Chronology of the Leo Frank Case

Part I

By Donald E. Wilkes, Jr.

**Apr. 26, 1913** Today, a Saturday, is Confederate Memorial Day, an important holiday in the early 20th Century South. Sometime in the very early afternoon, soon after being paid in cash the $1.20 in wages due her, Mary Phagan, 13 years old and an employee of the National Pencil Company, is murdered inside the National Pencil Company Building, a four-story, city-block-long stone structure with a cavernous, crypt-like basement, located at 37 South Forsyth St. in downtown Atlanta.

Today is not a workday for Phagan, who enters the building by the main entrance shortly after noon for the sole purpose of picking up her payroll envelope, which is handed to her by Leo M. Frank, the factory superintendent of the National Pencil Company, in his office on the second floor. Five feet six inches tall, weighing 120 pounds, Frank, 29 years old, is a small man of delicate physique who wears thick spectacles.

About 11 or 12 minutes after noon, Mary Phagan walks into the building through the front door on the first floor and heads for the staircase leading to the second floor. Only a few feet away on the right is a scuttle hole, which can be closed off by a trapdoor, and leads via a ladder down to the tomblike basement. As Mary Phagan walks toward the stairs she is unaware that she is being watched by a man who has been drinking heavily and is concealed from view by boxes stacked in front of him. For, unknown to Mary Phagan, Jim Conley, 29 years old, a short, strong, muscular light-colored black man who has been working as a janitor at the National Pencil Company Building since 1911, is sitting on a box in a dark place under the stairwell. The foot of the stairs is within a few feet of Jim Conley’s hiding place. From his vantage point in the gloom, Conley can observe persons walking to or from the stairs but is invisible to them. Conley has been drinking beer, wine, and whisky for several hours. While sitting there in the darkness this morning he has been carefully observing the persons who enter the building and ascend the stairs, and he will later testify in court as to the clothes and footwear the females were wearing. He silently watches Mary Phagan as she approaches the stairs and begins walking up the steps.

Leo Frank and Jim Conley are the last two persons known to have seen Mary Phagan alive.

Shortly after 1 p.m. Leo Frank leaves the building, boards a street car around 1:10 p.m., and arrives at his home for lunch around 1:20 p.m. He returns to the building around 3 p.m.

**Apr. 27, 1913** Around 3 a.m. Mary Phagan’s dead body is discovered in the basement by the National Pencil Company Building’s night watchman, a black man named Newt Lee who immediately telephones the police...
Police rush to the building by automobile. They find the corpse lying face down at the rear of the 200-foot long, earthen-floor basement, a filthy catacomb littered with trash, coal dust, sawdust and ashes, and lighted by a gas jet. The body is 136 feet from the elevator shaft.

Phagan has been strangled with a seven-foot length of cord tied in a slipknot still tightly wrapped around her neck. (Quantities of cord of this character are found throughout the building.) Her tongue is swollen and protruding. She has soot on her face, dirt in her eyes, and cinders in her mouth and nostrils. She has a black eye, there are wounds on her scalp and below the knee and scratches on the elbow, and her clothing has been torn. There is fresh blood in her underclothing, and she appears to have been raped vaginally or anally. She has also been robbed: her purse containing the $1.20 is missing.

The exit route of the murderer is unmistakable. Someone has pulled out an iron staple sealing shut a wooden sliding door which at the rear of the basement opens into an alley. Nearby, leaning against the wall of the basement, is the piece of metal pipe used to lever open the staple.

Police find two murder notes, handwritten in pencil, near the corpse. Riddled with misspellings, monosyllabic words, and grammatical oddities, the notes, which together contain 128 words, purport to have been written by the murder victim as she was being attacked (!) and blame the attack on someone described variously as "a long tall negro black," a "long sleam tall negro," and "that long tall black negro." (There is a photograph of both notes in Steve Oney's book.)

