butcher knife, nearly severing the jugular vein. Frank probably would have died, had not Warden Smith summoned J. W. McNaughton, a physician who was also serving a life sentence at Milledgeville. Creen told the authorities he meant to kill Frank because he wanted to keep the other inmates safe from mob violence, that Frank's presence was a disgrace to the prison, and that he felt he would be pardoned if he killed Frank.

Frank hovered near death for about two weeks. Two letters, one to his mother on August 4, and one to his brother, written the day before, give some idea of Leo Frank's state of mind:

Dear Mother:

Just a few words to let you know that I am improving daily and that my dear Lucille is well and on the job. We let the night nurse go, and the day

214

*The Murder of Little Mary Phagan*

nurse will take her place, dear Lucille holding the fort in the daytime.

I hope you did not yesterday or today hear the rumor I heard — viz: that I was dead. I want to firmly and decisively deny that rumor. I am alive by a big majority. You know by my yesterday's letter that the head surgical brace story is also another fabrication.

I had a short nice letter today from Simon Wolf. He has taken a great interest in me since I am here.

With much love to you and all the folks, I am devotedly your son,

Leo

Dear Lucille joins me in fond greetings to all.

Dear Chas:

Lucille got the package OK and I thank you for the cigars. Lucille wants to know the price of the whole wheat crackers as they will be paid for by the man for whom they were bought.

I trust that this finds you and all at home well. Dear Lucille is OK and I am continually progressing to the goal of health. The wound continues to heal rapidly.

Tomorrow we let one of the nurses go and by the end of the week, the other will be unnecessary.

My appetite continues fine. We get the fresh Elberta peaches and watermelons here, grown on the Farm. The apples are stewed for me, I also sleep well. It is now just a matter of fully regaining my strength. I sit up in bed, but it will be some time before I can walk about. You know I lost a large quantity of blood which must be regenerated and made up.

The piece that I understand was in the Constitu-

215

*The Lynching*

tion about my having my head in a surgical brace is a lie out of the whole . . . In fact, I haven't now even adhesive plaster on my neck or head. Just a bandage of gauze about my neck (Please phone about this to Herbert Haas). I can move my head reasonable well now, and in time will have use of neck as before. The wound will heal up well and leave only a reasonable scar which will not show much.

I look forward to seeing you the end of the week. Lucille joins me in much love to you and all the folks.

Devotedly your brother

Leo M. Frank

The incident put the carefully-laid plans of the Knights of Mary Phagan to abduct Frank on hold.

Also during August, Tom Watson thoroughly and completely "reviewed" the governor's commutation order in *Watson's Magazine*. Watson's words undoubtedly further inflamed the feelings against the order—and against Slaton himself. Watson said:

*It was the snob governor of high society, gilded club life, and palatial environment that proved to be the rotten pippin in our barrel. With splendid integrity our whole legal 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 great people.*

Our grand old Empire has been raped. We have been violated, and we are ashamed . . . The Great Seal of State was gone, like a thief in the night, to do

216

*The Murder of Little Mary Phagan*

for an unscrupulous law firm, a deed of darkness which dared not bask in the light of the sun.

Watson reminded the public that Slaton had been a partner in Luther Rosser's law firm since May 1913, and that the governor had had a secret midnight conference with Rosser before he issued his order: "The noble Rosser went up a back street in his automobile *late at night*, stopped it a block or two away from the Governor's; and footed it through the alley," he wrote, "like an impecunious person who desired to purloin the portable property of an unsuspecting fellow creature.

"Rosser went into the home of Slaton, and remained for hours, and until *after midnight*."

According to Henry Bowden, everyday citizens were more than willing to act as informers in the case. Telephone operators, switchboard girls, elevator operators, telegraph clerks, and many others kept the phones to Dorsey's home and office busy with little facts they picked up through their jobs. One morning at 6:00 a.m. Dorsey found a street car motorman sitting on his doorstep with full information as to the time that Luther Rosser arrived at Governor Slaton's home the night before he issued his commutation order, how long he stayed, and who was with him.

Watson stated that Governor Slaton did not cross-examine Leo Frank or Jim Conley. Watson argued the following points, quoting from the official record at some times in his arguments and at others giving his own views:

#### THE UNMASHED EXCREMENT IN THE ELEVATOR SHAFT

There were only two ways of getting into the basement, the elevator and a ladder. The ladder rested on the dirt floor and it ran up to a hole which

217

*The Lynching*

was covered by a trap door. The hole was two feet square and witnesses said that it was difficult for one person to pass through the hole and descend the ladder.

Governor Slaton went to the factory and travelled up and down the elevator. He claimed that the body of Mary Phagan could not have been transported to the basement because there was excrement in the elevator shaft which was unmashed.



The bottom of the shaft was uneven so the elevator could rest upon the dirt on one part and not touch it at others; elevators at that time did not always stop exactly at the bottom.

#### NO BED-TICK IN THE PENCIL FACTORY

Even though Governor Slaton argued there was no use for cloth or sacks at a pencil factory, Herbert Schiff, Assistant Superintendent and sworn for the defendant, indicated in his evidence that "*empty sacks are usually moved a few hours after they are taken off the cotton.*"

#### HAIR ON SECOND FLOOR

Barrett discovered hair on the handle of his bench lathe early Monday morning and the hair was almost immediately recognized as Mary Phagan's, as there was only one other girl who had hair like Mary's, Magnolia Kennedy. Magnolia Kennedy had not been in the factory after Friday and she testified that the hair "was not hers and looked like Mary's."

Governor Slaton gave the public the understanding that Dr. Harris destroyed the value of that part of the State's case.

Ten days after her death, the grave of Mary Pha-

218

*The Murder of Little Mary Phagan*

gan was opened and hair was taken from her head. Gheesling, the undertaker, in preparation of the body, cleansed her hair by washing it with tar soap.

Dr. Harris did make a microscopic examination of the hair — one found on the handle of the bench lathe and the other from Mary Phagan's exhumed body. He said: "Affiant further says that the two specimens *were so much alike* that it was impossible for him to form any definite and absolute opinion as to whether they were from the head of the same person or not." His examination failed to reveal any decided difference in color, size, and texture between the two stands. The conclusion had to be made that it was Mary's hair because the defense could not prove it to be anybody else's.

#### BLOOD ON SECOND FLOOR

Mell Stanford, who had worked for Frank for two years, testified that he swept up the whole floor in the Metal Room on Friday, April 25th. "I moved every-thing, and swept everything; I swept under Mary's and Barrett's machines. On Monday thereafter, I found a spot that had some white haskoline over it, on the second floor, near the dressing room, that wasn't there Friday when I swept. The spot looked to me like it was blood, with dark spots scattered around." Herbert Schiff, Assistant Superintendent and sworn for the defendant, testified that he had seen the spots as well as other witnesses.

Governor Slaton admitted that the white sub-stance, haskoline, was found spread over the splotches.

#### CONLEY'S AFFIDAVITS

Conley was reluctant to betray his boss, a white man, and denied all knowledge of the crime. He

219

*The Lynching*

admitted that he did not tell the truth when he finally confessed, he asked to be taken to see Frank. Frank refused to face Conley because his lawyer was out of town.

## BLOOD ON MARY'S DRAWERS

The Testimony set forth by Doctors Harris and Hurt said that there was blood caked in Mary Phagan's thick hair; she had blood on her drawers, and blood on her vagina. Evidence indicated some sort of violence and penetration in the vagina which appeared to have been made prior to death.

Governor Slaton's contention was that the blood stains came from her "monthly sickness." Mary Phagan was not filthy in her personal hygiene habits and there was no evidence such as a "bandage" which would have indicated that she had "monthly sickness."

## ANNIE MAUD CARTER NOTES

William Burns, the celebrated private detective, obtained an affidavit from Annie Maud Carter in which she claimed that Jim Conley wrote her notes. She later refuted her affidavit and both Conley and Carter swore that "their letters had been changed and that the unprintable filth put in them had been forged."

## WHERE THE NOTES WERE WRITTEN

Not only did Philip Chambers swear that the order blanks were "in the office next to Frank's office" but Herbert Schiff, the Assistant Superintendent and sworn for the defendant, testified that the paper the

220

*The Murder of Little Mary Phagan*

notes were written on "can be found all over the plant," not just in the basement.

## MONTEEN STOVER'S TESTIMONY, THE TIME QUESTION

Frank was accurate in fixing the time his stenographer left "about 12:00 or a little after" and of the time of Mary Phagan's arrival "between 12:05 and 12:10, maybe 12:07." Frank did not know that Mon-teen Stover had come to his office and claimed that he was in his office "every minute." In his attempt to excuse his absence when Monteen Stover came to his office he stated that he might have "inadvertently left to answer a call of nature."

Governor Slaton argued that Frank must have been in the second office while Monteen Stover waited five minutes for him even though she swore that she looked for Frank in both the outer and inner offices and that "the door to the metal room was closed." Where was Mary, that "Monteen Stover could not see her, when Monteen was in the office, from 12:05 to 12:10?

## BLOODY FINGERPRINTS ON DOOR

Why did Frank's lawyers not require Jim Conley, the State's star witness, to make an imprint of his fingers?

## JUDGE ROAN'S STATEMENT

Governor Slaton said that Judge Roan requested a commutation. This statement is false, Judge Roan continued to say, notably to his pastor and daughter, that the evidence unquestionably demonstrated

221

*The Lynching*

Frank's guilt; and not until Judge Roan had been dead more than two months was a forged letter presented which stultified Judge Roan's record, and contradicted his judicial declarations of record in this case.

#### DOUBTS OF THE JUDGES

The twenty-three grand jurors, four of whom were Jews, thought Frank guilty, the twelve trial jurors thought so, Judge Roan at least thought the jury was satisfied in its opinion, for he refused to disturb the verdict, and none of the four appellate judges had expressed doubt, simply dissents, as to legal procedure. The Prison Commissioner was not satisfied with the sentence.

Watson's frenzied views on the facts and conjectures about the case further fanned the fears, prejudices, and anger of those in Atlanta, especially the working class, who felt so strongly about the tragedy of Mary Phagan's death.

In a July editorial of the *Jeffersonian*, Tom Watson mentioned the name, Knights of Mary Phagan, and in each subsequent issue of the newspaper, declared the great "Invisible Power" of these Knights.

He wrote that lynch mobs were a necessary tool in a democracy and were acceptable as "guardians of liberty." In the August 12, 1915 issue he wrote, "The next Jew who does what Frank did is going to get the same thing we give Negro rapists."

By then a group of about two dozen men from the Knights of Mary Phagan had been selected to reactivate the mission to abduct Leo Frank. Each was a husband and father, a wage-earner, and a church-goer. They all bore

222

#### *The Murder of Little Mary Phagan*

well-known Cobb County names. There were no heavy drinkers, no hotheads, no braggarts, and they were mostly older men. Each took a vow never in his lifetime to reveal the name of any participant.

There is an individual alive today who knows all the vigilante group members names and has told them to me. No Phagan was involved in the lynching.

The mission was prepared like a military operation. An experienced electrician was selected to cut the prison wires; auto mechanics were selected to keep the cars running. The group also included a locksmith, a telephone man, a medic, a hangman, a lay preacher: each was chosen for a reason.

The route the abductors would take had been travelled, measured, and timed. Alternate routes were selected and a timetable set. D-Day was August 16, 1915. The weather was perfect.

Lucille Frank had visited her husband the day before, Sunday, August 15. She started back to Atlanta the morning of the 16. That afternoon the eight cars of the lynch party left Marietta one by one—inconspicuously. They arrived at the prison shortly before midnight on the 16th. They first cut the phone wires. Then they split into four groups: One went to the garage and emptied the gas out of all the cars. One forced themselves into the home of Warden Smith and handcuffed him. "We have come for Leo Frank," they said. "You will find him tomorrow on Mary Phagan's grave. You can come with us, if you want."

"Damned if I go any place with you," Smith answered.

Another group went to Superintendent Burke's house and handcuffed him, and then forced him to lead them to the administrative office, where they overpowered the guard.

The fourth group rushed to Frank's cell to awaken

### *The Lynching*

him, shackle his hands behind him, and remove him to the back seat of one of the cars.

Within the prison, only the leader of the abductors spoke, and he did so briefly. The men who entered the prison said not a word and neither did the frightened Frank, clad in a monogrammed nightshirt.

It all took eighteen minutes. Frank's captors had a blueprint of the prison, and where his cell was located as well as where guard stations, phones, and electric wires were. No effort was made to resist the group that whisked Frank away. Actually, many guards were sympathetic to the abductors.

Everything went as planned except for two incidents. The man assigned to guard the warden was left behind. There was a delay while some abductors returned to the warden's residence to bring out their companion.

The other incident involved the failure to cut a long distance line to Augusta. This line was used to alert sheriffs in county seats along the possible routes to Marietta.

From several of these places, the local sheriff replied: "The parties have just passed through on their way north in automobiles."

The motorcade on the seven-hour, one hundred fifty-mile trip travelled through small towns and back roads as they returned to Marietta via Roswell Road. Forty-nine years before, General William T. Sherman had gone that way from Marietta on his march to the sea.

Along the way, the group experienced tire trouble as the rough roads took their toll. One car had to be abandoned, but the others were repaired. By then the group was aware that they had missed a telephone wire—and that officials probably knew what they were up to.

The original plan was to hang Frank either from a tree in the Marietta City Cemetery, where Mary Phagan was buried, or in the Marietta Square. But dawn was breaking when the group reached Marietta's outskirts. Too

224

#### *The Murder of Little Mary Phagan*

much time had been lost, and knowing they would be seen, they went to a more remote side of town.

Frank, frightened but apparently reconciled to his fate, said little. When asked if he wished to confess to the murder of Mary Phagan before being hanged, he is reported to have said "I think more of my wife and mother than I do of my life."

"Mr. Frank, we are going to do what the law said to do, hang you by the neck until you are dead," the leader said to Frank, asking if he had any last request. Frank asked that his gold wedding band be removed and returned to his widow.

In the grove hidden from Roswell Road at Frey's Gin Mill (where developer Roy Varner's Professional Building now stands), they prepared Leo Frank to be hanged. A piece of brown khaki cloth was tied around Frank's waist, since he had been taken from prison wearing only a nightshirt. A white handkerchief was fastened over his eyes. He was placed on a table. A three-quarter-inch rope tied by the hangman was lowered over a tree branch and around his neck.

The table was kicked from under his feet. Frank was lifted high in the air. The drop from the makeshift gallows opened the wound on his neck. The time was about 7:00 a.m., on August 17, 1915.

The word spread fast that Leo Frank had been hanged. Scores of people raced to the hanging site on foot, via bicycles, by horseback, and in what few autos then were available.

One of the first to arrive was a prominent young Mariettan who had been rejected as a lyncher because of his high temper and drinking habits. "We thank you, God, for allowing these men to do this grand and glorious deed," the rejected lyncher shouted, "but damn their souls for not letting me help. They won't put any monument

225  
*The Lynching*

over you (Frank). They are not going to get a piece of you as big as a cigar."

People with cameras snapped Frank's picture as his body swayed in the breeze. Picture post cards of the lynching were sold for years as souvenir items in Georgia stores. Pieces of Frank's clothing were cut away, the tree stripped of many low-hanging limbs, and the rope cut up and taken as souvenirs.

Marietta hardware stores sold out of rope after the hanging. Enterprising citizens bought the rope, cut in into pieces, and sold it as mementoes.

When Frank's body was cut down, a citizen tried to grind his shoe into Frank's face. Newt A. Morris, a former judge of the Blue Ridge Circuit, stepped forward to stop him and to quiet the crowd.

"Whoever did this thing left nothing more for us to do," Morris told the crowd. "Little Mary is vindicated; her foul murder is avenged. Now I ask you, I appeal to you as citizens of Cobb County, not to do more. I appeal to you to let this undertaker take it."

Morris soon was joined by Canton attorney John Wood, who later became a congressman, in appealing to the crowd. He helped Morris load the body into a basket and place it in a W. J. Black Funeral Home wagon that hauled it to the National Cemetery gate where it was placed in Wood's car and rushed to Atlanta.

At Ashby and Marietta Streets, an ambulance from Greenberg & Bond met Wood's wagon and took the body.

A crowd gathered around the funeral home, demanding to see the dead man's body. Fearing violence, police persuaded Mrs. Frank to consent. The crowds were allowed to view the body.

Later, Leo Frank's body was shipped to his parents' Brooklyn home and buried on August 20th in Mount Carmel Cemetery. Carved on his tombstone is the Latin

226

*The Murder of Little Mary Phagan*

phrase *Semper Idem*—which means "always the same, nothing changes."

Before the day's end, Fiddling John Carson was wailing on the courthouse steps:

*Little Mary Phagan went to town one day,  
And went to the pencil factory  
to see the big parade.  
She left her home at eleven,  
And kissed her mother good-bye,  
Not one time did that poor child think  
That she was going to die.  
Leo Frank met her, with a brutally heart we know,  
He smiled and said, "Little Mary,  
Now you will go home no more."  
He sneaked along behind her,  
Till she reached the metal room,*

*He laughed and said, "Little Mary  
you have met your fatal doom."*

Ex-Governor Slaton and Mayor Woodward, of Atlanta, were in San Francisco on the day of the lynching.

On August 18 Slaton addressed the California Civic League and declared he preferred to have Frank lynched by a mob rather than by judicial mistake because "one reached the soul of civilization, the other merely reached the body."

Mayor Woodward addressed the California State Assessors' Association and declared that Frank had suffered a "just penalty for an unspeakable crime."

A Cobb County coroner's jury met on August 24, heard witnesses, and ruled that Frank was "hanged by persons unknown." A Cobb grand jury investigated the hanging for several days but said it couldn't identify any of the men involved. Several lynchers reportedly were members of the grand jury. No lyncher was ever arrested.

227  
*The Lynching*

Tom Watson sent the following telegram to Mariettan Robert E. Lee Howell: "There's life in the old land yet." He applauded the hanging: "In putting the sodomite murderer to death, the viligance committee has done what the sheriff would have done, if Slaton had not been of the same mould as Benedict Arnold . . . Georgia is not for sale to rich criminals."

