

# FINDS MOB FRENZY CONVICTED FRANK

"Politics, Prejudice, and Passion" at Heart of Case, Collier's Investigator Declares.

## FACTS POINT TO INNOCENCE

Negro Accuser Obviously Un dependable, Mr. Connolly's Article Shows—Unclaimed \$5,000 Reward.

Below will be found a graphic picture of the Frank case. It was prepared for Collier's Weekly by C. P. Connolly and is the first of two articles dealing with this remarkable case to appear in that periodical. The second article will be printed in the issue of Collier's for Dec. 26.

The writer, Mr. Connolly, has had long experience as a practicing lawyer and prosecuting attorney, and is well known as an investigator. He represented Collier's at the trial of Haywood and Pettibone in Idaho, at the trial of the McNamara's in Los Angeles, and in other important cases.

Mr. Connolly spent weeks at Atlanta investigating the Frank case. He points out that he went there with an open mind, without prejudice, and with only one purpose in view—to learn the truth. He finds that Frank did not have a fair trial; that his conviction was the result of popular passion, which demanded a victim, and that all the facts point, not to Frank's guilt, but to his innocence and to the negro Conley as the murderer.

Stress is laid by Mr. Connolly upon the fact that Frank was convicted "largely on the theory that he was a degenerate. William J. Burns, after his conviction, offered a reward of \$5,000 to any one who would produce evidence of a single immoral act of Frank's whole life, without producing a claimant; and then the police of Atlanta made the astounding statement that they had never claimed that Frank was a degenerate."

Here is Mr. Connolly's opening article, in part:

Saturday, April 26, 1913, a holiday, Mary Phagan went from her home in Atlanta to the National Pencil Factory at which she worked, to get some pay still owing her. She did not return to her home. A search was instituted, without success. At 3:30 o'clock the following morning her dead body was accidentally discovered in the basement of the pencil factory by the night watchman, whose duty it was to make the rounds of the building.

Two men were immediately arrested. One was Leo M. Frank, the Superintendent of the factory, who admitted having paid the girl her wages in his office at noon on Saturday. The other was Newt Lee, the night watchman, who had discovered the body. Alongside Mary Phagan's body were found two illiterate notes in pencil, purporting to have been written by the victim, and stating that the deed had been done "by" a long, tall, sleek, black negro.

The notes were manifestly a clumsy invention of the murderer to divert suspicion. It soon became apparent that the night watchman was not the guilty person. Suspicion fastened on Frank and rapidly intensified. During the next three or four days the police, the newspapers, and practically the entire population of Atlanta came to the conclusion that Frank was the guilty person.

Then a third man, a negro named Jim Conley, who also worked in the factory, but who was not known to have been in the factory at the time of the murder, was accidentally discovered washing a stained shirt. He was arrested and held as a suspect, but suspicion was not seriously directed toward him. The stained shirt was returned to him by the police, and his name was practically eliminated until three weeks later, when it was discovered that he could write. He had previously denied that he could write.

### Conley's Bewildering Stories.

Still later it was discovered and admitted by Conley that he had been in the factory at the time of the murder. When the fact that he could write was pressed upon him he told in succession four different formal stories, each of which was taken down by the police. On the trial he told a fifth different story.

His first story was that he had not been at the factory at all. His second story, in which he still maintained that he was not at the factory on the day of the murder, admitted that he had written one of the notes, but claimed that he had done it the day before the murder at Frank's dictation, and that Frank had written the other note. Both notes were in the same handwriting.

His third story admitted that he was at the factory on the day of the murder, but knew nothing of the murder, and in this story Conley said that he had written one of the notes at Frank's dictation on that day, instead of on Friday, and that Frank had written the other note. He said he had no idea at the time what use Frank was to make of the note. He did not admit having written both notes until two months afterward when he was sworn as a witness on the stand.

He finally claimed that he had helped Frank carry the body from the second story of the factory, where Frank had murdered the girl, to the cellar. He gave as his reason for not telling this story at first that Frank had promised to protect him and he was waiting for Frank to make his promise good.

The fastening of the authorship of the notes on Frank, however, as told in one of Conley's first stories, fixed the crime on Frank, on the theory entertained by the police that whoever was the author of the notes was the author of the crime. Frank was the first one to furnish the information to the police that Conley could write as soon as he learned that Conley had denied this fact.

After the trial of Frank, Conley was indicted and convicted as accessory after the fact and sentenced to one year. Frank was convicted by the jury, the trial judge afterward saying that he was not convinced that Frank was guilty, but overruling Frank's motion for a new trial and stating that not he but the jury were the ones to be convicted.

