

Leo Frank case

Pinkertons national detective

Harry Scott

Approval of Brief of Evidence.

The foregoing 134 pages constituting the brief of evidence in the above stated case, are hereby approved as a true and correct brief of the evidence produced upon the in the above stated case. Let the same be filed as part of the record herein.

This February 3, 1916.

W.D. Ellis,

Judge S. C. A C.

Filed in office this the 4th day of February, 1916.

T. C. Miller, D. Clk.

GEORGIA,
FULTON COUNTY.

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and all of the record material to a clear understanding of the errors complained of; and the clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the March Term, 1916 of the Supreme Court, that the errors alleged to have been committed may be considered and corrected. This 4th day of Febry 1916.

W D Ellis
Judge S C A C

I discontinued at 6:00 P. M.
Reported.
Atlanta 5/31/13.

Conley's Statement of May 29, 1913.
Atlanta, Ga. May 29, 1913.

On Saturday April 26, 1913, when I come back to the pencil factory with Mr. Frank I waited for him downstairs like he told me, and when he whistled for me I went upstairs and he asked me if I wanted to make some money right quick and I told him "Yes", sir", and he told me that he had picked up a girl back there and had let her fall and that he head hit against something he didn't know what it was, and for me to move her, and I hollered and told him the girl was dead, and he told me to pick her up and bring her to the elevator and I told him I didn't have nothing to pick her up with and to,d me to go and look by the cotton box there and get a piece of cloth, and I got a big wide piece of cloth and come back there to the man's toilet where she was, and I tied her up, and I taken her and brought her up there to a little dressing room, carrying her on my right shoulder, and she got too heavy for me and she skipped off my shoulder and fell on the floor right there at the dressing room and I hollered for Mr. Frank to come there and help me, that she was too heavy for me, and Mr. Frank come down there and told me to pick her up, damn fool, and he run down there to me and he was excited, and he picked her up by the feet, her head and feet were sticking out of the cloth and then we brought her on to the elevator. Mr Frank carrying her by the feet and me by the shoulders, and we brought her to the elevator and then Mr. Frank says, "Wait, let me get the key," and he went into the office and got the key and come back and unlocked the elevator door and started the elevator down. Mr. Frank turned it on himself and we went on down to the basement and Mr. Frank helped me to take it off the elevator and he told me to take it back there to the sawdust pile, and I picked it up and put it on my shoulder again, and Mr. Frank, he went up the ladder and watched the trap door to see if anybody was coming, and I taken her back there and taken the cloth from around her and taken her hat and shoe which I had picked up upstairs right where her body was lying, and brought them down and untied the cloth and brought them back and threwed them on the trash pile in front of the furnace, and Mr. Frank was standing at the trap door at the head of the ladder. He didn't tell me where to put the things. I layed her body down with her head towards the elevator, lying on her stomach and the left side of her face was on the ground and the right side of her face was up, and both arms were laying down with her body, by the side of her body, Mr. Frank joined me back on the first floor. I stepped on the elevator and he stepped on the elevator when it got to where he was, and he said "Gee, that was a tiresome job", and I told him his job was not as tiresome as mine was, because I had to tote it all the way from where she was lying to the dressing room, and in the basement from the elevator to where I left her. Then Mr. Frank hops off the elevator before it gets even with the second floor and he makes a stumble and he hits the floor and catches with both hands and he went on around to the sink to wash his hands, and I went and cut off the motor, and I stood and waited for Mr. Frank to come from around there washing his hands, and then we went on into the office, and Mr. Frank he couldn't hardly keep still, he was all the time moving about from one office to the other, then he come back into the stenographer's office and come back and he told me "Here comes Emma Clark and Corinthia Hall," I understood him to say, and he come back and told me to come here and he opened the wardrobe and told me to get in there, and I was so slow about going he told me to hurry up, damn it, and Mr. Frank, whoever that was come in the office, they didn't stay so very long, till Mr. Frank was gone about 7 or 8 minutes, and I was still in the wardrobe and he never had come to let me out, and Mr. Frank come back and I said, "Goodness alive, you kept me in there a mighty long time" and he said "Yes, I see I did, you are sweating," and then me and Mr. Frank sat down in a chair, Mr. Frank then took out a cigarette and he gave me the box and asked me did I want to smoke and I told him yes, sir, and I taken the box and taken out a cigarette and he handed me a box of matches and I handed him the matches back, and I handed him the cigarette box and he told me that was all right, I could keep that, and I told him he had some money in it and he told me that was all right, I could keep that, and Mr. Frank then asked me to write a few lines on that paper, a white scratch pad he had there, and he told me what to put on there, and I asked him what he was going to do with it and he told me to just go ahead and write, and then after I got through writing Mr. Frank looked at it and said it was all right, and Mr. Frank looked up at the top of the house and said, "Why should I Hang, I have wealthy people in Brooklyn," and I asked him what about me, and he told me that was all right about me, for me to keep my mouth shut and he would make everything all right, and then I asked him where was the money he said he was going to give me and Mr. Frank said, "Here, here is two hundred dollars" and he handed me a big roll of greenback money and I didn't count it, I stood there a little while looking at it in my hand, and I told Mr. Frank not to take another dollar for that watch man I owed and he said he wouldn't and the rest is just like I have told it before.

The reason I have not told this before is I thought Mr. Frank would get out and help me out, but it seems that he is not going to get out and I have decided to tell the whole truth about this matter.

(Signed.) James Conley.

Sworn to and subscribed before me, this day of May, 1913.

Notary Public, Fulton County, Georgia.

Witnesses:

N. A. Lanford,

Pat Campbell,

H. Scott,

Reported. Atlanta 5/31/13

Due and legal service of the foregoing bill of exceptions and the certificate of the Judge are hereby acknowledged.
This 4 day of Feby 1916.

Attorneys for Defendant in Error
Pinkerton's National Detective Agency

8251. NATIONAL PENCIL COMPANY v. PINKERTON'S NATIONAL DETECTIVE AGENCY

1. Where partners sue in their firm name, the partnership need not be proved, unless denied in a verified plea. This was true where the original petition alleged that the plaintiff was a corporation, and the partnership was alleged in an amendment to the petition.
2. It was not error for the court to repel as evidence in this case "certain portions of the argument made by the solicitor general of the Atlanta Circuit on August 23 and 25, 1913, at the trial of Leo M. Frank for murder in Fulton superior court". The rejected matter was so clearly inadmissible that no discussion is necessary to show that the ground of the motion for a new trial based upon its rejection is absolutely without merit.
3. The court did not err in ruling out of the evidence the testimony of the witness Pierce, or in refusing to allow him to answer a certain question compounded to him, such testimony being a conclusion of the witness, argumentative in its nature, and irrelevant to the issues in the case.
4. It was not error, in the absence of a timely written request, for the court to fail to charge that "it was the duty of the plaintiff in conducting this investigation into the murder of Mary Phagan to act honestly and in good faith, and to deal honestly and in good faith with the defendant." The court did instruct the jury as follows: "If you should find that this contract existed, and to the extent that it existed that the plaintiffs entered into this work, then the plaintiffs were bound to exercise reasonable diligence in the performance of the work." Section 3581 of the Civil Code declares that "an agent for hire is bound to exercise, about the business of his principal, that ordinary care, skill, and diligence required of a bailee for hire." The court substantially charged in the language of this statute, and under the facts of the case this was sufficient. It is of course implied in every contract that both parties thereto should "act honestly and in good faith", and it is not necessary for the court to charge such an elementary principle of law, unless particularly requested to do so.

Decided February 16, 1917.

Complaint; from Fulton superior court - Judge Ellis. February 4, 1916.

Henry A. Alexander, for plaintiff in error.

Robert C. & Philip H. Alston, contra.

BROYLES, P. J.

1. The Pinkerton's National Detective Agency brought suit against the National Pencil Company to recover the value of alleged services rendered under a contract entered into between them. In the original petition the plaintiff was alleged to be a corporation, and this allegation was admitted in the defendant's answer. At the trial term the plaintiff amended its declaration and alleged that it was a partnership. This amendment was allowed by the court with the consent of defendant, and the latter made no answer to it. The case was tried and resulted in a verdict for the plaintiff for the full amount sued for.

Counsel for the plaintiff in error strongly insists, before this court, that the verdict is not supported by the evidence, because there was no proof introduced to sustain the allegation of partnership, made in the amendment to the plaintiff's petition. There were various letter-heads and bill-heads on the plaintiff which were put in evidence, and also attached to the original petition, upon which appear the following words: "Pinkerton's National Detective Agency; William A. Pinkerton, Chicago, Allen Pinkerton, New York, principals." Under the ruling in *American Cotton College v. Atlanta Newspaper Union*, 138 Ga. 147 (74 S. E. 1084), these letter-heads might possibly be considered as some evidence of the partnership. Conceding, however, that this evidence was insufficient to show the fact of partnership, we do not think that a reversal of the judgment must result. Section 3166 of the Civil Code provides that "partners suing or being sued in their firm name, the partnership need not be proved unless denied by the defendant, upon oath, on plea in abatement filed." Counsel for the plaintiff in error contends, however, that this section of the code applies only to a case where the partnership was alleged in the original petition, and he insists that the very language of the section designating the plea of "no partnership" as a "plea in abatement" shows that it was so intended. It is true that ordinarily a plea in abatement must be filed at the first term, but in *Long v. McDonald*, 39 Ga. 186, it was held that an answer denying the existence of a partnership was a plea in bar, and,

although sworn to, was not a dilatory plea, which is required to be filed at the first term. This ruling was expressly approved in *Solomon v. Creech*, 82 Ga. 445 (9 S. E. 165). See also *Crockett v. Garrard*, 4 Ga. App. 360 (61 S. E. 552); *Dobbs v. Mixon*, 11 Ga. App. 789 (76 S. E. 166). Under these decisions it would seem that the defendant had a right to file his plea of no partnership at the trial term, especially since the fact of partnership had not been alleged by the plaintiff until that term, it is true that in *Crockett v. Garrard*, supra, Judge Powell criticizes the decisions in the Long and Solomon cases, doubting the applicability of the provisions of section 3166, supra, to the particular facts of those cases, but he distinctly says: "The criticism we are not about to make is not that the actual principle applied in these cases is incorrect". In our judgment, the instant case comes within the ruling of the Supreme Court in the Long and Solomon cases, supra. It follows that if the defendant had a right to file his plea of "no partnership" at the trial term, and he failed to do so, he will not be permitted thereafter to complain that the fact of the plaintiff's partnership was not shown by the proof. We are aware that the Supreme Court, in several decisions, has held that the provisions of section 5539 of the Civil Code, requiring a defendant to admit, deny, or explain why he does not admit or deny each paragraph, under penalty of having the allegations in the petition treated as prima facie true, relate to the answer to the original petition only, and not to the answer to an amendment to the petition, and that the failure of a defendant to answer an amendment does not authorize the court or the jury to treat the allegations in the amendment as being admitted. *Hudson v. Hudson*, 119 Ga. 637 (46 S. E. 874); *Watson v. Barnes*, 125 Ga. 733 (54 S. E. 723); *Brown v. Atlanta R. Co.*, 131 Ga. 259 (62 S. E. 186); *Brown v. Tomberlin*, 137 Ga. 596 (73 S. E. 947).

Not one of these cases, however, involves the question now under discussion, and the Supreme Court stated merely the general rule as to a failure to answer an amendment to a petition. In a case like the instant one we think that the provisions of section 3166 and 5539 of the Civil Code should be construed together, and that it should be held that a failure to deny the plaintiff's allegation of partnership, although made in an amendment to the petition, amounts to an admission of its truth.

To hold otherwise would in our judgment be contrary to the provisions of section 3166 of the Civil Code. That section is derived from the act of 1841 (Cobb's Digest, 590), and the preamble to that act plainly shows that it was the intention of the legislature in passing it to abolish the harsh technical rule that theretofore had been forcing the courts of this State to hold that partners suing as plaintiffs could not recover unless upon the trial they adduced proof of their partnership, even where the fact of partnership wasn't denied. The spirit of this legislation would be largely destroyed, and in many cases the intent of the legislature would be absolutely defeated, if it were now held that partners suing as plaintiffs, who in their original petition inadvertently characterized their firm as a corporation, but who by amendment corrected this misnomer and alleged their partnership (such amendment being consented to by the defendant, and the allegation of partnership therein made not being denied by it), could not recover unless they adduced proof of their partnership. We are therefore clearly of the opinion that in such a case it should be held that the general rule, that the failure of a defendant to answer an amendment to a petition can not be treated as an admission of the truth of the allegations made therein, does not apply to an amendment by plaintiff partners alleging the existence of their partnership. In other words, it is evident that an amendment is an exception to the general rule just stated, and that in a case like the one at bar, the failure of the defendant to deny the existence of the partnership amounts to an admission of the same. This ruling is in line with those of other jurisdictions. "Matter added by way of amendment, to which the defendant makes no opposition, must be deemed to be admitted where the adverse party omits to move to amend his answer so as to deny it." 1 Standard Enc. Proc 930 (E); *McCloskey v. Goldman*, 62 Misc. 452 (115 N.Y. Supp. 189). However, if this holding be an extension of the rule hitherto of force in this State, we think it a legitimate and just one, and one necessary under the exigencies of the case. Under the facts of the instant case it could not possibly make any difference to the defendant whether the plaintiff was a partnership or a corporation. This was not even a collateral issue in the case, and has not the slightest bearing upon its merits, there being no contention or intimation that as a matter of fact the plaintiff was not a legal partnership with the right to sue and to be sued. The cause was fairly tried; the verdict is amply supported by the evidence; no error of law appears, and we see no reason why the judgment of the lower court should be reversed.

Judgment affirmed.

