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DECEMBER 27, 1914.

Will The State of Georgia Hang An Innocent Man?

BY BURTON RASCOE.

WILL the state of Georgia send an innocent man to the gallows on Jan. 22? Will Leo M. Frank by law pay the death penalty for being a Jew upon whom the racial prejudice of a citizenry has placed the blame for one of the most hideous murders ever committed? Or will Leo M. Frank, unless a retrial or reprieve be granted him, be justly hanged for the murder of 14 year old Mary Phagan?

Upon the answer to these questions depends the efficacy of the aged adage to the effect that the voice of the people is the expression of the Deity. Upon the answer also depends the status of criminal jurisprudence in these United States and the quality of justice that is meted out in certain courts.

Residents in the main of Atlanta, Ga., where the crime was committed, are of the opinion that Frank is guilty and will be hanged according to the punishment due him. The exceptions are Frank's friends, many of whom are so thoroughly convinced of his innocence that they have undergone threats of assassination and destruction of their business and have bankrupted themselves contributing to Frank's defense fund.

Outside of Georgia those who have depended upon newspaper reports of the case are almost invariably of the opinion that Frank is innocent of the crime of which he has been convicted. United States senators, business men of prominence all over the country, and even judges of criminal courts have expressed the conviction that Frank's guilt has not been proved to their satisfaction. Jews have made of the case one of international importance, second, probably, to the celebrated "blood ritual" murder trial of Mendel Beilis, upon whom Russian officialdom fastened an atrocious and antiquated charge to foster racial and religious prejudice against an already persecuted race. Like the Beilis and Dreyfuss cases, the Jews have deemed the charge against Frank an affront against their race and they have rallied to his defense from all parts of the world, contributing money to attorneys and letters to editors. THE TRIBUNE has been besieged with letters imploring the influence of the editorial columns in protesting against what they deem a travesty upon justice and a crime against a race as well as against an individual.

To lawyers the case looms up in a different aspect. The constitutionality of the procedure by which Frank was convicted is challenged. To many of them it is an unheard of perversion of justice that a defendant should be deprived of his right to be present when the verdict convicting him was read. They protest, too, against the manner in which the trial was conducted, wherein the spectators were permitted to badger the jurymen during the trial with threats that should a verdict freeing the defendant be rendered the jurymen would suffer personal violence and business bankruptcy. Whether Frank is guilty or not is not a question with them; they hold that he has not received a fair and impartial trial that is his constitutional right to have.

The following review of the case is presented from the reports of the case, the affidavits that have been made, and the circumstances that led up to the trial. Every effort has been made to present an unbiased statement of the case.

In the early part of April, 1913, the National Pencil company's factory in Atlanta was recuperating from a seasonal business depression and was anticipating the fall orders of pencils for school children by working the full force at full time. Leo M. Frank, a young Jew inheriting some of the stock in the factory from his mother, had by persistent effort become superintendent of the factory.

His wealthy uncle holds the majority of the stock in the concern. Young Frank was not a native of Georgia. He was born in Brooklyn, N. Y., educated in the schools there, and later was graduated at Cornell university. His residence in Atlanta extended over only six years, during which time he had married and had established himself among his business associates as a thorough going, intelligent, reputable young man. He is now about 30 years old. In appearance he is strikingly like Elmer L. Reizenstein, the young Brooklyn Jew who at the age of 21 enjoys the phenomenal success of having had one of his plays ("On Trial") produced with eminent success on Broadway. There is no more hint of degeneracy in the facial characteristics of the one than in the other; and certain it is that young Reizenstein has proved himself a youth of promise rather than of evil.

In the metal room of the National Pencil factory a black haired, dimple cheeked, strikingly pretty girl of 14 years, Mary Phagan by name, operated one of the machines which turned the cheap yellow varnished pencils out by the gross for school children. She was one of five children in the family of a man who, to provide maintenance for his family, was called upon to use Mary's wages. Mary's duties were to arrive at the factory at 7:30 to 8 o'clock in the morning, punch a clock to record the time she started to work, sit stooped over a machine while she fed it the metal tips for pencils until 6 o'clock in the evening, excepting forty-five minutes for lunch. In consideration for this service every Saturday she was handed an envelope containing $1.50.

