

# FACING THE JURY, FRANK ASSERTS HIS INNOCENCE OF MARY PHAGAN'S DEATH

All Other Testimony of the Defense Had Been Practically Completed When Court Reconvened Monday Afternoon and the Stage Was Set for the Accused Superintendent to Tell Where He Was and What He Did on Day of Tragedy

## MAYFIELD GIRL REPUDIATES TESTIMONY GIVEN ABOUT FRANK LOOKING INTO DRESSING ROOM

Solicitor Dorsey by Questions Suggests That He Will Try to Prove That Frank Went to Hapeville With a Young Girl One Week Before Murder — Many Girls Employed at the Pencil Factory Testify to Frank's Good Character

Leo M. Frank, superintendent of the National Pencil factory, accused of the murder of little Mary Phagan on April 26, mounted the witness stand in his own behalf at 2:00 o'clock Monday afternoon. When court reconvened after the recess for lunch, all other defense testimony had practically been completed, and the stage was set for Frank to face the jury and tell his own story of where he was and what he did on the day of the tragedy. Talking in a firm, clear voice that carried to all parts of the court room, Frank asserted his innocence of the crime with which he is charged and denounced the story told by Jim Conley, the negro sweeper, as a tissue of infamous lies.

Frank was rather pale on the stand, and was calm. He sat with his hands clasped and later put them on his knees.

A murmur ran through the audience when Frank sat catty down in the witness chair.

"Such papers as you want at any time during your statement," said Mr. Arnold, "will be found right here on the table. You can come down and get them."

Judge Roan read the law regarding the testimony of a defendant in a murder case.

"The jury may believe it in preference to sworn testimony," said the judge, "or can disregard it, as they see fit."

Concluding, Judge Roan turned to Frank and read: "The defendant does not have to answer any questions that are put to him unless he so desires."

#### STORY OF HIS LIFE

"I was born in Paris, Tex.," began Frank. "Three months later my parents moved to New York and took me with them. That remained my residence until I moved to the south."

"I attended the public schools in Brooklyn and prepared there for college. In the fall of 1902 I entered Cornell university. I took a course in mechanical engineering. I remained there until the fall of 1906, when I graduated. I then accepted a position with the B. F. Sturdivant company, of Hicoff, Mass."

The morning session was taken up by character witnesses who testified to the good character of the defendant and by the introduction by the defense of documentary evidence. Among the documentary evidence admitted as evidence was the model of the pencil factory, the charge brought into court by Dr. T. H. Hancock, Conley's four affidavits, the financial sheets said to have been made out by Frank and Frank's letter to his uncle which was written on April 26.

Miss Emily Mayfield, one of the employees at the pencil factory, and the one mentioned in the testimony by Miss Irene Jackson, took the stand Monday and emphatically denied Miss Jackson's story that Frank came to the girls' dressing rooms at the factory while she was in one of them. She further stated that she never heard of Frank looking in the dressing rooms while other girls were occupying them.

Mrs. J. G. Wardlow, nee Miss Lula McDonnell, a former employee at the factory, denied questions asked her by Solicitor Dorsey as to whether she had heard that Frank and a little girl were on the Hapeville car on the Saturday prior to the murder of Mary Phagan and that Frank tried to persuade the girl to leave the car with him at several points on the trip. When the solicitor announced his intention of asking these questions, Mrs. Rae Frank, mother of the accused, left the court room.

Twenty-four factory girls took the witness chair Monday and told the jury of their belief in their superintendent's good character. One of them, Mrs. Mattie Thompson declared that she knew that the girls frequently flirted through the windows of the dressing rooms at the factory with boys on the outside and had made a complaint to Frank and Darley.

Another witness, Mrs. M. E. Fleming, admitted under the cross examination by the solicitor that she knew Frank worked on the financial sheet, on Saturday mornings while she was in his employ as his stenographer, from April to December, 1911.

That the defense of Leo M. Frank would close its case Monday was indicated before the court convened Monday morning by statements of attorneys for the accused man.

The rebuttal evidence by the state will begin immediately after Frank concludes his statement to the jury. The defense will have its turn again with rebuttal. And after that, perhaps by Wednesday or Thursday, the lawyers for both sides will begin their arguments.