Jenkins and Bloodworth, JJ., concur.

STATE OF GEORGIA,
County of Fulton.

I Hereby Certify, That the foregoing pages, hereunto attached, contain a true Transcript of such parts of the record as are specified in the Bill of Exceptions and required, by the order of the Presiding Judge, to be sent to the Supreme Court
in the case of
National Pencil Company
Plaintiff in Error.

vs.
Pinkerton's National Detective Agency
Defendant in Error.

I further certify that on account of the volume of work in office I was unable to make out + transcribe this record in the time prescribed by law

Witness my signature and the seal of Court affixed this the 15th day of Feb. 1916

Clerk Superior Court Fulton County, Georgia,
Ex-Officio Clerk City Court of Atlanta.

GEORGIA, Fulton County.

I Hereby Certify, That the foregoing Bill of Exceptions, hereunto attached, is the true original Bill of Exceptions in the case stated, to-wit:

National Pencil Company
Plaintiff in Error.

vs.

Pinkerton's National Detective Agency
Defendant in Error.

and that a copy hereof has been made and filed in this office.

Witness my signature and the seal of Court affixed this the 15th day of February 1916

Clerk Superior Court Fulton County, Georgia,
Ex-Officio Clerk City Court of Atlanta.

National Pencil Co. v. Pinkerton's National Detective Agency.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be

(AMENDED MOTION FOR NEW TRIAL.)

GEORGIA, Fulton County.

Now comes the defendant, the National Pencil Company, and amends its motion for a new trial heretofore filed on Nov., 22, 1915, and says that the verdict in the above stated case should be set aside and a new trial granted for the following reasons, to-wit:

1. Because the court on its own motion and although the plaintiff's attorney had withdrawn all objection, refused to admit in evidence certain portions of the argument made by the solicitor General of the Atlanta Circuit on August 23d and 25th, 1913 at the trial of Leo M. Frank for murder in Fulton Superior Court, in which he had strongly urged and stressed, before the jury, as indicating guilt, certain testimony of Harry Scott, the assistant superintendent of the plaintiff, who had been in charge of the investigation of the Phagan murder. An agreement had been made between counsel for plaintiff and defendant that a certain printed pamphlet purporting to be a complete and correct copy of said argument was such in fact, and that the same, or any part thereof, might be introduced in evidence and given full force and effect as such, whenever legally admissible. It was portions of the said printed pamphlet that were offered in evidence by the defendant as above stated and excluded.

Movant contends that the exclusion of said evidence was error for the following reasons, to-wit:

One of the defenses of the National Pencil company to the complaint of the Pinkerton National Detective Agency was that in conducting its investigation of the murder of Mary Phagan, the said Agency, fearing that unless Leo M. Frank was convicted, its own prestige and standing in Atlanta as a detective agency and the personal safety of its employees would be imperiled, did not seek honestly and in good faith to ascertain the truth, but, on the contrary, endeavored dishonestly and in bad faith to suppress and distort the truth and to bring about the conviction of Frank regardless of guilt or innocence.

During the trial of this case, in the direct and cross examinations of the said Harry Scott, testifying for the plaintiff, testimony was given by him tending to show, as movant contends, that the contract between the plaintiff and defendant required the plaintiff, regardless of consequences to any person, to devote its efforts and skill to the ascertainment of the truth and the discovery of the guilty person. Other testimony was educed from said witness on cross examination tending, as movant contends, to show that in regard to a number of material points involved in the Frank trial, the reports rendered to the defendant in the first stages of the investigation by the said assistant superintendent Harry Scott, differed widely and materially from the testimony given several months later at the trial of Frank by the said Harry Scott, all such differences being to the material disadvantage of Frank. Among such differences, as movant contends, were the following;

- a. In his report dated April 28, 1913, and in his testimony at the coroner's inquest on May 8, 1913, Harry Scott, the assistant superintendent of the Pinkertons, stated that in his first interview with Frank on April 28, 1913, Frank had stated to him that when Mary Phagan asked him had the metal come, he had replied to her "No", whereas in his testimony at the trial said Scott testified that his answer, as related by Frank, was, "I don't know."
- b. In his report dated April 28, 1913, and in his testimony before the coroner's inquest on May 8, 1913, Frank had said to him that he left the factory for his lunch in the middle part of the day at about 1 P. M., whereas in his testimony at the trial said Scott testified that Frank had said to him on that occasion that he had left the factory at 1-10 P. M.
- c. Neither in any report nor in his testimony before the coroner's inquest had the said Scott made any reference to any statement made to him in their first interview by said Frank to the effect that J. M. Gantt, a discharged employee of the defendant, was familiar and intimate with Mary Phagan, whereas in his direct examination at the trial said Scott testified that said Frank had made that statement, afterwards qualifying his testimony, on cross examination, by stating that he was not certain whether the remark was made by Frank or by another person who was present, N. V. Darley, and afterwards, at the trial of this case on November 18, 1915, still further changing his testimony by testifying that he was then certain that Frank and not Darley had made the remark referred to.
- d. The reports made by the employee of the plaintiff to the defendant in May 1913, showed that the information that Conley could write had been obtained by said operatives from employees of the National Pencil Company and with their aid and suggestion whereas, the said Scott testified at the trial that information had been obtained by him from sources entirely independent of and disconnected from the National Pencil Company.
- e. In his reports to the defendant, the said Scott made no mention of any display of nervousness by Leo M. Frank on the occasion of his interview with Newt Lee at the station House on the night of April 29th 1913. In his testimony at the coroner's inquest, said Scott swore that the entire interview had taken place out of his hearing in a room where he was not present. At the trial, said Scott testified that he had heard and witnessed the latter part of said interview and that Frank had displayed great nervousness.

Movant, at the time of tendering in evidence the portions of the argument of the Solicitor General referred to, then and there stated to the Court that said portions of said argument which it was desired to introduce, were those

portions which dealt with the testimony of the said assistant superintendent Harry Scott in reference to the matters referred to in the preceding sub heads a-e, inclusive, of the ground of the motion for a new trial; and movant then and there stated that said portions of the Solicitor's argument which it was desired to introduce would show that said Solicitor General had strongly urged and stressed said portions of the testimony of said Harry Scott.

In order to show that said differences in the testimony of Scott were highly material, and to negative the idea that they might be trivial or unimportant, movant contends that it was entitled to put in evidence the fact that in the trial of Leo M. Frank, the Solicitor General, the prosecuting officer of the State, in his argument, had strongly urged and stressed said testimony in which such differences appeared, which fact movant proposed to establish by putting in evidence those portions of the Solicitor's argument which dealt with said testimony.

2. Because during the examination of H. B. Pierce, a witness sworn in behalf of the defendant and shown to have been the superintendent in charge of the Atlanta office of the Pinkerton National Detective Agency, the plaintiff, during its investigation of the Mary Phagan murder he testified as follows:

"I resigned from the Pinkerton's National Detective Agency for two things, the first was that I couldn't serve two master conscientiously, the state and the client, and the second was that on account of the conditions at that time. I believe I was serving the best interests of the Pinkerton's National Detective Agency by removing myself from the organization, from the fact that, had I testified in the trial of Frank, either for the prosecution or the defense, the Pinkerton's National Detective Agency would not have had a license twenty four hours after I got off the stand. That is the reason I resigned." On motion of counsel for the plaintiff, this testimony was tentatively ruled out by the Court, the Court saying: "I rule that out for the present".

Thereupon the witness was then asked the following question:

"Please explain, Mr. Pierce, in more detail, what do you mean by "serving two masters."

The witness was beginning to answer the question and to explain his meaning when counsel for the plaintiff objected to the question. Then and there counsel for the defendant stated in substance to the court that the answer of the witness to the question would tend:

First: To explain and make clear the meaning of the witness in his answer above quoted which the court had tentatively ruled out:

Second: To show that the witness in resigning from his position with the plaintiff was impelled by a strong conscientious objection to the attitude of the plaintiff in maintaining the guilt of Leo M. Frank, it being his own personal conviction that Frank was innocent; and

Third: To show that in the opinion of the witness as an expert in detective work, the Pinkerton National Detective Agency, in maintaining the guilt of Frank, under these circumstances, was acting dishonestly and in bad faith toward its employer, the National Pencil Company.

Thereupon the court sustained the objection to the question and refused to permit the witness to answer the same. The testimony of the witness above set out, which the Court had tentatively excluded, was not thereafter admitted in evidence, and the same remained excluded.

Movant contends that the ruling of the court in excluding said answer of the witness tentatively, and exclusion which, through the absence of further action on the part of the Court, became permanent, and the ruling of the court in refusing to permit the witness to answer the above explanatory question were errors for the reasons stated above stated, and materially prejudicial to the defendant because they prevented the defendant from supporting and maintaining its defense that the plaintiff and its assistant superintendent Harry Scott, had been acting dishonestly and in bad faith throughout the investigation; the fact that the superintendent of the plaintiff was moved to resign and leave the employment of the plaintiff on account of its attitude in the matter, tending to support, as movant contends, this contention of the defendant.

3. Because the Court erred, as movant contends in wholly failing in its charge to the jury to instruct them that it was the duty of the plaintiff in conducting its investigation into the murder of Mary Phagan to act honestly and in good faith, and to deal honestly and in good faith with the defendant.

The only instruction in the entire charge given by the Court to the jury as to the nature of the duties imposed upon the plaintiff by its contract with the defendant was contained in the following paragraph of the charge, to-wit:

"If you should find that this contract existed, and to the extent that it existed, that the plaintiffs entered into this work, then the plaintiffs were bound to exercise reasonable diligence in the performance of the work."

One of the defenses of the National Pencil Company to the complaint of the Pinkerton National Detective Agency was that in conducting its investigation of the murder of Mary Phagan the said Agency, fearing that unless Leo M. Frank was convicted, its own prestige and standing in Atlanta as a detective agency and the personal safety of its employees would be imperiled, did not seek honestly and in good faith to ascertain the truth, but, on the contrary, endeavored dishonestly and in bad faith to suppress and distort the truth and to bring about the conviction of Frank regardless of guilt or innocence.

Movant contends that the charge of the court was materially defective in that while the Court undertook to instruct

the jury as to the duties of the plaintiff towards the defendant under the contract between them, and instructed them that the plaintiff was bound to exercise reasonable diligence, it failed to instruct the jury that the plaintiff was also bound to perform its services honestly and in good faith, there having been introduced by the defendant a great deal of evidence tending, as movant contends, to show dishonesty and bad faith on the part of the plaintiff and a desire, for its own protection, to suppress and distort the truth and to procure the conviction of Frank regardless of his guilt or innocence. Such evidence, was, as movant contends, in addition to the matters set out under sub-heads a to e, inclusive, under the first ground of this motion for a new trial.

First: The evidence of the witness Herbert Schiff, sworn and testifying in behalf of the defendant to the effect that on one occasion during the investigation one of the operatives of the plaintiff, L. P. Whitefield, by name, had told him of dissensions in the office of the plaintiff, and that the assistant superintendent Harry Scott, had on one occasion during the course of the investigation called him into a private office and told him that if Frank was not convicted, it would be the last of the Pinkerton Agency in Atlanta.

Second: The testimony of said Harry Scott, sworn and testifying in behalf of the plaintiff, to the effect that during the investigation he had discharged said Whitefield for going out to Marietta and declaring publicly that Conley was guilty and that Frank was innocent.

Third: The testimony of said Harry Scott showing that in editing the original report made in his own handwriting by said operative L. P. Whitefield on May 16, 1913, dealing with the discovery by him of Conley's ability to write, preparatory to having the same re-written on a typewriter to be sent to the National Pencil Company, the said Scott had cut out and suppressed from same a statement of said Whitefield tending to show, as movant contends, that this fact had been discovered through the suggestion and aid of Leo M. Frank.

Fourth: The testimony of the said Scott at the trial of Leo M. Frank, showing, as movant contends, the methods employed by the said Harry Scott in tutoring the negro Conley and helping him to frame up a less incredible narrative that would inculcate Frank and exonerate himself.

Movant contends that the phrase, "reasonable diligence" used by the Court did not in any sense include the idea of honesty and contends that one may be diligent in dishonesty as well as in honesty. Movant submits that it was the duty of the court, whether specially requested by the defendant or not, to have instructed the jury that it was the duty of the plaintiff to have dealt honestly and good faith with the defendant, that under the charge as given, the case went to the jury without any instruction whatever on this point; and that this constituted error of a controlling and highly prejudicial character.

H. A. Alexander,
Movant's Attorney.

The recitals of fact contained in the original motion for a new trial and in the three grounds of the foregoing amended motion for a new trial, the same being all the grounds of said original and of said amended motion, are hereby approved as true. Let this amended motion be filed.

W. D. Ellis,
Judge S. C. A. C.
Feb. 3rd, 1916.

Filed 4th day of Feb., 1916. T. C. Miller, D. Clk.

After considering the above and foregoing motion and amended motion the same is hereby denied and overruled and each and every ground thereof.

This Feb. 4th, 1916.

W. D. Ellis,
Judge S. C. A. C.

Pinkerton's National Detective Agency v. National Pencil Co.

No. 31231

In the Superior Court of Fulton County, Georgia.

ANSWER OF DEFENDANT.

Now comes the defendant, the National Pencil Company, and answers as follows:

1. Defendant admits the allegations of paragraph 1.
2. Defendant admits the allegations of paragraph 2.
3. Defendant denies the allegations of paragraph 3.
4. Defendant admits the allegations of paragraph 4 except the following allegation, to-wit:
and also to pay proper incidental expenses incurred by petitioner in this behalf
which allegation defendant denies.
5. Defendant denies the allegations of the paragraph following the paragraph numbered 4, and marked 4.
6. Defendant denies the allegations of the paragraph marked 5, and denies that it is indebted to petitioner in the amount stated, or in any other sum, and denies that petitioner is entitled to any judgment against this defendant.