### Terrorized by Public Opinion.

Frank is the victim of the police fastening the crime on him as the result of a public opinion which demanded conviction. This same public opinion now terrorizes officials and citizens who believe Frank innocent—and there are many such citizens in Atlanta today. They are afraid to proclaim their convictions—afraid of a business boycott, afraid of being marked for social persecution, or maybe afraid of violence.

Leo M. Frank is a young man of whose intellectual attainments any community might well be proud. Atlanta has been combed to find something against his moral character, and a like comb has been applied to Brooklyn, N. Y., the city of Frank's youth, and to Ithaca, N. Y., where he attended Cornell, but without success. Though he was convicted largely on the theory that he was a degenerate, William J. Burns, after his conviction, offered a reward of \$5,000 to any one who would produce evidence of a single immoral act of Frank's whole life, without producing a claimant; and then the police of Atlanta made the astounding statement that they had never claimed that Frank was a degenerate.

No defendant in a criminal case in Georgia may give testimony under oath in his own behalf, nor is his wife allowed to testify either for or against him, but he may make a statement not under oath to the jury. His own lawyers are not allowed to ask him any questions, and the prosecutor never asks any, for he fears the answers of a witness not subject to the penalties of perjury.

When Frank had concluded his four-hour statement to the jury the crowd in the courtroom, though mostly antagonistic to him, was deeply moved. It was one of those moments so rarely experi-

enced of an audience absolutely spell-bound. Moisture was in the eyes of some of the jurors.

The statement," said one newspaper which all along has been antagonistic to Frank "carried the ring of truth in every sentence, and scores in the room whose minds hadn't been made up left the courtroom convinced of the man's innocence."

During one of the day's of intense excitement in vogue throughout the trial, as Frank was being taken from the Court House to the jail, the crowd wedged threateningly about the automobile. Sheriff Wheeler Mangum, an outspoken believer in Frank's innocence, hurriedly told Frank to get under cover behind him.

"I am an old man," said this brave Confederate veteran, "and you are young. If they 'get' you it will be over my dead body."

### The Ring of Truth.

Frank has been twice sentenced to die, the last time on his birthday. When on that last occasion he was asked if he had anything to say, he made a remarkable statement. As showing its effect even in cold print, United States Senator William E. Borah of Idaho told me before I went to Atlanta that it so gripped him at the time that he was half inclined to take a train and go to Atlanta for the purpose of learning more about the case. Speaker Champ Clark gumbled it in his infrequent scrapbook as a rare gem. He declared it one of the most remarkable and convincing statements he had ever read. Frank had concluded this statement there was hardly a dry eye in the courtroom, according to many witnesses.

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Some may say that thousands of men in Europe are being sacrificed in a senseless war, and that, after all, the fate of Frank is no worse than that of others who must suffer in this world of injustice and mistakes. Indeed, The Macon (Ga.) Daily Telegraph of March 20 last, speaking of the Frank case, said editorially:

"If a mistake is made involving a single human life it would be deplorable, but it is better that such a mistake should be made than that our legal system should be brought into disrepute."

A Georgia jury dominated by one of its members, once returned a verdict that showed the court's return of Chief Justice Thomas J. Simmons of Georgia, in the court over which he then presided as a trial judge, immediately ordered the verdict set aside with the remark that "it takes at least thirteen men in Georgia to deprive a man of his property." And yet here is a man about to be deprived of his life on the verdict of twelve jurors, without the consent of the conscience of the Judge who heard the testimony.

Under a constitutional amendment adopted in 1906 the Supreme Court of Georgia is not allowed to reverse any capital case where no error of law has been committed in the trial, no matter how weak the evidence may be, and cannot investigate or pass upon the question of guilt or innocence. Two of the Supreme Court Judges were for reversing the case on alleged errors of law, but four voted to sustain the conviction.

### An Atmosphere of Riot.

While Frank's trial was pending and just before the jury retired for deliberation, Judge L. S. Roan, who presided, held a consultation on the bench, and in the presence of the jury, with the Chief of Police of Atlanta, and with the Colonel of the Fifth Georgia Regiment, to decide on the best means of protecting Frank in case of his acquittal by the jury. The Fifth Regiment was kept under arms throughout the night. Before delivering his charge to the jury, Judge Roan also called the lawyers into another room and advised that neither Frank nor his counsel be present when the verdict of the jury was rendered, for fear that if Frank were acquitted the mob would hang both him and his lawyers.