## BRANCH RESUMES TESTIMONY.

The first witness was Harlee Branch, reporter of The Journal, who was recalled to the stand to finish his testimony suspended at adjournment Saturday. He was examined first by Solicitor Dorsey.

"Now, Mr. Branch, you were saying when court adjourned Saturday that you were in the factory from about 12:15 or 12:20 to 1 o'clock. How much of the time did Conley spend in talking while he was acting his story?"

"Just as a pure estimate, I should say he spent about fifteen minutes."

"Didn't you say the other day that he spent about half his time talking?"

"No, I don't think I did."

The witness was examined by Attorney Arnold for the defense.

"What time did you get to the factory, Mr. Branch?" asked Mr. Arnold.

"About 12:10."

"What time did Conley begin?"

"It must have been about 12:15 or 12:18."

"Didn't you say that he went through his enactment very rapidly?"

Solicitor Dorsey objected. The question was changed.

"With what speed did Conley go through the performance?"

"He went through it rapidly, some times on a trot."

"You say he did some talking. Was that while he was acting, or did he stop to do his talking?"

"A few times he stopped to explain, and he was talking most all of the time during his performance."

"How much time did you say he lost while he was talking?"

"About 15 minutes."

"What time did you leave the factory?"

"It was 1 o'clock when I called the office, and I left as soon as the man came to relieve me, which was about 5 or 10 minutes later."

"Then you were there about 50 minutes?"

"Yes."

## CONLEY WROTES NOTES.

"What was Conley doing when you left the factory?"

"He had just finished writing a note."

"Did he write your notes?"

"No, I saw him write just one."

"How long was he writing that one?"

"He wrote it right off and it was only a few lines, so I should say it took him about two minutes."

"How long did Conley stay in the wardrobe?"

"He stepped right in and stepped

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right out."

"Then, in your opinion he didn't stay in the wardrobe over a minute?"

"Yes, about that."

"According to your estimate of the time it took him to write one note, it would have taken him six minutes to write three notes, and according to his estimate he stayed in the wardrobe eight minutes, which would make fourteen minutes, and that added to the fifty minutes you say he consumed in going through the performance would make a total of sixty-four minutes. Now, subtracting the fifteen minutes which, according to your estimate he lost in talking, he would have about forty-nine minutes that it took him to go through the performance, and you say he went through it on the run, is that right?"

"No, I didn't say he went through it on the run. I say he went through it rapidly."

SAW CONLEY WITH PAPER.

Before being excused the witness was asked more questions by Solicitor Dorsey, who undertook to make him admit that he had changed since Saturday his estimate of the time he went to the factory. In this effort the solicitor was unsuccessful.

Attorney Arnold asked the witness this question:

"Was this negro Conley taken to the press room after he left the stand here in court?"

"Yes."

"Did he read a paper?"

"I saw him pick up a paper."

The witness was excused.

Lou Castro, formerly a baseball player, who stated that he "amuses" the public in the summer time and burlesques it in the winter, being now an under-faker, was called to the stand.

Harlee Branch was called for one question by Solicitor Dorsey:

"Conley was looking at the pictures in the paper, and wasn't reading it was he?"

"When I saw him, he was holding the paper and looked like he was reading it. At first he was looking at the pictures, then he seemed to be reading it."



#### LOU CASTRO TESTIFIES.

Castro said he lives at 79 West Harris street. At the request of Attorney Arnold, he said, he had walked from the corner of Marietta and Forsyth streets to the office of the National Pencil factory. He walked at his average gait, he said, and made the distance in four minutes and 39 seconds. He walked from the factory office to the corner of Alabama and Whitehall streets, he said. That took him three minutes and 20 seconds. He walked from the corner of Hunter and Broad streets to the office of the factory in one and a half minutes, he said.

Miss M. E. Fleming, who stated that she worked from April to December, 1911, as stenographer for Frank, was the next witness. She testified that his general character is good.

Under cross-examination, she admitted that she judged his character from personal relations, but said she had never heard any charges against him. She also said in answer to questions by the solicitor that while she was in the factory she heard no complaints about girls flirting from the windows, and did not write out any notices prohibiting it. Usually, she said, she left the factory at 1 o'clock on Saturdays.