Harry A. Alexander,
Attorney for Defendant.

Filed in office this 10th day of January, 1914.

W. W. Clarke,

Deputy Clerk.

Write 168, page 401.

PINKERTON'S NATIONAL DETECTIVE AGENCY

v.

NATIONAL PENCIL COMPANY.

No. 31,231.

Fulton Superior Court.

BILL OF EXCEPTIONS.

GEORGIA,

FULTON COUNTY.

Be it remembered that on the 17th, 18th, 19th, and 22nd days of November, 1915, at the regular November Term of the Superior Court of Fulton County before the Honorable W. D. Ellis Judge, presiding, there came on to be tried the case of the Pinkerton's National Detective Agency v. National Pencil Company. A jury was stricken, evidence was introduced for plaintiff and defendant, and after argument of counsel and the charge of Court, the jury rendered a verdict in favor of plaintiff in the sum of \$1286.09 with interest, and judgment was duly entered thereon, all this appearing in the record.

The defendant thereafter in regular course, and within the time prescribed by law, filed its motion and an amendment thereto for a new trial, with a brief of the evidence duly approved by the Court and the charge of the Court properly certified. Said motion and the amendment thereto came on for a hearing on the third and fourth days of February, 1916, and the recitals of fact in the several grounds of the amendment to the motion were approved as true, and the said motion and the amendment thereto were overruled and denied by the Court on each and every of the grounds therein stated.

To this judgment of the Court, the defendant excepted, now excepts, and assigns error thereon, and says that the Court erred in overruling the motion and the amendment thereto for a new trial on each and all of the grounds therein stated, and for the reasons stated in said grounds respectively.

The defendant specifies the following portions of the record in said case as material to a clear understanding of the errors assigned in this bill of exceptions, to-wit:

1. The original petition in said case filed on April 29, 1914, omitting process and the sheriff's entry of service.
2. The amendment thereto allowed on November 17, 1915, alleging petitioner to be a partnership, and the order thereon.
3. The answer of the defendant filed July 10, 1914.
4. The original motion for a new trial filed by the defendant on November 22, 1915, with the rule nisi and service thereon.
5. The amendment to the motion for a new trial with the order of Court certifying as true the recitals in the grounds thereof, and filed on February 3, 1916.
6. The brief of evidence with the order and the entries thereon filed on the 4th day of February 1916.
7. The charge of the Court, with the approval of the Judge thereon dated December 27, 1915, and duly filed.
8. The verdict of the jury rendered in said case on November 22, 1915.
9. The judgment of the Court on said verdict dated November 22, 1915.
10. The judgment of the Court overruling said motion for a new trial dated the 4th day of February, 1916.
11. The entries of filing of each and all of the parts of the record above specified to be entered and transmitted in

the proper order.

And now within the time provided by law, and within thirty days of the entry of the motion overruling said motion for a new trial, comes the defendant and enters this its bill of exceptions, and prays that the same may be certified as provided by law, in order that the errors complained of may be considered and corrected by the Supreme Court of Georgia.

H. A. Alexander.
Attorney for Plaintiff.

Post Office address:
226-228 Trust Company of Georgia Building,
Atlanta, Ga.

GEORGIA,
FULTON COUNTY.

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and all of the record material to a clear understanding of the errors complained of; and the clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the March Term, 1916 of the Supreme Court, that the errors alleged to have been committed may be considered and corrected. This 4th day of February 1916.

W D Ellis
Judge S C A C

Due and legal service of the foregoing bill of exceptions and the certificate of the Judge are hereby acknowledged. This 4th day of February 1916.

Attorneys for Defendant in Error
Pinkerton's National Detective Agency

(BRIEF-OF-EVIDENCE.)

Harry Scott, for plaintiff, testified as follows:

I am at present superintendent of Pinkerton's National Detective Agency at Syracuse, NY. In 1913, I was assistant superintendent of the Atlanta Office. Acting in behalf of the Plaintiff, I made the contract with the defendant. On the afternoon of April 26, 1913, I was called on the telephone by Mr. Frank who asked me to come down to the Pencil Factory, which I did, and we discussed the case as it had developed up to that time, after which he inquired as to our rates, and I told him that our rates were \$8 per day and expenses per man, and he told me he would have to get the consent of Mr. Sig Montag to pass on those rates, and later he joined me, and said that it was O.K., that Mr. Montag sanctioned his employing us and that the rates were satisfactory. In the line of that employment, the Pinkerton Agency undertook the investigation of the crime.

As assistant superintendent of the office of the Pinkerton's, I was in charge of most of the criminal work, and I conducted and instructed the operatives working on it. I put the men to work on the case.

The men who worked on the case for the Pinkerton Agency were L.P. Whitfield, W.D. McWorth, L.J. Sachry, F.C. Peace, R.C. Fisher and W.W. Hannan. There may have been a few others whom I don't just recall. Hannan was colored. Edward Lewis was another colored man working on the case.

Outside of Atlanta, the New York, St. Louis and Houston Offices did work on the case.

I worked on the case myself. The reports of the operatives were made to me as follows: They reported to me; their reports came to me for revision and sending to the clerk to be typewritten and sent to our clients. The reports were typewritten and sent to our clients.

The account attached to our petition is a correct bill of the time and expense incurred. The bill was rendered monthly. The charges on the bill for incidental expenses of all kinds are reasonable and correct.

I dictated all my reports to a stenographer on account of working late at night and not having the necessary time to sit down and write them out in long hand. The other reports that came from the operatives were written in long hand. All our operatives are required to write their reports in long hand and either send them through the mail or deliver them at the office. I have produced here and identified the original reports of these operatives.

These reports are edited before they are sent to the client. They are edited by the official that is handling the case. The official goes through and edits them and cuts out and surplus and immaterial matter.

We put forth our very best efforts in this case. We were employed to locate the murderer of Mary Phagan; not to convict or turn loose any particular individual. I worked constantly on this case during the time I have testified to I devoted all my time to it. The operatives that I have blamed were working under my direction.

I did not have any expressions of approval or disapproval of the character of service rendered, but we were led to believe that the services were entirely satisfactory. Even Mr. Rosser told me that he realized we were doing all that we could under the existing circumstances. No, I never heard any complaints at all, not until after the trial. I didn't hear any of them direct. As to why these bills were never paid, Herbert Haas was to send us a check within three or four days; that was before the trial, and we never got the check. Mr. Haas, we were led to believe, was the attorney for the National Pencil Company, and we were informed by Mr. Luther Z. Rosser, that he would pay the bills. I went to Mr. Rosser about the bills. He called Mr. Haas up in our presence, and said Pierce and I were there to get our money, and said we wanted to know what he was going to do about paying it, and then when Mr. Rosser hung up the phone, he told us to go over to see Mr. Haas about it. Mr. Rosser was representing Frank and I understood was special attorney in that particular case for the National Pencil Co. Herbert Haas, I was led to believe, was the attorney for the National Pencil Co. I went to Mr. Haas, for payment. Mr. Haas stated that he would send us a check in 3 or 4 days. He did not make any complaint about the services rendered to me.

As to my telling anybody when this investigation started, the direction in which it was leaning, I told Herbert and Leonard Haas both up in their offices in the 4th. National Bank Bldg. when Pierce and I went down to confer with them, (I believe it was about a week after Frank's arrest) we told them at that time that things looked pretty bad for

Frank, and did they want us to continue on the case; and Herbert Haas, told us of course; that he wanted us to withhold our evidence from the police, and submit it to them first, before we would turn it into the police; and I told him rather than do that we would withdraw from the case; that we were going to cooperate with the police; and they told us to go ahead and find out, no matter it hit Frank or not. I then proceeded with the investigation. Nothing but satisfaction was expressed to me or in my presence all the way through either by Luther Z. Rosser or Reuben Arnold, and of course Mr. Haas never did express himself to me.

Cross Examination:

I meant just now to give the impression that Mr. Haas wanted me to withhold my reports entirely from the police. That is exactly what he stated to me. He wanted us not to withhold our reports, but to withhold the evidence that we had gathered and submit it to him first, verbally or otherwise before we would turn it in to the police. Afterwards, he said yes, go ahead. We told him we would cooperate with the police as we always did in all criminal cases, working for public justice alone. Yes, Mr. Haas requested me to turn out the evidence into him first. No, he did not say turn it in to me first. His words were, "Submit it to me." No, he did not say "first", not to my knowledge now, I don't recall whether he did or not. No, I can't recall that accurately. I would not infer that if he requested me to turn in the evidence to him "first" that he was perfectly willing for me to turn it over to the police second. The reason why I would not infer that is because we had a direct understanding in the first place that we would cooperate with the police entirely; and they would get the information as quick as we could naturally. I don't mean to have my evidence interpreted as meaning that Mr. Haas proposed that I was not to turn my evidence over to the police at all. He just told us to submit the evidence to him before turning it over to the police. Yes, he implied, surely he implied that I could turn it over to the police. As to his ever objecting to my turning it over to the police, he did in that one instance when he told us to withhold our evidence. I don't say that he said he wanted it turned very to him "first". I say he told us to submit our evidence to him "before" turning it over to the police. Certainly that implies that he expected me to turn it over to the police.

We were not limited in any way as to the scope of our investigation. We were told to find the guilty party by Mr. Haas, by Mr. Montag, by Mr. Rosser, and I heard absolutely nothing to the contrary.

We were told to submit our reports to Mr. Luther Z. Rosser. We furnished reports subsequent to June 17th. It was during the trial, while I was waiting here to appear as a witness the latter part of July and during August. The reports you have are the reports of the active work.

The practice in our office is to send our operatives out; they gather the evidence, come back to the office and write it out in their own handwriting, and they submit it to the man in charge who edits it. After it is edited, it is sent to clients, that constitutes the report. The file exhibited to me is the reports started on Apr. 28th. As to the process of editing, it is standard instructions with our officials to cut out all the surplus trimmings in a report; for instance, an operative will say: "I left the office and boarded a car and arrived at such and such a point at such and such a time, and entered a certain house"; we will cut that out, and say: "Left the office at such a time and arrived at this house at such and such a time", eliminating such surplus words as we don't think the client would care to read. In other words, giving the cold facts as they are turned in. The guide in this process is the officials' own mind as to what is material. If a certain fact was stated in an operative's report and it was omitted in the report to client, it would be evidence of the facts that in the mind of the official who edited the reports that the fact was immaterial. We don't cut out anything material. We send the net results to clients. Sometimes, what is apparently a trivial circumstance may develop eventually into the most serious circumstance. Our business is mostly in dealing with trivial circumstances, that is, it starts as trivial. The evidence that we get out for is the details, small things that an average man might overlook.

The value of a detective's report depends on its accuracy. Accuracy is characteristic of all good detective work. It is essential that a detective, to be successful, must have close observation and a good memory. I have a fairly good memory. I can hold things in my head pretty well.

Some of the reports were edited by Superintendent H.B. Pierce and placed on my desk afterwards for perusal, but of course, either he or I always edited them as an official. The stenographer to whom the reports were dictated was an employee of our office. We used male stenographers. I never re-read the reports after dictating them. Some I would go over afterwards. Some I read over and some not. I think I went over all of these. That is my recollection.

In a case where I did not go over a report individually and it contained something of supreme importance, and, by error, the stenographer left it out, and the report went to the client with a very material suggestion omitted or misstated, due to the fact that I did not read it over, I would say that it might be an oversight on the part of the clerk in writing it, or it might be an oversight on my part. Both I and the clerk are employees of the plaintiff.

The brief outline of the main facts of the crime that we were employed to investigate is that on April 26-1913, which was Memorial Day, Mary Phagan left her home for the purpose of going to the National Pencil Co. factory and drawing her pay for that week. She left her home and never returned. Her body was found at 3 o'clock the next morning on the basement of the National Pencil Co's factory, about three or three-thirty, by the negro nightwatchman, named Newt Lee. He is the only one that discovered the body. It was immediately carried to the morgue, and was identified as being that of the girl, Mary Phagan, who had been missing from her home over night. The last person proven to have been seen with her was Leo M. Frank. He made a statement of his conversation with her at that meeting. As to what he said about knowing the girl or not, I don't believe he ever told me about knowing her. When Frank spoke to me on Monday, April 28th, he spoke of Mary Phagan coming into the office, as if he had no doubt about it or anything; he just stated: "Mary Phagan came to my office at such and such a time". As to whether or not he made the statement at the trial that he did not know her, I was not present during his testimony. It was a point of contention in the case as to whether he did or did not know Mary Phagan. That was one of the points at issue. No, I would not say that it was a circumstance indicating guilt, if he denied that he knew the girl and it was afterwards proven that he did know her.

The reason the Pinkerton's National Detective Agency furnished these reports was to give our clients the information we had obtained; also to account for the bill that was rendered showing the actual work that was done, the time consumed each day. It is our system to give daily reports. Some agencies do not, and make only one final report, but this is not the practice of the Pinkertons. I understood that these reports I sent were to be used and examined and they were made in order to keep the client informed. It is of the essence of information of that kind that it be accurate. I knew that the attorneys in the case were relying on that to a great extent in taking their position.

I was present at the Coroner's Inquest and testified. I took place the first week in May. I was present at most of the trial in August. I was in and around there, but, of course, the witnesses were excluded. I heard a portion of the argument of the Solicitor General, very little of it.