In the *Jeffersonian*, he raged:

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 one hundred 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.

228

*The Murder of Little Mary Phagan*

They tried to "run over" the people and the courts of Georgia, and *we wouldn't let them do it*. That's all.

Leo Frank's wedding ring was delivered to O. B. Keeler, Marietta reporter for the *Atlanta Georgian*, at his Marietta home the following evening.

On Thursday, August 19, Keeler's account of the incident was published in the *Atlanta Georgian*. Some idea of the importance attached to the story may be gained from the prominence given the story.

The banner headline read "FRANK'S WEDDING RING RETURNED" across the top of page one. A two-column, three-line readout said "DYING WISH OF MOB'S VICTIM CARRIED OUT BY UNKNOWN MESSENGER," beneath the banner headline. The story was in twelve-point type; it occupied the two right-hand columns of page one and continued on page two, where it filled two more columns.

Keeler's first-person account read:

Old Books say if you put beneath your pillow an object that has been associated with tragedy, or any scene of great stress and profound emotional excitement—if such an object be placed near you while you sleep—you will dream the thing that gave the object its most terrible significance; the scene will be reconstructed for you, and the act reenacted.

This is not true. Not always true, at least. For in my pillow last night was the wedding ring of Leo M. Frank. And I dreamed of nothing that could concern him in any way.

And if any object in this world today has been close to tragedy and aligned with horror, it is the wedding ring of Leo M. Frank.

229

*The Lynching*

Keeler, who had covered every session of the trial for the *Atlanta Georgian*, then told of the many times he had seen the ring on Frank's finger during the trial and during Frank's stay of nearly two years in the Fulton County Tower.

Whatever is the truth of April 26, 1913, Leo M. Frank wore that ring at the National Pencil Factory that day. And Leo Frank wore that ring on the dreadful ride to his doom, in the oak grove just outside of Marietta. And who will say that the supreme moment of his agony was not when he took off that ring and stood up to die?

If ever an object was charged with tragedy, it is the wedding ring of Leo M. Frank. And it was in my pillow Wednesday night. And I dreamed a ridiculous little dream of being a kid again, at dancing school, and the waltz they were playing was "Beaming Eyes." So I should say there is not much to the old idea of psychic dream-influences.

Keeler related how the ring came into his possession:

It was a little later than 8:00 Wednesday evening, and I was in the front room of my small house at No. 303 Polk Street in Marietta [Today it is at the southwest corner of Polk Street and Powder Springs Connector].

I had just started the Victrola on a selection passionately adored by the two very young members of my family—"The Robert E. Lee Medley," by a lively band. It is very lively and ragged.

The band had just got into full swing when there was a step on the veranda outside the open door, then a knock. I went to the door, opened the screen, and stepped out.

There was a man on the veranda. He had something white in his hand. The following dialogue took place:

230

*The Murder of Little Mary Phagan*

"Is this Mr. O. B. Keeler?"

"It is."

"I have a note for you."

That was all. He spoke clearly and deliberately. He handed me an envelope. He turned and walked down the steps and away in the dark. He wasted no time, but he was not in a hurry.

Keeler opened the envelope, which contained the ring and a typewritten note. He took the note to the dining room where there was a light on the table. The note read:

Frank's dying request was that his wedding ring be given to his wife. Will you see that this request is carried out?

This note will be delivered to you by a man who you do not know and who does not know you. Make no effort to find out his identity.

Keeler wrote, "I am making no effort to find out his identity. And I am undertaking to deliver the ring to Mrs. Leo M. Frank. It is a trust."

On the following day, Keeler delivered the ring to Mrs. Frank in Atlanta. She denounced Keeler roundly, and accused him of being among the group of men who hanged her husband.

Keeler said that he had accepted the trust with mingled emotions. "It was because of something else—another circumstance, which I will tell too, because the outside world may find it of interest and perhaps of information concerning the county and town in which I live—Cobb County and Marietta—in which county and near which place Leo M. Frank was hanged at 7:05 o'clock the morning of Tuesday, August 17."

Keeler said he knew what bad things were being said by the newspapers of the state and he had an idea of what would be said by newspapers outside of it.

231

*The Lynching*

He related:

I am a newspaper man. But I am not writing this as a newspaper man. I am writing this as a man who has lived in Cobb County for twenty-five years. And I am telling it to the limit of my ability as a reporter and observer of some little experience.

In our home when the ring came was a guest—a young woman from Kansas City, Missouri. She had arrived the evening before, from the North. She had never been in the South before. She had read stories of the Frank Case in the Kansas City newspapers—which in the end made a great effort to show Frank's innocence.

This guest, you might say, was a "stranger within our gates." And the experience of the ring, following so closely the tragedy of the day before, had a tremendous effect on her. I sought an unbiased view. I found it—and the intelligent one.

She was saying:

"Why it is something out of a book—I can't believe such things happen, really. But . . . why—I SAW the man, myself . . . and the ring. I can't believe it, but I know it is so."

I said: "What do you think about it now?"

And she told me: "I read about the Frank lynching coming down on the train from Nashville. And I wondered: What am I getting into—what sort of people are these? I knew it took place quite near where I was going. And it frightened me."

I said: "You reached this town exactly twelve hours after the hanging. Did it look like that kind of a town to you then?"

She said: "It did not. I thought it was the quietest, most peaceful-looking little place I ever was in. I never met more kindly or hospitable or friendly peo-

232

*The Murder of Little Mary Phagan*

ple than at the party this afternoon. Why, I just know they are good people."



Of course, she hadn't met them all, having been in Marietta only twenty-five hours. But I have lived here the same number of years. And our opinions agreed exactly.

Explaining what he meant by "agreeing exactly," Keeler said:

I know what was done to Leo M. Frank, in that oak grove, the morning of August 17. It is said that men of Cobb County did it. I do not know about that. But I do know what was done that morning.

Also I know what the people of Marietta did for me and my family when I lay near death from pneumonia last spring.

And then you see, I have lived among these people for twenty-five years.

And I know they are good people.

One of the "young members" Keeler referred to was his son, George Keeler. George Keeler related to me the events that occurred. He told me: "My father, the late O. B. Keeler, was on the staff of the *Atlanta Georgian* in 1913 and reported every session of the Frank trial for that newspaper, and he said many times there was never any doubt in his mind as to Frank's guilt. He said the defense did everything it could to lay the blame on the Negro janitor, Jim Conley.

"He said, 'Conley, an illiterate Negro, could not possibly have made up the complicated story he told of Frank's sexual adventures, a story the defense lawyers could not shake after days of hammering on him.' And, my father pointed out, Frank had the best lawyers in the state that money could buy.

233

*The Lynching*

"Two years later, and well into the night of August 16, 1915, a telephone call from the *Georgian* informed my father the paper had received a report that a group of men was headed for the State Prison at Milledgeville with the intention of seizing Frank and taking him to Marietta and there to hang him over the grave of Mary Phagan. My father was instructed to go to the cemetery and await developments.

"My father went to the cemetery, and when nothing happened by dawn, he proceeded to the Cobb County Courthouse on the City Square. Shortly after my father arrived at the Courthouse, a farmer came in and said, 'There's a bunch of men at Frey's Gin and they're up to something.' This was early morning of August 17, 1915.

"The next evening, about dusk, a stranger appeared at the Keeler home on Polk Street and handed my father an envelope. The envelope contained a typewritten note and a wedding ring. The note said the ring was Frank's, and requested my father to deliver the ring to his wife.

"The next day, August 19, 1915, my father delivered the ring to Mrs. Frank and wrote the account of how the ring had come into his possession and what he had done with it—in a story that was published that day in the *Georgian* under an eight-column banner headline on page one.

## Chapter 9

# REVERBERATIONS

The Knights of Mary Phagan stood guard for at least one day and one night at the tree from which they had hung Leo Frank, apparently expecting that someone—perhaps souvenir hunters or someone on the orders of Governor Harris, who had offered a reward for the conviction of any of the lynch party—might cut it down.

Two months after the lynching, the group climbed to the top of Stone Mountain, outside Atlanta, and burned a large cross. They say it was visible all over Atlanta.

On October 26, 1915, William J. Simmons, an ex-Methodist minister and a member of at least eight fraternal orders, gathered together thirty-four men, including members of the Knights of Mary Phagan and three former Ku Klux Klan members, and signed an application to the State of Georgia to charter the Knights of the Ku Klux Klan.

On November 25, Thanksgiving Day, Simmons again convened this group and they again ascended Stone Mountain and formally inaugurated the new Invisible Empire of the Ku Klux Klan. They again burned a large cross.

The original Ku Klux Klan, founded in Nashville, Tennessee, in 1867, was a secret society opposed to the Reconstruction policies of the radical Republican Congress and whose purpose was the re-establishment of white supremacy in the South. General N. B. Forrest, well-

234

235  
*Reverberations*

known Confederate cavalry leader, was the first Grand Wizard of the Empire. The Empire immediately began a campaign of terror against ex-slaves and whites who involved themselves in black causes. They operated at night, their identities obliterated under white sheets. Their methods were flogging, torture, and lynching. They usually planted a burning cross on the property of someone whom they felt they had to threaten. It was their calling card.

It has been said that the Mary Phagan-Leo Frank case was the spark that rekindled the Ku Klux Klan.

As whites regained control of state governments in the South the Klan's power faded. In 1869 General Forrest ordered the abandonment of the Klan and resigned as Grand Wizard. But local organizations continued, some for many years.

The release, in 1915, of D. W. Griffith's "Birth of a Nation" further fueled the fires of the new Invisible Empire, which added to its motto of "white supremacy" anti-Catholicism and anti-Semitism. Its appeal, therefore, was wider than that of the original Klan. In the early 1920s, with the help of experienced promoters and fundraisers Edward Y. Clarke and Elizabeth Tyler, the Klan began exercising strong control over local politics throughout the South and spread rapidly into the North, especially Oregon, Oklahoma, Indiana, Maine, and Illinois. In 1922, 1924, and 1926, it elected many state officials and a number of Congressmen. At one point the Invisible Empire claimed a million members.

For ten years after its inauguration—or re-inauguration—the Klan exercised a career of terror. Then the death of another girl destroyed its power. In 1926, David C. Stephenson, who had ousted William Simmons from the leadership of the Klan and was at that time Imperial Wizard, was convicted of second-degree murder in the death of Madge Oberholtzer, whom, in consort with other Klansmen, he had kidnapped, raped, and abducted to

236

*The Murder of Little Mary Phagan*

Chicago from Irvington, Indiana. The case, which included some revolting perversions, created a widespread revulsion against the Ku Klux Klan. Throughout the 1930s its influence weakened irreparably. In 1944 it was formally dissolved.

Five years later, however, groups from six Southern states met to attempt to reform a national organization. During the Civil Rights era, the Klan again raised its head. It has never really died. It is recruiting members today. It recently attempted to involve my family.

In the months following the lynching about three thousand Jews left the State of Georgia. Those who remained—and particularly those in Atlanta—were financially crippled by a huge boycott of Jewish businesses.

The Jewish community, or at least some of its more prominent members, had felt, in fact, an increasing anti-Semitism for the previous three decades or so. This feeling mounted as resentment of the monies which poured in from Jewish organizations around the country—particularly in the North—to aid in Leo Frank's defense and subsequent appeals soared.

If Mary Phagan's death and Leo Frank's lynching gave impetus to the resurgence of the Ku Klux Klan, they also gave impetus to the formation of the Anti-Defamation League of B'nai B'rith.

At the time of his arrest, Leo Frank was president of the Atlanta chapter of B'nai B'rith, the Jewish fraternal order which had been founded in 1843. There were plans for the organization of its Anti-Defamation League, to combat anti-Semitism in the United States and "to work for equality of opportunity for all Americans in our time," as their charter reads, but it took the condemnation of Leo Frank to galvanize it into being. The League was established four weeks after Leo Frank's trial ended. As Dave Schary, the fourth national chairman of the League has stated, "Certainly the B'nai B'rith would have founded the League sooner or later, but the story of Leo Frank

237

*Reverberations*

struck the American Jewish community like nothing before in its experience. It was Frank's destiny to give the League a sense of urgency that characterizes its operations to this day."

At the founding ceremonies of the League, Adolph Kraus, then national president of B'nai B'rith, commenting on the widespread prejudice and discrimination, said:

Remarkable as it is, 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, it demands organized and systematic effort on behalf of all right-thinking Americans to put a stop to this most pernicious and un-American tendency.

The Anti-Defamation League practically from its inception vigorously opposed all lynchings. It, along with the NAACP, works to correct falsehoods in all forms of media and to distribute information correcting misconceptions about Judaism. It owes its genesis to Leo Frank. And to Mary Phagan.

After Leo Frank's death, Lucile Frank became a pillar of the Atlanta Jewish community. She worked in one of the better women's clothing shops, never remarried, and until she died, in 1957, signed all her checks and papers "Mrs. Leo M. Frank."

In March 1916 Fannie Phagan Coleman sued the National Pencil Company for damages. It was settled out of court and she was awarded several thousand dollars. She died in August 1947 at age seventy-five. She was buried beside Mary.

Tom Watson was indicted and tried in the United States District Court for sending obscene matter through

238

*The Murder of Little Mary Phagan*

the mail and was acquitted in 1916. Initially he supported Hugh Dorsey in the gubernatorial race. Dorsey won, and remained governor of Georgia until 1921. In 1920 Dorsey ran for the United States Senate, but Watson himself ran and won. Two years later he died from a bronchial attack. One of the memorials on his grave was a cross, eight feet high, made of roses. The Ku Klux Klan had sent it.

Jim Conley served less than a year of his sentence on a chain gang.

Some months after that, he was convicted of breaking and entering a business establishment in the vicinity of the Fulton County court house, and was sentenced to twenty years' imprisonment, which he served. It was after that that he and my grandfather and my aunt had the famous (in our family) conversation about little Mary Phagan. Then he apparently disappeared.

In 1941 he was among a group picked up for gambling by the Atlanta police. In 1947 he was again arrested—on a charge of drunkenness.

He died in 1962. Rumors of a deathbed confession of his having killed Mary Phagan have grown increasingly more persistent. On April 6, 1987 my father and I spoke with three members of the Anti-Defamation League—Stuart Lewengrub, Regional Director of the Southeast Office; Betty Canter, Assistant Regional Director of the Southeast Office; and Charles Wittenstein, Counsel for the Southeast Office. The League, we felt, would certainly have tracked down and confirmed this rumor. All three were emphatic: the rumor had no basis in truth.

Publications, films and plays concerning the Mary Phagan-Leo Frank case began even before Leo Frank was lynched:

1914—*The Frank Case: Inside Story of Georgia's Murder*, published by Atlanta Publishing Company. Argument of Hugh Dorsey, Solicitor for Fulton County, published.

239

*Reverberations*

1915—C. P. Connolly reported the trial in *Collier's Weekly* and then published a book, *The Truth About the Frank Case*.

1922—The French journalist, Van Paassen, claims that the teeth marks on Mary Phagan's head and shoulders do not match the X-rays of Leo Frank's teeth. He publishes his findings in the book, *To Number Our Days*, in 1964.

1936—*Death in the Deep South* by Ward Greene published.

1937—"They Won't Forget," a movie based on Ward Greene's novel and starring Lana Turner as little Mary Clay appears.

1938—*Tom Watson: Agrarian Rebel* by C. Vann Woodward published.

1943—*I Can Go Home Again* by Arthur Powell published.  
1952—*Guilty or Not Guilty* by Francis X. Busch published.  
1956—*Night Fell on Georgia* by Charles and Louise Samuels published.  
1959—*Confessions of a Criminal Lawyer* by Allen Lumpkin Henson published.  
1962—"Profile in Courage" series is aired by NBC. One deals with John M. Slaton.  
1965—*A Little Girl is Dead* by Harry Golden published.  
1967—A five-part series on the trial appears in the *Atlanta Constitution*, and the play, "Night Witch" has a short run.  
1968—*The Leo Frank Case* by Leonard Dinnerstein published, reissued in 1987.

There have been innumerable murders in Georgia since April 26, 1913, when little Mary Phagan was murdered. None have continued to fascinate the public as my great-aunt's tragedy has. Students, writers, and the curious continue yearly to visit the Georgia Department of Archives, Georgia State University, and Emory University to study the case. And many people still pay tribute to little Mary Phagan by visiting her grave. It is the history of Georgia. It is my history.

## Chapter 10

# ALONZO MANN'S TESTIMONY

At the end of February 1978, my coworkers at Griffin CESA jokingly told me I was on the front page! Silence fell over the room. The look in my face must have told them something: it couldn't be. Why was it on the front page now? It seemed I could never escape.

I picked up the newspaper. It was the *Atlanta Constitution*. The banner headline read: "THE MURDER OF MARY PHAGAN" by Celestine Sibley. A preface before the story indicated that they were doing a series on famous murders in Georgia.

My father and I found several inaccuracies in the articles on Mary Phagan and felt we had to voice our opinion to the author. My father called Celestine Sibley, but the call was never returned. He was surprised.

Several other Phagans were quite upset by the articles. John Phagan Durham, son of Lizzie Mary Etta Phagan, who made little Mary's dress, and first cousin of little Mary Phagan, went to Mr. Sears, the Managing Editor of the *Atlanta Constitution* and asked that the articles be stopped. He said that Mr. Sears replied: "We cannot stop the articles, and if we have caused hard feelings with the Phagan family we apologize. And if you would correct the factual inaccuracies, we would correct them." Phagan

*Alonzo Mann's Testimony*

Durham informed Mr. Sears that he, Phagan Durham, would not make the corrections because the series appeared on the front page, and he was certain the corrections would not appear on the front page. People would not see them. He left, frustrated.

The series rekindled interest concerning the murder of little Mary Phagan and its aftermath. Principals, teachers, students, optometrists, and ophthalmologists in the eight counties my work covered asked me that question: "Are you, by any chance, related to little Mary Phagan?"