The solicitor asked what work Frank usually did on Saturday mornings. The witness answered, enumerating a number of things, among them work on the financial sheet.

#### WORKED SATURDAY MORNINGS.

"You are certain," asked the solicitor quietly, "that he worked on the financial sheet in the mornings?"

"Yes."

"You are positive?"

"Yes."

"Come down," said the solicitor.

Attorney Arnold detained the witness. "You didn't mean to put the financial sheet among those things you enumerated, did you?"

"I didn't say the financial sheet," said the witness.

"Come down," said Mr. Arnold. But the solicitor detained her.

"You say now that you did not say that Frank worked on the financial sheet in the mornings of Saturdays?"

"I don't think I did," said the witness.

At the request of the solicitor, the court stenographer read the questions and answers.

"I think I saw him do a little work on the financial sheet," admitted the witness.

"Well, why were you so positive, and why did you answer to one question that you were certain, and when I asked again said that you were positive?"

"Well, I've seen him do a little work on it," said the witness.

"Come down," said the solicitor.

Before the trial had commenced Monday morning Miss Fleming had received permission of the deputities and had entered court and greeted the defendant.

Geoffrey Winecuff was the next witness on the stand. He is superintendent of the lead plant at the National Pencil factory.

He testified that he was accustomed to visit the factory every alternate Saturday afternoon between July, 1912, and May, 1913. The time of his visits was about 3 o'clock in the afternoon, he said. He said that Frank, the office boy, and Schiff, were there nearly always, although sometimes the office boy might have been absent. He never saw any women in the office, said he. He frequently saw Holloway, the day watchman, about the factory. He was excused without being cross-examined.

MRS. THOMPSON CALLED.

Mrs. Mattie Thompson, who works on the fourth floor of the pencil factory, was called. In answer to a question as to whether Frank's character is good or bad, she said "I never heard a word against him in my life."

She was used by the defense to prove that complaint had been made to Darley or Frank that the girls were flirting through the dressing room windows. She testified that about a year ago or less she complained of it to the forelady of her department, who in turn told Darley.

"Isn't it a fact that girls should be at work after 7 o'clock in the morning, and not in the dressing room?" asked Attorney Arnold.

"Yes, sir."

Solicitor Dorsey questioned the witness.

"Who was talking to you about what you are going to testify here?" he asked.

"I don't know." She said that she couldn't remember names. Solicitor Dorsey admonished her to think. After a moment, she said Mr. Haas had talked to her Monday morning. "He asked me if I knew about the girl flirting there."

"Do you mean to intimate that there are fast girls there?" asked the solicitor.

LIKE ANY "TIFFLY" GIRLS.

"Oh, no, they were just like any other little 'tiffy' girls. They wanted to wave at every boy in sight."

"Did they flirt with men inside the factory too?"

"Not that I ever saw."

Answering other questions by the solicitor she said she had talked it over with Mrs. Carson at the factory, and they had decided to report their complaint. She could not name any of the girls who she said flirted, declaring that she had forgotten them. She could not tell who first told her about the flirt-

ing. She said she never saw any, but had been told about it.

The solicitor brought out the fact that girls who worked there on piece work or by the hour frequently changed clothes at all hours of the day in the dressing room.

"Did you ever hear of Frank taking a girl into a dark place and putting his arm around her?"

"Never in my life!"

The witness was excused.

#### CHARACTER WITNESSES.

The following employees of the pencil factory testified to Frank's good character: Miss Annie Howard, Miss Lillie Mae Goodman, Miss Cora Cowan, Miss B. D. Smith, Miss Irene Carson, Miss Lizzie Word, Miss Ida Holmes, Miss Willie Hatchett, Miss Mary Hatchett and Mrs. O. Johns.

Miss Jemmie Mayfield was called as a character witness, but failed to qualify.

The following other character witnesses testified for Frank. All are employees of the Pencil factory. Mrs. Georgia Denham, Miss Bessie White, Mrs. Zelle Spivey, Miss Minnie Smith, Miss Grace Atherton, Mrs. Margaret McCord.