The Solicitor General would never let me get my hands on the original murder notes, and, consequently I don't know anything about them. I never saw the originals. The only thing I had to go by was the reproduction of them in the newspapers. They were claimed to be notes that were found by the body of Mary Phagan purporting to have been the writing of Mary Phagan herself. I don't know to whom they purported to have been written. I never did examine them. I didn't pay any attention to the pamphlet that you got out. That was the only thing I saw that was connected with those notes. (I have been in the business of a detective about 10 years. I am 29 years old and consider myself successful in my profession, by the promotions I have been getting.) There could hardly have been any clue more important in the case than these murder notes. They were very important. They were the most important clue that developed. On anything dealing with those notes, my report should have been accurate. Anything pertaining to those notes was very important. It was very important who wrote them. As to what was my theory as to who wrote the notes, I never saw them and never knew the full contents of any of them during my investigation, and I can not theorize on them when I don't even know verbatim what those notes contained. No, I never formed a theory. I am not a theorizer. We work on theories, but I don't theorize. I suppose a whole lot of things, but I don't put them down in writing until we get some facts to back them up. We always try to get facts. As to what part the authorship of the notes played in determining guilt or innocence, never having had the notes or knowing the full contents of them, I will not theorize on them. I will state that I thought the specimen of handwriting obtained from the newspapers, the reproduction of the handwriting, was so important in my mind, that I instructed men to go over to the Pencil Factory and obtain specimens of the handwriting of the past and present employees of that company, including the negroes. That is how important I considered that clue. I was looking for the author of those notes.

I read the majority of the newspapers during the trial. Certainly I considered it a part of my duty to keep up with what was going on in the newspapers. I read them every day. Most of them from the time I was employed.

The established policy of the plaintiff in dealing with crime in its relations with the local police is to cooperate

with the State and County authorities to the fullest extent and work with them in the interest of public justice. That policy prevails in all our offices and has been the policy of the company from the first. The policy is followed because we are working with the local authorities with the same object in view. If any conflict arises between us and the local authorities, men will be working on such conflict to settle out which is right and which is wrong, and we will go and convince the police they are wrong. We go absolutely and convince the police. We try to. As to our failing, we have never failed in any criminal case that we had the facts on. Not in any case where we have had the absolute facts. We don't always have the absolute facts. In that case there is no conflict. There is no conflict where the facts are uncertain. There is no friction between the police and ourselves. We don't split hairs or anything like that. If after studying the facts of a case, a Pinkerton man came to an honest conclusion that conflicts with the police, we would take our case to the court and we would put our facts before the court and go to trial in the criminal court, and we would present our facts and let the police present theirs. We would not split with the police. We would keep on friendly terms with them. We would handle our case separately maybe, yes. At the same time, we would confer with them each day about it. We would tell them positively just how we went about things as they were developing in our office. Any new facts that we unraveled in a criminal case, we go right to the police about it, and give the local men the benefit of all the information we obtain.

Where the Pinkerton agency is working on a crime and is divided in its opinion, one thinking that a certain theory is correct, and another thinking that a different thing is correct, the facts determine it. As to who decides what the facts are, no one decides. We just present the facts. As to how we reconcile our differences within the agency, we just talk them over; that is all. There is very seldom any conflict. We discuss things between ourselves. If the talk don't come to anything, it stays that way I presume. We don't separate. We work in perfect harmony all the way through. We have to, to get along very successfully. Superintendent Pierce and I were not at loggerheads. We worked in harmony all the way through. The only thing I heard from anyone in reference to it was relay information that I secured through Pierce, but that was after the trial was over, about dissatisfaction, when I had been told that everything was satisfactory, especially by Mr. Rosser, Mr. Haas, and others.

The reason Mr. Pierce resigned from the Pinkerton agency was because he was asked to. He went out of town, dodged a subpoena, refused to answer a subpoena in court in that case. Mr. Pierce told me his opinions about this case. He was superintendent. I was his assistant. I was under his instructions. I followed them absolutely, always. There was no conflict of views between me and Mr. Pierce. There was never a conflict. I would not call it a conflict. There was no conflict between us except about a club that was discovered. As to whether we agreed thoroughly all the way through, I don't know. We were just talking the case over among ourselves, he had his opinion probably and I had mine, but we never became enemies, or had any disputes about anything. Oh yes, difference of opinion with me. Towards the end, of course, he commenced to express himself as to how he felt about the case. That was after he left town, and wouldn't answer the court's subpoena. As to how he expressed himself, you can get Pierce to tell that. I heard him tell how he felt and I saw it in writing, too.

The day before we went to trial, Mr. Pierce and I both went to Luther E. Rosser's office, and Mr. Arnold was there, and we both expressed ourselves to those gentlemen, that we had the two right men in jail, and if they could convict either one to go ahead and do it. If there was any difference of opinion, there you are. I thought it was one or the other. That is exactly what I said. That is the way I felt about it. I told Mr. Rosser what I thought was the truth at that time, which was that they had the two right men in the jail, and if the court can settle the question, let them settle it. That is exactly what I said to them. I didn't say I didn't know which of the two men is guilty. I said we have got the two right men in jail. If you and the courts can settle it, go to it. It is up to you.

I was down at police headquarters a good deal. I was not in conference with the Solicitor. He refused to have conferences with me until just before the trial. He did not see me at the first part of the investigation, because he declared himself in the newspapers he didn't want to see me on account of my connection with the case. I do not know where the murder notes were kept. My information was that Solicitor Dorsey had them. I do not know how long they were in the possession of the police before they were turned over to the Solicitor. I don't know whether they were at police headquarters on April 28th, when I was employed, nor do I know whether they were there on April 29th. I inquired as to where the notes were and I was told that Solicitor Dorsey had them. The exact date, I don't remember. It was the fore part of the investigation. It was the first or second day I was on the case here. I went to Solicitor Dorsey, and he said he could not give them to me, that some reporter had them, I believe. I did not ask which reporter. No, I didn't just let it drop there. He just told them I couldn't have them. I didn't try to find the reporter because they were in charge of Solicitor Dorsey, and he told me I couldn't get them anyhow. His word was final for me. I made no further effort to get them. I never read those notes. I never saw a full copy of them. I

was not indifferent at all about examining the notes, I was refused by the authorities that had control of them, not to see them; I was considerably handicapped, I couldn't get my hands on them. I could not get a copy. The same thing applies to the dress and other evidence in the case. Certainly I reported that to you. I reported to Mr. Rosser every day. He knew what was going on from day to day. Not in my written report, I might not have had it there, but what he did not get in writing, he always got verbally. As to why I made written reports, when I was giving him the facts verbally I was recording the facts. I had no facts about the notes. There were no facts to report about them. I never saw the original notes during the whole case. I inquired about them of Chief Lanford, I was perfectly satisfied when the Chief told me they were in the hands of Solicitor Dorsey. When I went to Mr. Dorsey for the notes, he said he would not have a conference with me at all. He said: "Considering your connection with the case, I can't afford to take you into my conferences." I said: "All right, Mr. Dorsey". I conducted my whole inquiry into this case without ever seeing the original notes, which I regarded as the most important clue in the case.

In a criminal case, there is no exception to the policy of our agency that we always work with them and give them everything we have. The attitude of the police toward us is thoroughly cooperative. As a rule, they give us everything they have. There is bound to be some friction between the police and ourselves. We handle matters all over the country and there is a little jealous feeling, which is only natural among detectives of that sort. As to whether we are friendly with them, and then again not friendly with me, no we are very friendly with them. As to whether they ever withhold anything from us, they did on that Frank case. A great many things. Yes, it looks as if they were getting all they could out of us and we were not getting all we could out of them. Chief Lanford told Black to work with me. He selected Black as one of his best men and told him to get out and work with me and investigate the matter impartially, and he and I were working alone, and I never expected to get the information that they were gathering, and that he and I should go and investigate the crime together as we saw fit, and as our best efforts would permit. At the same time, they never did take us into their confidences. Yes, I gave them everything I had, but they did not give me everything they had. As to whether that policy is in the interest of the discovery of truth, it was on account of the developments in the fore part of the investigation that led to that. It was the arrest of Frank. If I was in the Chief of Detective's office myself, I would not trust a private detective when his own client seemed to be under arrest. As to what is gained by our policy when we give everything to the police and they withhold from us what they see fit, we are both working for the same object, for the interest of public justice. Yes, they do think we are working for public justice. The reasons they did not give us the truth is that in this one particular case the developments were unusual, different from any case I have ever worked on in that respect, where the man that hired us was under arrest, in charge of the police. Mr. Frank hired us stating he was representing the directors of the National Pencil Factory. Frank was merely the mouthpiece of the directors of the National Pencil Co. in employing our agency. We had absolutely no duty to protect him, and that was mutually understood between ourselves and Mr. Frank.

We reported to you when we first learned about the witness, Monteen Stover.

The following appears in my report of April 28th: "Frank personally handed this girl her wages, after which this girl left Frank's office and walked towards the door of the office leading into the factory; Mary Phagan turned to Frank and asked him if the metal had arrived yet, to which Frank replied no, and the girl then went on her way out of the Factory, as far as Frank knows, as he did not see anything of her during the afternoon.

I presume that is the way I reported it. That is the way it was written up, I never proofread it though.

A correct transcript of my testimony at the coroner's inquest on May 8th is:

"That about 12:10 this little girl, Mary Phagan, came into the office to draw her salary, which he gave her, \$1.20, the denominations of which he thought were two half dollars and two dimes, and that Mary Phagan left his private office, where he paid her off, and went into the bookkeeper's office, and when she got near the door, she turned to him and said 'Has the metal come yet' and Frank replied 'No', and then he stated that Mary Phagan went on out."

A correct report of what I testified, in part, at the trial of the Frank case in July and Aug. is:

"Frank then stated that this little girl, Mary Phagan, who was murdered, came into the factory at 12:10 and drew her pay, that she had been paid off the Monday previous, and she was due \$1.20, which he paid her in denominations of two half dollars and two dimes, he believes, he would not be sure of the two dimes, but he knew there was no currency, bills, that he paid her off inside of his private office, where he was at his desk, and then

Mary Phagan left his office and went into the outer office, she reached the outer office door leading into the second floor hallway, and turned around to Frank and asked if the metal had come yet, and Frank replied that he did not know, and that Mary Phagan then he thought reached the stairway and he heard voices, but he could not distinguish whether they were two men or two girls, talking, etc."

A correct statement of what I testified on cross examination on this point is:

"Q. Mr. Scott, you say now that Frank told you when this little girl asked him if the metal had come yet, that Frank said 'I don't know.' A. Yes sir.

Q. Now, isn't it true that in your report to me, you stated that Frank said 'No' and in the report before the coroner's jury, didn't you say Frank said 'No'? A. I don't think I did, I have said about that practically all the way through the case that his remark was 'I don't know.'

Q. Didn't you say no? A. I am very positive now that is what I said.

Q. Your mind was fresher before the coroner's jury, wasn't it? A. I was very brief there, as I say.

Q. No is a brief word, isn't it? A. It is brief.

Q. Didn't you say no? A. That is what I said.

Q. Didn't you report to me that he said no? A. I suppose so, if you say so, I guess.

Q. Let me read you what you said: 'When she got in the door she turned around and said 'Has the metal come yet' and Frank replied 'No'. Well now, there is a good deal of difference between that language and 'I don't know', isn't there? A. Oh yes.

Q. You stated while sending your report that he said no. A. I positively swear that he said "I don't know".

Q. How came you to swear before the coroner that he said no. A. I was brief there, and by inference that is what I asked him, but if I said no, that was a grammatical error.

Q. When you said no, you meant "I don't know"? A. Yes sir; that was a grammatical error.

Q. What happened there was taken down and written out, wasn't it? A. Yes sir.

Q. And you said 'NO'? A. I admit it.

Q. On April 28th, when it was fresh in your memory you stated that he said 'no'? A. Yes sir.

The following appears in my report of April 28, 1913:

"Frank left the factory about 1 P.M. Saturday, while White and Denham were still working on the top floor."

But it is not correct, it must be a typographical error. You have my original notes in which I exactly took it down from Frank's own mouth 1:10 PM. But the report that you are reading from is the report that the Pinkertons sent to the National Pencil Co. That is what the National Pencil Co. got.

The following is a correct transcript of a part of my cross-examination:

"You say now Frank told you that he left the factory about 1:10. A. Yes sir.

Q. You reported to me that he told you he left at 1, didn't you? A. I made a very serious mistake; my notes there will show 1:10, look them up.

Q. Oh, well, I know, but how many mistakes are there in this report you made to me? A. Why, very few, but of

course that is an oversight, I never proof-read them after I dictated them to the stenographer, and I didn't know she made any discrepancies like that in there.

Q. Well, you made a mistake to the office, and you made a mistake to me. A. Apparently so, yes sir.

Q. You made the mistake you said; you have identified that as your report to me? A. Yes sir.

There is nothing in these records as to the matter of Frank's stating that J.M. Gantt, one of his employees, was familiar and intimate with Mary Phagan. Our system is as follows:

"Our system is this, when we take a case from a client, we write up what is known as the general memorandum, and this contains the brief facts of the case as it is referred to us by the client, what the client desires done, and information of that sort; our first conference with the client is never rendered in the form of a report, it has never been done, and I doubt if it ever will be; this information developed just through questions asked me by the Sol. General, which of course I had no idea of, and they were not material as far as our investigation was concerned.

The information was not material as far as our investigation was concerned. It wasn't material in our reports that part about the question whether Leo Frank stated that Gantt knew Mary Phagan. As to whether, if a thing is material enough for the So. General in trying the case to bring it out, it was material enough for me to put it in my reports, you will understand, I did not have a conference with the Sol. General for 2 months after that first report was rendered, and as I say, information of that kind should not go in any report. I would not say that if a point was sufficiently material for the prosecuting officer to bring it out that it should have gone in our reports. My explanation is:

"Reuben Arnold and Rosser, towards the close of the case, just about a week before it was going to trial, I notified them I was subpoenaed by the State, and they asked me to come down and see Mr. Dorsey and have a conference with Mr. Dorsey, and learn what evidence he was going to gather from me and give in a report to them so they would know the line of evidence I was going to give for the state's benefit; I volunteered to do that, I told them I would gladly do it, and I even called him on the telephone and asked him when could I have a conference with him in regard to the evidence that the Solicitor was going to obtain from me for the State's side; well, "we will see you this afternoon"; I called up Herbert Haas that afternoon, and asked him to arrange for that conference before the trial, and they seemed to be disinterested, did not care to assume.