While the prosecuting attorney was making his closing argument in the case, the newspaper editors of Atlanta joined in a petition to the Presiding Judge to adjourn the case over for a day, "because," as The Atlanta Journal said: "It was known that a verdict of acquittal would cause a riot such as would shock the country and cause Atlanta's streets to run with innocent blood."

It was common street talk that if the jury discharged Frank, or dared to disagree, Judge Lynch would take a hand before Frank could reach his home or the jail. "Innocent or guilty, we will 'get' the d— Jew!" was a remark frequently heard in the crowd around the Court House on the day of the verdict. The mob was breathing vengeance in the very face of the Judge and jury.

When the verdict was rendered, street car employes quit their street cars to join the crowds that cheered; women in fashionable groups in Atlanta's stores and social functions clapped their hands. It was a Roman holiday in Atlanta. The news of the verdict was chalked up on the score board at a baseball game at Piedmont Park, and a wild demonstration of approval ensued in the grandstand, and on the bleachers. Hundreds "cakewalked" for an hour in front of the pencil factory of which Frank had been the Superintendent and where the girl had been murdered. Telephone bells rang incessantly.

"It looked as if every man, woman, and child in Atlanta wanted to use the telephone as soon as the verdict was rendered," said an official of the Southern Bell Telephone Company. More than three times the number of telephone connections were called for on that Monday afternoon than on any previous day in the history of the company in Atlanta. A week after the trial a barbecue was given in honor of the prosecuting attorney and the jury.

Let me quote from The Atlanta Constitution a pen picture of the scene around the Court House when the verdict was rendered:

### The Crowd in a Frenzy.

A veritable honeycomb of humanity spread over the section from Whitehall to Central Avenue, on Hunter Street, and from Alabama to Mitchell on Pryor. Men and women clung to the walls of buildings and stood in doorways. Windows were crowded with women and girls and children. It was as though a street audience had gathered to watch an eventful procession. The shrill orders of the mounted policemen rose over the hum of the crowd.

As the reporters at the telephone shouted the verdict to their offices, the word came through the windows. It was received with a shout. The cry of "guilty" took flight from lip to lip. It traveled like the rattle of musketry. Then came a combined shout that rose to the sky. Pandemonium reigned. Hats went into the air. Women wept and shouted by turns.

As Solicitor General Dorsey appeared in the doorway of the Court House, while the crowd yelled its reception of the Frank verdict, there came a mighty roar. The Solicitor reached no farther than the sidewalk. While mounted men rode like Cossacks through the swarm, three muscular men swung Mr. Dorsey. (The prosecuting attorney) on their shoulders and passed him over the heads of the crowd across the street to his office. With hat raised and tears coursing down his cheeks, the victor in Georgia's most noted criminal battle was tumbled over shrieking throng that wildly proclaimed its admiration. Few will live to see another such demonstration.

Time and again the crowd in the court room clapped their hands and stamped their feet in approval of some act of the prosecutor and laughed aloud at the objections of Frank's lawyers. Frank's lawyers protested, but the only relief the court gave was to direct the Sheriff to find out who was making the noise. When Frank's lawyers in the early stages of the trial called the names of several Jewish ladies as character witnesses for Frank, the crowd jeered and laughed. When, toward the end of the thirty days' trial, they moved the court for a mistrial on the ground of these various demonstrations of applause and hisses the clapping of hands, the stamping of feet and the boisterous, sarcastic laughter in the presence of the jury—the crowd jeered more uproariously than before. The Judge repeatedly but timidly threatened, but the Sheriff informed him in open court that the only way order could be maintained was to clear the room.

I know how difficult it is to believe these things—I doubted them myself at first—but they are there in the printed record; and, however incredible it may seem to the reader, I am understating rather than overstating them.

### A Critical Moment.

When Solicitor General Dorsey, the Prosecuting Attorney, was in the middle of his impassioned argument, pointing out how this "fiendish degenerate" took Mary Phagan's life, he held up the bloody clothes before the jury and,

dramatically pointing to them, said: "I ask you to look at them—I ask you to look at them." In a stillness that Mr. Phagan's mother uttered a terrifying shriek. The crowd in the court room rose as a man to their feet. The hands of numbers of these men went to their pockets. Every Bailiff in the room instantly called out in excited tones: "Order! Order!" It was a critical moment.

This gives one an idea of the scene. As the Prosecutor concluded his fiery address to the jury, which, instead of being a calm analysis of the testimony, was an appeal to passion and prejudice, and tended to increase rather than to allay the frenzy of the crowd, he dramatically repeated the words "guilty, guilty, guilty." With each "guilty," the bell in a neighboring church simultaneously tolled, and the superstitious crowd regarded it as Providential approval of the words.