One murder note, purportedly addressed to the victim's mother (!), was written on a lined carbon copy of a National Pencil Company blank order sheet, with "Atlanta Ga. 190_" across the top. It reads: "mam that negro hire down here did this i went to make water and he push me down that hold a long tall negro black that hoo it was long sleam tall negro i wright while play with me." This note was probably the one written first. The other murder note, written on a white piece of lined paper, states: "He said he wood love me and land doun play like night witch did it but that long tall black negro did buy hisslef."

Suspicious police accuse Lee (who is tall, slim, and dark-complexioned) of the murder and arrest him on the spot.

Later in the day, during a search of the basement, police discover a mound of formed human excrement (which a policeman says "looked like someone had dumped naturally") in the elevator shaft pit. Shortly afterwards, when the elevator car is lowered down to the basement, it stops when it comes into contact with the ground, mashing the naturally formed feces and filling the air with a fetid odor.

**Apr. 28, 1913** The first newspaper articles about Mary Phagan's murder are published in the three Atlanta dailies: *The Atlanta Constitution, The Atlanta Journal*, and *The Atlanta Georgian* (recently purchased by William Randolph Hearst). The early 1900's is the high point of titillating partisan journalism in America, and not surprisingly today's articles are sensationalized accounts of the murder tragedy. The *Georgian* devotes five pages to the murder and even features a ghoulish photograph, taken by a newspaper photographer, of Mary Phagan on a slab at the undertaker's. At least eight and perhaps as many as 20 *Georgian* extra editions, with red headlines, are published today, according to Oney's book.

Between today and the end of August these three newspapers, in a revolting manifestation of yellow journalism, boost their circulation figures and compete with each other by acting as if the murder of Mary Phagan was the world's biggest news story. There are screaming headlines, lurid stories, heartrending
accounts of people and events, lugubrious interviews with friends and relatives of the murder victim, wild allegations and false rumors repeated as gospel, barbarous cries for vengeance, grim offers of reward, and excited promises of draconian justice. The attention given to the Phagan murder is staggering. From the end of April through August the Georgian, for example, devotes the equivalent of 100 pages the size of The New York Times to the case. The Georgian triples its sales during this time. Once Leo Frank is arrested, the newspapers publish numerous items falsely alleging or implying not only that his guilt is certain, but also that he is of depraved and lecherous character and a sex pervert. The fact that Frank is Jewish is not ignored by the press, and this fans the flames of the anti-Semitic rumors running rampant through Atlanta, such as the ugly canard that (in the words of history professor Leonard Dinnerstein) "the tenets of the Jewish faith forbade the violation of Jewish, but not Gentile, women." ("It is ridiculous to protest that there has been prejudice against the Jew in the Frank case," a contemporary will write in 1915, "the whole atmosphere of the case reeks with it.") The trial of Leo Frank in July and August will, therefore, occur during a period of what historian Dinnerstein accurately describes as "newspaper hysteria."

Apr. 29, 1913 Around 11:30 a.m. two Atlanta police detectives arrest Leo Frank in his office for the murder of Mary Phagan. Frank will never have another day of freedom. As he is being led into the police station, Frank tells reporters: "I am not guilty. Such an atrocious crime has never entered my mind." Today's The Atlanta Georgian announces the arrest under the headline "Police Have the Strangler." It also reports: "Frank and Negro [Newt Lee] Are Given the Third Degree." Also on this day Mary Phagan's funeral is held, and she is buried in Marietta, the city where she lived for most of the first eight years of her life.

May 1, 1913 Jim Conley is arrested after the National Pencil Company Building's day watchman spots Conley washing red stains out of a blue work shirt on the second floor of the building. Police fail to have the shirt tested for the presence of blood. Conley will remain in police custody until after Leo Frank's trial.

May 16, 1913 In his first written statement to police, Jim Conley says that on the day of Mary Phagan's murder he got up from bed after 9 a.m., that he left his home at 10:30 a.m., visited a number of saloons, purchased a half pint of whisky on the street, visited another saloon, won 90 cents throwing dice, bought some beer, visited another saloon where he bought beer and wine, arrived home at 2:30 p.m., went out and bought beer about an hour later, and then returned home, where he remained that night.