As to how that is, an explanation is:

"It explains this thing, the identical business, you have inquired about my reports, if they explained the one and one ten business, and you bring up here the point that I was in duty bound for my client, working under his instructions to give them everything they were interested in, and I showed interest enough to give to them that thing that I didn't think they should have known about."

This was just a week before the trial. When I made these reports, I was supposed to be giving reliable information and all the material facts in the case, but I say that the familiarity and intimacy of Gantt towards Mary Phagan was not a material fact at that time. At the coroner's inquest, I was asked to tell all I knew about the case, but I don't recall whether I said anything about the alleged intimacy of Gantt toward Mary Phagan.

The following correctly states a part of my testimony at the trial of Leo M. Frank:

Q. Now, what, if anything, did Frank say with reference to Gantt? A. He stated during our conversation in the private office the first day I met Frank, that J.M. Gantt knew Mary Phagan very well, and that he was familiar and intimate with her.

Q. Now, did Frank discuss or not the friendliness of Gantt for Mary Phagan with you on that occasion? A. He stated, as I have expressed it, that Gantt was very familiar and intimate with Mary Phagan, and he seemed to lay special stress on it at the time.

Q. Well, what particularly did he say about the attentions on the part of Gantt for Mary Phagan, if anything was said? A. He said that Gantt paid a good deal of attention to her.

Q. I will get you to look over that and see if you didn't give me a statement of what was said there that day (handing paper) didn't you testify before the coroner's inquest what conversation you had with him that day? A. Yes sir.

Q. Your mind was very fresh then, wasn't it? A. Yes sir.

Q. And you told the whole conversation then, did you; you didn't keep anything back? A. As I remembered it, no, I wasn't concealing anything, the bulk of it is there, all but the morning movements of Frank, the movements of the morning.

Q. You did give, me, or purport to give me in substance the conversation with Frank in the factory the first time you went there, did you not? A. Not in detail, no sir.

Q. Didn't you detail it here at considerable length? A. Well, yes, it was at considerable length, but I say I haven't the movements of the morning hours here.

Q. What do you mean by morning hours? A. When he left home, and arrived at the factory, and went to Montag Bros., and returned to the factory.

Q. That is not what I am talking about; you did give me a statement, whether detailed or not, of the conversation you had with Frank that evening at the factory, and you didn't said one word that he said about Gantt being familiar with the poor girl Mary Phagan, did you? A. It was just an oversight, that is all.

Q. Was it an oversight before the coroner's inquest too? Look at it, and see if you said anything about that before the coroner's inquest; your mind was fresher then about a verbal conversation than it is now, wasn't it? A. Well, it was fresher on my mind at the time, certainly, but you will understand the coroner asked me certain questions, and I gave him answers to the questions, but he did not cross examine me like Mr. Dorsey has been.

Q. Now, didn't the coroner ask you what he told you about it at that time, didn't you answer for two and a half full pages, and isn't it true that you never said a word about that? A. About Gantt?

Q. Yes, about that particular transaction with Gantt? A. Yes, probably so, I don't know.

Q. You understood to tell the coroner about it under oath, and you didn't mention that, that is true, isn't it? A. Yes, I can explain the reason very well why I did not put it in your report.

Q. You were not hiding anything from me, were you? A. Because Gantt was released on the next day and I considered him no suspect at all in the matter.

Q. Well, that wasn't true when you were before the coroner, he was under arrest then, wasn't he? A. Gantt. No, he was out on habeas corpus, so far as I know.

Q. No sir, that was afterwards. A. That is right.

Q. He was a suspect then, but you did not put it in there because he was not a suspect when you gave it to me? A. No.

Q. So, it was on your mind, but you had a reason for not giving it to me? A. No, there was no reason, it was an oversight, if anything at all.

Q. Didn't you tell me a moment ago that you had a reason for not giving it to me? A. Oh, I did not consider him a suspect at the time I dictated that report to you there, I have not at any time said that I dictated it to the stenographer the same evening I talked to Frank.

Q. But didn't you tell me just a moment ago that was the reason you didn't give it to me, you said that, didn't you? A. I did not consider Gantt a suspect, and that was my reason, yes sir.

Q. That is the reason you didn't give it to me? A. Yes sir.

I did not consider it material at all to mention in the report to the Pencil Co. that statement of Leo Frank regarding Gantt's intimacy with Mary Phagan. I knew then that Frank was under strong suspicion, but I did not think the fact that he was accusing Gantt of familiarity with Mary Phagan had any materiality against him. I knew that Frank had stated that he did not know Mary Phagan and that he had to look into the books to tell her name, but it wasn't a material fact against Frank at that time that he said to me that Gantt was familiar with her and knew this little girl. The fact that he said he did not know the girl, by name, and yet stated that Gantt was familiar with her was not in my mind at that time a suspicious circumstance against Frank. That circumstance did not look suspicious, and did not indicate guilt to my mind at that time. If a man was saying, I don't know a person by name, and yet went on to say that somebody else was familiar with her, I don't think it would show that he was necessarily lying in his first statement. That did not enter my head in the first place. The first time I saw the materiality of it was when the Solicitor asked me the question. It took me from the 28th of April until the day in August, when I was examined, for it to dawn upon me that that was a very material point. I had a great many other points in my head and it is impossible to get them all. No, I don't admit that I was a little slow about that.

Yes, I am positive that Leo Frank said to me that Gantt was familiar and intimate with Mary Phagan. Yes, he told that to me. I know he told it to me. This a correct transcript of my cross-examination by Mr. Rosser:

Q. Well, now, that conversation you say about Gantt's wasn't that Mr. Darley that said that; I just want to re-fresh your memory? A. No, Mr. Frank, to the best of my knowledge, is the man that said that to me, he was the one that told me about him being familiar with Mary Phagan.

Q. The reason I want to refresh your memory about that is your own notes, as you have them there, your own notes show that it was not in the factory, but in the room outside afterwards; I just want to refresh your memory, if that is not true. A. You can't refresh it, I am clear on that point.

Q. That it was not Mr. Darley? A. Well, as to the factory, I am not clear, but I am clear, perfectly so, that it was in the office, and Mr. Frank was the spokesman.

Q. Well now, are you clear whether you got that statement from Darley or from Frank? A. No, I am not sure.

Q. You are not sure about that? A. No sir, I am not sure about that.

I testified just now that I was sure that I got that information from Frank. As to which of those statements is true, I got it from Frank. As to why it is I was not sure at the time of the trial, more than 2 years ago, it is because I know that Frank was the spokesman the entire time that we were in the office. I recall it all perfectly now.

In my report of May 1st, I made reference to the fact that on the night of April 29th, at midnight, that detective Black and I requested Leo Frank to go into a room and talk to Newt Lee, one of the suspects at that time, and I narrated in this report what has occurred and what Lee told us afterwards about what Frank had said to him. The following is what I testified on this point at the coroner's inquest, the coroner interrogating me:

Q. Will you please state about the interview between Lee and Frank, who planned it, and how it was planned, and what was said to Frank before he went in. A. Black and I requested Frank that he go into this private room with Lee, and I thought it was to get any information that he might be withholding from either us or the detective department, and I told Frank to impress upon Lee the importance of telling the whole truth in the matter, and to do whatever he could to persuade Lee to tell the absolute truth in the matter. Frank said he understood, and we went in to talk to Lee.

Q. Now, that did you tell him to say to Lee? A. Just as I said.

Q. What did Frank say, or do you know? A. No, I have no way of knowing that; they were both together privately in the room there, and we had no way of knowing except what Lee told us afterwards.

The following is a part of my testimony at the trial on this point in response to questions by the Solicitor:

Q. Who said that: A. Black, first, he had a little preliminary conversation with him, and then I talked to Frank myself, and after Black got through talking to Frank, I said to Frank that I also believed that Newt Lee knew more than he was telling about this murder, and that he was his employer I thought he could get more out of the negro than we could get, and I asked him if he would consent to go into a private room there as employer and employee, and try to get it out of him; Frank readily consented, and we put them in a private room, and they were in there for about 10 minutes, they were together, and nobody else was around; when the 10 minutes was up, Black and I entered the room, and it seemed then Lee had not finished, had not completed his conversation with Frank, and just as we entered the room, we took seats alongside of both of them; Newt Lee was handcuffed to the chair, and he says: "Mr. Frank, it is awful hard for me to remain handcuffed to this chair, he says: 'It is awful hard, awful hard, Mr. Frank'". Frank hung his head the entire time the negro was talking to him. Finally in about 30 seconds, he says: "Well, they got me too". Then I finally had a conversation with Lee and Black.

Q. Was Frank present? A. He was not.

Q. Well, that is not admissible. A. Then I asked Frank in the presence of Black, if he had gotten anything out of the negro, and Frank said no, he still stuck to his original story.

Q. Now, describe if you can the appearance and deportment and manner in which Frank talked and carried himself at the conference set forth on that occasion. A. Well, he was extremely nervous at that time.

Q. Well, now, detail the facts. A. Well, Frank was very squirmy in his chair, crossing one leg and then with the other he didn't know how to put his hands, he was moving them up and down on his face, and he hung his head a great deal of the time while the negro was talking to him, that is, in my presence.

Q. How did he talk? A. Well, as I say, he hesitated some.

Q. How did he swallow? A. Very deep swallows.

Q. How did he breathe? A. Very heavily.

Q. Illustrate to the jury how he breathed. A. Well, he just took a long sigh like that (illustrating), more of a sigh than a breath.

Q. Did you notice his eyes? A. Yes sir, I judged their insecure condition all the way through, yes.

Q. What did he do with his hands? A. He didn't know where to place them, he placed them, he placed them all over his face, and he rubbed his mouth, several times, and then he crossed his legs and squirmed in his chair a great deal." The following is a part of my cross-examination on the same point by Mr. Rosser:

"I have no way of knowing that, they were both together privately in a room there, and we had no way of knowing except what Lee told us afterwards: "He asked you this question, didn't you say that? A. Yes sir.

Q. Now, you say you did hear a part of the conversation between Lee and Frank? A. Those last words of Lee, I heard.

Q. But you said before that you did not know, that you had no way of knowing, didn't you? A. Suppose I did say so, can't I refresh my recollection since then.

Q. Well, this is one statement here, and you are making another one now. A. Well, I give you the gist of it.

Q. But you didn't say anything about the gist of it. A. Well, I will admit that I did hear Lee's last words of that conversation.

Q. So you admit it was not the truth you testified before the coroner? A. Well, that is all true as you have stated it, yes sir, so far as you have gone.

Q. So there you say you did not hear anything, and now you say you did; they asked you "What did Frank say afterwards," and didn't you state you didn't hear him say anything, but that he stated that he couldn't get anything out of the negro; now that is the whole thing you told about it? A. Yes sir, that I remembered."

At that time, Frank's nervousness had no effect whatever on my mind, because I did not consider Frank any suspect at all. Knowing the man was under a strain, I did not suspect him at all at that time, and therefore it was not a material fact at that time. I did not consider him a suspect.

It was a matter of materiality in my mind as to who had written the murder notes, and it would have been material to show that any one was aware of the fact that Conley would write and had nevertheless concealed the information. It would have been a guilty circumstance. The circumstances relating to the discovery of the fact that Conley could write were:

"Being in charge of the investigation, I instructed the 2 operatives that were working it with me, McWorth and Whitfield, I told them to go to the factory and get a specimen of the handwriting of every present and past employee, particularly the negroes; of course that took some little time; then there were things that came up in the investigation that needed immediate attention, and they did not devote every day to the doing of that particular work; and so I left Syracuse about May 16th, and had to spend sometime at Ashville, N.C., before I left, I had those two operatives in my office, and I told them I would be gone 3 or 4 days, and that what I wanted them to do while I was away, was this: I wanted them to first go through that factory from attic to cellar and see if by any chance they could find a pay envelope and a mesh bag, and I gave them very positive instructions to make a minute search all over from attic to cellar, and I told them also to secure the specimens of the handwriting of the various employees that they had not already obtained specimens from; of course that would have taken the 3 or 4 days time while I would have been away. When I returned, I returned I believe on Sunday morning, yes, I know it was Sunday morning, and the 2 operatives and the former superintendent there, Mr. Pierce, was present in the office when I arrived about 9 o'clock, and they told me what the result of the search was in the factory, they had some twine there, and they had a club, they didn't have the club but they had a buggy whip handle, which they told me, or a club, what had been in Attorney Rosser's hands, and also had a portion of a pay envelope, with the name "Mary Phagan" written on it; and they also had 2 receipts showing that the negro Jim Conley signed on those receipts had purchased a watch and some jewelry on the installment plan, and of course he signed one of those credit receipts, legal bond they were, and the writing there impressed me very much, and I asked them where this negro was, and they told me he was locked up in the city jail, that he was the negro, the only one that they had not secured a specimen of handwriting of, and they told me that their information came through Mr. Herbert Schiff, the bookkeeper, who referred them to this jewelry agent to get the specimen of handwriting. Of course, with that information, I started out to get Jim Conley, and of course I made my very best efforts to track him down, and of course the result is known. I went down there, and of course made him write, he made no denial to me, but I had previously been informed that he had made a denial that he could write to the city detective, but I had no trouble at all, and Mr. Alexander has told you that I showed him where he could write; I did no such thing; I gave him a tablet and pencil and told him to write what I dictated, which he did, without telling him what I had.