Mary Phagan was an unusually pretty girl and as such attracted the coarse gibes of the louts she met to and from her work as well as the attentions of others a little higher up in the social scale. There was evidence introduced and corroborated by Frank that two employés of the factory had been on terms of serious intimacy with the little factory hand. This corroboration by Frank damaged his case, inasmuch as he previously had stated he did not know that a Mary Phagan worked for the pencil company.

At about this time Atlanta was thoroughly aroused by the perpetration of three revolting crimes against women and young girls. These three crimes were the culmination of a series of over a dozen murders within a year in which the police had failed to attach the guilt in any one case. A girl just in her teens had been brutally assaulted on a country road outside of Atlanta; a girl a little older had been found dead in an alley; murders had been committed with terrifying regularity. In none of these cases had the police been able to furnish evidence conclusive enough to bring about a conviction.

And as is the custom with the American populace when a crime wave sweeps over the district, there was a hue and cry that some one be punished as a lesson to others and in expiation of the crimes that had been committed. The same spirit was witnessed here in Chicago when not so long ago there was a demand that some one be sent to the penitentiary to stop the "auto bandit" outrages which were giving the city an appearance of '49 lawlessness and making the streets unsafe to pedestrians. There was the same popular uprising in the Haymarket incident, in the car barn murders, and in others the reader will recall. The demand for a "victim" to appease popular wrath against public outrages is not peculiar to Atlanta.

The police of Atlanta, with or without foundation, were declared incompetent by the people and in turn declared incompetent by the mayor. Political animosities against the party in power were renewed on this alluring pretext. Editorials in the leading newspapers issued warning that unless the police and the prosecuting officers made good they would be thrown bodily out of their jobs at the next election. Atlanta's elections are controlled by the working people and it was the working people who were crying out for convictions, since most of the crimes had been committed against working women. The police realized that if they meant to retain their jobs and the confidence of the people they must secure a conviction at the next opportunity that presented itself.

The chance came.

Saturday, April 26, 1913, was Confederate Memorial day. On this day in the south the business offices are shut up, workmen are given a day of rest, and flowers are strewn with fitting ceremony upon the graves of men who died for the erstwhile confederacy. The National Pencil company's factory was closed. The busy streets of Atlanta in the morning had assumed a Sunday aspect, while residents remained for the most part at home to eat a hearty dinner before paying their respects at the cemeteries.

Superintendent Frank, having been born in the north, with no deceased relative due his floral tribute on this day, went down to the factory office to finish some routine work he had been unable to conclude on the day before. He had let it be known that those who wished might obtain their weekly pay from him on Saturday in the office in the absence of the regular cashier. At 11:30 in the morning two employés, Emma Clark and Corinthia Hall, came in for their money and were seen to leave the building at 11:35.

Frank's stenographer, who had come down on extra time at the request of her employer to take dictation on some letters that were important and to be mailed that day, finished up her work and went home at two minutes after 12. Monteen Stover, another employé, came in five minutes later, received her pay envelope, and departed. Lemmie Quinn, factory foreman, stepped in Frank's office and observed it was 12:20 p. m., talked with Frank on some minor affairs of the office for approximately five minutes, and, bidding his employer good-day, went home.

On the fourth and top floor of the building two workmen had foregone the holiday granted them and were getting in some overtime by doing some extra work. Near their bench was the elevator machinery with its squeaking cogs and clanking chains and pulleys. They were not bothered with the noise of the elevator, however, because the elevator man had been given a holiday and had disengaged the mechanism in such a manner that the elevator would not run until he returned on Monday.

This jealousy on the part of the elevator man for his machine proved inconvenient to a Mrs. White, wife of one of the silent workmen, who came in at 12:30 to see her husband and was forced to climb four flights of steps. On her way up she paused at the door of the factory superintendent on the second floor, attracted his attention from his work over some papers he had spread upon his desk, gave him a friendly greeting, received one in return, and continued on her way.