May 24, 1913 On this day Jim Conley, after being subjected to third degree interrogation tactics for a week, verbally admits to police that he can read and write and that he wrote the murder notes. (During the previous weeks he had repeatedly told police he was illiterate. Police have discovered Conley's literacy due to a remark made by Leo Frank. "I know he can write," Frank told a private detective. "I have received many notes from him asking me to loan him money.") Conley then makes his second written statement to police, in which he claims that he wrote the notes on the day prior to Mary Phagan's murder under the following circumstances: on the afternoon of Friday, the day before the murder, Frank had summoned him to his office; Frank had then inquired whether Conley could write, to which Conley answered, "Yes;" Frank had then told Conley to write the notes; and Frank had then composed and dictated the contents of the notes, which Conley wrote out. Conley also says that after writing the notes that Friday Frank "told me he had some wealthy people in Brooklyn and then... said, 'Why should I hang?'"
A few hours later, unaware that Conley has confessed to being the author of the murder notes, the Fulton County grand jury indicts Leo Frank for the murder of Mary Phagan. A dozen or more men have been arrested as suspects in connection with the murder of Phagan, but Frank is the only person ever indicted for the crime. If the grand jury had known about Jim Conley's confession to writing the murder notes, it is certain that Conley also would have been indicted for the murder.

May 28, 1913 Jim Conley, who has now been in police custody for four weeks, makes his third written statement to police, this one notarized. In today's statement Conley acknowledges being in error in his previous statement when he said that he wrote the murder notes on the day before the murder; he now says he wrote them on the day of the murder. Conley claims that he was summoned up to Frank's office to write the notes "about four minutes to one o'clock." Today's statement is similar to the statement Conley will give on the following day, except that today's statement is less detailed and says nothing about the murder of Mary Phagan or the disposal of her body or about any alleged incriminating admissions made by Frank. In today's statement Conley repeats what he said in his May 16 statement about his visits on the morning of April 26 to numerous saloons and about his drinking beer, wine, and whisky that morning.

Later, at Leo Frank's trial, a police detective explains how and why and he and other police interrogators induced Conley in his May 28 statement to alter his story as to the day on which the murder notes were written. The detective testifies:

"We tried to impress him with the fact that Frank not would not have written those notes on Friday, that that was not a reasonable story. That 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 had 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 he previous statement showed deliberation and could not be accepted."

May 29, 1913 After four hours of what The Atlanta Georgian the next day will call "merciless sweating" (and Oney characterizes as "ruthless grilling"), Jim Conley makes his fourth written statement to police, this one also notarized. Much of this statement is substantially similar to testimony Conley later gives on direct examination at the trial of Leo Frank. In today's statement Conley claims for the first time that Frank led him to a dead girl on the second floor and admitted killing her, and that he helped Frank carry the corpse to the elevator and transport it to the basement. He also now claims that once the dead girl was deposited in the basement he returned to the first floor on the elevator, that Frank returned to the first floor by climbing a ladder that led to the trapdoor hole on the first floor, that both men then rode on the elevator from the first floor to the second floor, and that it was after they arrived in Frank's office that Frank composed and dictated the murder notes. Conley also says that after he wrote the notes Frank gave him a cigarette package inside which Conley later discovered $2.50, prompting him to exclaim, "Good luck has done struck me."

June 4, 1913 Lucille Frank, Leo Frank's wife, releases a statement accusing Hugh Dorsey of "torturing" witnesses to give false testimony incriminating her husband. She says: "[T]he action of the [district attorney]
in arresting and imprisoning our family cook because she would not voluntarily make a false statement against my innocent husband, brings a limit to patience." Tomorrow, Hugh Dorsey will issue a statement denying any wrongdoing, and on the following day Lucille Frank will repeat her charges.

**June 28, 1913** John M. Slaton is inaugurated as Governor of Georgia, succeeding Joseph M. Brown.

**July 21, 1913** With difficulty prosecutor Hugh Dorsey persuades a newly convened Fulton County grand jury not to indict Jim Conley for the murder of Mary Phagan. Unlike the grand jury that indicted Leo Frank, this grand jury knows that Conley has confessed to writing the murder notes.

