day of April of this year, with force and arms, did unlaw-
fully and with malice aforethought kill and murder one
Mary Phagan by then and there choking her, the said Mary
Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the
Grand Jury of this county recently empaneled Leo M. Frank,
the defendant, files a plea of not guilty. The charge as made
by the bill of indictment on the one hand and his plea of not
guilty filed thereto form the issue, and you, gentlemen of the
jury, have been selected, chosen and sworn to try the truth
of this issue.

Leo M. Frank, the defendant, commences the trial of this
issue with the presumption of innocence in his favor, and
this presumption of innocence remains with him to shield
him and protect him until the state shall overcome it and re-
move it by evidence offered to you, in your hearing and
presence, sufficient in its strength and character to satisfy
your minds beyond a reasonable doubt of his guilt of each
and every material allegation made by the bill of indict-
ment.

I charge you, gentlemen, that all of the allegations of this
indictment are material and it is necessary for the state to
satisfy you of their truth by evidence that convinces your
minds beyond a reasonable doubt of his guilt before you
would be authorized to find a verdict of guilty.

You are not compelled to find, from the evidence, his guilt
beyond any doubt, but beyond a reasonable doubt, such a
doubt as grows out of the evidence in the case, or for the
want of evidence, such a doubt as a reasonable and impartial
man would entertain about matters of the highest importance
to himself after all reasonable efforts to ascertain the truth.
This does not mean a fanciful doubt, one conjured up by the
jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Mur-
der is defined to be the unlawful killing of a human being, in
the peace of the state, by a person of sound memory and dis-
cretion, with malice aforethought either express or implied.