At 12:45 Frank glanced at his watch and decided he was late for lunch. He hurriedly mounted the steps to the fourth floor and announced to the workmen and Mrs. White that he was going home to lunch and would have to lock up the factory. The men replied they would not have finished their work before he returned and that he might lock up the factory until he returned and it would be just the same to them. Then Frank told Mrs. White she must go now if she intended to do so before he returned, as he was all ready to go except to put on his coat and hat. Mrs. White left the building and was four blocks away in a furniture store at 1 o'clock. Frank left the building immediately afterward and was seen by a dozen persons on his way home. It was established that Frank arrived home at about twenty minutes past 1 o'clock, ate luncheon, and returned to the office.

The time element in the above was fully verified by witnesses for both the prosecution and the defense. There is a detail omitted in the above which must be explained more at length.

At the trial it was testified that Mary Phagan had requested one of the factory girls to get the money due her on Friday as Mary did not work on that day, owing to the lack of metal for her machine. This request, it was sworn to, Frank refused to acknowledge, and told the girl Mary would have to call for the money in person. So the next morning Mary left her home and caught a street car at 11:50, arriving at the factory, according to the testimony of the street car conductor and motorman, not earlier than 12:15. The car company's schedule was referred to and the time required to walk from the car line to the office was calculated to establish this time. She went to Frank's office, and, according to Frank's testimony only, obtained a pay envelope containing $1.20 in the denomination of two halves and two dimes. She had not worked a full week because of the lack of metal for her machine.

At 3:30 the next morning Newt Lee, watchman in the pencil factory building, was making his regular rounds. He groped his way uncertainly through the basement with the aid of the flame of a small gas jet, which was permitted to burn at all hours. Presently he stumbled upon something that caused him to leap back in mingled horror and terror. He bent down and found his foot had brushed against the crumpled up body of a girl. He ran wildly out of the place and notified the police at the nearest station.

The police came. They straightened out the crumpled body, while one of them took notes of the proceedings. The girl's clothing was badly torn and part of her body was exposed. A blood clot covered a hideous gash on her head. There were numerous wounds that might have been inflicted with a penknife on her body. Her hair and eyelashes were covered with cinders, ashes, and dust from the basement floor. There was evidence that she had been dealt with in a criminal manner sexually. Her umbrella rested against some debris in a corner.

When the body was lifted up by the minions of the law two pieces of paper fluttered to the floor. One of the policemen picked them up and examined them. On one side was the printed date line of some office stationery that had been replaced by more recent stationery almost a year previous. The carbon impressions of an order for a bill of goods ordered by a previous superintendent were dimly descried. Across and over the carbon impressions were the following illiterate sentences freshly scribbled in pencil:

"mam that negro hire down here did this I went to . . . and he pushed me down that hole a long tall negro black I wright while"

"he said . . . play like the night witch did it but that long tall black negro did it buy his slef."

This was the chance for the police to make good in the grasp of the people. Here was a tragedy that from its awfulness was certain to caused the entire population to cry out for the blood of the murderer. To save their faces the police must bring the murderer to justice without delay—before there could be any chance for renewed criticism of the department.

The police went to their task valiantly, not to say enthusiastically. They called upon all the resources they had and enlisted the services of the Pinkertons and other private detective agencies—on the condition that the operatives of the other agencies should not work on different angles than those conceived by the police and that they should not have any views conflicting with those of the police.

The newspapers leaped into the process of goading the police to their best endeavors with hot editorials. The mayor declared that this was the day of reckoning for the police and that out they would go if the murderer was not ferreted out and expeditiously hanged. Mobs swarmed the streets discussing the case until the mayor was constrained to issue an order that the police should keep every one moving and allow no congregating in the city streets. Newspaper extras were issued every half hour announcing new developments in the work of detecting the criminal who was still at large. The gleaming saber of Damocles was suspended by a slender thread over the heads of the prefect of police and all his worthy underlings.