Conley up to this time had denied that he could write to the city detectives. I knew it that Sunday when I got back to Atlanta from a trip away. They had just gotten it that Friday, said they had seen Black and Black and told them that, so they kept all this information until I returned. Conley was arrested May 1st, Thursday. It was on Sunday, May 18th, when I came back, they day we obtained the first statement. That was the first time I heard that Conley was denying he could write. As to whether it was good work for me to have been ignorant of that fact up to that time, do you think I could have handled the whole investigation from start to finish? As to my having operatives on the job, my operatives had been out a month previous getting samples of handwriting. Well, a couple of weeks previous. The reason I did not know before that Conley was denying that he could read or write was because he wasn't present in the factory during the month, the fore part of the month, he was under arrest, and my instructions to those operatives were to secure it from the past and present employees of the factory, the handwriting, and Conley, of course I saw him last, he was the last they could get to, he being locked up. Before then, the operatives had been instructed to ask for handwriting. Black had not told me before this that Conley had told him he could not write. He had not told me that he had made any inquiry about Conley, because I had a good many other things on my hands and I did not get to Conley at that time. I didn't know when I sent my operatives down there that Conley was denying that he could write. As to why the operatives that went down to the factory asked about Conley particularly it was because he was the only one they had not obtained a specimen of handwriting from, particularly the negroes. I presume those specimens of handwriting are in our office. I don't know what has become of them. I

don't know whether they are here this morning or not. They were obtained under my instructions. McWorth and Whitfield made this investigation under my instructions. These papers are their original reports. They reported verbally as well as in handwriting. They were supposed to be accurate in their reports. Sometimes a man has a conference and tells certain things and then later on other things may develop and all those things may not be in his report, but you know them because he has told them verbally. A man has got a lot of things to think about and he cannot carry everything in his head so as to get it exact in his report. There is no man who can do that. No detective can do it. No, I do not reserve the right to be inaccurate in my reports. As to my leaving things out occasionally, there is a chance of an oversight of that sort. Certainly we are not infallible in that line. Either Mr. Pierce or I edited these reports.

Whitfield and McWorth's reports of May 16th were both edited by me. The following appear in Whitfield's report:

"Schiff stated that he did not know (that is as to whether Conley could write, if Conley could write) Schiff stated he did not know (then you have got some words cut out) I was informed by Schiff that Conley had bought watches from different jewelry stores; I then went to the Berry & Thompson Jewelry Store on Broad and Alabama Streets, where they had a contract was signed by Jim Conley, but he had signed this contract as Willie Conley; I then went to the Jones & Phillips Jewelry Store 287 Marietta St., and received another contract signed by James Conley, I then went to the Saul & Abelson Jewelry Store, corner of Broad & Luckie Sts., and received another contract signed by James Conley. I then returned to the agency and compared the handwriting of Conley's with the note that was found alongside of the body of Mary Phagan, and the handwriting appeared to be identical."

In this report the following words were cut out: "Schiff stated that he did not know, but that he would send to the Tower and learn from Frank if Conley could write."

I cut that out of the report, yes sir. These words did not appear in Whitfield's report of May 16th made to the pencil factory. They were not in there. They had been cut out. The report was sent to us with the words eliminated that Schiff said he would send to the Tower and learn from Frank if Conley could write. There is nothing in the report sent to clients about the result of sending to the Tower and finding out if Conley could write. There is nothing in said reports about getting any information from Frank. Whitfield and McWorth did not report to me that they had sent a man over to the Tower and this man had come back and said that Leo Frank had said that Conley could write and that they were to look for that Jeweler's card. They did not report that to me. They told me, I remember distinctly, that Schiff has informed them that he could write and to go to those Jewelry stores.

My reason for cutting those words out of Whitfield's report was because McWorth's words contradicted him. If 2 men are working together and they cannot reach and they did not hear the same thing, we will cut it out. We would say it was not a fact. If they didn't hear the same thing, it goes out, no matter how material it may be; of course, it all depends on what we think of the man that is making the statement. As to whether I did it because I mistrusted Whitfield, we had complaints against Whitfield for talking too much at that time. McWorth was very reliable, but that is nothing against his truthfulness. There was nothing in the reports of Whitfield and McWorth as to what they learned from Leo Frank saying that Conley could write. Certainly, I regarded it as a material point in the case, Frank's saying about Conley's writing, but Schiff in that report states that:

"He would send down and see Frank, and when the operative got back later, Schiff had told them evidently that Frank said it, or that he said so and so, and instructed so and so, and Schiff must have taken it on his own responsibility to tell them 'You go to certain jewelry stores and get his receipts; and therefore they put it in the reports exactly the way they got it'".

If the messenger came back and told them so, they certainly ought to have put it in their reports. On May 18th, I knew that Connally could write, and I knew that I had gotten that information from the Pencil Factory and that it came from Schiff who at that time was acting as superintendent of the Pencil Factory.

As to the article in the Atlanta Constitution of July 17th, purporting to have been written by one Britt Craig, I examined every line of it and it is a pure fabrication. It was a complete and gross misrepresentation of the facts. As far as I was concerned, it was an outrageous misstatement of the facts.

On the witness stand, at the trial, I was asked by the Solicitor General as to where I got my information that Conley could write. The following is a correct transcript of that part of the evidence.

Q. "Did you get any information about this man being able to write from the National Pencil Co. people? A. Personally, no.

Q. Did you or did you not get your information from entirely outside sources and wholly disconnected from the National Pencil Co.? A. Yes sir."

I swore that I got it from two operatives. When I swore that I got the information from wholly outside sources, I meant I got it from my two operatives. I did not get it from the pencil factory. No, I wasn't quibbling. I have no reason to quibble not anything else, or to cover up.

As to the part played in the successive affidavits that Jim Conley gave, on May 18th, I got my first statement from Conley at police headquarters, after conferring of course, with the operatives in the morning; immediately after getting that statement from Conley, I sent for Mrs. White, or the pencil co., she having previously stated that she would testify that she had seen a negro at the bottom of the stairs when she was going up in the factory to see her husband, she had seen a negro hid behind some boxes; of course, I sent for her to line Conley up with several other negroes to see if she could pick him out to identify him as being the negro that was sitting at the bottom of the stairs. That about constituted my work on the 15th. Of course, you understand as well as working on this matter myself, I also instructed the operatives and during the times, during the day, my time was taken up in that respect. On May 22nd, I was conferring with the police and the Solicitor General. On May 23rd, I was subpoenaed as a witness first to appear before the Grand Jury, and running out some information we had received, that is, various facts that came along, something about the crime.

The following is a correct statement, in short form, of what I testified at the trial as to the part I played in getting these affidavits from Conley:

Q. "Sunday, May 18th, I was present when Conley made his statement:" is that statement in your report? A. Yes.

Q. "May 18th, I wrote it out myself, he made no further statement on that day, but he stated he did not go to the pencil factory at all that day; at that time I knew he could write; he told me everything that was in that statement, but the information that Conley could write came from the pencil factory on May 18th. On May 18th, I dictated to Conley these words: "That long, tall, black negro did by himself"; I dictated each word singly, and I should judge it took him more than 6 or 7 minutes to write it, he writes quite slowly. When he was before Mrs. White to see if she could identify him, he was chewing his lips and twirling his hat in his fingers, he didn't seem to know how to hold it, and he couldn't keep his feet still; he positively denied on May 18th that he had anything to do with the murder of Mary Phagan, and that he was at the factory at all. We talked very strongly to him, and tried to make him give a confession we used a little profanity, and cussed him, and he made that statement that he knew that I knew he could write; we talked for about 2 or 3 hours that day. He made another statement on May 24th, which was put in writing."

He was carried to Mr. Dorsey's office that day, and went over the statement with Mr. Dorsey there. He still denied that he had seen the little girl the day of the murder. He swore to all that the statement contained. That statement was a voluntary statement from him; I sent for Black, and we went there together, and we two questioned him very closely for about 3 hours. On May 25th, he repeated the story that he told in his statement of May 24th. We saw him again on May 27th in Chief Lanford's office. Talked to him about 5 or 6 hours. We tried to impress him with the fact that Frank would not have written those notes on Friday, that was not a reasonable story, that showed premeditation and that wouldn't do."

We pointed out to him why his first statement would not fit. We wanted another statement, and he declined to make another statement; he said he had told the truth. On May 28th, Chief Lanford and I grilled him 5 or 6 hours, endeavoring to make clear several points which were far fetched in his statement; we pointed out to him that his statement would not do, and would not fit. He then made us another long statement on May 28th, having been told that his previous statement showed deliberation, and that they could not be accepted." That was the second affidavit he made. "He told us then all that appears in the statement of May 28th." That is my report there.

"He never told us anything about Frank making an engagement for him to stand for him and for him to lock the door; he said nothing to us about seeing Monteen Stover. He didn't tell us about seeing Mary Phagan; he said he

did not see her, and he did not say he saw Lemmie Quinn. Conley was a rather dirty negro when I first saw him. He looked pretty good when he testified here. Frank was arrested Tuesday morning at about 11:30, on May 29th, about 11:30. On May 29th, we had another talk with him (meaning Conley) we talked with him almost all day; then we pointed out things in his story that were improbable, and told him he must do better than that, anything in his story that looked to be out of place, we told him wouldn't do; after he had made his last statement, we did not wish to make any further suggestions to him at that time; he then made his last statement on May 29th." That is in there.

"He told us all that appears in that statement; we tried to get him to tell about the little mesh bag, we tried pretty strong, and he always denied ever having seen it, he never said he saw it in Frank's office, or that Frank put it in his safe; we asked him about the parasol, and he didn't tell us anything about it; he didn't tell us anything about Frank's stumbling as he got on the street floor so the elevator would hit him. Since making this statement of May 29th, I have not communicated with Conley, and have not seen him."

As to whether I recollect any of the things that I pointed out to Conley as being improbable and not fitting, I was trying to get the truth, and as to whether there was any particular kind of truth, I tried to make Conley confess that he killed the girl. That was my idea, and I put most unusual efforts in that line. The affidavits that I took from Conley were taken to make him confess that he was responsible for that crime as principal that he committed the crime himself. That is what I was driving at, to break him down. Absolutely, every time I talked to him. Certainly, I did not report what Conley did when I got these affidavits, because it was not essential at all. It would have been ridiculous for me to tell you how I got a statement from everybody. It would be ridiculous and we would have to hire public stenographers to take down the questions and answers; we never do it. We do not want anybody to be present in the room when a detective is talking to a criminal. I don't regard it as essential that is the reason we did not report it.

I remember that one of the points in the affidavit of May 29th, 1913, was that Conley said:

"That Frank took a big roll of bills out of his pocket, \$200, and gave it to him, and in the next few lines he said that Frank said 'Let me see that money', and then he took it back, and I said 'Is that the way you do' and he said "All right, I will make it good on Monday".

Yes, I remember that was added to the affidavit as a sort of postscript, as to exactly how that happened, it came voluntarily from Conley's own mouth, there was no suggestion of anything else made to him when he sprung that. I made no suggestion of my own in regard to that. It came from Conley himself. I cannot recall at what time of day the affidavit was made. It was written out and he signed it. The postscript was put to it immediately. It was put down there when the whole affidavit was written out. That is my recollection of the matter. I didn't regard the postscript as of any importance, because I am of the impression that I asked Frank about it and he denied it. I asked someone, I have forgotten. We discussed it. I don't know whether it was with Mr. Rosser and Mr. Rosser asked Frank, or just how. I know it came through Frank that such a thing was not done. When Conley made the statement that Frank gave him \$200 in bills, he was asked the question, what became of the money, most certainly. He was asked how he spent the \$1.25 that was in the cigarette box. I just can't recall who asked him how he spent the \$200. I just don't recall. It is so far back and so many questions were asked and so few parties in the room, it is utterly impossible for me at this time, at this late day, to say who did it. I wouldn't be sure whether I did or not or whether it was any other particular man. It may have been me or it may have been. I may have asked him that question. My recollection is on this that, after the stenographer, Mr. February, took this statement from Conley, Conley volunteered this information himself while February was writing it upon the typewriter, and then when February came back in the room with the typewritten copy, he volunteered this information, and it was added to this affidavit, that is my recollection of it now at this time, though I am not absolutely clear on it; I think that was the way it was done.

After the affidavit was made, I got only a copy of it, so that we could copy it to our clients. I recognize that as Conley's signature. I believe I can even recall February sitting down and taking those words from Conley's mouth and writing them in long hand. As to whether I regarded the addition to the affidavit as a matter of consequence, I don't believe I placed much credence in it, and that would show that I didn't place any materiality in it. I don't know whether he testified the same thing about this \$200 at the trial or not. I was not there. We were talking about the \$1.25 and we were trying to learn from him what he did with that money.

We were trying to get Conley to confess to the crime. Yes, all the time, each affidavit that we secured from him, I

went after him to make him admit that he killed the girl. As to whether these statements were all in his own language, I would not say positively. The one taken on the 18th, I wrote myself, the others were taken right down from Conley, as far as I know or recall. The opening part of the affidavit of May 28th, is as follows:

"Personally appeared before me, a Notary Public in and for the above state and county, James Conley (He was James at that time) who, being duly sworn, on oath says, I make this statement, my second statement in regard to the murder of Mary Phagan at the National Pencil factory. In my first statement, I made the statement that I went to the pencil factory on Friday, on the 25th and went to Mr. Frank's office at four minutes to one, which is a mistake. I made this statement in regard to Friday, in order that I might not be accused of knowing anything of the murder, etc. Now, I make this my second and last statement regarding the matter freely and voluntarily, after thinking over the situation, I have made up my mind to tell the whole truth, and I make it freely and voluntarily, without the promise of any reward, or from force, or fear of punishment in any way."

