

# FRANK IS INNOCENT, SAYS GEORGE S. DOUGHERTY

By George S. Dougherty.

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### Former Second Deputy Police Commissioner of New York, Who Has Spent a Lifetime in Detecting Crime, Gives Five Reasons for His Belief.

*George S. Dougherty, author of the following close analysis of the charges against Leo M. Frank, is one of the best known criminal investigators in the United States. His most recent public official service was that of New York's Second Deputy Commissioner in Charge of Detectives. He is said to know more professional criminals than any other detective now living in the United States. His twenty-three years of service with the Pinkerton National Detective Agency, during which he filled almost every position between and including operative and Superintendent of Criminal Investigations, in conjunction with his official police service, and work as an independent criminal investigator, in partnership with his brother, have given him a knowledge of crime, criminology, and criminals which few men have possessed. Certainly none is better qualified to shrewdly draw deductions from the clues and evidence available to students of the famous Frank case.]*

By George S. Dougherty.

**T**HROUGH thoroughly careful and absolutely conscientious study of the murder of Mary Phagan, the young employe of the National Pencil Factory at Atlanta, Saturday, April 26, 1913, I have been absolutely convinced of the innocence of Leo M. Frank, who was convicted of the crime, and who, although he still has a fighting chance for his life in the courts, is imprisoned in Atlanta's "Tower" under sentence of death.

His execution would be a social crime, and, therefore, more deplorable even than the brutal murder of the girl, which was the crime of a single human individual—and, at that, a brutal, a somewhat primitive individual.

In stating the reasons for my conclusions that Leo M. Frank is innocent, I find that it seems best to summarize them, so far as possible, in a list of salient points. This list follows:

#### FIRST.

Neither physiologically nor psychologically was Frank capable of the crime. Unquestionably the murderer was strongly under the influence of liquor at the time when the girl was killed. Frank never in his life was under the influence of liquor. The psychology of the murderer, as surely proven by his crime, was that of a brute, crude, undeveloped. Frank is highly developed, a gentleman, a scholar.

#### SECOND.

No testimony, either of fact or circumstance, warranted Frank's conviction. This, or about this, was admitted by the Judge who presided at the trial.

#### THIRD.

All the convincing evidence tended toward fastening the crime upon another person of another race. The revolting treatment of the body, the method of the attempt to hide the remains, the stupid effort to avert suspicion by means of the famous "murder notes," the theft by the murderer of the victim's cheap mesh bag and its pitiful contents—\$1.20—the utter disappearance of the flowers and ribbon from her hat do not point to Frank. They do not indicate the murder to have been a "white man's job," but they do indicate it to have been a negro's job.

#### FOURTH.

Frank's conviction undoubtedly was due largely to scandalous attacks upon his personal character and habits. Every charge of this nature has been disproved, but one may, for the sake of argument, admit every one of them save those immediately connected with this crime and find in them an argument against associating Frank with the murder. A man of loose character, given to the immoral practices with women and girls with which Frank was charged, never would have selected the pencil factory as the place, nor that day and hour as the time for the assault upon and murder of this girl. The charge is that the crime was carefully premeditated. This one detail makes the whole accusation absurd.

#### FIFTH.

Not one of the bits of so-called circumstantial evidence against Frank will stand the test of even casual analysis. The letter written by Frank to his uncle the day before the crime was committed was a quite ordinary and casual communication, twisted into a significance which, in plain reality, it did not have. Frank's instructions to the watchman to report at 4 P. M., although, in fact, he, Frank, remained later at the factory is so unnoteworthy that it seems incredible that it should have been regarded as evidence against him; his later telephone call to the night watchman to ask if everything was all right was mere proof of his faithful interest in the factory of which he was the superintendent.

Thus, to be brief, every point made against the prisoner by anyone other than the negro, Conley, clears itself away as the result of the most casual analysis.

#### As to Frank's Character.

Now let us consider Frank's character. All good criminal investigators do this very carefully in such cases, attaching much significance to what they learn. Twenty-nine years old, born in America of Jewish parents, a prize student and college graduate, especially a notable mathematician, he had lived mostly in Brooklyn save when in college and while traveling and studying in Europe until he went to Atlanta several years before the crime.

There he married and afterward lived a very notably clean and upright domestic life in the home of his wife's parents.

He was of retiring disposition, but was deeply interested in charitable work and was prominent in at least one fraternity order. Many blemishes

were charged by the prosecution and sensationalists against his character, but several of these charges were repudiated by the people who made them and not one was proved.

Frank stood the acid test of an examination as searching, as terribly minute as could be made. Do you remember the statement he made after the crime was discovered? It had been a holiday. He had gone to his office to catch up with his work. He frankly and minutely remembered Mary Phagan's call for her pay, between noon and 12:10. He related every detail of his dealings with the girl, who, to him, was a mere unit of the working force, associated in his mind with a number, not a name.