There is not a note in all the gamut of human passion that has not been sounded in the Frank case. There is not a fabric of civilization which it does not touch somewhere—the press, the courts, the police system, labor and capital, racial prejudice, politics, the hub and eye of the impassioned pack hungering for the blood of their fellow. But for brevity, the heart of the Frank case may be summed up in three words—politics, prejudice, and perjury.

Frank's most ordinary movements, such as catching a street car on this corner or on that, the lowering of his head, the fashion of his hair, the rubbing of his hands, the tone of his voice, the bell in a neighboring church magnified and turned into glaring light, while every move of his was under green and glib suspicion. All the raffish who love the garish light came forward with the most unbelievable tales, which were given unquestioned credence, and no one of any prominence dared to raise his voice in behalf of common sense for fear of the same white light of publicity, from which they shrank in such a seeking mess. No one gave Frank credit for any innocent purpose or unguilty motive. From the first, suspicion of guilt fastened on him; and three weeks later, when the real murderer was discovered, the community was greedy for the sacrifice of Frank.

### Epps's Fantastic Tale.

Again there were stories, facts, and suspicions that found their way into the newspapers in floods. George Epps, a youth of 15, who claimed to be a chum of Mary Phagan, swore at the Coroner's inquest, a few days after the tragedy, that he had ridden to town from Bellwood with Mary Phagan on the street car on her way to the factory that Saturday. He said that on that trip he took her home. No one gave Frank credit for any innocent purpose or unguilty motive. From the first, suspicion of guilt fastened on him; and three weeks later, when the real murderer was discovered, the community was greedy for the sacrifice of Frank.

These alleged remarks of Mary Phagan were not competent evidence under well-known legal rules, but the public accepted the story in perfect good faith at the time, until months later, when at the trial young Epps swore that he could tell time by the sun. (although that Memorial Day was dark and cloudy.) and that he knew that Mary Phagan had got off the car at 12:07 o'clock by the sun. Thereafter, when any one in Atlanta wanted to describe a young liar, they said, "He's a little Epps."

The motorman and conductor of the car contradicted Epps as to his presence on the car that morning with Mary; they knew her well and said she was alone; some of Epps's young friends have declared that they saw him that morning riding to town on the wagon. An Atlanta Georgian reporter who interviewed young Epps and his sister on the day the body of Mary Phagan was discovered swore that young Epps then said that he occasionally rode to town with Mary Phagan on the car, but said nothing about being on the car with her that Saturday. Young Epps had an overwhelming fondness for putting himself in the limelight even in his own neighborhood. He is now in the Georgia Reformatory.

The police gave to the newspapers mysterious hints of telephone operatives who were prepared to swear to certain damaging conversations over the pencil factory line on the night of the tragedy, and of Mary Phagan having been called over the telephone to come to the factory; but these witnesses never materialized at the trial.

A woman of the underworld, whose connection with the police of Atlanta is beyond dispute, came forward with the most circumstantial story of how Frank had repeatedly telephoned her that Saturday night between 6:30 and 10 o'clock, begging for a room; that he wanted a room at her place because he implicitly trusted her; that it was a case of life and death—and this over the telephone. She declared that Frank had been a frequent visitor at her house, and that since his arrest he had had a secret conference with him in the jail. She also swore that she had been offered large sums of money to leave the city.

As a matter of fact, there was a card party at Frank's house that night, and there were a dozen guests in the room where the telephone was located. Also, Frank's telephone was on a different system from this woman's telephone. But the public did not know these facts, Frank, by the advice of his counsel, remaining silent during all these developments.

### Jewish Stranger from the North.

Stories of Frank's alleged philandering utterly inconsistent with the conduct of his whole life filled the air, every one of which was later—but too late—proved to have not the slightest foundation in fact. Frank was practically a stranger in Atlanta, unknown except to a small circle. He is of a rather shy, nervous, and intellectual temperament. He and his wife lived with Mrs. Frank's parents. On account of real or fancied racial prejudice, the Jewish people of Atlanta move altogether in their own religious-social set. Frank was President of the local B'nai B'rith, a charitable and fraternal organization. He was strictly devoted to his business, and outside his own circle was little known in Atlanta. He had lived in the city less than five years. The public from the beginning seemed ready to believe anything about this young Jewish stranger from the North. One sister was murdered, and a hundred others—all were accepted without question in the state of public fanaticism.