That is not Conley's language nor mine either. The first paragraph. That is the notary public's language. I think Mr. February. The remainder is Conley's language.

I never had this in my hands I had a copy of it. I knew the postscript had been marked. Mr. Rosser knew it verbally. I know, I knew that client's knew it. No, I don't leave important matters out of a report relying upon clients finding them out for themselves, but you can appreciate the fact that a man coming along in a case of that sort, with a great mass of details, working on the case, preparing reports, instructing operatives, and rushing out on the work himself, he don't have time maybe to insert all that stuff. Now, the chances are I just grabbed that copy of that affidavit and took it right up to the office to show to our clients without that part being written in by Mr. February. It was not omitted intentionally. The reason I sent an imperfect copy of this affidavit was because the job was taking up all my time, and I had so much to do I could not look after all these details. I did not say the job was too heavy. There was no limit to the number of men that I could have employed on this case according to the contract, yes we could have put on the case 50 or 100 additional men if we found it necessary. Here was our system, every time we sent clients a written report, these written reports would go to Mr. Rosser, then frequently I would go up there and make a verbal report. So far as that goes, a verbal report was just as good as a written report. It is the same system the Pinkertons use all over the country. You don't have to put down everything. They will confer with their client and tell him maybe a little more than they will put into a written report, just like a business man will confer with somebody and tell him a little bit more than he has put in a letter he has written to him, it is only a very small percentage of the facts that we report by word of mouth. In addition to the written reports, we would confer with Mr. Rosser about what had transpired from time to time. In addition to the reports, we would tell everything we knew. I don't recall that I called Mr. Rosser's attention to this affidavit, and told him that his copy was imperfect. As to what was the value of our work anyhow, I don't know that we fell down on every material point. No, we didn't fall down. We didn't do anything of the kind. We made an honest effort to discover the true facts. No, I was not careless at all. No more careless than an ordinary man would be under a heavy strain like that. It did not enter into it, as far as that goes, that I had a right to employ 50 or 100 men to relieve me of the strain. I had direction of the work and I had more on my head than any one man could do. As to why I did not get another head, you cannot have two heads running the same line of work. Yes, I had the right to employ anybody I wanted to. Yes, I said just now I was not very careless. I made certain omissions that I don't really attribute to carelessness, that if faulty carelessness, intentional carelessness. You might call it thoughtless carelessness. We gave you the information as to the contents of the postscript to that affidavit. Pierce and I discussed it with Mr. Rosser and ridiculed it with him. Mr. Rosser ridiculed it with us. He said he never had \$200.00 at a time, meaning Frank. You are just trying to create the impression that we were careless or negligent in not reporting that matter as a matter of fact. We did take that matter up with Mr. Rosser verbally.

I presume May 29th was the date I last conferred with Jim Conley, but I made an error to confer with him again. I never laid eyes on him after that, but I carried out the wishes of our clients by going down there and asking Chief Lanford to let me have one final talk with the negro. Beavers and Lanford said no.

As to what is the sense of the policy by which the Pinkertons go to the police and turn over everything they have to you and then when the police get out with you, they turn you down in certain limits, the police do not in all cases. They did in this case. This is an unusual case. They did it in this case. That is no fault of the Pinkerton Detective Agency that our friends threw us down. The police can take a man into the jail and talk to him and a detective may not have that opportunity. Detectives are employed to do things and we did them. The police have control over the proposition. They can lock a man up where we can not see him if they want to. And the regular detective run up

against that sort of thing they are seriously handicapped.

As to why we wanted to have a further conference with Conley, after the affidavit of May 29th I was not satisfied with his affidavit, but after this, I could not get another word with the negro on account of the police. As to whether our policy of cooperating with the police accomplished much in this case, I think that it accomplished all that it was possible to accomplish. I don't know who was put on the case after May 29th. There were so many of them working on it. Mr. Dorsey was the one that issued the order, after May 29th, not to have any one see him. He had the prisoner then, over in the county jail. Campbell and Starnes were the other city detectives on the case after that. I and Black were dismissed and Starnes and Campbell put on. I don't know why they took me and Black off. I never have found out. I suppose it must have been my connection with the case. Black and I were pretty thick, certainly, but we were acting together all the time, and of course when the department would get certain information that they were giving to Black, they treated Black the same as they treated me in that respect.

Re-Direct Examination:

After May 29th, the city prevented us from going any further, because our ground work for further investigation would have been Conley. The plaintiff did not take me off the case. I continued to conduct the investigation for the plaintiff and direct their operations through the entire investigation until after the trial. The defense put me on the stand as a separate witness.

Re-Cross Examination:

Yes, the defense put me on the stand. They subpoenaed me and I went on the stand at the trial. I followed Dr. Childs on one day. Chief Lanford never told me after the affidavit of May 29th had been obtained that the Phagan mystery had been solved and that Conley had at last told the truth, and that after that no more could be expected from Conley because he had told the truth.

John Starnes, for plaintiff, testified as follows:

I am a city officer and was such at the time of the Mary Phagan murder. I investigated the crime for the City. I came in contact with the Pinkerton detectives in that work. I remember the names of Harry Scott and the partner of McWorth. Those are the only two that I knew that did work. They were working on the case. I had conferences with those men. I came in contact with Whitfield at several places. I met Scott in that connection. He was connected with one of our men, Mr. Black, I went out with them. I remember Black and Scott and I went away down to East Point, I first came in contact with Scott on perhaps Monday afternoon or Tuesday. Sometime right early in the case. I saw him from the first right on through the trial.

Cross Examination:

As to my having heard why it was the Black and Scott were taken off the case, and I and Campbell put on, I don't think they were taken off. On one part of the case they were taken off. In connection with Jim Conley, they were excluded from him and Campbell and I managed that part of it. We took charge of Conley. After that Black and Scott did not connect with Conley. I don't know of my own knowledge why that was.

Re-Direct Examination:

I was in the case to start with. I got to the place the next morning after it happened. Black continued to work on the case after he was relieved from investigating the Conley end. Black was never retired from working on the case that I know of. Scott was never retired from working on the case in my knowledge.

S.L. Rosser, testified for plaintiff as follows:

I am a city detective and was such at the time of the Mary Phagan murder, I was detailed to that work by Chief Lanford and Chief Beavers the same morning after her body was found that night. The body was removed from the factory before I went there. There were three or four Pinkerton detectives who worked on the case. I came in contact with them. I recall Scott, Pierce, McWorth, Whitfield, and another, Peace, I believe. These men were working, trying to find who murdered Mary Phagan. I came in contact with Scott, Whitfield and McWorth within 2

or 3 days after the murder. I saw them often on up to the trial.

Cross Examination:

I saw none of the reports made by the Pinkerton Agency to the National Pencil Factory. In the character of reports that I make to the City detective department, accuracy is not important. I do not give the facts in my report. I simply report the arrest and what it is for.

I saw the so-called murder notes at police headquarters. I do not know exactly when they were brought there. The other parties handled that. I saw them myself and had them in my hands. It was a day or 2 after the murder happened. They were in Chief Lanford's office at the time I saw them.

Re-Direct Examination:

Scott and the rest of these Pinkerton men worked together with the city men trying a great deal to ferret out the crime.

Re-Cross Examination:

John Black is 42 or 43 or 44 years old and has been working for the city about 9 or 10 years. I have been there about 15 years.

L.J. Sacrey, for plaintiff, testified:

I am now in the real estate business in Atlanta and was employed by the day in the Mary Phagan murder case. I did several days work on it in July 1913. I don't remember how many days. I was directed to investigate the affidavit made by Muncie, and find out whether it was really the truth or not. I worked just 2 or 3 days under the direction of Mr. Scott. Wiley W. Hannon, sworn for the plaintiff on the Mary Phagan murder case. I worked close on to 16 days under Mr. Scott. I went to Macon to look for a man named Will Green who said he had heard Conley say something about who committed the crime. No sir, I did not locate Green. I never found a person by that name. I scoured the town. That is all the work I did on the case.

Plaintiff Rested At This Point.

Leo Gottheimer, for the defendant, testified as follows:

In April and May, 1913, I was in the employ of the National Pencil Co. as a traveling salesman. I arrived in Atlanta about May 5th or 6th following the murder. When I came in I was instructed by my employer to go over to the office where I might be of some assistance. Frank was not there and I might be able to help.

I recall seeing the Pinkerton operatives in the factory. I recall 2 of them by the names of Whitfield and McWorth. I recall the occasion of their visit to the factory on May 16, 1913. On that occasion there was present Mr. McWorth, Mr. Whitfield, Mr. Darley, Mr. Schiff, and I think another fellow by the name of Campbell. Mr. Darley was the foreman and Mr. Schiff was acting as superintendent. Mr. McWorth and Mr. Whitfield came in and they asked Mr. Schiff and Mr. Darley and those present if they knew whether Jim Conley could write, and Mr. Schiff said yes he thought he could write, he knew he could write, and they wanted, they told us then they wanted to get some evidence of his writing, for they felt sure themselves that he could write, and that he had been denying that he could write, but they themselves felt sure that he could write, and what they wanted now was evidence of that, and a few minutes after that, one of them McWorth, I think it was, called me in the outer office, and asked me as a favor to him, the next time I went over to the Tower to see Mr. Frank, to please ask Mr. Frank for him if he knew whether Conley could write or not; and I did; I went over to the Tower and saw Mr. Frank, and told him just what was happening, that the Pinkertons had come up very much enthused with their belief that Conley could write, that he had been denying that he could write, and they believed he could write, and what they wanted was some evidence of his writing; and Mr. Frank said "Yes, I know he can write, I have had notes from him asking me to lend him money, and things of that character." And I said "What they want, though, is some evidence of that matter, and we thought maybe you could tell us, tell us where they could find some evidence of his writing." Then he told me to tell Mr. Schiff to go back in a certain drawer in the safe vault and find a card from jewelers or pawn brokers where he had been buying a watch, and to give that to the Pinkertons, and maybe it would be some help to

them. And I came back and reported that to the Pinkertons, just what Mr. Frank had said.

As to what these men said as to the relations between themselves and their superiors, they talked on a number of occasions, every time they came up, they talked to me, and they wanted to impress, there seemed to be friction with their superiors, everything they done, these two men, McWorth and Whitfield, they told me they would not accept their theories, and they seemed to be tickled to death to get this new evidence of Conley's writing, they said "We have got the goods now, they can't deny this, we can prove this on them in such a way that they can't deny it." They would come up there, Whitfield and McWorth, and they would talk to me at those times about how they were moving. I saw them a dozen times or more at the factory. They were in and out all the time, several times a day sometimes.

Up to the time of this visit, of the operatives to the factory on May 16th, the people at the pencil factory did not know that Conley was denying that he could write. It came as a surprise when they told us that. When they asked me to do that for them I was glad to do it.

Cross Examination:

Mr. McWorth told me to ask Mr. Frank the next time I went down to the jail if Conley could write, and if we knew where we could find any evidence of his writing. I reported my interview with Mr. Frank to Mr. McWorth. I came back and reported that interview to McWorth and Whitfield, and came back and told McWorth exactly what Mr. Frank told me. No, I did not tell McWorth to go in the safe and get the papers out, for Mr. Frank told me to tell Mr. Schiff where the card could be found in the safe and for him to get it and give it to the Pinkertons. When I came back I told that to Mr. Schiff and I also told that to Mr. Schiff and I also told Mr. McWorth everything that happened. McWorth was there and the other men came in a little later. When he found out what had happened, he was very much enthused over the fact that they had found this thing and they left after that. Mr. Frank's exact words, if I remember them correctly, were that Mr. Schiff will know where to find it. He knew that I had nothing to do with the safe, had no business to have, and he said "Those cards are in the safe." I don't know as to Mr. Schiff giving the cards to McWorth. I simply came back and reported that I had done what McWorth asked me to do. Mr. Schiff was present when I told McWorth. Both were there in the office. I reported back Mr. Frank's message in the presence of both Mr. Schiff and McWorth. I came back and reported the entire conversation. I don't remember whether Mr. Schiff went to the safe and got the matter at that time or not. Afterwards Whitfield came up and then McWorth told him what they had found, he was very much elated.

H.B. Pierce, for the defendant, testified as follows:

In 1913, at the time of the Mary Phagan murder, I was superintendent of the Atlanta office of the plaintiff. I had been superintendent since June 1911. I had been in their employ for 5 years prior to that time in Philadelphia.

Under the contract made with the defendant, there was no limit to the number of operatives that Mr. Scott could have put on the case other than as limited by Mr. Rosser, who was to be the arbitrator, and whose instructions were to control. There were 4 or 5 men on the case, including Mr. Scott and Mr. Whitfield. At one time, when the work was getting too heavy and we needed more help, I went to Mr. Montag and suggested that it would be a good plan to put 2 or 3 more men to work. He referred me to Mr. Rosser and said whatever Mr. Rosser said would be all right, that he had charge of the case.