The questions became more intense: people wanted details on the trial and the lynching and wanted to know if any of the Phagans were involved with the lynching.

I wanted the truth to be known. I wanted the inaccuracies corrected. I became more articulate in discussing the case, and I felt a sense of confidence since I knew the story well and could answer most of the questions.

I had plans to marry in June of that year. Bernard knew nothing of the story of little Mary Phagan. I had never told him. He, like most, had read the series in the newspapers, and one night he mentioned that a girl was murdered who had my name; then he, too, wanted to know: "Are you, by any chance, related to her?"

"Yes," I said, "I am."

Why, he wanted to know, had I never told him? "You never asked," I said.

Then I told him: I told him the story and why the Phagan family had remained silent. But, I told him, we had something to say now, and my father agreed and was beginning to let it be known that there were close relatives of little Mary Phagan who were still living.

Daddy hadn't gone so far as to publicly acknowledge our existence, but had let certain individuals know in nonchalant ways.

Bernard asked if I had ever been to the grave. I hadn't.

242

*The Murder of Little Mary Phagan*

I was bothered that my name was on a tombstone. Right then we determined to go.

We drove to Marietta. I was extremely quiet, and Bernard responded with silence. It was time: I felt the desire to go to the grave.

It was a beautiful day—sunny, with a light breeze. As we neared the cemetery, I began to feel sick to my stomach. Now I wasn't quite sure if I wanted to see the grave.

"We're here," Bernard said suddenly.

I hesitated. "Are you all right?" he asked. Somehow, I felt inner strength. "I'm ready," I told him softly.

The plot was located in the wealthy section of the cemetery. There, beside little Mary, were other Phagan family members, including William Jackson Phagan and Angelina O'Shields Phagan.

Little Mary Phagan's grave was like none other that I had seen before. It had a marble tombstone which bore her name and an inscription the length of the burial place in marble. It was a beautiful inscription and was written by Tom Watson. I immediately memorized it.

Bernard and I took photos for the scrapbook about Mary I had begun assembling. A middle-aged couple approached us and asked if we knew where the grave of little Mary Phagan was. The articles in the newspaper had once again revived interest in her.

A sense of sadness for my relatives, especially those who had lived through the horrible ordeal, came over me. And I admired them for not seeking publicity and wishing to remain anonymous.

That year, 1978, proved to be full of beginnings and firsts for me. It was the first time my father had acknowledged our relationship to Mary by contacting a reporter; the beginning of a scrapbook of little Mary Phagan; my first visit to the grave of little Mary Phagan; and my first car accident—which turned out to have a connection to Mary Phagan.

243

*Alonzo Mann's Testimony*

A few days after the accident I decided to check on the elderly lady who had struck my car and to find out if she had turned in the insurance papers. She was a wealthy, prominent member of the community in which she lived. Her house was extraordinarily beautiful. When she answered the door, I explained that I was the individual involved with her in the accident, and I was checking to see if she had turned in the insurance papers. She welcomed me inside her home and told me that she was becoming blind and deaf and did not have anyone to help her fill out the forms. She asked me if I would help. I filled out the paperwork, and, with a magnifying glass, she read it to correct the errors. When she came to my name, she abruptly turned to me and asked me that question: "Are you, by any chance, related to little Mary Phagan?"

When I said "Yes," she hugged and kissed me. Then she related her memories of it.

She and her husband drove their horse and buggy to Atlanta and saw the crowd of people waiting to hear the trial. Apparently it had been an overwhelming sight. The majority of the people at that time felt that Leo Frank was guilty, she said, and she believed it too. She still believed it. She excitedly told me about life in that era and how many changes she had seen in her ninety-two years. She liked some of the changes, but others she disliked. I had a wonderful time, and she invited me to have lunch with her. She had found that I listened to her attentively, and nowadays it seemed that no one really listened anymore.

The next day, I received another invitation for lunch. For the rest of the school year, I would lunch with her on Mondays. We became very close.

In 1980, Bernard and I moved to Cobb County, where my family had begun. Since the travel was too far and too much for me, I resigned my position at Griffin CESA and began employment for the Cherokee County Board of

244

*The Murder of Little Mary Phagan*

Education in Canton, Georgia as the itinerant teacher for the blind and visually impaired.

When school began in August, my supervisor introduced me to the principals for whom I would be working. Several of them asked me that recurrent question: "Are you, by any chance, related to little Mary Phagan?"

At one of the schools the principal was not available to meet me, but as we were leaving, he ran out after us and asked me my name and what position I held for the county. He took out his pen from his shirt pocket, and as I told him my

name, he wrote it on the palm of his hand. He stared at it and asked me that question.

I told him "yes."

He erased my name from his hand and told me he would never forget my name. From that moment on, Mr. Tippens called me "little Mary Phagan," and introduced me as such. I didn't mind.

### **ALONZO MANN**

On Saturday, March 6, 1982, Sue Youngblood, one of the secretaries where I worked, called. She was very upset. She had been watching television and heard a promotional late news headline, something to the effect of: "An eyewitness says Leo Frank was not guilty of the murder of little Mary Phagan. More details on the eleven o'clock news.

Stunned and bewildered, I waited for the hours to pass. How could there be a witness alive?

The local news provided a report from two reporters, Colin Sedor from Georgia, and Jerry Thompson from Tennessee. They discussed the era of the crime and the basic facts of the case. Then they showed an interview with Alonzo Mann, a man who said he had seen Jim Conley with the body of Mary Phagan. Mann, now eighty-three

245

#### *Alonzo Mann's Testimony*

years of age and living in Virginia, appeared calm and competent as he spoke of these events.

Alonzo Mann claimed that he had attempted to relate what he had seen for years—and that no one seemed interested. After a while, he told reporters, he had given up.

He told reporters of the *Tennessean* that as a soldier during World War I he'd engendered a heated argument with another soldier—who happened to be from Georgia—when he said that he knew that Leo Frank did not kill Mary Phagan.

Over the years he told his wife, his relatives, and his closest friends his story. During the 1950s, he told it to a reporter of an Atlanta newspaper. But, Mann stated, the reporter said he didn't want to stir up the anti-Semitism that had engulfed Atlanta during the trial and at the time of the commutation. "Mrs. Frank is still alive," the reporter had also said, "and we wouldn't want to do anything to cause her any more grief."

At about the time he gave his testimony to the media, Mann agreed to a polygraph test and a psychological stress analysis.

The psychological stress analysis electronically measures and charts, with a needle and graph, the stress in the voice in response to questions: the greater stress there seems to be, the greater the probability that the subject is not telling the truth.

The polygraph, broadly used by law enforcement personnel across the United States, tests whether the subject is telling the truth by measuring the respiratory rate, blood pressure, skin reaction, and pulse rate.

In both procedures, the subject responds to questions and a pattern is printed out on graph paper connected to the machines which are connected to the subject's body.



Alonzo Mann, according to both tests, told the truth consistently.

246

*The Murder of Little Mary Phagan*

Alonzo Mann's story was a new twist on the facts presented since 1913. He said that Jim Conley had said to him, "If you ever tell anyone, I'll kill you." He had gone home and repeated what he had seen and what he'd been told by Conley to his mother. She told him to be quiet, and he had been.

Now, after almost seventy years of silence, he decided to come forward to be at peace in his heart.

I wasn't the only one who was stunned. And I could not believe that Alonzo Mann would wait seventy years to reveal his eyewitness testimony. My father and I discussed at length the plausibility of Alonzo Mann's statements. We decided to remain silent until the sensationalism of the story quieted down.

It didn't.

On March 7, 1982 the Nashville *Tennessean* ran a special supplement which bore the headline, "AN INNOCENT MAN WAS LYNCHED." The copy began, "Leo Frank, convicted in 1913 and lynched in 1915, in one of the most notorious cases in American history, was innocent, according to sworn testimony by a witness in the case." The section contained quotations of the letters Leo Frank wrote his family from prison, Alonzo Mann's statement—and the print-out of the polygraph test he had taken. It contained photos of him at Mary Phagan's grave. The supplement was nominated for a Pulitzer Prize.

Between the publication of that special supplement and Alonzo Mann's appearance before the Georgia Board of Pardons and Paroles, reporters on the staff of the *Tennessean* initiated plans for a book, and had even spoken to the producer of the television miniseries, "Winds of War." Pardon Board Chairman Mobley Howell was quoted as saying that the entire affair had taken on a "showman quality."

Also, on March 7, 1982 Cassandra Clayton, another local reporter, reported an interview with Bernie Dukehart, brother of one of the members of the lynching mob,

247

*Alonzo Mann's Testimony*

in which Dukehart said that Alonzo Mann's statements changed nothing and that his brother always felt that Leo Frank was guilty. On the same newscast there was an interview with Jasper Yeomans, the son of Leo Frank's defense attorney. The reporter also spoke briefly with Stuart Lewengrub of the Anti-Defamation League, who expressed the desire that a posthumous pardon be granted. It was also reported that the Phagan family members denied the station's request for an interview and were tired of their name being dragged through the mud. The Phagan family member who denied the interview was John Phagan Durham.

Ironically, at this point no one in the media knew that either my father or I existed. And several older Phagans who had lived through the murder and its aftermath had also kept silent, even though the media contacted them. They did not discuss the case with even their closest friends.

On March 8, 1982 a review of the story appeared, with the conclusion that a posthumous pardon for Leo Frank was unlikely.

Alonzo's testimony read:

IN THE STATE OF TENNESSEE, COUNTY OF  
SULLIVAN

The undersigned, being duly sworn, deposes as follows:

My name is Alonzo McClendon Mann. I am eighty-three years old. My father was Alonzo Mann, who was born in Germany. My mother was Hattie McClendon Mann. When I was a small boy my family moved to Atlanta where I spent most of my life.

In 1913 I was the office boy for Leo M. Frank, who ran the National Pencil Company. That was the year Leo Frank was convicted of the murder of Mary Phagan. I was fourteen years old at the time. I was

248

*The Murder of Little Mary Phagan*

called as a witness in the murder trial. At that time I was put on the witness stand, but I did not tell all that I knew. I was not asked questions about what I knew. I did not volunteer. If I had revealed all I knew it would have cleared Leo Frank and would have saved his life.

I now suffer from a heart condition. I have undergone surgery to implant a pacemaker in my heart. I am making this statement because, finally, I want to have the record clear. I want the public to understand that Leo Frank did not kill Mary Phagan.

Jim Conley, the chief witness against Leo Frank, lied under oath. I know that. I am certain that he lied. I am convinced that he, not Leo Frank, killed Mary Phagan. I know as a matter of certainty that Jim Conley—and he alone—disposed of her body.

Jim Conley threatened to kill me if I told what I knew. I was young and I was frightened. I had no doubt Conley would have tried to kill me if I had told that I had seen him with Mary Phagan that day.

I related to my mother what I had seen there at the pencil factory. She insisted that I not get involved. She told me to remain silent. My mother loved me. She knew Conley had threatened to kill me. She didn't want our family's name to be involved in controversy or for me to have to be subjected to any publicity. My father supported her in telling me to remain silent. My mother repeated to me over and over not to tell. She never thought Leo Frank would be convicted. Of course, she was wrong. Even after he was convicted my mother told me to keep secret what I had seen.

I am sure in my own mind that if the lawyers had asked me specific questions about what I had seen the day of Mary Phagan's death I would have told the whole truth when I testified at Frank's trial.

249

*Alonzo Mann's Testimony*

Of course they didn't suspect what I knew. They asked me practically nothing. I was nervous and afraid that day. There were crowds in the street who were angry and who were saying that Leo Frank should die. Some were yelling things like "Kill the Jew!"

I was very nervous. The courtroom was filled with people. Every seat was taken. I was interested mostly in getting out of there.

I spoke with a speech impediment and had trouble pronouncing the "r" in Frank's name in those days. The lawyers put their heads together and said that it was obvious I knew nothing and since I was so young they would let me off the stand. It was not an easy place for a young boy to be, there in court like that.

I never fully realized until I was older that if I had told what I knew Leo Frank would have been acquitted and gone free. Instead he was imprisoned.

After he was convicted my mother told me there was nothing we could do to change the jury's verdict. My father agreed with her. I continued to remain silent. Later, Frank was lynched by a mob from Marietta, Georgia. I know, of course, that because I kept silent Leo Frank lost his life.

I have spent many nights thinking about that. I have learned to live with it.

I now swear to the events I witnessed that fatal day, Confederate Memorial Day, 1913, when Mary Phagan, who was just about my age, fourteen, was killed.

I came to work on time that morning, at about eight o'clock. I rode the streetcar from my home, on South Gordon Street, and when I walked into the building Jim Conley, the janitor, who also was called a "sweeper," was sitting under the stairwell on the first floor of the building. Although it was early in the

the

*250*  
*The Murder of Little Mary Phagan*

morning, Conley had obviously already consumed considerable beer. He drank a lot, even in the mornings.

He spoke to me. He asked me for a dime to buy a beer. A dime could buy a good-sized beer in those days.

I told Jim Conley I didn't have a dime. That was not the truth. I had some money in my pocket, but I had let Conley have a nickel or a dime for beer before. He never paid me back.

I didn't like to be around Jim Conley.

After I told Conley I didn't have any money I went up the stairs to the second floor where my desk was located in the office of Leo Frank.

My job required that I open the mail, file papers, keep the office orderly, run errands, and the like.

Leo Frank arrived in the building that morning shortly after I did. He came into the office and spoke to me. I always called him "Mister Frank" and he referred to me by my given name, "Alonzo." I do not know whether Leo Frank had seen Jim Conley on the first floor when he came into the building that morning.

A substitute secretary worked for Leo Frank that morning. As I remember, it was a routine Saturday morning for me at the office. Because of Memorial Day the factory part of the company was closed. But sometimes on Saturday mornings people who had worked at the factory during the week would come to the pay window in the office and collect their salaries. Girls who worked in the factory made about twelve cents an hour.

I did not know Mary Phagan by name, but I had seen her at the factory and knew her face. We were just about the same age.

I was supposed to meet my mother that day

*251*

*Alonzo Mann's Testimony*

about noon and go to the Confederate Memorial Day parade. When I left the premises, just before noon, Mary Phagan had not come to the pencil factory. She apparently came to pick up her pay shortly after I left to go meet my mother.

Sometime after 11:30, and perhaps as late as quarter to twelve, I told Mr. Frank that my mother wanted me to meet her so that I could go to the

parade with her. I didn't care all that much about seeing the parade, but my mother wanted me to go.

Mr. Frank agreed for me to leave at that time. I told him I would return to the office and complete my filing work later in the afternoon. He said he expected he would still be there.

When I left the company premises, just before noon, Mary Phagan had not come to collect her pay. When I left the building, down the stairs and out the first floor front door, Jim Conley, the janitor, was sitting where I had seen him when I came to work: in the darkened area of the stairwell.

I walked to the point where I was supposed to meet my mother. It was a short distance—perhaps a block and a half. We had agreed to meet in front of a store on Whitehall Street. My memory is that my mother had planned to buy a hat that day. I stopped and bought a hotdog on the way to meet her. However, when I arrived, she was not there. She had told me that if she was unable to come, for me not to worry. I waited for her for a few minutes. Since I didn't care that much about seeing the parade, I went back to work.

I can't be sure as to exactly how long I was gone, but it could not have been more than a half hour before I got back to the pencil factory.

I had no idea that I was about to witness an important moment in a famous murder case—a mo-

252

*The Murder of Little Mary Phagan*

ment that has not been made public until now; that I was about to become a witness to tragic history.

I walked into the building by the front door.

Inside the door, I walked toward the stairwell. I looked to my right and I was confronted by a scene I will remember vividly until the day I die.

Jim Conley was standing between the trapdoor that led to the basement and the elevator shaft. I have an impression that the trapdoor was partially open, but my eyes were fixed on Jim Conley.

He had the body of Mary Phagan in his arms. I didn't know it was Mary Phagan. I only knew it was a girl.

At that moment I couldn't tell if she was alive. She appeared to be unconscious, or perhaps dead. I saw no blood.

He was holding her with both arms gripping her around the waist. I can't remember the color of her clothes but I have an impression that she had on pretty, clean clothes. She was extremely short and her head was sort of on his shoulder, or over it. Her hair was streaming down his back. Her hair was not in braids when I saw her. It was hanging loose. I saw no blood on the part of her neck that was exposed. I do not know if she was dead, but she was at least unconscious. She was limp and did not move. Her skirt had come up to about her knees.

It was as I suddenly barged into the first floor, prepared to go up the stairs to the office that I encountered Conley with the body of Mary Phagan.

Conley was close to the trapdoor that led down into the basement by way of a ladder. I believe that from the direction he was headed and the attitude of the body that he was preparing to dump Mary Phagan down the trapdoor. I have no clear memory of whether the elevator had stopped on the first floor,

253

*Alonzo Mann's Testimony*

but if it was not on that floor, the shaft would have been open. Conley could have dumped her down the empty elevator shaft. I believe for some reason Jim Conley turned around toward me. He either heard my footsteps coming or he sensed I was behind him. He wheeled on me and in a voice that was low but threatening and frightening to me, he said:

"If you ever mention this I'll kill you."

I turned and took a step or two—possibly three or four steps—up toward the second floor, but I must have worried about whether the office upstairs was closed. I did hear some movement upstairs, but I can't be sure who was on the floors above. I was fearful that the office might be closed, and so I turned back toward Conley. I wanted to get out of there quick. He got to within eight feet of me. He reached out as if to put one arm or hand on me. I ran out of the front door and raced away from that building.

I went straight home. I rode the streetcar.

Once at home I told my mother what I had just seen. I told her what Jim Conley had said to me about killing me. I didn't know for sure that the girl in his arms was dead.

My mother was very disturbed by what I told her.

She told me that I was never, never to tell any-body else what I had seen that day at the factory. She said she didn't want me involved, or the family involved, in any way. She told me to go on about my business as if nothing had happened and that sometime soon I would have to quit working there. From then on, whenever I was at work I steered clear of Jim Conley. I kept away from him and he did the same.