**July 27, 1913** *The Atlanta Constitution* publishes a full page article heaping praise on the police who had "solved" the murder of Mary Phagan.

**July 28, 1913** Leo Frank's jury trial, which *The Atlanta Constitution* predicts will be "The Greatest Legal Battle in the History of Dixie," begins on this Monday in the Superior Court of Fulton County, Judge Leonard S. Roan presiding. It will be longer than any previous criminal trial in Georgia history, with court sessions held on 25 days over a period of four weeks. Seated near Frank during the trial, in addition to his counsel, are his wife Lucille, 25 years old, and his elderly mother, Rachel Frank. During the morning session of this first day of the trial, the all male, all white jury is selected and sworn, and both sides make opening arguments. After lunch, the prosecution begins its presentation of the case. The first witness to testify is Mary Phagan's mother, dressed in black mourning clothes and wearing a heavy veil. While on the stand she weeps and sobs.

Leo Frank's trial is taking place in the old Chamber of Commerce Building-City Hall (since demolished) on the northeast corner of Pryor and Hunter Streets. (A new courthouse for the Fulton County Superior Court is under construction nearby.) The cramped courtroom in which the trial takes place formerly was used for city council meetings and features a dozen electric chandeliers hanging from the tin ceiling. During the trial the room is oppressively hot and humid, with the thermometer in the 90s.

The case for the prosecution is tried by the district attorney, Hugh M. Dorsey, and his assistants. From the beginning of their involvement in the case last May, these prosecutors have time after time displayed a disturbing proclivity to see Frank convicted at all costs and by any means. For example, they repeatedly arrange for police to arrest persons who have made statements or given affidavits helpful to Frank, and the persons so arrested usually are not released until they retract their previous declarations. During the trial and in the posttrial proceedings, Hugh Dorsey and his fellow prosecutors present the case for the prosecution with craftiness and overzealousness; and by the use of what Oney calls "uncanny dexterity" they extract every possible advantage flowing from the widespread community enmity toward Leo Frank. The prosecutors remorselessly press two overarching assertions - that their principal witness, Jim Conley, is a paragon of veracity and that Leo Frank is an inhuman, perverted child murderer.

The chief defense lawyers, Luther Rosser and Reuben Arnold, are talented, highly experienced practitioners, but they inexplicably commit blunder after blunder before, during, and after the trial, doing overall a wretched job of defending their client. Prior to the trial, for example, despite overwhelming community hostility to their client, they do not move for a change of venue. During the trial they botch the cross-examination of Jim Conley, underestimating Conley's intelligence and wiliness. After the trial they fail to raise in a procedurally correct manner some of Frank's strongest claims of violations of his constitutional
rights, and as a result the courts deem these, the best of Frank's constitutional claims, to have been waived due to the procedural defaults of his attorneys. Louis Wiley, a business manager of The New York Times who carefully follows the Leo Frank trial as it unfolds, will write with great perspicacity in 1914: "I am strongly inclined to believe that [Frank] was not adequately defended. If he had been it seems to me the dreadful situation now before us might have been prevented." The consensus of modern opinion is that, in the words of DeWitt H. Roberts, a scholar who carefully studied the trial, "the defense of Leo Frank was one of the most ill-conducted in the history of Georgia jurisprudence."

Throughout the trial Judge Roan struggles to maintain order and decorum and to suppress outbursts among the 250 spectators in the courtroom. The courtroom is packed with unruly spectators hostile to Frank. They frequently cheer and applaud the conduct of prosecutor Hugh Dorsey, as well as court rulings in favor of the prosecution, whereas they laugh at arguments or motions made by defense counsel. Because of the blistering summer heat the windows of the main floor courtroom are kept open. And yet just outside those windows, in the adjoining streets and alleys, large crowds hostile to Frank are milling about, vociferously expressing their barbarous feelings. The noises emanating from these crowds can be clearly heard inside the courtroom, and sometimes, when the prosecution scores a point, the courtroom spectators and the crowds outside applaud simultaneously.