Forthwith Newt Lee, the watchman, was locked up as a suspect and put through the nth degree. His quick notification of his discovery of the body and his satisfactory answers to grilling questions satisfied the authorities that he had no connection with the murder other than that of being the uncomfortable finder of the body.

"Jim" Conley, a shiftless negro who was given to desultory employment and not so desultory drinking, was found the next day at the factory undergoing the questionable process of washing some stains from a shirt. Conley and the shirt were taken to police headquarters and locked up in separate compartments.

There was, and is, an intense prejudice in Atlanta against the Jews, not much greater probably than in many another community in this country where all people are "created free and equal" and are privileged to worship unhampered according to their convictions, but still great. Frank, part owner of the pencil factory and its superintendent, was a Jew—almost enough, in the minds of some of Atlanta's voters, to indict him without further evidence on the charge of the murder of the girl he had employed. A Jew was a prize subject for the accusation of the crime—much better than a negro. In the south they do not hate the negroes. They don't respect them, they deny rights to, disfranchise, lynch, and pity them; but they do not hate them. To hate them would mean some acknowledgment of the equality of white and blackamoor which no true southerner will admit.

The negro is not allowed to own property in the white district of the town; he is segregated as to residence and as to place of business. His chances for arousing the hatred of the white by commercial jealousy are automatically obviated because he is not allowed to have any business except that of being a servant, and a servile and obedient one. His word is taken only when it is convenient.

But with the Jew it is different. The Jew is an aggressive business competitor and compels outward respect at least because of his ability to secure trade and thereby insure himself and family a good living. He, mayhap, owns a motor car, and causes competitors to meet his prices. He contributes to the local charities and relieves the suffering of the poor, Jew and Gentile alike. So he is thoroughly hated, from economic jealousy as well as from religious prejudice, the one intensifying the other.

The negro, Conley, was put under a cross examining process, which has been declared by William J. Burns, the detective, who has had some experience in cross examining himself, contrary to the ordinary procedure in such business. It has been stated that the "bloody" shirt episode incriminating Conley was dropped like a hot poker upon an answer to a leading question propounded to Conley. It has been declared by Burns, among others, that the circumstantial evidence warranting the retention of Conley as the suspected slayer was dropped and Conley was led to shoulder the blame upon Frank in somewhat the following manner:

"What do you know about this murder?"

"Nothing."

"Who do you think did it?"

"I don't know."

"How about Frank?"

"Yes. I confess. He's the one who did it."

"Sure he was. That's the fellow we want."

And forthwith Frank was locked up as a suspect.

Immediately the populace arose almost as one man and cried for the death of Frank to expiate the murder of the Phagan girl as well as the other murders in which there had been no conviction. Frank was removed from one jail to another and the state militia was notified to be in readiness at a moment's call to prevent mob violence. The telephones of the police and the solicitor general were kept busy with the threats of an outraged populace that "unless you hang the Jew we will get you." Truly this was an incentive to the most painstaking efforts in bringing about a conviction.

Plied with questions, Conley made a detailed statement, one of five, of which the four following were modifications, elaborations, and alterations of the first statement, which was made under duress and consequently likely to contain an error or so. That he was sentenced to one year in the penitentiary as an accessory after the fact of the murder was one of the direct results of his being a trifle overhasty in making his first statement. In his excitement he failed to make his story hitch up properly and he could not quite extricate himself from the accessory charge.

Conley's testimony was in effect this: Frank was given to immoral practices and he had let Conley know that he was after Mary Phagan. Frank called him into his confidence on the day preceding the murder and told the negro hat the Phagan girl was coming to the factory the next day and that while she was in his office on the second floor Conley was to stand on guard in the hallway to prevent the intrusion of any one who might come along—"just like ah done befo'" (implying that Frank had been in the habit of having Conley guard the entrances while he was alone in his office with girls).

(This arrangement, of course, was built up without cognizance of the prevailing custom in the south, which is whenever a negro attempts to block the way of a white man said negro is promptly kicked down the steps, and mayhap lynched if he doesn't relish the kicking.)