Mrs. Lizzie Barnes, who worked at the factory only a short time; Miss Ethel Barber, and Miss Velvey Holland declared that they did not know Frank's character well enough to testify.

Several of the preceding were cross questioned, but nothing additional was brought out.

#### SHIPPING CLERK TESTIFIES.

R. P. Butler, a shipping clerk at the factory, was the next witness. He declared that the doors leading into the metal room are six feet wide. He said there are two glasses in these doors, measuring 15 by 18 inches. He testified that he has known Frank's general character for several years and that it is good.

Solicitor Dorsey cross examined the witness. Butler declared that he measured the doors of the metal room Monday morning. The solicitor asked if the passageway leading back to the metal room is not very narrow. The witness answered that it is not, being possibly 10 feet wide, except for a distance of about 14 feet where there are racks, and in that distance it is only 6 feet wide. Asked if the passage way is very dark, the witness said no, he would not consider it dark.

#### MAULSBY NOT A WITNESS.

Solicitor Dorsey discovered Harry Maulsby in the room, and stated that he understood Maulsby was to testify.

He asked that Maulsby be excluded. Attorney Rowser retorted that he was not going to call Maulsby and that the solicitor need not be wrought up about it.

Deputy Sheriff Minor addressed the spectators, admonishing any other witnesses among them to get out; that they were in contempt of court if they sought to remain. There was no other in the room, however.

The solicitor continued his cross-examination of the shipping clerk.

"When the doors of the metal room are closed, you can see a person through them if he is standing up, can't you?"

"If he's just the least bit at one side of the glass, you can't see him then, can you?"

"I wouldn't say the least bit, but one can get out of the line of vision."

Solicitor Dorsey brought out the fact that the witness had been re-employed at the pencil factory in May and had remained there since.

Rabbi David Marx was recalled to the stand by Attorney Arnold. Before questioning the rabbi, Mr. Arnold consulted with Solicitor Dorsey and said that he wanted him to tell the jury the functions and aims of the B'Nai B'rith. He said that if Mr. Dorsey had any objection he would ask that the jury be sent out of the room while the question was argued.

Solicitor Dorsey told the defense attorneys not to send the jury out, that if there was argument upon the question it could be spoken before them.

Attorney Arnold then put the question to the rabbi, asking him to explain the activities and purposes of B'Nai B'rith.

Solicitor Dorsey interposed an objection before the rabbi could answer. Addressing the court, the solicitor said, "Your honor, we haven't attacked the B'Nai B'rith, and anything pertaining to it is entirely irrelevant. It is already in the records as a charitable organization."

Attorney Arnold argued for admission of the evidence. "My friend Dorsey in cross-examining certain witnesses went into the question of the B'Nai B'rith. It only came out in a general way."

Judge Roan ruled that the evidence was not admissible.

Attorney Arnold addressed the court. "I want to state, but not in the presence of the jury, what we seek to prove."

Solicitor Dorsey said, "Step over and dictate it to the stenographer. I've got no objection to that."

Attorney Rowser in an undertone that could not be heard by anybody but the stenographer, dictated for two or three minutes to the stenographer. Rabbi Marx left the stand, and Mrs. R. A. Wilson, an employe of the pencil factory for four years, was called.

#### MORE CHARACTER EVIDENCE.

Mrs. Wilson testified that Frank's character is good as far as she knows. In answer to a question by Attorney Hooper, on cross examination, she said that she never had heard anything against Frank.

Miss Lena McMurtry, a telephone



operator who worked in the pencil factory six or seven weeks, about the time of the murder, was called, and asked as to whether or not she knew the character of Frank. She replied that she knew him only by sight, and was excused without further questioning.

Mrs. Mary Bolton and Mrs. W. R. Johnson testified as to the good character of Frank. Mrs. Bolton worked there six months, four years ago, and saw Frank twice then. She started working again in the factory in June 1913, after the murder.

Charley Lee, a machinist at the factory, was recalled to the stand as a character witness and testified in behalf of Frank. He was cross questioned vigorously by Solicitor Dorsey on his previous testimony about other things.

"On the stand the other day didn't you testify that you signed a paper stating that you witnessed the accident to Duffy?"

"Yes."