A member of the lower house of the Georgia General Assembly who visits the courthouse during Leo Frank's trial will later recall: "There was a thirst for the blood of Mary Phagan's murderer. So intense was this feeling that the very atmosphere in and about the courthouse was charged with the sulphurous fumes of anger. I was in the courthouse several times during the trial, and the spirit, the feeling, the thought of the crowd affected me. Without reason I found myself prejudiced against Frank. Prejudiced, not from facts and testimony, but by popular belief and hostile feeling manifested by the crowd."

The prosecution's theory of the case is that not long after she entered his second floor office Leo Frank, acting alone, killed Mary Phagan in the metal room (where Phagan usually worked), which was located on the same floor over 150 feet from Frank's office; that Frank killed Phagan because she had just refused his unwanted sexual advances; that Frank sought help from Jim Conley to dispose of the body; that Frank and Conley carried the dead girl from the metal room and put her in the elevator and took her down to the basement; and that thereafter both men went to Frank's office where Conley wrote the murder notes at the dictation of Frank.

The case for the defense is that, unknown to Leo Frank, Jim Conley attacked Mary Phagan after she had left Frank's office and had descended the staircase to the first floor; that Conley threw her body down the nearby trapdoor hole into the basement and then wrote the murder notes there in the basement in an attempt to cast the blame for the murder on Newt Lee; and that Frank had nothing to do with the crime.

**July 29, 1913** Atlanta police detective John Black, who had gone to the basement where Mary Phagan was found to investigate her murder, testifies:

"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."

**July 30, 1913** During cross-examination by defense attorneys, Boots Rogers, a civilian who had accompanied police searching the basement, testifies:

"In the elevator shaft there was some excrement. When we went down on the elevator, the elevator mashed
it. You could smell it all around. It looked like the ordinary healthy man's excrement... [T]hat was before the elevator came down. When the elevator came down afterwards it smashed it and then we smelled it."

**July 31, 1913** Monteen Stover, 14 years old and an employee at the National Pencil Company Building, testifies that on the day of the Mary Phagan murder she went to Leo Frank's office on the second floor of the building to pick up her wages, arriving at 12:05 p.m. to find that Frank was not in his office. She waited for five minutes and when she left the office at 12:10 p.m. Frank still had not showed up.

Wherever Frank might have been during the brief interval between 12:05 and 12:10 when he was absent from his office (assuming the accuracy of Stover's testimony), it is certain that - contrary to the contentions of the prosecutors - he was not with Mary Phagan. Stover left Frank's office at 12:10 p.m. The street car bringing Phagan to downtown Atlanta arrived at its destination, the intersection of Marietta and Forsyth streets, no earlier than precisely 12:07 p.m (according to the testimony of the motormen operating the street car). At the trial civil engineers testified that the intersection was 1,016 feet, or a four and a half minute walk, from the building. Because of the holiday crowds, it might have taken longer than normal for Mary Phagan to walk to the building. Thus, Mary Phagan did not arrive at the building until at least 12:11 p.m., which was after Stover had left it. "[I]t hardly seems possible under the evidence," Gov. John M. Slaton will later write in his 1915 order commuting Frank's sentence, "that Mary Phagan was at [the] time [of Stover's visit to Frank's office] being murdered."

Monteen Stover's testimony conflicts with Jim Conley's Aug. 4 direct examination testimony. Conley claims that Stover came to the building after Mary Phagan. But is clear from Stover's own testimony that Stover arrived before Mary Phagan. Stover says, without dispute, that she left Frank's office at 12:10 p.m., and it is indisputable that the earliest time Mary Phagan could have reached the building was 12:11 p.m. "Therefore," Gov. Slaton will write, "Monteen Stover must have arrived before Mary Phagan ..."