Arrangements thus having been made Conley the next morning proceeded to indulge a few hours in a disreputable saloon not far from the factory and to imbibe considerable quantities of exceedingly cheap whisky in preparation for his sentry duties. He reported to Frank at about noon and took up his post behind the stairway on the second floor, where Frank's office was situated. (His presence there was noted by one or two witnesses, but not attended with the duties that were supposed to be his.

(One woman passed by the sentinel without the countersign and without noticing him until she had nearly reached the door of Frank's office. Having then observed his crouching figure, she uttered a slight scream, lifted her skirts, and ran affrightedly into the office. This was one of the girls who had come for her pay and one who preceded Mary Phagan into Frank's office by about five minutes. After Mary Phagan had gone into the office Quinn, the factory foreman, and others failed to appreciate the duties of Conley and intruded into the presence of Frank.)

Then, to resume Conley's story, Frank, having the Phagan girl in his office, told Conley to come at the stamp of his foot and unlock the door. Conley dozed off to sleep and was awakened to find his master nervously twitching his fingers and tapping the negro excitedly with the point of his right shoe. "I guess I hit her too hard and she's lying on the floor in the machine room," was the gist of Conley's remembrance of what his master had said. Conley then went in the room and found the girl dead. His master was excited and said to wrap the girl up in a gunnysack and the two would take the body down to the basement furnace for burning. But Frank had a brilliant thought, according to Conley, and suggested that he might divert suspicion if Conley would write some notes in the girl's handwriting, at Frank's dictation, describing the person who did the deed as a "long, black negro." (Conley is low and squatty and chocolate colored.)

Having indited notes at Frank's dictation on slips of paper taken from Frank's desk drawer, Frank concluded he would like to have a memento of the occasion and took the girl's purse and locked it up in his safe. Turning to Conley, Frank pulled out a roll of bills and counted out $200, and gave the fortune to Conley with the announcement it was his, providing that he take the body down to the basement, burn it, and return to work the following Monday without opening his head about the murder. Conley demurred and proposed an amendment to the proposal to the effect that owing to a sudden chilling of the feet Conley would prefer to carry out the order with the help of Frank. Whereupon Frank reconsidered the payment of the $200, took the money back, and handed Conley a package of cigarets instead, saying that it would be all right if they both would carry the body down to the basement and Conley would return later on and burn it.

The two incased the body in the gunny sack, placed it on the elevator (which was out of commission, due to the jealousy of the elevator operator for his bread and butter machine), and ran it down into the basement. This task accomplished, Conley agreed to return later to burn the body—and disreputable looking negro and white business man walked out of the factory together and proceeded thus in boon companionship for several blocks on the streets of a southern city at a little over an hour past midday. Conley then, by way of gathering strength for his ordeal, went back to his accustomed dramshop. There, upon opening the cigaret box Frank had given him, Conley, to his utter gratification, found that it contained not only some good smokes but about $2.50. This money was used to such advantage that Conley got exceedingly drunk, went to sleep, and forgot all about the body until it was too late to remember it without getting himself into serious difficulties.

This, in substance, was Conley's story, minus the interpolations and asides in brackets.

This substance was frequently changed to fit, as has already been said, the facts as they presented themselves after the excitement of the first telling had worn off and Conley's memory was made more vivid with the evaporation of whisky fumes. The first story contained no mention of the "murder notes" and Conley had manifestly upheld his contention that he could not write. When Frank let it be known that Conley not only could write but that his favorite means of making his wants known, even to a request for salary, was that of writing notes, Conley was asked by the police to reconsider his statement of illiteracy. They further intimated that the notes were in Conley's handwriting and that unless he offered some excuse for them they might put him in a dangerous light.

That gave Conley the excuse to make a "full confession," notwithstanding the consequences upon his own personal freedom and well being. He admitted that the notes were written by him, but at Frank's dictation, the theory of these two cronies in crime being that it might be well when the body was found that the girl leave some notes scribbled in her death agony describing the man who had murdered her so that neither Conley nor Frank would be caught. Hence the "long, tall negro black," Newt Lee, the negro "hire down here," who "did it buy his slef."