When my father came home my mother explained to him what I had seen and what Conley had

254

*The Murder of Little Mary Phagan*

said to me. My father told me to forget it and never mention it.

My mother was a very strong-willed woman who was thirty years younger than my father and he said to me what she wanted him to say.

Later on he told me that Frank would never be convicted.

I have wished many times that my mother hadn't taken that attitude and that either she had told the authorities or that she had encouraged me to tell somebody—perhaps Leo Frank—what I had seen.

When the detectives later questioned me I told only the part of the story up to the time I left that day to go meet my mother. I did not tell that I had come back into the building and saw Conley with the body.

When Frank went on trial and I was called as a witness, my mother told me I would have to go and testify. She told me to keep to myself what I had seen. She said if I were not asked a specific question I did not have to give a specific answer.

Jim Conley was the chief witness against Leo Frank.

He testified that Frank had called him to his office a little after noon that day and told him that Mary Phagan's body was in the Metal Room on the second floor. He testified that Frank told him to get the body and take it on the elevator down to the basement. He swore that he tried to carry the body to the elevator but dropped Mary Phagan because she was too heavy for him to carry. According to Conley's testimony, Frank picked up her legs, while Conley lifted the upper part of her body. Conley said that Frank had pulled the rope to start the elevator down and that they went with the body directly

to the basement, past the first floor without stopping there. Conley claimed that Frank dragged the body

from the elevator to a point in the rear of the building. Conley contended during the trial that after Frank dragged the body away from the elevator, Conley ascended in the elevator and Frank came back up-stairs by way of the trapdoor to the first floor, and then came on up the stairway from the first to the second floor.

I know that all of that testimony was false. It was Conley who had the body on the first floor. He was alone with the body. Frank was not there on the first floor. Conley did not tell the truth when he said the body was taken from the second floor to the basement. He had the body on the first floor.

I know from what I read of the case that Mary Phagan had come into the building shortly after I went out to meet my mother. She went upstairs to the second floor. Leo Frank had given her her pay envelope. I understand that she had worked one day that week and she was entitled to about \$1.20.

I am convinced that she had left the pay window and was coming down the stairs or had reached the first floor when she met Conley, who had been looking for money when I came in that morning. I am confident that I came in just seconds after Conley had taken the girl's money and grabbed her. I do not think sex was his motive. I believe it was money. Her pay was never found in the building after she died.

Many times I have thought since all of this occurred almost seventy years ago that if I had hollered or yelled for help when I ran into Conley with the girl in his arms that day that I might have saved her life. I might have. On the other hand, I might have lost my own life. If I had told what I saw that day I might have saved Leo Frank's life. I didn't realize it at the time. I was too young to understand.

As the years have gone by I have told this "se-

cret" to a number of other people. I told it when I was in the Army in World War I. In fact, I had a fight with another soldier who became angry when I said Leo Frank did not kill the girl, but that Conley did. I have told other people. I told my late wife. She urged me not to make it public because she felt it wouldn't do any good. She said it would not bring back Leo Frank and it would not bring back Mary Phagan. And I told other relatives and friends. On one occasion, I believe in the 1950s, when I was operating a restaurant, I discussed this with a reporter in Atlanta. But the reporter said that since Leo Frank's wife was still alive it was not a matter the newspaper wanted to open up.

Leo Frank was convicted by lies heaped on lies. It wasn't just Conley who lied. Others said that Leo Frank had women in the office for immoral purposes and that he had liquor there. There was a story that he took women down in the basement. That cellar was filthy. It was filled with coal dust. I was in the basement twice and remember the dirt and filth there. That was all false.

Leo Frank was a good office manager. He was always proper with people who worked for him. There were witnesses who told lies and I remained silent.

Now I am finally making all this public. I have found reporters, Jerry Thompson and Bob Sherborne, who have heard my story and who understand that it is a case that is important to history. I am glad to have it all come out.

At last I am able to get this off my heart.

I believe it will help people to understand that courts and juries make mistakes. They made a mistake in the Leo Frank case. I think it is good for it all to come out, even at this late date.



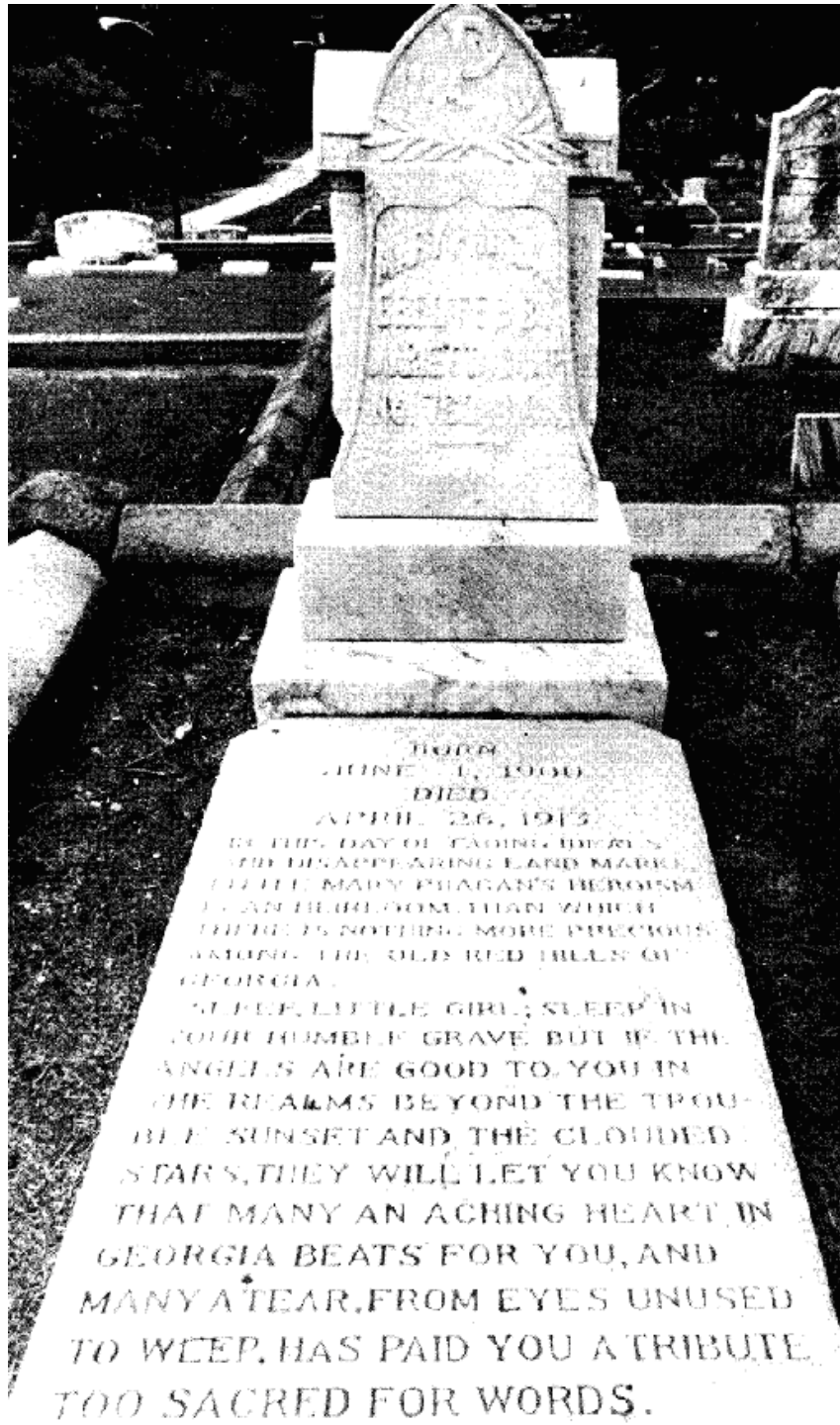
The two Marys as children



Mary Phagan and Alonzo Mann look through the author's scrapbook.

Mary Phagan and Alonzo Mann look through the author's scrapbook.





The grave of little Mary Phagan.  
The grave of little Mary Phagan.



Mary Phagan and Mary Phagan

There will be some people who will be angry at me because I kept all this silent until it was too late to save Leo Frank's life. They will say that being young is no excuse. They will blame my mother. The only thing I can say is that she did what she thought was best for me and the family. Other people may hate me for telling it. I hope not, but I am prepared for that, too. I know that I haven't a long time to live. All that I have said is the truth. When my time comes I hope that God understands me better for having told it. This is what matters.

On March 19, 1982 my father and I went to the Woodruff Library at Emory University to research the case again and learn more about the role of Alonzo

Mann. This was the first time my father and I had gone together to research the case.

When we signed in, the librarian observed us curiously as we checked out more information.

She asked my father, "What did you think of little Mary Phagan?"

My father replied, "Young lady, I wasn't even a gleam in my father's eye in those years!"

We both laughed, and the librarian relaxed.

When we told the librarian what we were looking for, she directed us to a copy of the *Tennessean*, since one of the *Tennessean's* reporters had been instrumental in breaking the story of Alonzo Mann's confession.

From our research, we learned that Alonzo Mann was indeed Leo Frank's office boy. Mann had begun working April 1, 1913, and had worked two Saturdays before the murder occurred. And he testified that he had left the factory "at half past eleven."

Before we left that day, the librarian gave us the name and address of the *Tennessean* librarian.

On March 23, 1982, I wrote a letter to Sandra Roberts, the *Tennessean* librarian:

258

*The Murder of Little Mary Phagan*

Your name was given to me by the librarian at the Woodruff Library at Emory University in Atlanta, Georgia. My father and I were researching the Mary Phagan/Leo Frank case. She showed us a copy of the *Tennessean*. We would like two copies if possible.

My father and I are very interested in this case because we are direct descendants of little Mary Phagan. My grandfather, William Joshua Phagan, was Mary's brother. My father is a nephew and I am a greatniece.

We would pay for the cost of the newspaper.

On March 26 Sandra Roberts called. She told me that the newspaper staff would be in Atlanta on March 31. She asked if they might drop by and hand deliver the newspapers.

Before this time, my father was always the one who dealt with anyone inquiring about the Phagans. He had always represented our family's opinion.

I called my father to let him know about the meeting and to see if he could be there to meet the staff, too. I had never spoken any of my feelings about the murder, and I could sense his concern. He didn't think he'd be able to be there, but he wanted to make sure that either a friend, my husband, or another family member would be.

## Chapter 11

# THE PHAGANS BREAK THEIR VOW OF SILENCE

Nervousness, curiosity and excitement all plagued me as I awaited the arrival of the *Tennessean* staff. My mind flitted back and forth to questions I wanted to ask. I wondered what their response would be to me and whether they would push me to come forward with the statement that Mary Phagan's convicted murderer was innocent.

Why, I thought, was that young girl's murder never forgotten? My family and I never really fathomed the publicity that continued almost unabated since her untimely death. And the media never once considered what the publicity did to the Phagan family. But Mary Phagan's legacy is a real part of all our lives—especially mine.

It also occurred to me that my father was right in his assessment of the media's handling of the story: he had told me that the story of little Mary Phagan would never be forgotten and that every three to five years the story would reappear in some form in the media. He had also

259

260

*The Murder of Little Mary Phagan*

thought that the story would never be put to rest because the Jewish community would not be satisfied until Leo Frank's innocence could be established. And, with the Alonzo Mann story, that now seemed possible.

The *Tennessean* had sent two staff reporters and a photojournalist to the house. I introduced myself as Mary Phagan and my confidence returned.

We discussed the Mary Phagan/Leo Frank case. They asked no probing questions. One of my questions was how the Alonzo Mann evidence had come to light. One of the reporters, Jerry Thompson, explained that he had been working undercover in the KKK for over a year, developing a story depicting the current KKK. When they discovered that he was a reporter, there were several threats made against his life. The newspaper hired guards to protect him and his house.

One of these guards was Bob Mann, who is Alonzo Mann's nephew. Bob told Jerry that his uncle had witnessed a murder in Atlanta in 1913, but he knew no other details.

Jerry was intrigued. He spoke with his publisher, who agreed to run a series of stories on the convictions of innocent people. At that time the series was considered to be low profile.

Jerry had never heard of Mary Phagan or Leo Frank. That began to change when, in working on the series, he called Alonzo Mann. A few weeks later, Jerry met a rabbi who happened to mention Leo Frank and it "clicked." Armed with what Alonzo Mann had told him, Jerry then met again with his publisher. The story was given top priority.

Why did Alonzo Mann wait until 1982? The staff told me that Mann's mother didn't want their name involved in the case and feared for their safety. Alonzo Mann liked Leo Frank and had been relieved that Frank's sentence was commuted. Mann had hoped that the truth would be

261

*The Phagans Break Their Vow of Silence*

found out during the appeals process. Leo Frank's lynching made that superfluous.

The newspaper staff asked me to comment on Mann's testimony. They said they'd be happy to send over any other materials I might need.

As they were leaving, they invited me to a press conference to be held at the Atlanta Jewish Community Center on April 1.

I accepted, but asked to remain anonymous.

The Atlanta Jewish Community Center is on Peachtree Street, the most well-known street in Atlanta. It is a low brick building that resembles those sprawling public schools I attended when we moved back to the States.

But it was months after the night before I saw it that distinctly. My surroundings were a blur the night I attended the press conference: for the first time I was participating—even though as an anonymous observer—in a public discussion of my greataunt's murder.

Bernard and I had decided that the best way to retain anonymity was to register as "Mr. and Mrs. Kean." Because of my family's silence, I was not emotionally prepared to come forward at a news conference. In fact, the *Tennessean* staff had agreed that anonymity would probably be best since I had doubts about making any sort of statement. And I had no idea what they were going to present to the Jewish community.

The room was a typical conference area. Seated around the table were reporters who were either asked to be present or who had an interest in the case. As we entered the room, the *Tennessean* staff asked me to sit near them. Reporters directed questions concerning all areas of the case to the *Tennessean* staff for approximately thirty to forty-five minutes. Of foremost interest, of course, was

262

*The Murder of Little Mary Phagan*

Alonzo Mann's affidavit and whether a posthumous pardon would be sought for Leo Frank.

At the conference, I listened intently and watched the facial expressions of those present. What were these people thinking I wondered, and how did they come to their conclusions?

After all questions were discussed, we were ushered into a huge main room which was filled to capacity. My husband and I sat in the back row; I felt most comfortable there. The *Tennessean* staff reporters, Jerry Thompson and Robert Sherborne, publicly presented to the Jewish community the review of evidence for Leo Frank's innocence.

Then they answered questions. Most of the questions concerned the effect of Alonzo Mann's affidavit as the missing link of evidence to finally substantiate Leo Frank's innocence.

One question involved the Phagan family. An individual wanted to know the reaction of my family. Jerry Thompson stated that some Phagan family members upheld their belief in the convicted Leo Frank's guilt while others "were trying to be objective." I knew he was talking about me. I had my own opinion, but I wanted to hear what they had to say. I was trying to be objective, but, because of my emotional involvement, it was difficult for me. The meeting adjourned on the thought that the posthumous pardon for Leo Frank was likely to be an issue for the governor's race.

By the time we got to the car, tears were running down my face, and I didn't know quite why. In thinking over the conference the following day, I realized that while listening to Jerry Thompson and Robert Sherborne present their evidence to the Jewish community, I had thought how strange it was that they had asked me to be objective, since they themselves had decided that Alonzo Mann's conclusions were true and could not themselves be all that objective.

263

*The Phagans Break Their Vow of Silence*

At the time, all I could see was my grandfather and my father telling me the story of little Mary Phagan, over and over again. They had always told me that Leo Frank was convicted of her murder. How could I not believe them and the evidence? They had never withheld the truth from me. Truth was valuable to them and to me.

How could I reconcile the two views?

On April 4, just three days after the news conference, my youngest brother, Michael, died.

I was the oldest and he the youngest. We were very close. He looked up to me, and I depended on him more than he ever knew.

Michael had a lot of difficult times in his life, but he always knew that the family supported him. We didn't always agree with what he did, but we never stopped loving him.

His death devastated me. I couldn't believe he wouldn't be around anymore. I couldn't believe we'd never talk again.

Michael was buried next to our grandfather. I placed flowers on each grave. For the first time I began to understand the depth of my grandfather's grief over his sister's death—and why he couldn't talk about it. I wished that I could tell him so; placing the red rose on his grave was my gesture to him that I finally understood. Some griefs can never be overcome. Like my father, I learned there are two things in life you can't share: grief and pain.

On April 6, the following article appeared in *The East Cobb Neighbor*, a neighborhood newspaper near Marietta:

JEWISH LEADERS SEEK EXONERATION FOR  
FRANK

Leaders of the Atlanta Jewish Community say they are seeking ways to obtain a posthumous exoneration of Leo Frank, the turn-of-the-century Atlanta businessman convicted of and lynched for the murder of

*The Murder of Little Mary Phagan*

a Marietta girl—a murder a witness in the case now says Frank did not commit.

And one of three Nashville, Tennessee newspaper reporters who broke the apparent new development in the sixty-nine-year-old case says he is ready to help clear Frank's name "not only historically but legally."

The statements came last week before two of the reporters, Jerry Thompson and Robert Sherborne of the *Tennessean*, told an audience at the Atlanta Jewish Community Center about their discovery of a possible turnaround in the Frank case.

In a package of copyright stories published last month, the *Tennessean* revealed that eighty-two-year-old Alonzo Mann of Bristol, Virginia, says an employee of Frank actually killed fourteen-year-old Mary Phagan.

The April 1913 murder of the girl at the National Pencil Company in Atlanta—where she, Mann, Frank, and Jim Conley, the man Mann says was the killer, worked—began one of the most sensational legal episodes of the century.

Frank, a Jew, was convicted on what even then was considered fuzzy evidence at a time of intense anti-Jewish feeling in the city. His death sentence was later commuted by Georgia's governor, but a mob pulled Frank from prison in 1914 and hanged him from a tree on Roswell Street in Marietta, just east of what is now Cobb Parkway.

Gerald Cohen, Vice President of the Atlanta Jewish Federation, said last week the new twist in the Frank case "has really set the Atlanta community back on its heels."