Among the suspects was a colored man named "Jim" Conley, who had been arrested on the Thursday succeeding the murder because of the fact that he was seen washing a shirt in the factory. He was a floor sweeper employed on the fourth floor. Conley lay in jail for three weeks, almost forgotten, while the whirlwind of calumny had been swirling about Frank's head. Then it was discovered that Conley could write. The significance of this discovery is explained by the fact that near the body of Mary Phagan were found a pencil and two pieces of paper, on which were written a note or notes, addressed to Mary Phagan's mother, which the murdered girl was supposed to have written, and in which she told her mother how she was murdered, giving a physical description of the person who, according to the notes, murdered her.

This description was exactly the reverse of "Jim" Conley's physical characteristics. The notes described the murderer as a "long, tall, sleek, black negro." Conley is short and stout, with a "finger-cake" complexion.

### Experts' Shrewd Conclusions.

One of the first efforts of the police was to locate the author of these notes. In pursuance of this purpose, each of six suspects, among them Frank and Newt Lee, were required to write portions of the notes for comparison of handwriting. All of the suspects gave specimens of their handwriting without hesitation, except Conley, who claimed that he could not write. The proof that he could write was finally furnished after three weeks by Frank, who did not know that Conley's handwriting had not been compared with the handwriting of the "murder notes," or that Conley had denied that he could write—the police had kept these facts to themselves, but the credit of the discovery was denied to Frank at the time and claimed by the police with sensational flourish, in a full-page newspaper story, as a clever piece of clairvoyant detective work. There is no doubt that Conley was a keenly surprised negro when he discovered from the newspapers (for he could read, although he denied that, too) that the police were looking not for the "long, tall, sleek, black, negro" described in the notes, but for the one who wrote the notes.

A bank teller supposed to be an expert declared that these notes were in the handwriting of Newt Lee, the negro night watchman; another bank official in Atlanta declared they were in the disguised handwriting of Leo Phagan. One expert declared that the notes were written by the murderer, "a shrewd man, with intent to reflect guilt upon an illiterate negro."

Thus, again, with public suspicion di-

rected against Frank. This was before the discovery that Conley could write. These notes were, as a matter of fact, in the handwriting of "Jim" Conley, as he afterward confessed, though up to the time of the trial he insisted that one of the notes was written by Frank and the other by himself. But the notes were so obviously in the handwriting of the same person that the police made him change his story before the trial, as they admitted they had made him change it in many other respects.

### Grand Jury Kept in Dark.

Conley's presence in the factory was unknown and unsuspected by every one connected with the unravelment of the mystery until May 28, ten days after it was discovered he could write. During all that time he denied having been at the factory that day—in strong contrast to Frank, who promptly admitted he had seen the little girl at the factory and had paid her off. Frank was indicted after the police and the Prosecutor knew that Conley had admitted the authorship of the "murder notes," but the Grand Jury was not advised of this fact. The police had already given the public to understand that they had overwhelming evidence of Frank's guilt.

"Jim" Conley, obliged to acknowledge authorship of the "murder notes" by the knowledge of the police that he could write, and by a comparison of the "murder notes" with his handwriting, finally admitted that he was at the factory on Saturday. This admission was made after the visit to the jail of a woman witness who saw a negro in the factory entrance that day. During this visit Conley was noticeably nervous. One of the officers testified that he "chewed his lips and twirled a cigarette" in his fingers; he didn't seem to know how to hold on to it; he could not keep his feet still.

Conley had no mission at the factory that day, unless his story, told for the first time at the trial, was true, that he was there at Frank's direction, fortified with a bottle of cheap whisky, to see that nobody entered the factory during Frank's "distractions." Frank was to give a certain signal from the second floor by stamping with his feet, when the front door downstairs was to be locked until such time as he whistled "all right," when the door was to be unlocked.

If Mary Phagan went down the stairway that noon, as Frank declared, then she was in plain view, with her silver meshbag in her hand, of this semi-intoxicated, lustful, improvident, and impecunious negro, who lay concealed all that morning in the shadow of a pile of packing boxes stacked at the foot of the stairway. This entrance was always dark even with a burning gas jet, but on that Saturday it was darker than usual because of the lowering day without and because, being a holiday, the gas was extinguished. At the foot of the stairway was an elevator shaft which led to the still darker cellar or basement, and alongside of this elevator shaft was also a trap door leading to the basement by means of a ladder—the "hole" referred to in one of the "murder notes," if my theory of this crime is correct; for the negro made the notes in part tell truth, just as he made his main story in part tell truth.