Solicitor Dorsey produced a paper which Attorney Haas had handed to him. He showed the paper to the witness.

"Your signature's not on that, is it?"

Lee replied: "No, sir. I never told you I'd signed the paper."

"Didn't you tell me the other day, and again just a moment ago, that you had signed the statement?"

"No, sir. I said I had made a written statement."

"Was it in your handwriting?"

"No, sir. I think it was typewritten."

#### SIGNED STATEMENT.

The witness then said that about a year ago, at the time Duffy was hurt, he told a man whose name he did not know, the details of the accident suffered by Duffy. This man went into the office and wrote it down on a typewriter, said he, and called him in to approve it when it was finished. The witness testified that he saw the statement two months ago when Herbert Schiff called him into the office and asked him if he remembered making the statement.

"Did you see your signature on that?" asked the solicitor.

"No, sir."

"Did you notice whether or not it was typewritten?"

"No, sir."

"What did you put in your statement?"

"I told all about it."

"Where did you say that Duffy was hurt?"

"On the forefinger of the right hand."

"What was Duffy doing when he was hurt?"

"He wasn't doing anything. He was standing by the machine."

"Then Duffy wasn't putting a roll of brass on the machine when he was hurt, was he?"

"No, sir I had just put that on."

Lee then told about Duffy being taken to the front office, and from there to the Atlanta hospital for treatment.

"What date was this?"

"November 4 I think."

The witness was excused and a recess of about five minutes was taken.

Mrs. J. G. Wardlaw was the next witness. She was married three weeks ago. Her name previous to her marriage, she said, was Miss Lula McDonnell. She testified that she worked at the factory four years and that she quit there about a month ago. She testified that she knew Frank's character to be good.

Solicitor Dorsey stated that he was going to ask the witness a question to which the defense already had objected, and he suggested that the jury be excused while the point was argued and the question was asked.

#### FRANK'S MOTHER LEAVES.

Mrs. Rae Frank, the mother of the defendant, put her hands over her ears and then as the jury went out she also left the court room.

The question asked by the solicitor was whether or not the witness ever had heard of Frank going to Hapeville with a little girl on the Saturday afternoon before Mary Phagan was killed, and whether or not Hermes Stanton and H. M. Baker were the motorman and the conductor on that car.

To this question the witness replied in the negative.

The solicitor then asked whether or not she had heard that Frank put his arm around the girl and tried at several stations to get off the car and go with him to the woods.

To this question also the witness replied in the negative, somewhat emphatically.

Attorneys for the defense did not push their objection to these questions, and accordingly the jury was recalled and the questions were asked again in its presence, the witness again replying twice in the negative.

The following witnesses then were called and testified to Frank's good character: Sig Montag, Frank Ziganka, an employe of the pencil company; N. V. Darley, manager of the factory; E. F. Holloway, watchman.

#### DENIES FRANK'S "PEEKING."

Miss Emily Mayfield, one of the girls who was in the dressing room when Frank came and looked in (according to the testimony of Miss Irene Jackson, Saturday.) was called. In response to questions by Attorney Arnold she denied that Frank ever had come to the dressing room while she was there, dressed or undressed, and denied that she ever had heard of him going to

the dressing room while any other girls were there.

Solicitor Dorsey questioned Miss Mayfield closely in an effort to shake her denial, but did not succeed.

#### DOCUMENTARY EVIDENCE.

Mr. Arnold commenced introducing the documentary evidence tendered by the defense. He explained to the court that the model of the pencil factory "has been marred by a slight disturbance between two gentlemen." The state waived objection, and the model went in.

Mr. Arnold then put in evidence, without objection, the financial sheets of the pencil factory from July 1, 1912, through the week ending April 24, 1913.

Mr. Arnold introduced a letter from Leo Frank to Moses Frank, his uncle, at the McAlpin hotel, New York. "We have no objection now to this," said the solicitor.