Sherry Frank (no relation to Leo Frank), area director of the American Jewish Committee, said Jew-

265

*The Phagans Break Their Vow of Silence*

ish leaders would like to make a possible exoneration of Frank an issue in the gubernatorial race this year.

That time after Michael's death was the most difficult period of my life so far. Nothing mattered. For the first time, I could not get excited over—nor even care about—the burgeoning resurgence of interest in Mary Phagan's death. Then I received a letter from Sandra Roberts:

Dear Mary and Bernard:

I am sending you the latest story that we have had on the Frank case. I am also enclosing copies of the letters on which the story was based. The original letters are in the Goldfarb Library of Brandeis University in Waltham, Massachusetts.

Seigenthaler [President, Editor and Publisher] told me this morning that the reaction to the Frank story continues to pour in from all over the world. Reporters and television people are trying their best to get Lonnie (Alonzo) Mann to tell his story again, but he seems more comfortable just dealing with Bob and Jerry. I believe that he is at peace with himself at last.

I must admit, Mary, that when I first received your letter, I was purely curious about your reaction to the section. However, since our visit I've tried to put myself in your place. I've wondered what I would do if I were Mary Phagan.

From the beginning this story has been fascinating, but it was merely another story to me. It is easy for me to remain objective as a researcher, since I have no personal involvement with the people, the races, the religions, or

even the state concerned. It was simple for me to sit silently in the Jewish Community Center in Atlanta, and view the product of two conflicting cultures.

On one hand I witnessed a mass of people, totally

266

*The Murder of Little Mary Phagan*

convinced that one of their brothers was brutally and unjustly lynched. Moreover they have remained angry for seventy years because they believe he was lynched because he was Jewish.

On the other hand I saw one small woman who bears not only the name but also the face and figure of an aunt that she will never know. I felt your total devotion to a family and a legacy that will always bear the burden of the senseless slaughter of a beautiful young girl.

I honestly don't know what I would do if I were you, Mary, but the options seem clear. You could remain silent and let the past stay buried, or you could make a statement indicating your reaction to the resurgence of the Phagan-Frank case.

When I spoke with Seigenthaler this morning he revealed his concern (and curiosity) about your reaction to the case. He assured me of a few things; if you should decide to make a public statement concerning the case, there will be immediate, world-wide response to it. The *Tennessean* would print any statement that you or your father would make. You could indicate your belief of Frank's guilt or innocence, or you could simply react to the new evidence of Alonzo Mann's testimony. Any statement that you make could be preceded by a visit with Mr. Mann (I think that might be really interesting). We would also let you read the story in full before its publication (I was quite surprised when John made the last suggestion. It flies in the face of a basic rule of journalism).

No matter what your decision is, I have another personal promise to you. I assure you that you have a new-found friend in Nashville who has tried very hard to feel this story through your heart. There are many times in this business that sensitivity and objectivity clash. Reporters must remind themselves

267

*The Phagans Break Their Vow of Silence*

that what is merely a story for the newspaper could be a thunderbolt in the existence of a human being. Maybe that is why I prefer the research end of journalism.

Best wishes,  
Sandra

I read her letter again and again and realized that she was indeed a friend. Her letter stayed with me. Sandra felt compassion for me and I knew she would not ask anything from me that made me uncomfortable or some how uneasy. It made me feel good that she respected me as an individual. She knew that I was struggling inside.

Sandra's letter also made me see something else in myself: I was fighting my legacy at the Atlanta Jewish Community Center. I couldn't see it before reading and rereading her letter, but that was why I cried so abruptly and bitterly after the news conference. Now those feelings were over, gone. I could never deny or fight my legacy again. I would now be able to stand up and acknowledge that I am Mary Phagan.



My family's strength during my brother's death also proved to me that I could never forget who I was or where I came from. I was proud of my heritage.

On April 18 I wrote Sandra to tell her of my brother's death. I also reiterated that I would not make a public statement concerning Alonzo Mann's affidavit at that time. I still felt the past should stay buried.

Sandra responded on April 22 with yet another warm and sympathetic letter:

Dear Mary and Bernard:

Here is the long promised tape of the WRFG program. The producer, Chris Kuhn, did most of the research. The narrator, Sherry Conder, is a librarian at Georgia State Library and Archives. She did her

268

*The Murder of Little Mary Phagan*

Master's thesis on Governor Slaton—and she knows a lot about the case. You'd really enjoy her if you get to meet her.

Mary, I'm really sorry about Michael. I don't know the circumstances, if it was accidental or an illness, but I'm sure you were a great comfort to your parents.

Don't worry about the statement. I'll be honest with you—your statement would make a great story for this newspaper. Bob and Jerry and Seigenthaler really would like to have it—But, as I have reminded them, what is one great story for us could alter your life considerably. I'm sure that the chances are good that other news people may track you down (if they haven't already). So all I'm asking is—if and when you decide to say something, please let the *Tennessean* have a little warning.

I hope your healing is swift and as painless as possible. Let me know when you need anything that I can help you with.

Best wishes,  
Sandra

While reading through the newspaper articles I'd collected, I came across the name Mike Wing, a member of the Georgia State Board of Pardons and Paroles. Another big first step: why not call him, introduce myself, and let him know about my family?

When I told him that my name was "Mary Phagan," and of my relationship to little Mary Phagan, he reacted with utter shock. Mike Wing, like countless others, never knew that there were surviving Phagan family members.

I wanted the Board to know, I told him, that there were indeed surviving close family members of Mary Phagan and that the family was anxious to be notified of any

269

*The Phagans Break Their Vow of Silence*

information brought before the media. I asked to be informed if an application for a posthumous pardon for Leo Frank was received. At the very least, this would ensure that if the story broke, I'd know ahead of time.

He was responsive. During the conversation, he was curious about the fact that the Phagan family had never publicly acknowledged themselves. I explained that the murder had been a deeply traumatic event whose reverberations we still felt and that we had never seen the need to say anything. It had been, we hoped, best to keep a "vow of silence" among ourselves.

He said he felt certain an application would be filed. He took my address and phone number and those of my father.

After that, I wasn't scared anymore. I was glad that I had called Mike Wing and felt confident that if he did indeed receive a posthumous pardon application for Frank, he would inform me.

But my brother's death continued to cloud my life. I began to ask myself some difficult questions—including why he died and what the true value and purpose of my, life was. I and other close family members learned once again the importance and significance of family, and how vital it was that we continue being loving and caring to one another always.

Then, in August, a happy event: I was the matron of honor in Amy's wedding. Amy and I had remained close friends after I left Florida. Like most good friends, we had our good and fun times, and also had some "conflicts." It didn't matter, though: we always resolved them.

Amy was there for me when Michael died, too. She kept in close contact, since she knew me well and knew I was having a difficult time adjusting.

The wedding was a beautiful Jewish ceremony and I learned many new things. Her family became my family and I became a part of her family. The love and happiness we all shared was a healing force for me.

## Chapter 12

# APPLICATION FOR PARDON: 1983

I had begun to put my life in proper perspective by October of 1982, when Mike Wing called from the State Board of Pardons and Paroles. He informed me that the Board had received a formal application for a posthumous pardon for Leo Frank. The application was filed by the Anti-Defamation League, the American Jewish Commit-tee, and the Atlanta Jewish Federation, and directed by a Lawyer's Committee chaired by Atlanta immigration lawyer Dale N. Schwartz. He also stated that the Board wanted to study the case with a minimum of outside pressure and publicity. I felt that this was appropriate and stated my own intention of not publicly seeking out-side intervention from such sources as the media.

He also suggested that if the Phagan family had any factual information concerning the case, we could write a letter to the Board.

I had assumed that because six months had passed an application for a posthumous pardon would not be filed.

Actually, the petitioners had been working on the

*Application for Pardon: 1983*

filing of an application for pardon ever since Alonzo Mann had come forward with his testimony. They felt it to be the basis of a full pardon for Leo Frank.

While posthumous pardons had been granted not only in Georgia but across the country, the obvious question still was: what was the point of seeking a pardon for a dead man?

"I am not working for Leo Frank or his family," Dale Schwartz stated publicly. The core of seeking a pardon for Leo Frank, he said, was an attempt to obtain an official repudiation of anti-Semitism and bigotry and to "remove a blot on Georgia history." As such, the petitioners based their case for pardon not on the legality of the trial and conviction of Leo Frank, but on extra-legal concerns.

The pardon effort, an Anti-Defamation League staffer later stated, was not simply a matter of one person, not just the case of Leo Frank.

"I respectfully disagree . . .," an official wrote the League's National Director Nathan Perlmutter, "that 'from a broad point of view, the Frank pardon is of no consequence.' An innocent Jew was lynched by a mob inflamed by anti-Semitism. It has never happened before or since in the United States." Ironically, however, exonerating Frank would mean "convicting Jim Conley," and possibly be construed as racism. Even before the pardon effort became public, its leaders had been concerned with minimizing potential offense to Blacks.

Another concern of the pardon effort was the repudiation of prejudice generally, against Blacks and Jews. "This is a justice issue," Schwartz said in reference to some Black critics. "The Klan didn't lynch Jews. They lynched Black people. And what we're trying to show is that's not the way to run justice in this country." Responding to a recent Klan demonstration, a local reporter took up the same theme, reflecting the widespread belief that the Leo Frank case was something more than a transac-

*The Murder of Little Mary Phagan*

tion between a bureaucratic body and a dead factory owner:

The state should answer Klan bigotry with a clear rebuke. It should let the world know that Georgia does not condone terroristic rule by robed riff-raff; it should let all know that we recognize injustice and are willing to undo it, even at so late a date.

The third extra-legal element concerned Georgia's past as it reflected upon the personal identity and regional pride of Georgians. To "do justice" in the Frank case, this argument went, is to make Georgia a better place, morally, and to make Georgians better people. The League, in a memo, compared the Frank case to the Holocaust:

I agree entirely that our constituency—the literate world—knows that Frank was railroaded. Our constituency also knows that the Holocaust was real, but we continue to counteract Holocaust denial. We have also proceeded on the assumption that it was important for the German nation to come to terms with the past and acknowledge the terrible crime committed in days gone by. Likewise some of us here in Atlanta think it is important that the State of Georgia acknowledge its sins in the Frank case, and repent.

"Georgia will not be pardoned by people of good will until Georgia pardons Leo Frank," the Atlanta Black-Jewish Coalition declared. "We must seize this opportunity," the petition for pardon concluded, "for we believe, as we know you do, in following the Biblical injunction: 'Justice! Justice, ye shall pursue!' "

This last concern apparently spurred counter-argument about the historical stature of Georgia's legal community. To say in the 1980s that Leo Frank was innocent, attorney Edgar Neely argued, impugned not just the Georgia system of justice in 1913 but the reputation of its

273

*Application for Pardon: 1983*

lawyers in general and particularly Frank's counsel. Though apparently otherwise unconnected to the case, Neely submitted a formal brief opposing the pardon, which stated, in part:

I am speaking as an individual, steeped in the law, who wants the law to be upheld and the judicial system of Georgia not *ex post facto* impugned.

The leaders of the pardon effort responded at length, including the outlining of the "new evidence" of Alonzo Mann, pointing out that it had been unavailable to Frank's lawyers. Mobley Howell, then Chairman of the Board of Pardons and Paroles, is said to have considered Neely's arguments carefully.

There were four legal means of exonerating Leo Frank: a declaration by the governor proclaiming Leo Frank innocent; a resolution by either the House or Senate of Georgia—or both—proclaiming Leo Frank innocent; a complicated procedure of the courts beginning with an extraordinary motion for retrial; a pardon by the Georgia Board of Pardons and Paroles. And while Governor Joseph Harris, District Attorney Louis Slaton, and the Georgia Senate all expressed sympathy for the effort to exonerate Leo Frank, all also recommended that they obtain a pardon from the Board of Pardons and Paroles. The petitioners began to see that a pardon would, in fact, best fulfill the extra-legal goals of Frank's exoneration, and that it would be considered by the public as definitive. Dale Schwartz commented.

The public has come to understand the pardon process as an exoneration, particularly if it is coupled with a statement as to the innocence of the applicant.

He stated that a gubernatorial proclamation might appear as "one of hundreds of such proclamations and would not have the publicity impact that a pardon would."

274

*The Murder of Little Mary Phagan*

The petitioners also came to feel that a court ruling might appear as though the Jewish community had manipulated a friendly judge.

The goal, then, was a pardon from the Board of Pardons and Paroles. As Dale Schwartz told the editor of *Israel Today* in a 1984 interview, "It was determined that Georgia would perhaps recognize the type of posthumous pardon which did not merely grant 'forgiveness' for a crime committed in the past, but rather would ask the defendant to forgive the state for having wrongfully convicted him."

To the petitioners, such a pardon seemed impossible to deny.

It didn't take a lot of thought for me to realize that this was just the beginning. This time I was personally involved and affected, and this was what I wanted: I didn't want to be left in the dark again about "news breaking" stories of

the case. It seemed my quest had actually just begun. I wondered if I was mentally prepared for what was about to happen.

My father suggested I contact the rest of the Phagan family. He, as well as I, knew that some of the Phagans would be quite distraught and angry over the seeking of a posthumous pardon. They had objected in March, when the idea was first broached, and would continue to object until they died.

I did as my father wished. And we were right in our assessment of the family's opinion: they objected. And, as Mike Wing had stated to me, all, including the Phagan family, hoped for minimum publicity.

In December I contacted Mike Wing about the possibility of my father and I appearing before the Board hearings on the Leo Frank case. He referred me to Silas Moore, who would be in charge of handling the case, and again suggested that we write the Board a letter.

On January 9, 1983, I wrote the Board requesting that

275

*Application for Pardon: 1983*

the Phagan family be permitted to appear at any Parole Board hearing regarding the Leo Frank case.

On January 17, 1983, I received the following letter from Silas Moore:

Dear Ms. Phagan and Mr. Phagan:

Thank you for your letter of January 9, written in behalf of the Phagan family, requesting to be permitted to appear at any Parole Board hearing on the Leo Frank case. We certainly understand your family's interest in this matter.

This past fall the Board received a formal written application for a pardon, and in fact, was requested to do so by Resolution of the Georgia Senate on March 26, 1982, a copy of which is attached.

The pardon application may have been inspired by the 1982 statement of Alonzo Mann. However, the application is not based solely on that information, and certainly the Board will not be limited to considering that alone.

The applicants have been told that the Parole Board plans no hearing to take oral testimony from anyone. We have requested that all information be submitted in writing. If any members of the Phagan family wish to share with us information or views about the case, we would be glad to receive their written letters or statements. We would be particularly interested in any factual details about the case they may have.

The Board will likely render its decision some time this year. It has expressed its determination to base its decision on the facts and evidence. It desires to study the case with a minimum of outside pressure and publicity.

If you have any questions, please give me a call. If you wish, I would be glad to talk with you in our offices. We appreciate your interest.

276

*The Murder of Little Mary Phagan*

The letter from Mr. Moore confirmed that, again, my father's intuition about the case—namely, that there would be some sort of political involvement with the Board in even deciding whether to consider the application for a posthumous pardon—was correct.

We discussed the letter and the Senate Resolution. We determined that we had to present our views concerning the Resolution, since we felt that the political involvement would possibly put "outside pressure" on the Board.

So on February 14, 1983 my father and I responded with a letter to the Board:

Dear Mr. Moore and Board Members:

We would like to present our views concerning the Resolution adopted in the Senate on March 26, 1982:

WHEREAS, Leo Frank was tried in the Superior Court of Fulton County in 1913 for the murder of Mary Phagan and

This is a true statement.

WHEREAS, he was convicted in an atmosphere charged with prejudice and hysteria; and

This issue was decided by the Supreme Court of the United States. In Georgia Reports, Volume 141, Pages 246 & 247, Numbers 16-18, it states: "The alleged disorder in the courtroom during the progress of the trial was not of such character as to impugn the fairness of the trial, or furnish sufficient ground for reversing the judgment refusing a new trial. On conflicting evidence the judge on the hearing of the motion for new trial, acting as trior, did not err in holding the jurors whose impartiality was attacked were competent."

WHEREAS, he was sentenced to death but his sentence was commuted by Governor John Marshall Slaton; and

277

*Application for Pardon: 1983*

Governor Slaton stated: "It will thus be observed that if commutation is granted, the verdict of the jury is not attacked, but the penalty is imposed for murder, which is provided by the State and which the Judge, except for his misconception, would have imposed. Without attacking the jury, or any of the courts, I would be carrying out the will of the Judge himself in making the penalty that which he would have made it and which he desires it shall be made."

WHEREAS, in August of 1915, he was taken by a mob from the state institution in Milledgeville and carried to Cobb County where he was lynched; and

This is true.

WHEREAS, Alonzo Mann, a fourteen-year-old witness at the Frank trial, was threatened with death and was not asked specific questions which could have cleared Frank; and Frank was ably represented by a counsel of conspicuous ability and experience—Luther Rosser, Reuben Arnold, and Herbert and Leonard Haas. They knew what they were doing.

WHEREAS, Mr. Mann has come forward to clear his conscience before his death and claims that Leo Frank did not commit the murder of Mary Phagan; and Alonzo Mann gave an opinion that was sworn to, he did not submit any evidence contrary to the conviction of Leo M. Frank. How long did he work at the Pencil Factory? I believe his testimony stated two Saturdays. We challenge and doubt his claim.

WHEREAS, if Leo Frank was not guilty of such crime, it is only fitting and proper that his name be cleared, even after his death.

Leo M. Frank was convicted in a court of law by his peers and was duly sentenced to death.

NOW, THEREFORE, BE IT RESOLVED BY THE

278

*The Murder of Little Mary Phagan*

SENATE that this body strongly requests that the State Board of Pardons and Paroles conduct an investigation into the Leo Frank case; and, if the

evidence indicates that Leo Frank was not guilty, the Board should give serious consideration to granting a pardon to Leo Frank posthumously.

Over the past seventy years, no real new evidence has been submitted. On March 10, 1982, Mr. Mobley Howell stated: "His innocence would have to be completely proven with complete evidence." This case will never be put to rest. Every three to five years, somebody reintroduces the case to the public.