Hence the extraordinary idea that the handwriting of Conley and Mary Phagan could not be differentiated. Hence the superextraordinary miscalculation of premeditated murder which would think it necessary to leave notes about a murder when the body had been safely and securely burned up in the furnace, when all clew save the notes of the girl's disappearance had been destroyed. Save alone Mary's purse, the memento of the occasion, of course, which was placed in Frank's safe.

The next morning Frank opened his safe in the presence of the police, and the purse mysteriously had disappeared. Further, the police examined the contents of Frank's desk, from which, according to Conley, came the paper on which the "murder notes" were written. There could be found no stationery or even scratch pads which corresponded to the paper of the notes. Several piles of trash paper, which had been collected with the advent of a new superintendent and the change in the date line, and carted to the basement, where they were to be used to build fires, were found in the basement, identical with the paper on which the "murder notes" were written.

An examination of the lungs of the dead girl revealed the fact that she had breathed in a lot of ashes and basement soot—which fact, though not brought out in the trial, is the contention of Burns and other investigators, reveals unmistakably that the girl was not dead when she reached the basement where, in her struggles, she was forced to breathe the ashes and soot. The gash, too, on her head has been held to have been caused by her falling against a log near where the body was found and not by a blow upon the head.

Detective Burns' theory of the murder is this:

"Conley, drunken and hard up, was hiding behind the boxes at the foot of the stairway when Mary Phagan, who had drawn her pitiful little wage, went down on her way out of the building. She had her money in her hand. She decided to go to the basement and leaned her parasol against the wall before starting down the stairs. Then Conley caught her, not with the intention of killing her but with the intention of robbing her.

"Having struck her, he heard some one calling her (as he confessed to Annie Maud Carter), and then quickly pushed his victim through a square hole in the floor close by, a hatchway, to which a ladder rose from the basement.

"It was in this fall, and not from a blow by any weapon, that Mary Phagan received the great cut on her head which killed her. Nothing in the factory would have inflicted just that wound save the short, sharp cornered log which lay behind the foot of the ladder. Bruises on her body were such as would have been made by the ladder as she struck against it in the course of her fall."

Conley, locked up and knowing they had the goods on him relative to his abilities in penmanship and spelling, let his literary gifts run at full tilt. He sent no cheering words to the woman he had been living with and who was not his wife, but inscribed some notes to a woman he met in jail which outstrip anything investigators have seen in the line of obscenity. Authorities—not produced at the trial—claim that these notes in themselves are the criteria of degeneracy.

With the network of evidence brought against Frank he was indicted and his trial was set. The money of the National Pencil company was the basis of an immense fund for Frank's defense and for the employment of investigators. Contributions poured in from Honolulu, Oshkosh, Bombay, and Paterson, N. J.—wherever the case was discussed and wherever Jews interested themselves in it.

Detective Burns entered the case at an inauspicious moment. Affidavit after affidavit had been drawn up against Frank; witnesses had been corralled who knew Frank by sight and witnesses who knew him by word of mouth. After a few days of investigation, in coöperation with the operatives from his Atlanta office, Burns declared that it was obvious that Frank was not guilty and that Conley was. He secured affidavits, too, from witnesses who declared they had been coerced into making affidavits against Frank.

On proprietress of a disorderly resort, who had made an affidavit that Frank on the day of the murder had called her up several times trying to engage a room and saying he had a girl he wanted to bring over, made an affidavit that she did not know Frank and that her previous affidavit had been plied out of her by police officers after they had tanked her up on brandy and whisky.

Aroused by the interference by Burns in their plans to attach the guilt upon Frank, the police exercised the right given them by the Atlanta city ordinance and closed Burns' Atlanta agency. Burns himself was threatened with a lynching and his operatives were prohibited thenceforth ever to show their faces in the southern city. Burns was prevented even from concluding his investigating of other cases in Atlanta which had nothing to do with the Frank case. It was intimated that Burns was using double dealing to combat double dealing and that they got the goods on him.