Without comment from the solicitor, the defense entered the following documentary evidence: The data from which the financial sheet for April 24 was compiled, as identified by Herbert Schiff; record of orders for week ending April 24; requisition bearing date of April 26; ten orders bearing date of April 26, identified by Miss Hattie Hall, stenographer of Montag Brothers; carbon copies of ten letters written by Miss Hall at Frank's dictation, April 26, identified by Miss Hall; packing reports for week ending April 24; page 195 of cash book, bearing dates April 21 to April 26; specimens of cabbage introduced by Dr. T. H. Hancock; four signed statements by James Conley, dated May 18, 24, 28 and 29, and records of three convictions of the witness C. B. Dalton.

An indictment against C. B. Dalton by the grand jury of Walton county, charging violation of the prohibition law, was ruled out upon objection by the state.

#### SCOTT'S STATEMENT.

Solicitor Dorsey waived identification by Stenographer Crusselle of the records of the coroner's inquest. Attorney Rosser introduced that part of the record of testimony given by Harry Scott, Pinkerton detective. Mr. Rosser said that Scott's testimony was introduced to show two things: first, that Scott did not say that according to Gantt Frank was familiar with Mary Phagan, and second that Scott swore at the inquest that Frank told him that when Mary Phagan asked if the metal had come he replied "No." In his statements on the witness stand in court, Scott said Frank told him his answer was "I don't know." Mr. Rosser introduced also Scott's report to his agency, bearing date of April 28, in which Scott said that Frank told him that he, Frank, said "No." when Mary asked if the metal had come.

Attorney Rosser read another portion of Detective Scott's testimony at the coroner's inquest, in which Scott testified that he had heard no part of the conversation of the meeting between Frank and Lee at the police station a few days after the murder. This went in without objection.

#### SCENARIO INTRODUCED.

The defense then introduced the scenario of the movements of Dr. Owen and his aides and re-enacting the story told by Conley.

Attorney Arnold announced that the defense wanted to introduce some other papers and documents by which Conley was released from the tower. Solicitor Dorsey had agreed to turn the papers over to him, he said. The solicitor assured the defense that he had the reply by Attorney Rosser, for Frank, and the reply of Jim Conley, but not Jim Conley's original petition. "I will object to their introduction, however," said the solicitor. He declared the papers to be immaterial and would merely incumber the record. Judge Roan after a short argument by Attorney Arnold held that the papers would be admissible.

Attorney Rosser then read a portion of Call Officer Anderson's testimony before the coroner's jury. It related to the story told to Anderson by Lee about the first discovery of the body. Solicitor Dorsey asked Attorney Rosser if it was for the purpose of impeaching Anderson. "I take it for granted that he had just forgotten," said Mr. Rosser. This was admitted.

Attorney Rosser read the inquest testimony by Newt Lee to the effect that Frank took longer to put the tape in the time clock the second time than it did the first. This testimony record was admitted.

A diagram showing the location of the Selig home and the streets near it, was offered and admitted.

#### BLUE PRINTS ACCEPTED.

Diagrams of all the floors of the pencil factory, made by Civil Engineer Kauffman, as well as a diagram used by the pattern maker in constructing the model of the factory, were offered and admitted.

A score or more photographs of the factory, Frank's office, and the Selig home, were offered and admitted.

The part of the pay envelope which Pinkerton Detective McWorth said he found near the elevator was admitted.

Attorney Arnold addressed the court. "We want now to introduce the check book of Leo M. Frank from September 18, 1912, up to and including the time of his arrest. We expect to follow it with his bank pass book," said he.

Solicitor Dorsey objected to their introduction on the ground that they proved nothing. Attorney Rosser said "I understand you called on us for them once." Solicitor Dorsey replied that he



had no recollection of it if he did. Attorney Arnold addressed the court.

"One of our objects in introducing these books is to show that Frank had only \$200 at the time of his arrest. This negro Conley said Frank gave him \$200 and took it back, and we want to disprove that."

Solicitor Dorsey objected, and the defense announced that Monday afternoon they would have the check and pass books identified and would make further effort to introduce them.

Attorney Arnold then said that the lathe machine on which the hair is supposed to have come from Mary Phagan's head was found, would be brought to the court room and offered as evidence; as well as boards taken from the floor of the metal room.

Court then adjourned until 2 o'clock.

The stage was set for Frank to go on the stand Monday afternoon.

Attorneys for the defense stated that they believed Frank would take the stand within less than fifteen minutes after court resumed.