As Phagan family members, we hereby request a copy of the applicant's application and any evidence submitted. We also request any information regarding requests for the Leo M. Frank/Mary Phagan case in the future.

At about the same time my father and I wrote the letter, my father registered as a lobbyist in the Georgia State Capital representing only himself. He wanted to have the privilege of going to the capital and to give a rebuttal to each of the three Senators who had proposed the resolution. In this way the family's feelings could be known.

April 26, 1983 was the anniversary of little Mary Phagan's death. I wondered as I prepared for work if anyone else realized it.

As I arrived at work the principal of one of my schools told me there was an article in the *Atlanta Journal and Constitution* about little Mary Phagan. A pardon has been asked for Leo Frank, he said. For the first time I wasn't angry.

Ron Martz, staff writer for the *Atlanta Journal* and

279

*Application for Pardon: 1983*

*Constitution* reported that the Anti-Defamation League, the American Jewish Committee, and the Atlanta Jewish Federation urged the Board of Pardons and Paroles to vindicate Frank. "The conviction and lynching of Leo Frank was the worst episode of anti-Semitism in the history of the United States, and continues to be a blot on Georgia's criminal system," he'd written. "By issuing a full and complete pardon, the Board of Pardons and Paroles can repudiate the twin evils of prejudice, mob rule, and right an historic wrong." Silas Moore confirmed to the press that the petition for a posthumous pardon was being studied and that this was the first time a posthumous pardon had been considered in Georgia.

Dale Schwartz said that the petition contained three hundred pages of evidence. The major pieces were "an affidavit from Alonzo Mann, who was Frank's office boy at the time of the murder, and a two-and-one-half-hour videotape of Mann giving that affidavit in which he asserts Frank's innocence."

The myth that had grown up around Leo Frank colored popular thinking about him long before Alonzo Mann's testimony became public. "My grandmother would point out where Leo Frank was lynched," Mike Wing was to recall in 1985. "As a child, I grew up thinking an innocent man was lynched. I don't even know if I knew there was a trial."

A recurrent theme of the Leo Frank myth is the alleged confessions of Jim Conley. The pardon application claimed that Conley confessed at least three times: to an insurance agent, in letters to his woman friend, Annie Maud Carter, and to his attorney, William Smith. Schwartz would later say Conley confessed "thousands of times," and argue that these reports "should, standing by themselves, warrant the granting of the posthumous pardon."

Then there was the "secret evidence" supposedly

280

*The Murder of Little Mary Phagan*

made available to John Slaton in 1915. When Conley's attorney publicly claimed Frank was innocent in 1914, many thought that he had somehow passed secret information on to John Slaton. In his autobiography, *I Can Go Home Again* Judge Arthur Powell hinted that Frank's innocence would one day be conclusively revealed:

I am one of the few people who know that Leo Frank was innocent of the crime for which he was convicted and lynched. Subsequent to the trial, and after his conviction had been affirmed by the Supreme Court, I learned who killed Mary Phagan, but the information came to me in such a way, though I wish I could do so, I can never reveal it so long as certain persons are alive. We lawyers, when we are admitted to the bar, take an oath never to reveal the communications made to us by our clients; and this includes facts revealed in an attempt to employ the lawyer, though he refuses the employment. If the lawyer were to be so forgetful of his oath as to attempt to tell it in court, the judge would be compelled under the law not to receive the evidence. The law on this subject may or may not be a wise law—there are some who think that it is not—but naturally since it is the law we lawyers and the judges cannot honorably disobey it. Without ever having discussed with Governor Slaton the facts which were revealed to me. I have reason to believe, from a thing contained in the statement he made in connection with the grant of the commutation, that, in some way, these facts came to him and influenced his action. I expect to write out what I know and seal it up; for the day may yet come, after certain deaths occur, when more can be told than I can honorably tell now.

The file to which he refers may have contained a confession obtained by Conley's own counsel. There has been an air of mystery about this evidence in other accounts, as

well, such as a recent letter from the late Governor Slaton's nephew to a relative:

He [Governor Slaton] never talked at length about the Frank case, but at that time he and Judge Powell had long since come to the conclusion but elected not to publicize the details. Eventually they decided to destroy the document and stir up no further fuss.

But it was Alonzo Mann's testimony on which the petitioners for the pardon were pinning their hopes. If true, Schwartz eventually argued before the Board, Mann's testimony proved that Jim Conley, the state's chief witness against Frank, had lied on two counts: first, since Mann indicated Mary Phagan was alive as she was carried down, it contradicted Conley's statement that she was dead when he saw her on the second floor; and second, the testimony corroborated Governor Slaton's conclusion in 1915 that Conley could not have used the elevator to carry little Mary Phagan's limp body.

The editorial opinion of the *Atlanta Journal and Constitution* felt "that the case is compelling and that the Board of Pardons and Paroles should move quickly to clear Leo Frank's name—and the enduring blot on the con-science of Georgia."

The *Marietta Daily Journal* article by Brent Gilroy stated that the Board of Pardons and Paroles would probably take a year before all the evidence could be digested and a decision be made.

Sherry Frank, Southeast Area Director of the American Jewish Committee, told the *Journal* that "she had been told the pardon not only would wipe from the books the life sentence given Frank, but also would clear him outright of guilt in



Mary Phagan's killing." Stuart Lewengrub, Southeast Regional Director for the Anti-Defamation League, said "We are looking for a complete exoneration." It was also reported that Governor Joe

282

*The Murder of Little Mary Phagan*

Frank Harris expressed his intention to approve the pardon if it was recommended by the Board of Pardons and Paroles.

When the posthumous pardon effort became public, it attracted its own anti-Semitic response. On September 3, 1983, the New Order of Knights, a fringe Klan group, held a march and rally in Marietta, Georgia, featuring signs reading, "No pardon for the Jew murderer Leo Frank." It was all part of a conspiracy, a group calling itself "Christian Friends of Mary Phagan" wrote to the Pardon Board, "to accuse and hopefully prove, Christians (guilty) of prejudice, bigotry, and 'anti-Semitism' . . . while instilling Christians with feelings of self hate and self guilt."

Others felt the way the petitioners did. For the *Atlanta Constitution*, the "power to right a great wrong" was not the narrow legal case, but the extra-legal ramifications of the Leo Frank case: the ability to signify "that we no longer excuse or forgive prejudice, no matter how old or how recent:

One could argue that this is not the role of a pardons and paroles board, that it is merely expected to rule on narrow issues involving living persons convicted of crimes. Technically, this may be so. But if the power to right a great wrong and do a great good falls into the hands of any citizen—or of five citizens . . . [it is their responsibility] to seize the opportunity and act for the betterment of the state.

Among those who exhorted the Board to pardon Leo Frank were a minister in Tennessee who felt that pardon would "bring a sense of reassurance to many of our citizens who have been hurt and still suffer because of the prejudicial trial to which he was subjected many years ago," and a member of the Christian Council of Metropol-

283

*Application for Pardon: 1983*

itan Atlanta, who viewed a pardon as a way to "repudiate the twin evils of prejudice and mob rule."

I think most of the Phagan family felt as I did about this latest episode: we had known about the application for the posthumous pardon beforehand, and while we weren't pleased with the Board's considering the application, we realized there was more here than just interest in clearing the name of Leo Frank.

What bothered my family most was that little Mary Phagan's horrible murder was not considered. What about her and the effect of her murder on the Phagan family? Little Mary Phagan was the victim and now her surviving family continued having unwarranted publicity. No one seemed to care about that.

Then I took a step to assure that the next generation of Phagans would not be continually victimized by a news-hungry press. And it was a hard decision. I contacted Ron Martz, who had written the "anniversary" article and informed him of his errors.

Ron Martz, along with most people with whom I come in contact, acted with utmost surprise and shock that I even existed. Chuckling, I told him I did indeed exist, and he should research his facts more thoroughly. He asked if I would consider an article or a series of articles about myself. I told him I was not interested but if I did reconsider, he would be second—as I would let the *Tennessean* have the first consideration.

Several months later, I contacted the *Tennessean* staff and informed them I would like to meet Alonzo Mann and asked if it could be possibly arranged.

On July 19 I met Alonzo Mann at my home. He, along with Jerry Thompson and Robert Sherborne, arrived about 11:00 a.m. I had had second thoughts about

284

*The Murder of Little Mary Phagan*

whether I was doing the right thing, but I knew when I met Mr. Mann that I was.

He was dressed quite dapperly in a gray suit with a light pink shirt, straw hat, and he gingerly carried a cane. Of course he was quite elderly now, but I could picture him as a young boy working in the pencil factory.

Suddenly I felt a lump of nervousness in my throat. Obviously that same nervousness affected him, for we stood awkwardly in my livingroom until finally I thrust my hand out and said, "I'm Mary Phagan."

Taking my hand, he said, "I'm Alonzo Mann."

I ushered him over to the daybed and we settled back, sitting beside each other, leaning on the fluffy blue pillows.

For about an hour we looked through my huge scrap-book on the murder of Mary Phagan. At one point I read him the article from *The Tennessean* about his visit to my greataunt's grave, and although he must have seen the article before, he leaned forward, staring at the clipping, listening intently.

By the time we had finished looking at the scrapbook we had become friends, talking animatedly together, sharing confidences about Mary Phagan's murder, which knit us together although we had never met before.

Finally, having made up a list of things which I wanted to ask him, I began to question him more formally. "Where were you born?" I asked soberly.

"In Memphis, Tennessee. I had two brothers and one sister, all of whom are dead. My father was a doctor. Instead of paying with money, his patients paid with bacon, eggs, and ham because most of the families could not afford medical expenses," his soft southern accent washed over his words.

My questions came more quickly.

"How long did you stay in Atlanta after giving testimony?"

285

*Application for Pardon: 1983*

"About a year; then I joined the United States Army." "Did you ever go to the courthouse besides giving testimony?"

"No. I just passed by."

"Did you ever meet Mary Phagan?"

"I didn't know Mary Phagan, but I knew her by sight."

"Was she as pretty as they say?"

"Yes."

"How long did you work for Mr. Frank?"

"I worked at the pencil factory for several months." (This contradicted my father's understanding that Mr. Mann had only been at the factory for one week.)

"Did you ever keep copies of the original newspapers?"

No.

"Did you ever confront Jim Conley after what he says he saw?"

No.

"Did you see Jim Conley murder Mary Phagan?"

"No, but I saw Jim Conley with Mary Phagan in his arms. I believe Jim Conley murdered Mary Phagan, not Leo Frank."

I looked up and suddenly noticed that Mr. Mann appeared tired, his voice had grown less strong.

"Are you all right?" I asked, concerned.

He nodded, "I've had a heart operation recently," he said softly. "I have a pacemaker now."

Shaking my head, I confided, "I have a heart condition also."

"But how old are you?"-I asked, anxiously. "Twenty-eight," I replied.

"To have a heart condition at twenty-eight—how difficult that must be," he said sadly.

I nodded. "But it's something you learn to live with."

286

*The Murder of Little Mary Phagan*

"Yes," he agreed sympathetically, "accepting life is something we all have to learn."

We began once again to talk of the murder.

He told me that after he encountered Jim Conley, he went home and told his mother what he had witnessed. She told him not to offer any other information if he wasn't asked. When the detectives arrived at his home, they asked him what time he left. That, he said, was their main concern of his account in the matter. He had felt that if he had been asked specific questions, the course of history might have changed.

Then he related a story about little Mary Phagan that to this day I picture in my mind. A bunch of young girls were pushing a red wagon. In the wagon was little Mary Phagan. Her hair was pulled up with big bows. She was beautiful and laughing.

As Mr. Mann recalled the information, I felt for him as I have felt for myself. He, like me, was faced with a struggle. This was his way of resolving it—to come forward and tell the world what he believes he had seen. I wasn't angry at him. I could never be, for I was brought up to respect others' opinions and their values, and with a sense of what one has to do to be true to his own beliefs whatever the difficulty. I empathized with him. Our talk had lasted four hours; we were both exhausted.

As Mr. Mann was preparing to leave, he told me that his main purpose was to get Leo Frank pardoned, and that he had personally asked the Board for a pardon. He asked me to tell the Board again that Leo Frank did deserve a pardon, to come with him.

I felt that I just couldn't.

But something was stirring in the back of my mind. I had automatically accepted the Phagans' assumption of Leo Frank's guilt—as had my Dad. Here, in Alonzo Mann, was a nice, presumably honest and gentle human being, who strongly believed otherwise.

287

*Application for Pardon: 1983*

What was the truth? Would it ever be known?

On July 20, my father received *The Thunderbolt*, issue No. 290, from the current association of the Ku Klux Klan. Many years before they had asked my father for a "Remember Mary Day," and he had objected. My father did not object then and does not object now to anyone or any organization wishing to pay respects to little Mary Phagan. He objects to individuals or organizations who use little Mary Phagan's death for their own prejudicial purposes.

My father wrote the Anti-Defamation League in Atlanta to find out more about *The Thunderbolt*. He received the following letter from Stuart Lewengrub:

Dear Mr. Phagan:

Thank you again for letting us know about the approach that was made to you by a representative of *The Thunderbolt* concerning resurrecting the Leo Frank case. You can be sure that your aunt's memory would have been used solely for a vehicle to promote anti-Semitism.

I have enclosed for your information a copy of *The Thunderbolt* in order to give you an idea of what this paper and group engages in. For the extreme vulgarity see especially page 10.

The KKK reprinted in its entirety the statements of Judge Randall Evans, Jr., from the *Augusta Chronicle-Herald* dated May 15, 1983. In here, Judge Randall Evans, Jr., stated the review of the case and discussed Leo Frank's appeals to the Supreme Court of Georgia:

. . . The Supreme Court consisted of legendary giants—Justice Lumpkin, Justice Beverly Evans, Justice Fish, Justice Atkinson, Justice Hill, and Justice Beck. That court affirmed the conviction, with Justices Fish and Beck dissenting as to the admission of certain

288

*The Murder of Little Mary Phagan*

evidence; but on motion for rehearing by Frank, the entire court unanimously refused to grant the motion for rehearing.

Frank then filed an extraordinary motion for a new trial before Superior Court Judge Hill, which was overruled, and this decision was unanimously affirmed by the Supreme Court of Georgia.

On June 6, 1914, Frank filed a motion to set aside the verdict, again before Judge Hill, which motion was denied. And all of the justices concurred in the denial, except Justice Fish, who was absent.

So at this point in time the record shows that two impartial judges of Superior Court in Fulton County, twelve impartial jurors in Fulton County, and six impartial justices of the Supreme Court of Georgia, all held that Leo Frank was legally tried, convicted, and sentenced to be hanged.

Bear in mind, this was not in a rural county of Georgia where influential politicians are sometimes thought to sway juries, but it was in the most populous county in the South where it was not shown or even suggested that Jews are the objects of bias.

Leo Frank's race was not an issue in the case during the trial.

But the Jewish community of the entire United States sought to shield Frank by saying he was convicted because he was a Jew! Nothing is further from the truth! Money was raised on the streets of New York and elsewhere in the Jewish community for Leo Frank's defense; the best lawyers were employed, including the top defense lawyer in Georgia, Reuben Arnold, associated with and aided by Rosser and Brandon, Herbert Haas and Leonard Haas. But the evidence was overwhelming—and it is still so today.

It is interesting to note that Gov. John M. Slaton's term as governor expired on June 21, 1915.

289

*Application for Pardon: 1983*

Frank's final date for execution was set for the next day, June 22, 1915. On his last day in office, Governor Slaton commuted Frank's sentence to life imprisonment, thereby thwarting and overturning the due process of law as set forth by the Superior Court of Fulton County and the Supreme Court of Georgia. People were so aroused and dumbfounded by this maneuver they went

to the Slaton Mansion. But the Governor called out the National Guard for his protection, and succeeded in escaping. Mobs formed in many other parts of Georgia on learning of the rape of the judicial process by Slaton.

The Jewish community nationwide directed its wrath in large part towards Thomas E. Watson of Thomson, charging that Watson had written incendiary articles in his *Jeffersonian*, which contributed to Frank's conviction. They urged that Frank was a victim of racial prejudice and bias towards Jews.

Now comes "newly discovered evidence" which is claimed would have proven Frank innocent. Not so! A year ago the new witness, one Alonzo Mann, was first located, and said that as a young man he saw a Negro with the body of Mary Phagan in the basement of the factory building, and that he had remained silent for around seventy years because he was so young at the time, and he just didn't know what to do about it. Our State Department of Archives even wrote in one of its publications that this "new evidence" seemed to prove Frank innocent. I wrote the Department of Archives and pointed out that this was not new evidence at all—that during the trial of the case it was plainly proven that Jim Conley took the body to the basement—and the Archives Department replied with an apology and, in effect, said it had goofed. That correspondence is now a part of our Department of Archives.

290

*The Murder of Little Mary Phagan*

The suggestion that a governor or Board of Pardons and Paroles may pardon a deceased person is completely ridiculous.

The Constitution of Georgia provides that "the legislative, judicial, and executive powers shall forever remain separate and distinct." The executive department has no power whatever to reverse, change, or wipe out a decision by the courts, albeit while the prisoner is in life he may be pardoned. But a deceased party can not be a party to legal proceedings (*Eubank v. Barber*, 115 Ga. App. 217-18). If Leo Frank were still in life, he could apply for pardon, but after death neither he nor any other person may apply for him. As the Supreme Court of Georgia held in *Grubb v. Bullock, Governor*, 44 Ga. 379: "It [pardon] must be granted the principal upon his application, or be evidenced by ratification of the application by his acceptance of it [the pardon]." Leo Frank's case was finally terminated absolutely against him by the Supreme Court of Georgia on June 6, 1914. He lived thereafter until August 16, 1915, and never did apply for pardon. It is too late now for any consideration to be given a pardon for Leo Frank. Pardon can only be granted to a person in life, not to a dead person. To illustrate the folly of such proceedings, could someone at this late date apply for a divorce on behalf of Leo Frank?