On Monday evening, July 28, 1913, after an unusually short time, the personnel of the jury which was to try Frank on the murder charge was agreed upon. The selection had been made expeditiously and but little challenging was done on either side. The jury selected included one bank teller, one bookkeeper, one real estate agent, one manufacturer, one contractor, one optician, one claim agent, one mailing clerk, two salesmen, and two machinists. There was not a Jew among them. With one exception all were married. Five of them had one or more children.

Ordinarily is it the instruction of the jury that they are to assume the defendant is innocent until he is proven guilty. In Frank's case the opposite was the case. Although the judge made no such command the jurymen knew that if they considered their lives worth the living or intended to remain in Atlanta it was their duty to assume that Frank was guilty from the moment they were impaneled and continue in their assumption until Frank was safely hanged.

The room was crowded and little attempt was made to restrain the feelings of the crowd, which was intense in its antagonism toward Frank. The jurymen, while listening to evidence, had their attention distracted by men in the audience who shouted, "You'd better hang the Jew. If you don't, we'll hang him and get you, too." The populace considered the jurymen its personal enemies until they had shown otherwise by bringing the verdict it wanted. The wives of the jurymen received threatening telephone calls and notes from the enraged citizenry.

Two of the best and highest priced lawyers in Atlanta were engaged for the defense and in consequence their presence in Atlanta since has been ticklishly uncomfortable. Before the case was heard they received letters and telephone calls notifying them their lives would be at stake should the Jew be freed with their aid.

The trial consumed nearly a month. The case of the state rested almost entirely upon the testimony of Conley. Frank was the only other person who testified to having seen Mary Phagan after the time she entered the pencil factory building shortly after noon on Memorial day. The solicitor general, Hugh Dorsey, made a point, an intense point, of the statement of Conley that Frank was given to degenerate tendencies. Although Detective Burns' offer of $5,000 to any one who could substantiate a charge of degeneracy against Frank was allowed to go without a caller, the state used the lead to the uttermost. Frank was pictured as a degenerate of the most pronounced type who was accustomed to ruin small girls.

At the conclusion of the case Frank was allowed to make a statement not under oath to the jury. His demeanor was calm, his words forceful and eloquent. He declared he was innocent of the crime, and that should he suffer for something he did not do the shame would be lasting on Atlanta; his own death would mean but little, its significance great.

Following this—and here was where his constitutional rights are alleged to have been denied him—the judge agreed that it would be safer for Frank if he were removed to jail so as not to be present when the verdict was read. There had been threats in open court from spectators (who were not ejected) that if Frank were freed he would be killed in the courtroom or dragged therefrom and strung up at the nearest telephone pole. Frank was taken back to jail and locked up, with a heavy cordon of guards to protect him and the militia ready at a moment's call to come to his aid.

The jury retired to consider the verdict shortly after noon on Aug. 25. The spectators were excluded from the courtroom when the jury reported; but they had gathered around the courthouse, yelling threats and gibes at the jurors while the latter were considering the verdict. In a little over three hours the jurors filed back into the courtroom and Foreman Washburne announced that a verdict of guilty had been reached. Almost instantly the news was received outside, and a near riot of jubilation took place. The news of the verdict was brought to Frank in his cell in the county jail. He received it with a stoical indifference, although his wife, who was with him, collapsed.

Since that time efforts have been made on five occasions to get Frank a new trial or a reconsideration of the evidence, without success. The attorneys for the defense have declared they have obtained new evidence that would show without the question of a doubt that their client is innocent. Recently a Supreme court justice of the United States, Justice Holmes, declared that he was under the impression that Frank's trial had been irregular. The federal court judges and the state supreme court judges in Georgia have refused to grant Frank a rehearing and unless some legal miracle happens before Jan. 22 he will hang. The only possibility of escape from the fate is the intervention of the state board of pardons, the president, the governor, or the action of the United States Supreme court judges through the recommendation of one of their number.

Photo by American Press Ass'n

Leo Frank, Sentenced to Death for the Murder of Mary Phagan.

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