**Aug. 1, 1913** Mrs. Arthur White testifies as follows: Her husband was doing some repair work up on the fourth floor of the National Pencil Company Building on the day of the murder. She entered the building at 12:30 p.m. and went up to the fourth floor. As she was going up the stairs she saw Leo Frank standing outside his office near the safe. At 1 p.m. Frank came up to the fourth floor and said that unless she wanted to stay until 3 p.m. she had better leave because he was going to lunch. She left shortly afterward, and saw Frank at his desk in his office as she left.

Mrs. White's testimony conflicts with the testimony Jim Conley will give when he takes the stand. Mrs. White says she saw Frank in his office at 12:30 p.m., whereas, according to Conley, Frank must at that time have been in the metal room (with Mary Phagan), over 150 feet from his office. Mrs. White says she talked with Frank on the fourth floor at 1 p.m. and saw him alone in his office shortly afterward; Conley will testify that he was with Frank on the second floor, apparently near the stairs, "about four minutes to one o'clock," and that afterward he and Frank were busily involved in moving Mary Phagan's corpse to the basement.

**Aug. 4, 1913** On this, the seventh day of the trial, Jim Conley takes the stand as the chief (and final) prosecution witness. He testifies on direct examination for four hours.

In essence, the story of the Mary Phagan murder Conley tells today on direct examination is a dressed up, flesheout version of his May 29 written statement to police. (Conley's May 29 statement was, it will be recalled, his fourth written statement to police.)
Here are a few key excerpts from Conley's trial testimony on direct examination, arranged in paragraphs (the original transcript is unparagraphed):

"And I sat there [on the first floor of the building] on a box...

"The next person I saw was Miss Mary Perkins, that's what I called her, this lady that is dead. I don't know her name. After she went upstairs I heard footsteps going toward [Leo Frank's] 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 stayed there a pretty good while, it wasn't so very long either. 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 up the steps. Mr. Frank was standing there at the top of the steps 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 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. 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... I noticed the clock after I went back and found the lady was dead and came back and told him. The clock was four minutes to one... I found I couldn't get [the body] on my shoulder, it was heavy... and when I got away from the little dressing room that was in the metal department... I let her fall... and I said, 'Mr. Frank, you have to help me with this girl, she is heavy,' and he came and caught her by the feet and I laid hold of her by the shoulders... and we went on the elevator... and the elevator went down to the basement... and we carried her out... and rolled her out on the floor, and Mr. Frank turned about and went up the ladder [to the first floor]... and I got on the elevator and started it on to the first floor... [then] Mr. Frank... stepp[ed] on to elevator [with me]... and we... got... [to] the second floor...

"I followed him into his private office and I sat down and he commenced 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 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 here 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.'...

'[A]nd 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 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 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 piece and told me what to write...

"And Mr. Frank turned around in his chair... and he looked back at me and folded his hands and said, 'Why should I hang, I have wealthy people in Brooklyn.'..."

After Jim Conley completes his direct examination, he is cross-examined by Frank’s attorneys for a total of 12 hours over the course of the rest of today and the next two days. Although the cross-examination shows that Conley has previously told lies and half-truths to the police and that his memory is suspiciously poor except as to the matters he testified to on direct examination, defense attorneys are unable to seriously damage his credibility or shake his story. They do not even ask Conley, in front of the jury, to put the contents of the murder notes in writing, so as to let the jury see what he does, and to see how long it actually takes Conley to write the notes Frank allegedly dictated. (A police detective has testified that he dictated eight words to Conley, and it took Conley about six minutes to write them.) Furthermore, during the cross-examination defense lawyers egregiously err by allowing Conley to amplify his sinister, devastating claim, originally made on direct examination, that Frank is a sexual degenerate who performed oral sex on numerous women in his office and other rooms in the building.