I contend, and I often have handled similar situations, that a man guilty of a crime cannot manufacture natural occurrences for verbal relation. He will imagine and describe unnatural occurrences.

Every question ever asked of Frank before, during, and after the trial was answered fully, freely, with an accuracy impossible to disprove. Without hesitation he wrote for his inquirers the words of the murder notes which he was at first accused of having written in a disguised hand, and then was charged with having dictated. Of this tragic absurdity he practically stands convicted, for he was condemned upon the testimony of the negro who alleged it.

According to the testimony of Conley, the negro, he, Conley, was at the factory that morning by Frank's orders, so that if Frank had an opportunity to have an affair with a woman in his private office he, Frank, could give a signal which would warn Conley not to permit any one to enter from below who might interfere with the young manager's privacy.

It is inconceivable that Frank, the Superintendent, could issue such orders to a negro watchman, thus placing himself utterly in the man's power.

And the office in which Frank was charged with having committed immoral attacks was in direct line of possible observation from several people already in the building, whose approach Conley would have known nothing of.

#### No Adequate Grounds.

Another point: Conley's statement is that Frank knew in advance that Mary Phagan was to visit the factory that day for the purpose of getting her pay. There is no reasonable cause for believing this to have been true; no other employe went there that day to be paid. If Frank did not know that Mary Phagan was to be there Conley's entire story falls. And, as a matter of fact, there seems to be more reason to believe that he did not than there is to believe that he did.

One of the prosecution's principal contentions was that Frank was the last person to see the girl alive. For this, also, Conley is the sole authority. Let us analyze his testimony, upon which this brilliant and theretofore blameless young white man was condemned to disgrace and death.

He testified against Frank only after he himself had been arrested as a suspect, having been seen in the act of washing blood from his shirt. It is generally admitted that if Leo M. Frank is innocent "Jim" Conley must be guilty as the principal in the crime to which he confesses to have been an accessory.

He was the only person who refused to write copies of the "murder



George S. Dougherty.

notes," claiming inability to write; then Frank said, and it was found to be the fact, that Conley could write; then Conley confessed to having written the notes, but said he did so at Frank's dictation.

One analysis will be, I think, sufficient to convince the reader, as I am convinced, that Conley lies about this. If he lies, then Leo Frank is innocent.

Note No. 1, which Conley admits having written, claiming that Frank dictated it, runs: "man that negro hire down here did this I went to \* \* \* and he pushed me down that hole a long tall negro black that hoo it wase long sleam tall negro"

The second note was largely identical with the first, but concluded as follows: "but that long tall black negro did buy his slef."

The important significance of these

notes is that they attribute to the murderer a physique as different as possible from that of Conley, who admits having written them.

Note that Conley is short, stout and coffee-colored, while the murderer is described by the notes as being "long, tall," "sleam" and "black."

Any psychologist will testify that a crude mind like that of Conley, in endeavoring to divert suspicion from itself for something of which it really was guilty would be sure to go to exactly that extreme.

The theory of the prosecution is that the girl's body was taken to the basement of the building on the elevator, although there is evidence to disprove this; the theory of the defense is that the girl was struck and knocked through a hole or hat-hway in the ground floor (near where Conley admits having been lurking), and, in falling to the basement floor, received certain bruises through violent con-

tact with a ladder, and that the fatal wound in the head probably was caused by the fall against the sharp end of a piece of log lying at the foot of the ladder.

Conley wrote in the note "pushed me down that hole."

He testified, while he was fastening the crime on Frank, that the girl was killed upstairs and taken downstairs on the elevator.

The phraseology of the notes is as eccentric and characteristic of the negro as their spelling, which included "hoo" for "who"; "wase," for "was"; "sleam," for "slim"; and "slef," for "self."

It is as inconceivable that Frank could have originated and dictated that phraseology as it is that he could have originated and dictated that spelling. Not the most careful literary student of the Southern negro could so accurately have imitated the

vagaries of the slightly educated black.

It will be remembered that I have said the crime bore all the earmarks known to the criminologist of one committed by a person under the influence of liquor. Conley testified that he had drunk a phat of bad whisky in order to nerve himself to the task of assisting Frank after Frank had committed the crime.

Why did Conley fix on Frank as a scapegoat?

At first he had said he could not write; then he admitted that he could write; but said he had not written the notes; then he admitted that he had written the notes, but at Frank's dictation. Long before the discovery that he could write Frank had been arrested, charged with the crime. Conley knew this.

What more natural then, than that, finding the discovery that he could write had cornered him, he should search desperately for a way out and find it in swearing that he wrote the notes under Frank's orders and at his dictation? Here, to my mind, is direct evidence that Conley, not Frank, committed the crime.

The prosecution's contention was that if something "startling" really had not occurred he never would have used this phraseology. This contention was absurd to me.