The blood of a little girl cries out from the ground for justice. I pray the sun will never rise to shine upon that day in Georgia when we shall have so blinded ourselves to the records, to the evidence, to the judgments of the court, and the judgment of the people, as to rub out, change, and reverse the judgment of the courts that has stood for seventy years! God forbid!

291

*Application for Pardon: 1983*

My father and I were interested in the statements made by Judge Randall Evans. We had been told that the Phagan family were the only ones who had objected to a posthumous pardon for Leo Frank. Evidently there were other people, prominent and well known, who had also objected.

We felt that the judge made some important and relevant points. We felt we had to verify the statements concerning the pardon to find out whether the consideration of the application by the Board was indeed illegal.

I contacted Mike Wing of the Board and asked for a copy of the governing rules in consideration for a pardon. He was again most supportive, and even suggested that we meet. A date was set for August 8, 1983.

When I received the information that I requested, I learned that the application for pardon filed was indeed illegal. Why, then, had it been accepted? There were only two instances in which a pardon could be granted. According to the rules of the Pardons and Paroles Board:

1. A pardon may be granted to a person who, to the Board's satisfaction, proves his innocence of the crime for which he was convicted under Georgia law. Newly available evidence proving the person's complete justification or non-guilt may be the basis for granting a pardon. Application may be submitted in any written form any time after conviction.

2. A pardon which does not imply innocence may be granted to an applicant convicted under Georgia law who has completed his full sentence obligation, including serving any probated sentence and paying any court-ordered payment, and who has thereafter completed five years without any criminal involvement. The five-year waiting period after sentence completion may be waived if the waiting period is shown to be detrimental to the applicant's livelihood

292

*The Murder of Little Mary Phagan*

by delaying his qualifying for employment in his chosen profession. Application must be made by the ex-offender on a form available from the Board on request.

On July 22 I went to Nashville to meet the whole *Tennessean* staff, including John Seigenthaler, the president and publisher. Jerry Thompson, Robert Sherborne, and I went to lunch, and on our return a special tour was arranged for me so that I could understand the operation of a newspaper. For the first time I realized the minute details that had to be seen to before an article could be printed.

At 3:00 I met with John Seigenthaler, also Frank Ritter, who was Deputy Managing Editor, and Jerry and Robert, as well as Sandra Roberts. On the wall of John Seigenthaler's office was a picture of the jury that convicted Leo Frank. "The picture will remain there until a pardon is granted," Mr. Seigenthaler said.

The staff was very cordial, courteous, and helpful to me. We shared our opinions, both pro and con, and we remained strong in them. Mr. Seigenthaler asked what my father thought about the possibility of a pardon and I told him that he objected unless complete proof of evidence could be submitted. Mr. Seigenthaler felt that no complete proof of evidence would ever come forth, only so-called controversies.

I realized something about myself during our discussion: my opinions were as strong as my father's, and I, too, felt that a posthumous pardon should not be granted unless there was complete proof of evidence. Sherry Frank's statement kept playing in my mind: "The pardon not only would wipe from the books the life sentence given Frank, but also would clear him outright of guilt in Mary Phagan's killing." If the pardon was granted, what would the books say?

293

*Application for Pardon: 1983*

Our meeting broke up at 5:30. Mr. Seigenthaler told me that I need not commit to a decision on publicly coming forward and that my name alone was worth something—a special name. He also felt that I was as stubborn in my opinions as he was in his.

He was right: my name was special to me. It would always be. I would never forget who or what or where came from.

Later that evening the staff allowed me to go through Sandra's research files and determine what materials I would like to photocopy. They were extremely responsive and showed no hesitation whatsoever in giving me any of their work.

On the way home I thought about what was happening: I knew that the Board would be deciding soon. And, I thought, the sooner the better; I just didn't think I could go much longer without knowing.

Alonzo Mann called me on July 26 to let me know he had received a letter from a "Phagan" and thought I would be the most appropriate person to have it. He also told me that no matter what decision I made, we would be friends and not have to talk about it. We both realized and understood our mutual struggle to have the truth known. I respected him and he me.

Frank Ritter of the *Tennessean* called me on July 28 to ask me to let him know when I made a decision about going public. He added that no matter what, he supported me!

The following day Sandra Roberts called to ask if I would agree to a meeting with Bill Gralnick, president of the American Jewish Committee and Miles Alexander, an attorney, on August 3.

During the days that followed, I wondered what the real purpose of the meeting was. I trusted Sandra and liked her. She had become a friend to me. So I knew she would never put me in an uncomfortable position.

294

*The Murder of Little Mary Phagan*

The meeting was held at the Kilpatrick and Cody law firm on Peachtree Street. Bill Gralnick and Miles Alexander had concerns about the Phagan family and wanted me to share our views. One of the concerns was what the Phagan family—especially my father's and my—attitudes were toward their organizations.

I told them that we didn't condemn or object to them with regard to their seeking to pardon Leo Frank, but that we did object to a pardon unless complete proof of evidence could be substantiated. We understood their position and hoped they understood ours.

They wanted to know how we would feel if a pardon were granted without such evidence. I told them I knew my father would be mad as hell and that he would seek legal advice if the pardon were granted without adequate proof.

My impression was that they felt that Leo Frank did not have a fair trial according to today's standards. They wanted to know how I would deal with the situation if I were Leo Frank's greatniece but I told them I could only deal with the questions and heritage that were mine.

On August 8, 1983, my father and I met with Mike Wing of the Board of Pardons and Paroles. I drove to my parents' home in Decatur, and we agreed the easiest way to get downtown would be via MARTA, the rapid transit system in Atlanta. While we were riding, my father recollected some stories and spoke of childhood memories. As we rode, he described and pointed out where my grandfather lived as a young man and the location of the Fulton Bag Mills where he worked. He explained to me the hard life my grandfather had, but expressed proud feelings for his father. "My father wanted his children to do better than himself, and I feel the same way. I am as proud of you as he was of me," my father squeezed my hand lightly.

We arrived at 2:00 p.m. and registered in the waiting

295

*Application for Pardon: 1983*

room. Silas Moore greeted us and then introduced us to Mike Wing.

Mike Wing was cordial. We freely discussed the idea of a posthumous pardon for Leo Frank. My father did most of the talking. He informed Mike that the Phagan family was opposed to the granting of a posthumous pardon because there was no absolute proof of Leo Frank's innocence. He felt that Alonzo Mann's affidavit offered no proof, but was merely Mr. Mann's opinion that Leo Frank did not commit the murder. The controversies which my father said were "so-called" were exactly that. He felt that they could not be proven and what was essential was the transcript at the Supreme Court of Georgia. And he wanted evidence. Not statements. Not hearsay. Not resolutions. He wanted evidence that would stand up in a court of law. The known facts were brought out during the trial, the jury heard them, and the jury of Frank's peers convicted him. He would fight for Frank's exoneration if new evidence were brought forward, he declared. We would be the first ones to stand up and support that exoneration.

My father's other main point was that those who were seeking the pardon chose to impose today's judicial standards for a trial that occurred in 1913. "How can one compare yesterday with today," he asked. "Today's laws are built on yesterday's court decisions."

"The lynching is a different matter," my father stated. He said "I neither condemn or condone it. Again, we cannot judge yesterday's values based on today's standards of morals."

My father told Mike that he was not in any way associated with the Ku Klux Klan but felt that any person or organization could and should have the right to pay little Mary Phagan tribute as long as it wasn't for their own prejudicial purposes. My father then described the

296

*The Murder of Little Mary Phagan*

"Remember Mary Phagan" incident in 1974 to which he had totally objected.

Mike told us that Judge Randall Evans, Jr., who was quoted in *The Thunderbolt*, was not a member of the Klan or had any association with them. He informed us that he was a retired judge and felt that the courts of Georgia should be upheld in dealing with the Leo Frank case. Then he told us about Edgar Neely, the attorney who also opposed the pardon.

My father explained his reasons for wanting to be present when the Board discussed the case. Again, Mike stated that no oral testimony would be taken but that the Board might consider granting us a review. My father felt we had a right to it.

We thanked him for notifying us in advance about the application for a posthumous pardon and for the opportunity of discussing in person our views with regard to it.

On August 9 I contacted Edgar Neely. I wanted to know why he opposed the pardon. He told me that the April 26 article made his blood boil. He personally knew Reuben Arnold and Hugh M. Dorsey and felt it was a disgrace to discredit these fine lawyers. He had even argued cases against Reuben Arnold, and felt he was brilliant. He stated that the evidence is "flimsy because no one is alive to dispute Alonzo Mann," and that he wanted to uphold the courts, "as Leo Frank got a fair trial for that time." Therefore, he had written a letter to the Board stating his opposition.



Sandra Roberts called and asked me how the meeting went with the Board. I told her the Phagan family—including myself—opposed the pardon. I also told her I would make a decision about going public by the end of August.

I was ready for another big step. On August 29, 1983 I decided to acknowledge my name and legacy to the press. I called Sandra and told her. Frank Ritter called

297

*Application for Pardon: 1983*

back within minutes and we set September 5 for my interview.

On September 1 the *Marietta Daily Journal* reported: HARRIS: PARDONS, PAROLES BOARD SHOULD RE-CONSIDER FRANK CASE.

The article, by Bill Carbine and Merritt Cowart, was, my family felt, further outside pressure on the Board to determine its decision. Governor Harris was quoted as saying: "From what I've seen and heard, the case deserves reconsideration. From the recent evidence and from what I've heard, I think it is something that the Pardons and Paroles Board could consider." The governor did not say whether he would recommend a posthumous pardon for Frank, as several of the Jewish organizations suggested.

Dr. Edward Fields of Marietta, head of the New Order of Knights of the Ku Klux Klan, maintained the Board could not posthumously pardon anyone in Georgia and based his argument on the opinion of retired Judge Randall Evans, Jr.

Fields scheduled a KKK march for Saturday, September 3, from Marietta Square to Mary Phagan's grave, located off Powder Springs Road. Expectations were that approximately one hundred to one hundred and fifty Klansmen would come to the "Remember Mary Phagan" services. They planned for the Reverend Thom Robb of Harrison, Arkansas, to lead the eulogy, and for a wreath to be placed on Mary Phagan's tombstone.

Marietta Mayor Bob Flournoy announced that a service would be conducted at the First Baptist Church at 148 Church Street in Marietta for all those people opposed to the KKK rally.

September 3 arrived. I stayed home. I felt afraid. A couple of local stations reported the KKK march to Mary's grave. She was eulogized, and a wreath was placed on her tombstone. It was stated that everyone might not agree with what the Klan stood for, but that the remembrance

298

*The Murder of Little Mary Phagan*

of Mary Phagan is still alive and that this was part of Georgia history. The counter-demonstration at the First Baptist Church in Marietta took place at the same time.

The *Atlanta Journal and Constitution* and *Marietta Daily Journal* reported on the Klan march and repeated what the news account reported. It was also reported that the rally and the counter rally were orderly and without interruption.

On September 5 the *Tennessean* staff—Frank Ritter, Sandra Roberts, and Pat Casey (photographer)—arrived at my home. We grilled hot dogs and hamburgers outdoors and ate before we got into the interview. My father did most of the talking. The rest of the family listened attentively, even though we had heard the same stories before.

The staff had asked to be taken to little Mary Phagan's grave. It was the first time that my father and I had been there together. When he read the inscription

his emotions got the best of him and he cried. His tears made me cry. Her memory bound us together. It was true. Little Mary Phagan was not forgotten.

We felt strongly that the story in the *Tennessean*, "Little Mary Phagan Is Not Forgotten," would be done honestly, accurately, and with sensitive feelings toward us. We were correct. Frank Ritter called us and read the entire story before it went into print. He wanted to make sure there were no mistakes. We were pleased.

On September 7 Durwood McAlister of the *Atlanta Journal* wrote an editorial opinion on the Frank case. He felt that the Klan march was a futile attempt on the part of the Klan for its very existence, using the posthumous pardon for Leo Frank as an excuse.

His explanation of why the KKK marched to the grave of Mary Phagan was that the legacy had begun there. It was well documented that the modern Klan, known as the "Knights of Mary Phagan," gathered on top of Stone Mountain a few weeks after the lynching of Leo Frank.

299

*Application for Pardon: 1983*

It was evident that he believed Leo Frank to be innocent of the murder of little Mary Phagan and that the lynching was wrong.

He felt that Leo Frank should be officially pardoned due to the fact that remaining doubts were dispelled by the confession of Alonzo Mann.

He also stated, "Ten years after the murder, a journalist working for the *Atlanta Constitution* uncovered new evidence proving Frank's innocence, but prominent Atlanta Jews, fearing the story would only bring on new repercussions, persuaded the newspaper to withhold the publication."

I couldn't believe what he was saying. Why didn't he present the evidence to the Board along with Alonzo Mann's eyewitness testimony? I called to try and find out, but my call was never returned. I thought it was incredibly one-sided to present the story in such a way.

My father and I contacted Ron Martz of the *Journal* to tell him we were ready to public in Georgia.

On September 14 the *Atlanta Journal* printed a letter from Randall Evans, Jr., in response to Durwood McAlister's editorial opinion.

It said that Judge Randall Evans, Jr., was not a member of the Ku Klux Klan, but one of the thousands of Georgians who vigorously opposed a pardon for Leo Frank. And it reminded readers that the law of Georgia gave no authority for pardoning a dead man.

Judge Evans responded to every one of Durwood McAlister's statements. His last paragraph also expressed my sentiments exactly: "It is hoped that the Board will permit oral argument on this question and then your hired editorial writers will be privileged to speak out in public and justify their statements written from the privacy of your editorial offices. And perhaps others of us will be allowed to reply."

Ron Martz's story, which appeared in the *Atlanta*

300

*The Murder of Little Mary Phagan*

*Journal* on September 22, 1983, provided a step forward for my family—and closed any way of going back. The story titled, "MARY PHAGAN'S LEGACY: Victim's name-sake opposed pardon for convicted Frank," ensured the awareness in Georgia of my family's existence and our opposition to a pardon for Leo Frank unless new proof of evidence was found.

Once again, my father and I were pleased with Ron Martz's reporting.

On September 27, 1983 they permitted my father and me to address the Board. Sitting on the Board were Mob-ley Howell, Chairman, Mamie Reese, member, James Morris, member, Michael Wing, member, and Wayne Snow, Jr., member. They had not realized that the Phagan family existed until Mike Wing informed them. They had become concerned about our feelings and felt that we could share them with the whole Board. They were responsive and understanding.

My father addressed the Board:

My name is James Phagan, and this is my daughter, Mary Phagan, named for little Mary Phagan. We are direct descendants of little Mary Phagan. My father, William Joshua Phagan, Jr., was little Mary's brother. We have come here today to express our views and opinions on the request for a posthumous pardon for Leo Frank, who was the convicted murderer of little Mary Phagan. We prefer to remain within ourselves and not to seek publicity concerning our legacy. We have never said anything before because we never had anything to say. We granted Ron Martz, staff writer for the *Atlanta Journal*, an interview because of the many articles, editorial opinions, both in the news-paper and on TV stations, and "outside pressure" of the Senate. It was time for it to be known that we do indeed exist, and we are concerned about the granting of a posthumous pardon.

301

*Application for Pardon: 1983*

I am here today with my daughter, Mary, to inform you that if you find evidence—not statements, not hearsay, not resolutions, but evidence—that will stand in a court of law to prove the innocence of Leo Frank for the murder of little Mary Phagan, then we would like to come forward with you and tell the world. A miscarriage of justice is a miscarriage of justice whether it happened two years ago or seventy years ago.

We cannot compare yesterday with today's standards. We were not there and it is unfair to say that Leo Frank did not get a fair trial according to today's standards.

The lynching of Leo Frank is an entirely different matter. But I am not going to condemn or condone what was done. You had to be there to understand the feeling that Governor Slaton's commutation order caused. The people felt robbed of justice and became a vigilante committee.

I am emotional about this, and my daughter is emotional about this. We thank you for the opportunity to address you and for letting us express our views and opinions.

I listened to my Dad as he spoke and felt proud to be his daughter and to be a Phagan.

Mobley Howell asked if any of the members had any questions. There were none. Mr. Howell told us the nicest part of this tragedy was that the Board had the opportunity to meet my father and me.

"Young lady," he said, "you are beautiful and have a startling resemblance to your greataunt."

I smiled and thanked him. He also told us that the Board would render its decision by the end of 1983.

The rendering of this decision weighed heavily on my mind in the following months. During that time, *The New*

302

*The Murder of Little Mary Phagan*

*York Times*, *Washington Post* and *U.S. Magazine* sent reporters to interview my father and me. One of the reporters told me outright that my grandfather and father "have been lying" and that Leo Frank was innocent.

My nightmares returned.

In December the *Atlanta Journal* and *Atlanta Constitution* reported that the Board of Pardons and Paroles would announce its decision sometime during the last two weeks of 1983. Finally, I thought, it would be over. Or would it?

On December 22, 1983 my father went to the State Capital Building, where the Board was to announce its decision. I had left Atlanta that morning for Michigan to spend Christmas with Bernard's family. I wouldn't be there. I would be the last to know. It was frustrating.

When we arrived at Bernard's parents' home, Bernard's mother couldn't wait to tell me: Dan Rather had reported on CBS news that the request for a posthumous pardon for Leo Frank had been denied!

I cried. I was relieved, angry, and sorrowful. I wanted to know if it was truly over.

The Board had begun work on the pardon in January 1983, pretty much going over the same routes of investigation that John Slaton had sixty-eight years earlier.

It organized an investigation staff under the direction of Chairman Silas Moore. This staff was presented with "evidence": newspaper accounts, the trial brief, books, and letters—along with short summaries. Many of the Board members turned to history books to get a perspective on the lynchings, yellow journalism, and the general temper of the time when little Mary Phagan had been murdered.