The defense attorneys do elicit from Conley an admission that he had, on the day of Mary Phagan's murder, defecated at the bottom of the building’s elevator shaft prior to the murder. It will not be until be after the trial, however, that the inept defense lawyers will comprehend the significance of this admission by Conley. For it means that Conley's tale that Mary Phagan's body was transported to the basement via the elevator cannot be true. Whenever the elevator car reaches the basement, it does not stop until it comes into contact with the floor. Therefore the elevator cannot have been used to reach the basement once Conley had (before the murder) excreted into the bottom of the elevator shaft, for the formed excreta there would necessarily have been mashed when the car carrying the corpse (as Conley claimed) reached the basement floor. It was, however, still there the day after the murder, and was mashed only when police investigating the murder rode the elevator down to the basement.

Aug. 7, 1913 On this, the 10th day of the trial, when the cross-examination of Jim Conley finishes, the prosecution rests its case and the defense begins its presentation.

Aug. 12, 1913 Two foreladies at the National Pencil Company Building, Corinthia Hall and Emma Clark, who are entirely reliable and quite positive in their recollections, testify that they visited the building on the day of Mary Phagan's murder, arriving at 11:35 a.m. and departing about 10 minutes later, at around 11:45 a.m. This means that they must have left the building long before Mary Phagan's arrival (which did not occur until nearly a half hour later, around 12:11 p.m.).

The testimony of Corinthia Hall and Emma Clark conflicts with Jim Conley's testimony. The two ladies testified that they left the building at 11:45 a.m., which was half an hour before Phagan arrived. Conley, on the other hand, testified that Hall and Clark had come to Frank’s office after Mary Phagan had been
murdered. Conley further testified that when he first saw the corpse (in the metal room on the second floor) it was four minutes before one o'clock, and that it was not until later, after he and Frank had moved the body to the basement and entered Frank's office, that Hall and Clark came to the office - which contradicts the foreladies' testimony that they left the building a quarter hour before noon. Conley is saying that the ladies arrived well after 1 p.m.; the ladies are saying that they left before noon.

**Aug. 13, 1913** Lemmie Quinn, a foreman at the National Pencil Company Building, testifies that he paid a surprise visit to the building on the day of the murder and found Leo Frank working alone at his desk in his office around 12:20 p.m. Quinn's testimony contradicts Jim's Conley's testimony. According to Conley's version of the facts, at around 12:20 p.m. Frank would have been in the metal room over 150 feet away, with Mary Phagan.

**Aug. 15, 1913** The Georgia Court of Appeals hands down its noted decision in *Underwood v. State*, 13 Ga. App. 213, 78 S. E. 1103 (1913), unanimously reversing the conviction of a man tried in Americus for violating a state liquor prohibition statute. In its eloquent decision the Court delivers what is obviously a stinging reprimand of Atlanta police for their widespread use, in violation of basic constitutional rights, of the third degree against numerous suspects and witnesses taken into custody in connection with the investigation of the Mary Phagan murder.

(The third degree - the infliction of mental or physical suffering upon a person to obtain information about a crime - was a common law enforcement practice in American police departments in the early 20th Century, and the Atlanta newspapers covering the Mary Phagan murder case frequently referred to use of coercive interrogation techniques against persons held incommunicado in police custody. "[T]he specialty of the station house," Oney remarks, "was the third degree." Prisoners were, the newspapers dutifully reported, "grilled," "sweated," or subjected to "sweating" or "merciless sweating." "Conley in Sweatbox," one headline said; a later headline said, "Conley in Sweatbox Again;" and another headline announced, "Frank and Negro are Given Third Degree."

"For three days," historian Leonard Dinnerstein tells us, "they kept the night watchman [Newt Lee] manacled to a chair and put him through a searching, grilling third degree that left him weeping and nerveless.")

In *Underwood*, the Court of Appeals condemns these inquisitorial techniques in these memorable words:

"The [constitutional rights of Americans] are the sacred civil jewels which have come down to us from an English ancestry, forced from the unwilling hand of tyranny by the apostles of personal liberty and personal security. They are hallowed by the blood of a thousand struggles, and were stored away for safe-keeping in the casket of the Constitution. It is infidelity to forget them; it is sacrilege to disregard them; it is despotic to trample upon them. They are given as a sacred trust into the keeping of the courts, who should with sleepless vigilance guard these priceless gifts of a free government.