Frank wrote:

"There is nothing new at the factory. The prosecution's claim is that had there not been something 'new'—ghostly 'new'—at the factory, he never would have used that phrase. It seems to me to have been, like the first phat, a perfect, natural, ordinary expression, such as a man in his position would be very likely to use in writing to the absent President of the company which employed him."

The prosecution made a point of the fact that Frank did not go to a baseball game for which tickets had been secured. As a matter of fact, there were good reasons why he did not go—in the first place the day was proving to be raw and chilly, not at all an agreeable one for attendance upon out-of-door entertainments, and, in the second place his work took longer than he had expected it to take.

Another sentence in the letter seems to have impressed unfavorably the prosecutor and the jury—just why I do not understand. It was: "The thin gray line of eyebrows, smaller each year, braved the rather chilly weather today to do honor to their fallen comrades."

What there is in this indicative of the fact that the man who wrote it had just committed a revolting murder I do not understand. It was one of the portions of the letter which the prosecution quoted as helping to justify the conviction of Leo M. Frank.

It seems to me, rather, that the words, "the rather chilly weather," may be taken, however, as an explanation of Frank's determination not to go to the baseball game.

Another detail: It was shown that the baseball game on New Year's day after dark discovered the girl's body, had been ordered to report that day at 4 o'clock, two hours earlier than may be taken, however, as an explanation of the fact that the girl remained for a considerable time after his arrival. This was referred to as a suspicious circumstance. Why? He had given the man who was with him the game and he was busy. Why not stay?

A further point: The fact that, after he reached his home that evening, he called on his telephone to the telephone to ask him if everything was all right at the factory was instanced and apparently accepted as damning evidence that he was in a state of nervous dread, expecting momentarily that from the factory would come a report of the discovery of the girl's body.

Jim Conley frequently called up the watchman at night, to ask that question of him, and this night there was especial reason for so doing, for he was called during the day by a negro who had been discharged under suspicion of dishonesty had been admitted to the building so that he might get some things which he had left there.

Frank had cautioned the watchman to remain in this man's company during every minute of his presence in the building, and his telephone call was a natural expression of his anxiety as to whether or not the visit had had any unpleasant consequences.

The defense showed clearly that Frank had on his mind when he called up the factory the fear that the discharged workman might have tried to re-enter the place after his (Frank's) departure, and that the watchman, who had been but two weeks in the factory's employ, might have admitted him.

ing no errors and accomplishing at least a normal task for the time devoted to it. Could a man of his temperament do that, after having committed such a crime? No.

Would Frank have stolen the girl's purse and contents and would he have removed the flowers and ribbons from a dead girl's hat? No.

To any outside investigator, unswayed by any of the unusual influences which affected the police and other authorities as well as the people of Atlanta, after the commission of this crime, such contentions seem absurd.

Why should Leo M. Frank, young, sober, married happily, very ambitious, socially prominent, and becoming more so, habitually leading an absolutely sober and moral life, the superintendent of a business practically owned by his uncle and certain to advance in it if nothing untoward occurred—why should such a man commit any crime, and, more especially, why should he commit a crime of this particular character?

One point which the prosecution dilated upon was the phraseology of the letter written, that day, by Frank to his uncle, who was in New York, en route to Europe.

From this letter the following extracts were made and referred to as significant of the fact that his author was laboring under such stress as would burden a man who had just committed a great crime.

"It is too short a time since you left for anything startling to have developed down here."

The prosecution's contention was that if something "startling" really had not occurred he never would have used this phraseology. This contention was absurd to me.

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Other Points Might Be Made.

I have touched upon only a few of the points which might easily be made in this argument for a further opportunity for Leo M. Frank to prove his innocence of the heinous crime of which he stands convicted and of which I believe him to be absolutely innocent.

I have no intention of criticizing anyone; but it is my belief that all concerned in the investigation which led to Frank's arrest and in the prosecution which resulted in his conviction were, from the start, so affected by the general horror at the nature of the crime, so anxious that such a crime should not go unpunished, and so firmly convinced of the prisoner's guilt as indicated by the negro's story, that their efforts were directed, probably unconsciously, rather to proving the truth of Conley's testimony than to determining the actual facts in the case.

Conley has made so many and such conflicting statements, from time to time, that although this brilliant young white man's life has been declared forfeit principally on the strength of them, I myself should hesitate to accept as truth any future statement from him, even if it amounted to a confession clearing Frank and taking the guilt upon his own shoulders.

But I believe that if justice so far errs as to permit the execution of Frank to approach within a few hours some strong mind may take "Jim" Conley in hand the night before it is to occur. I believe if this occurs that then, under sufficiently provocative influence, a true confession may be wrung from this crude negro, backed and incontrovertibly confirmed by a revelation as to the whereabouts of the murdered girl's still missing purse and hat-trimmings.

And I am firmly, solemnly, and absolutely convinced that if Leo M. Frank is hanged for the murder of Mary Phagan, the law will have taken the life of a man wholly innocent of the crime.