Alonzo Mann's testimony was the first to be evaluated. While many, including Mr. Mann, felt that his new recollection "proved" Frank's innocence, the Board felt it merely cast doubt on Jim Conley's testimony. It proved in

303

*Application for Pardon: 1983*

the Board's estimate that Jim Conley lied about carrying Mary Phagan in the elevator, and possibly about her dying on the metal room floor, but it did not prove that Frank had not killed her upstairs nor even that he might not have later killed her downstairs. The Board felt Mann made Conley into a liar, which everyone knew, but not necessarily a killer. Also, the seventy-year gap that made his testimony so sensational to the media and would-be movie producers cast doubt on the validity of his recollections. Moreover, it was perceived that his testimony itself had internal contradictions.

Once the Mann evidence had been weighed and found to be non-conclusive, there wasn't much to go on. "We set about to do almost the impossible," one Board member was to state publicly, "to reconstruct something that occurred seventy years ago—frankly, all the actors were deceased except Alonzo Mann. We were totally at the mercy of accounts by others—mostly journalism accounts, letters—and mostly opinions." He was correct: no other witnesses appeared; no one unearthed heretofore secret material; and, despite rumors, there was no concrete evidence of a confession by Jim Conley. Seventy years after it all began, the Leo Frank case remained a mystery—and, because of the passage of time, an even deeper mystery. Even if Alonzo Mann's account were entirely true, Frank still could have killed Mary Phagan, either accidentally or deliberately, either in combination with Jim Conley or on his own—or he could have been completely innocent.

And there is a third possibility. Someone, whose identity we may never know, could have slipped unnoticed into the pencil factory that day, or have been allowed in by a person on duty. What would this person's motive for killing little

Mary Phagan have been? Robbery? A grudge against the pencil company? Anger at Mary because she may have rejected advances this person might have made to her?

304

*The Murder of Little Mary Phagan*

I wondered: how many others had thought of this possibility? In the announced decision itself, the Board declared cogently: The lynching of Leo Frank and the fact that no one was brought to justice for that crime is a stain upon the State of Georgia which granting a posthumous pardon cannot remove.

I called my Dad and asked him if it was over. He told me it wasn't. He said that when the Board of Pardons and Paroles changed chairmanship there would be another request filed. Somehow I knew he was right.

The Board sent me the decision in response to the application for posthumous pardon for Leo M. Frank. It stated:

On August 25, 1913, Leo M. Frank was found guilty in Fulton County Superior Court of the murder of Mary Phagan. Frank was sentenced to death by hanging.

For almost two years the case was appealed unsuccessfully up to the highest levels in the state and federal court system.

On June 21, 1915, Governor John M. Slaton commuted the sentence of death to life imprisonment.

On August 17, 1915, a group of men took Leo M. Frank by force from the state prison at Milledgeville, transported him to Cobb County, Georgia, and there lynched him.

On January 4, 1983, this Board received an application from the Anti-Defamation League of B'nai B'rith, the American Jewish Committee, and the Atlanta Jewish Federation, Inc., requesting the granting of a full pardon exonerating Leo M. Frank of guilt of the offense of murder.

305

*Application for Pardon: 1983*

In accepting the application, the Board informed the applicants that the only grounds upon which the Board would grant a full pardon exonerating Leo M. Frank of the murder for which he was convicted would be conclusive evidence proving beyond any doubt that Frank was innocent. The burden of furnishing such proof would be upon the applicants.

The information which has been submitted to the Board in this matter is considerable. The pardon application, prompted by the affidavit of Alonzo Mann dated March 4, 1982, is accompanied by numerous other documents submitted in support of the pardon.

Alonzo Mann made statements to journalists Jerry Thompson and Robert Sherborne, which appeared in a copyright article in the *Tennessean* on Sunday, March 7, 1982, and made similar statements in Atlanta, Georgia, on November 10, 1983, which were video-taped and recorded by a court reporter in the presence of representatives of the Parole Board. Mann's major point was that, upon re-entering the front door of the National Pencil Company building on April 26, 1913, shortly after noon, he saw the limp form of a young girl in the arms of Jim Conley on the first floor. Upon seeing Mann, Conley is alleged to have turned and reached out toward him with one hand, stating "If you ever

mention this, I will kill you." Mann then ran out the front door, caught a streetcar, and went straight home.

Assuming the statements made by Mr. Mann as to what he saw that day are true, they only prove conclusively that the elevator was not used to transport the body of Mary Phagan to the basement. Governor Slaton concluded as a result of his investigation, that the elevator was not used and so stated in

306

*The Murder of Little Mary Phagan*

his order of commutation. Therefore, this in and of itself adds no new evidence to the case.

Briefs have been submitted in opposition to the pardon. These briefs cite evidence and information to support that view, none of which is new.

Numbers of other letters have been received reflecting opinions in support of and in opposition to the pardon.

In addition to the information and material submitted to the Board by interested parties, the brief of trial evidence was obtained from the Supreme Court of Georgia. This extensive document contains all the testimony given at the trial. It is the foundation upon which most arguments on both sides of the issue are based.

The lynching of Leo Frank and the fact that no one was brought to justice for that crime is a stain upon the State of Georgia which granting a posthumous pardon cannot remove.

Seventy years have passed since the crime was committed, and this alone makes it almost impossible to reconstruct the events of the day. Even though records of the trial are well preserved, no principals or witnesses, with the exception of Alonzo Mann, are still living. This case is tainted due to the lynching of Leo Frank. Would he eventually have won a new trial? Would he have been paroled? These questions can never be answered. After an exhaustive review and many hours of deliberation, it is impossible to decide conclusively the guilt or innocence of Leo M. Frank. There are many inconsistencies in the accounts of what happened.

For the Board to grant such a pardon, the innocence of the subject must be shown conclusively. In

307

*Application for Pardon: 1983*

the Board's opinion, this has not been shown. Therefore, the Board hereby denies the application for a posthumous pardon for Leo M. Frank.

For the Board,  
Mobley Howell, Chairman

Though the testimony they had collected convinced the petitioners of Leo Frank's innocence, it must have seemed far less certain to Board members. Dale Schwartz had declared Alonzo Mann's testimony "so credible you couldn't get an actor to do that," but the Board members apparently doubted its value as concrete evidence. To the Board it became clear that Mann's testimony did no more than support Slaton's conclusion, based on the argument of the excrement in the elevator shaft, that Jim Conley did not tell the truth about using the elevator to carry Mary Phagan's body to the basement. But at worst, considering that it took seventy years for Alonzo Mann to come forward, as well as a couple of unsupported assertions in his testimony, the testimony proved nothing at all.

Even if Jim Conley had lied, the Board argued, it did not mean that Frank was innocent. As Mike Wing is quoted as saying in an *Esquire* article in 1985:

The testimony of Mann sounded good. It matched up with the shit in the shaft to suggest that Conley was the killer. But does his testimony provide sufficient reason to overturn the findings of the court. I wouldn't convict someone seventy years after the fact solely on the testimony of an eighty year old man, so how can I pardon someone on that testimony. To get that pardon, they needed to prove that Frank was innocent beyond a shadow of a doubt, and Mann's testimony just didn't do that.

308

*The Murder of Little Mary Phagan*

And, while the pardon effort was motivated by extra-legal goals, it spoke of the pardon process as within the structure of the "judicial process" that provided for "the privilege of pardon and commutation as a 'safety valve' for use in extraordinary cases," and probably worked against it. As if meant for a formal court, the application cited federal court cases to justify "standing" to seek a pardon. The petitioners, in attempting to repudiate anti-Semitism, represented their attempt as a legal effort to repudiate the libel against the Atlanta Jewish Community—an "injury in fact."

The conclusion of the pardon application read:

The public good will be served; a historic injustice will be corrected; a seventy-year libel against the Jewish Community of Georgia will finally be set aside, and the soul of Leo Frank will, at last, rest in peace.

The "proof" in Mann's testimony and the collective weight of the number of people, including John Slaton, who believed in Frank's innocence in 1915, provided the claim for Frank's innocence. But the leaders of the pardon effort tied the extra-legal justifications for the pardon and their procedural mindset very tightly together, which led to claims of innocence that were not easily justified.

Dale Schwartz publicly responded to the passage in the Board's statement which said that Frank's innocence was not "proved beyond any doubt," with "The 'beyond any doubt standard' is one which none of us have [sic] ever seen applied in Anglo-American jurisprudence." Yet the pardon application itself stated that: ". . . the statement of facts demonstrates, Leo Frank was innocent to a mathematical certainty."

The response to the Board's denial of pardon was immediate and vociferous. The Atlanta *Constitution* ran an editorial cartoon showing three men, labelled as Board

309

*Application for Pardon: 1983*

members, packing away a crate. The cartoon was captioned: "Well, that's done . . . Now where can we stash it?" Television and radio broadcasters took up the cry, as did the three groups who had filed for the posthumous pardon—the Anti-Defamation League, the American Jewish Committee, and the Atlanta Jewish Federation. They were, they said, in shock. Board members, convinced of the sincerity of their investigation and decision, also pro-claimed themselves in shock. Hundreds of letters criticizing the decision came into the Board weekly.

I felt that the Board made a fair decision. From the start the Board had explained to the applicants that complete and new evidence must be shown before a posthumous pardon could be granted. Alonzo Mann's testimony was not new

evidence: in essence it suggested that Jim Conley probably lied about the use of the elevator, but it did not prove that Leo Frank did not murder little Mary Phagan. I wondered if the editors of the papers sifted through the mounds of evidence and whether they had read the 454-page trial transcript or the daily accounts in newspapers. I was amazed that the *Atlanta Journal* stated on December 23, 1983: "A network news anchor told his viewers last night that Georgia had refused to clear the name of Leo Frank. That's not quite true. Leo Frank's name has, in all but the most formal sense, been cleared for decades. His innocence is understood and accepted by all but those few whose hearts are clouded by connection to Mary Phagan or blackened by remnants of the kind of bigotry that killed him."

I felt they were wrong. There are many people in Georgia, not related to little Mary Phagan and not bigoted, who believe Leo Frank to be guilty. In fact, I have met some people of the Jewish faith who believe Frank to be guilty.

310

*The Murder of Little Mary Phagan*

My father requested time on one of our local TV stations to make a rebuttal to an editorial opinion on the pardon. He was denied it. My father decided not to report the TV station to the Federal Communications Commission. This phase was over—for the rest of the world. Not for my family. The story of little Mary Phagan would go on. The denial of the posthumous pardon was, I felt, merely a breathing space.

And the nightmares continued.



# AFTERWORD: PARDON: 1986

On March 19, 1985 my father told me that Alonzo Mann died. I felt sad. To me, he was a fine gentleman; he believed what he had seen to be evidence of the truth. He was at peace now. I was still struggling for my peace.

On March 6, 1986 Silas Moore of the Pardons and Paroles Board had contacted me regarding the Board's receipt of another application for a pardon for Leo Frank. The Board wanted to meet with my father and me.

It shouldn't have been a surprise. The reverberations from the Board's denial of pardon in 1983 had never really died down.

"I don't know," Board member James Morris had said in 1985, "I wish we could do something to right this wrong. I know we want to do something, but to say with one hundred per cent certainty that Leo Frank is an innocent man is a very difficult thing to do."

That year Wayne Snow, Jr., who had been appointed chairman of the Board of Pardons and Paroles, said, "The case is so repulsive because of the lynching—because it terminated all the rights of an individual." Another Board member had been disturbed by "the State's inability to protect one of its citizens" since Frank was in state custody during the lynching.

311

312

*The Murder of Little Mary Phagan*

And while no one on the Board mentioned the goal of repudiating anti-Semitism, there was no way anyone could have been unaware of the pain that the Frank case seemed to cause the Jewish community—nationally.

The following day, my father and I met with Wayne Snow, Jr., the new chairman of the Board, and Mike Wing. We were told that the Jewish community had again filed application for a posthumous pardon. And that if a pardon were issued, it would be based not on guilt or innocence but on the contention that "the State did not protect Leo Frank and that his rights were violated." The Board felt that the lynching of Leo Frank was wrong. And that this pardon would "heal old wounds."

Apparently, renewed efforts for pardon had begun in September 1985. And while at first the petitioners had thought they'd failed to obtain the pardon in 1983 simply because they had not brought enough pressure to bear, they had come to see that, beyond the strictly procedural action of the process which sought to establish Leo Frank's innocence or Jim Conley's—or someone else's—guilt, what was most probably achievable was a pardon that addressed the extra-legal case about Leo Frank.

And this approach by the petitioners allowed Board members' sympathies for the extra-legal aspects of the case to come through. The Board had been deeply concerned about the problem of setting a precedent for a huge number of posthumous pardon applications, were Frank pardoned on strictly legal bases. By addressing the extra-legal case, however, the precedent that a pardon would grant would only be to exceptional cases like the Frank case. So, six months prior to the Board's contacting me, an initial proposed pardon application made its way through to some members of the Board. This initial draft repudiated the old

standard of absolute innocence and made no mention of a pardon based on innocence or guilt. By March, members of the Board had agreed in principle

313

*Afterword: Pardon*

to grant a special type of pardon which would imply neither innocence or guilt, but merely address the concerns brought about by the case. They approved such a pardon in early March.

After meeting with representatives of the petitioners, the Board began drafting a final pardon order which they approved shortly after ADL officials and others found it acceptable.

But our family had questions.

Why was there no public announcement of receipt of application?

Why were other people who opposed granting of the pardon not told of the new application?

My father reminded the Board that if the pardon were granted books, miniseries, and movies of the Mary Phagan/Leo Frank case would be made, and, he believed, the pardon would not "heal old wounds" as they had hoped: instead, little Mary Phagan's story would never die, and the controversy surrounding her horrible death would continue.

"You are damned if you do and you are damned if you don't," he told them.

Former Chairman Silas Moore announced the issuance of a pardon order on March 11, 1986 at 1:00 P.M. at the Georgia State Capitol.

It seems that Board members had finally agreed on the bases for granting a pardon. They reflected concern that Frank's lynching had foreclosed efforts to prove him innocent. The Board also addressed three extra-legal concerns—the repudiation of lynch law, the need to heal old wounds, and the acknowledgement of anti-Semitism.

The question of whether Leo Frank had really committed the murder—the search for his purity or demonhood—was now just dust in the wind. In the discussions

314

*The Murder of Little Mary Phagan*

of pardon from September through March 1986 the Board had done no detective work, except to ensure the accuracy of its final order, discussing the historic background to the Frank trial. The Board simply overlooked guilt or innocence, something it had never done in pardons of forgiveness or pardons of innocence.

The final statement read:

On April 26, 1913, Mary Phagan, a thirteen-year-old employee in an Atlanta pencil factory was murdered. Georgians were shocked and outraged. Charged with the murder was the factory superintendent, Leo M. Frank.

The funeral of Mary Phagan, the police investigation, and the trial of Leo Frank were reported in the overblown newspaper style of the day. Emotions were fanned high.

During the trial a crowd filled the courthouse and surrounded it. While the verdict was read, Frank was kept in jail for protection. He was convicted on August 25, 1913, and subsequently sentenced to death.

After unsuccessful court appeals the case came to Governor John M. Slaton for his consideration. The governor was under enormous pressure. Many wanted Frank to hang, and the emotions of some were fired by prejudice about Frank being Jewish and a factory superintendent from the North. On June 21, 1915, the governor, because of doubts about Frank's guilt, commuted the sentence from death to life imprisonment. Thus Frank was saved from the gallows, and his judicial appeals could continue, or so it seemed.

On the night of August 16, 1915, a group of armed men took Frank by force from the state prison at Milledgeville, transported him to Cobb County, and early the next morning lynched him.

315

*Afterword: Pardon*

The lynching aborted the legal process, thus foreclosing further efforts to prove Frank's innocence. It resulted from the State of Georgia's failure to protect Frank. Compounding the injustice, the State then failed to prosecute any of the lynchers.

In 1983 the State Board of Pardons and Paroles considered a request for a pardon implying innocence, but did not find "conclusive evidence proving beyond any doubt that Frank was innocent." Such a standard of proof, especially for a seventy-year-old case, is almost impossible to satisfy.

*Without attempting to address the question of guilt or innocence, and in recognition of the state's failure to protect the person of Leo M. Frank and thereby preserve his opportunity for continued legal appeal of his conviction, and in recognition of the state's failure to bring his killers to justice, and as an effort to heal old wounds, the State Board of Pardons and Paroles, in compliance with its constitutional and statutory authority, hereby grants to Leo M. Frank a pardon.*

Given under the Hand and Seal of the State Board of Pardons and Paroles, this eleventh day of March, 1986.

STATE BOARD OF PARDONS AND PAROLES

Wayne Snow, Jr., Chairman  
Mrs. Mamie B. Reese, Member  
James T. Morris, Member  
Mobley Howell, Member  
Michael H. Wing, Member

The reports had indicated that the Board worked in secret with the Jewish community for almost a year and Wayne Snow, Chairman of the Board, stated this publicly during a TV station interview. This disturbed us. Wayne Snow had told us at the beginning of March that the

316

*The Murder of Little Mary Phagan*

Board was thinking of granting a pardon, but, in fact, had already made the decision which they announced immediately after they spoke to us.

We wondered what the purpose was of keeping it secret?

The pardon was covered by the media across the country. Everyone who knew me sent me the articles. Most of the newspapers reported that the relatives of Mary Phagan said that "Frank's official pardon doesn't mean he was innocent."

My father felt that the pardon which was finally issued was meaningless, for it had not settled the real question of Leo Frank's innocence or guilt.

As the publicity surrounding the announcement of the pardon died down, my struggle for inner peace became more difficult. I continued to have nightmares. It was as if someone was trying to warn me, to prod me into action. I felt compelled to tell my family's side of little Mary's story, to let the next generation of Phagans know their heritage, to let everyone know the true legacy of little Mary Phagan.

In January of 1987, the story of little Mary Phagan appeared in the newspapers again. Because of racial tension in nearby all-white Forsyth County, the media reminded readers that the murder of little Mary Phagan spurred the beginnings of the modern KKK.

And now my father's prediction of more books being written about the case and television miniseries is beginning to come true. I wonder what the next phase will be.

Even more, I wonder: will we ever know with complete certainty who killed Mary Phagan?

Has the answer gone to the graves with all the participants in the tragedy?