"We hear and read much of the lawlessness of the people. One of the most dangerous manifestations of this evil is the lawlessness of the ministers of the law. This court knows and fully appreciates the delicate and difficult task of those who are charged with the duty of detecting crime and apprehending criminals, and it will uphold them in the most vigilant legal discharge of all their duties, but it utterly repudiates the doctrine that these duties can not be successfully performed without the use of illegal and despotic measures. It is not true that in the effort to detect crime and to punish the criminal, 'the end justifies the means.' This is
especially not true when the means adopted are violative of the very essence of constitutional free government

"What is commonly known as the methods of the 'third degree,' so frequently used by zealous officials or interested detectives, may be an appropriate part of that jurisprudence which holds that every man is guilty when accused of crime until his proves his innocence, but it has no place in the jurisprudence of a land where the cardinal principle of humanity and justice is that every man is presumed to be innocent until his guilt is shown by legal evidence beyond a reasonable doubt. These arbitrary methods of discovering crime are subversive of the fundamental principles of law, liberty, personal security, and private property, and place at the mercy of every petty official and conscienceless criminal the life, liberty, and reputation of the citizen. They flourished in the days of the Star Chamber and the Spanish Inquisition, but could not exist in the clear atmosphere of political liberty and personal freedom. Therefore courts of justice will not approve such methods to discover crime..."

Aug. 18, 1913 On this, the 19th day of the trial, Leo Frank makes a four-hour unsworn statement to the jury detailing his knowledge of events in the National Pencil Company Building on the day of the murder and vehemently denying that he had anything to do with the murder. He says Conley's testimony is a pack of odious lies. (Prior to 1961, criminal defendants tried in Georgia were prohibited from taking the stand and testifying under oath, but were permitted, if they wished, to make an unsworn statement not subject to cross-examination.)

Here are a few excerpts from Frank's unsworn statement about his activities on the day of Mary Phagan's murder:

"I went to the second floor or office floor, and I noticed the clock and it indicated five minutes after eleven o'clock... [Later] 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 [who was repairing equipment on the fourth floor] that his wife was downstairs... Mrs. Emma Clark Freeman and Miss Corinthia Hall came into my office and asked permission to use the telephone... 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...

"It must have been from 10 to 15 minutes after Miss Hall left my office, when this little girl, whom I afterward 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 the impression of a female voice saying something: I don't know which way it came from; [it] just passed away and I had that impression...

"She had left the plant hardly five minutes when 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... I then gathered my papers together and went upstairs to see the boys [Arthur White and Harry Denham, who were servicing equipment on the fourth floor] 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 me and saw me. That is possibly true; I have no recollection about it;
perhaps her recollection is better than mine; 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 said they had enough work to keep them several hours... 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 office and locked the doors to the street and started to go home.

"Now, gentleman, 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 my inner office; but it is possible that in order to answer the call of nature or to urinate I may have gone to the toilet...

"I continued 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...

"Gentleman, 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 the office. I never even saw Conley in the factory or anywhere else on that date, April 26th, 1913...

"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...

"I have told you the truth, the whole truth."

Aug. 20, 1913 On this, the 21st. day of the trial, the defense rests.

Aug. 21, 1913 Both the prosecution and the defense make closing arguments to the jury. In their closings the prosecutors hammer away at their two favorite themes: Jim Conley is truthful and trustworthy, and Leo Frank is a murderous sex fiend.

Frank Hooper, an assistant district attorney, argues that "Conley... had arrived at the truth, and the truth is stronger than these [defense] lawyers... The idea that Jim would have written those notes himself is absurd. You know these negroes. You know their traits. Would one of them have done a thing like that? What object could Conley possibly have had in planting those notes by the body saying that a negro had committed the crime?" He also argues to the jury that Leo Frank is a "Dr. Jekyll and Mr. Hyde. This defendant, like Dr. Jekyll when the shades of night come, throws aside his mask of respectability and is transformed into a Mr. Hyde."

comments