The history of the connection of the Pinkertons with the Phagan case is a long, long story as follows:

Mr. Scott was called down to the National Pencil Co. by someone there, who I was later informed was Mr. Frank, for the purpose of taking up the investigation of the murder of this little girl, Mary Phagan; I don't just recall whether I had been out of town, but I believe I had, I had just come from Chattanooga; I remember that on the morning, Sunday morning, the crime was discovered, I met George Bullard at Pryor and Marietta, and he mentioned the fact that somebody had been murdered on Forsyth Street, and I remember he asked me to go along with him, and I paid no attention to him, and went up to the office. During Monday, Mr. Scott was called during the morning, I believe I was out, and when he came back, he informed me of taking up this work, and on account of its importance, I later suggested to Mr. Scott that we had better go down and see Mr. Herbert Haas, whom I understood was the attorney for the National Pencil Co., and when I believe Mr. Scott had been referred to, our purpose for taking it up with him being to have an understanding with Mr. Haas as to just exactly how this work

would be carried on. I didn't want there to be any questions on Mr. Haas' or anybody else's mind as to the agency's standing in the matter. Mr. Scott and I went to Mr. Haas' office, and informed him in a general way, that the agency had been employed by Mr. Frank or somebody connected with the National Pencil Co., to make this investigation, and that before the agency could undertake this work, it must be absolutely understood without any question about it at all that the only way the agency could accept the work would be absolutely along legitimate lines, it didn't wake a particle of difference, of course, to us, who the blow fell on or anything else, that if there was any idea in his mind connected with the work, as to how it was going to be conducted, we had better have an understanding right now, that as far as the agency was concerned, there was going to be a clean, honest, legitimate investigation in every way, shape and form. Mr. Haas acquiesced in that and said that was all they desired, they wanted a clean, honest investigation, and they didn't expect to get anything else. The work was then turned over by me to Mr. Scott practically for sometime, as I was out of town a great deal, canvassing for the agency; he was the one that handled it, he having had a great deal of criminal experience, with a keen mind for that character of work. Of course, I only touched the work at that from time to time; for instance, I remember the fact that 2 or 3 days' reports would come to my desk, and I would go over them and revise them ready to be written up; expenses bills or other things of that kind would come to me, and I would go over them, and look and see that they were O.K. all right, and then pass them along; but the work generally was handled by Mr. Scott; there was very little interference from me.

As to the part I played in the discovery of the fact that Conley could write, operatives Whitfield and McWorth I think on Friday prior to May 18th, Sunday 18th, I think they brought into my office what was purported to be 2 or 3 contracts of some installment jewelry house here for watches that Conley had contracted for, and which contracts contained his signature, and I don't remember that Mr. Scott, I don't know whether he was out of the City then or not, I don't think he was, I believe he was busily engaged, but I suggested to Mr. Scott on Sunday morning that we go down to police headquarters and have Conley brought upstairs and questioned as to his ability to write. We did that about, I believe, ten o'clock Sunday morning: Officer Black was present, and Chief of Detectives Lanford was in his office; we had this man Conley brought upstairs; and when he was brought in, he was sat down at the end of a table, and I said to him, as my recollection goes, "now Jim, can you write? Or "Conley", can you write? either one of those statements, and he said "No sir, Boss" and I said "you can't write at all?" and he said "No sir." I was back of him at that time, and I showed him the contract, one of the contracts, and I said "Isn't that your name?" and he said "yes Sir", and I said "who wrote it?" and he said "I wrote it." And I said "I thought you said you couldn't write." "Well," he said, "that is, I thought you asked me if I was an expert writer. After that we got some paper and pencil, a scratch pad off the Chief's desk, and I took I think it was a paper engraving out of one of the Atlanta papers here that we had, and I dictated certain words out of that, at random, that is, not taking them connectedly. I suggested the word tall, the word black, the word himself and the word by and had him write those all out separately; the word himself he wrote hisself, spelling in his method of writing, with the exception that he made what you would call the capital S in printing, and I said to him several times, I said "Now, Jim, you make that other kind of "S", and he said "Boss, that is the only kind of S I know. So I kept pounding at him, and Mr. Scott, I think, pounded him, and Jim Black kept telling him that he could make another S, and finally he made that small S, that is, he wrote the word himself hisself in that particular word, and I think then we finally had him write the whole note out, "That long, tall, black negro did this by himself."

We picked up the scraps of that, and showed them to Chief Lanford, and I don't recall whether we left any there or not, I don't believe we did, he didn't seem to be very much interested. We took them away I believe, then Mr. Scott took charge of them and I am not sure whether the Grand Jury met the next day or not. I regarded that discovery as of vast importance, wonderful importance to me. As to whether I think there could have been anything more important in the case, well, I can't say just at that particular time, but as I think of the matter now I thought it was the biggest thing in it. I cannot answer as to whether it seemed to impress the others that way. As to how it seemed to impress Mr. Scott, I suppose he was impressed in a way. He did not notice particularly I don't think.

My recollection is not clear as to who it was that sent McWorth and Whitfield to the pencil factory. Long previous to that, I kept after Mr. Scott to investigate this. Conley proposition more thoroughly, more generally, it seemed to my mind that there was entirely too much time being devoted to this one theory, this one line of investigation, there was no general investigation being made, and I kept after Mr. Scott to make more general investigation, to throw his lines out wider, and particularly on this Conley proposition, you understand, to get more about it, sift it out thoroughly. Now, whether Mr. Scott instructed Whitfield and McWorth, to make that search for those contracts for the writing. I won't be positive, I won't say positively as to that, but it is my recollection that I did, but I want to be positive in that, Mr. Scott may have done it. As to how Mr. Scott took my suggestions about a broader line of

inquiry on Conley, he acquiesced in that suggestion, as far as his acquiescence went, but in the matter of the investigation it was my opinion that it did not go as broad as it should. As to what extent I thought he should have gone further, I believe he should have employed more men, put more men to work on it, and he should have given broader and more definite instructions about it, on a wider field, and devoted more of his time to it, and not just simply worked on this branch of the investigation. Mr. Scott was entirely interested in developing the Frank proposition. I won't say he seemed to be after Frank, he was developing that proposition. That was his theory. I believe Mr. Scott was after the man who was guilty, not after any particular thing. That is what he was employed to do. I communicated these views to Mr. Scott and he communicated his to me. We had our differences of opinion very frequently about the character of the investigation and its carrying on, we clashed very often. In that clash of opinions, Mr. Scott prevailed. Mr. Scott had the weight of opinion both with his superiors and with himself. By superiors, I mean his general superintendent and his other superior officers. Mr. Scott was then in correspondence with officers higher than myself and his course in working on the Frank angle met their approval. At times, I communicated with them also, as to what I said to them, well, more than a general correspondence in connection with the case, it is peculiar to the organization, that a great deal of that is left to the superintendent in charge and his general superintendent, as the case does in its natural course, as a rule, there is very little correspondence, and particularly no conclusions, that is one of the things that the agency rarely ever allows its officials to draw, haphazard, that is, conclusions, my correspondence on anything was after I developed opposition, you see; what I mean, to the course being taken.

As to that opposition, as I have already stated, it was my belief that a more thorough investigation should be made of the Conley end of that investigation, and that I believed that it had not been made; I believed that if it had been thoroughly made, there might have been something different developed.

I wrote those views to my superior, Mr. A.S. Cowerdin, the general superintendent of this division at New Orleans. I went over the case with him in detail and explained my views. He very politely replied that from the revealed facts and the reports that had been submitted, and that were being rendered, it was his opinion that the investigation was being carried on in a proper way.

He disagreed with me and agreed with Mr. Scott. He was the superior of all of us in the Atlanta branch. New Orleans is the main office of this division, Houston and Atlanta are branches.

Mr. Scott and I frequently talked about the policy of the agency as to this case. We had several discussions on some matters bordering at time on quarrels, as to his theories or my theories, Mr. Scott was, I will say, very staunch and keen that his theory, he was satisfied his theory was right, and he believed that mine were all wrong; he, of course, had the matter of public opinion with him, whether that influenced him or not.

As to my remembering any expressions from him that indicated that he was influenced by public opinion, he was of the opinion that if so many people saw it that way, that is the way the case was being developed, that, in his opinion, must be right, against all other facts or anything else, regardless of facts. Yes, he thought the whole trend of his investigation must be right because so many people thought he was right, that was Mr. Scott's attitude. As to whether that is a sound theory of detective work, it is not a sound theory with me. I think there are some detectives that possibly may be influenced by public opinion and by the opinions of others. They may not think entirely by themselves. They must have theories that influence them. They think that because a theory is popular it must be the fact. A man may entertain a view like that without being dishonest. They are unconsciously influenced to accept that which is so generally accepted as right.

The accepted policy of the Pinkertons, as I was always taught it, was to work as much with the police department in criminal matters as was consistent with the work you were doing.

If in pursuing that policy, there developed an irreconcilable difference of opinion between the Pinkertons and the police, their attention is called to it first, and if that bore no results, we would either go on making investigation for our client, regardless of the theories of the police department or anybody else, or we would quit.

In the matter of the employment of additional men, when Mr. Montag had referred me to Mr. Rosser, I went to him and he told me to put on as many additional men as we thought necessary for the work. I think three were stipulated. Three additional men were put on, but the number was left to the agency's judgment.

If any of the Pinkerton men discovered that the work was getting too heavy for them, they should have put on more men to relieve the situation under pressure.

As to the method of the agency in making out its reports that were sent to the clients, the method of making such reports was to typewrite them and send them to the client. The procedure by which the report passed from the operative to the client was as follows:

An operative would make up a daily report, and turn it in to his official whom he was working under, and that official would revise it, probably first as its grammar and second as to relevant matter in it, and anything that he discovered, or if he discovered anything that he didn't think the client should know, or was not material, superfluous, or anything like that, he would what we call just cut it out, that is by placing brackets around that particular word, sentence or paragraph, and it was then sent to the stenographer, and he wrote it up with the exception of those abrogated portions of the report.

If two men were working together on a certain angle of the case, and one of them in his original report stated a certain fact which was material to the case, and the other man in making his report did not refer to it, that would not be a reason for cutting out the reference to that fact in the report sent to the client.

The policy of the Pinkertons is to make only written reports to clients. These reports cover everything done by the investigators on the work. Sometimes, in important cases, where the clients wants immediate information or wants it as soon as the official gets it, we may communicate it to our client, but that is immediately followed by a complete written report. In fact, it might include the very fact that this matter was reported verbally to the client. The policy of the company is to have all its communications with its clients in writing.

Cross Examination.

It is the policy of the official having charge of the operatives' reports to call out the parts which, in his judgment, are immaterial. I could not say, I do not know, that anything material has been eliminated from any report in this case.

At one time in the case, I conceived that it was necessary to put on additional men. I went first to Mr. Montag and he referred me to Mr. Rosser. He told me to put on the two men, Whitfield and McWorth, who were then being considered, and to put on any other men that in my judgment were necessary, or in the judgment of the Agency, and I did that, I did not work on the case myself. Technically, as superintendent, I was in charge of it. I did not neglect my duties as superintendent.

As to my having had any interview with the defendant or any of its officers relative to the bill in the very beginning, I could not say whether it was in the beginning, but I believe that during the time of the investigation, or immediately after, I saw Mr. Herbert Haas two or three times about it and I also saw Mr. Luther Rosser several times just after the investigation had been completed. I never saw Mr. Montag with reference to collecting the bills. I went to Mr. Montag for a guarantee of the contract. In substance I said to Mr. Montag that we believed that the work would assume such proportions at that time that I thought it was necessary to put on additional men; I believe, too, that he questioned the expense, what it was going to cost per diem, and I told him the approximate amount that I thought per day, and he was fairly reticent. Mr. Montag didn't seem to care to talk very much at all about it, and he finally told me to go to see Mr. Luther Rosser, that he had charge of the matter, and whatever Mr. Luther Rosser instructed I was authorized to go ahead and do, as far as the National Pencil Company was concerned.

After we had operated several weeks on the case, I went and saw Mr. Herbert Haas, in his office. I requested the payment of the amount earned up to that time and that was my sole purpose in seeing him. He promised to look into it and endeavor to secure me a check. I cannot say that he promised to pay it, not in so many words. He may have, I don't remember now. I would have quit if I had thought he was not going to send a check. I recall one time Mr. Scott and I going over to see Mr. Haas about the bills. Mr. Scott was I were in the Fourth National Bank, I believe talking to Frank Berry, and Mr. Haas came up, and I thought that was a pretty good time to take a crack at him about the bill, and I asked him when we were going to get a check, and Mr. Haas said I believe at that time, that he would send us a check for the amount in about two or three days.

While I was connected with the Agency, it received no payment on this account.

I approved the operatives expense bills as they came through not all, but as they came to my desk in the absence of Mr. Scott. Either he or I did this.

There was complaint about the payment of this bill just immediately before I severed my connection with the agency during the month of August, 1913. I think the trial had just about been concluded at that time. I went to Mr. Luther Rosser about that time for the purpose of securing the bill, and Mr. Rosser then complained that he did not think that the National Pencil Company should be called upon to pay that bill and stated his reason. That was the first complaint I remember. Mr. Haas promise was made several weeks before that.

Mr. Scott was assistant superintendent at the time of the trial of the case. He was a man of practical experience in criminal investigations, with a keen head for that work, and as such, I put him in charge of the details of that work. On the account rendered client, there is no charge for time put upon the case by myself. That does not indicate that I did not do some work on the case. I may go out and spend half a day or three quarters of a day or something like that in connection with that or any other operation, which I would not charge for, I would probably put that in sometimes as good measure, you might say; practically all our officials do. In this case, there was no charge for my services that I know of.

Re-Direct Examination.

The conversation with Mr. Haas, that I have referred to took place before the trial, I was not in Atlanta during the trial. I recall the conversation between Mr. Rosser, Mr. Scott myself and others just prior to the trial. Mr. Rosser knew my opinion and Mr. Scott's stated to Mr. Brandon, after a discussion pro and con of the various phases of the investigation and the conclusions, that, regardless of the opinions we had, there were two men in jail, and we were both of the opinion that one of these two men was guilty of that crime. I stated my opinion outright which was that the negro Conley was guilty. I do not believe Mr. Scott expressed an opinion. I believed he differed with me.

As to why it was that I left the employ of the Pinkerton Detective Agency, I am very glad you asked that question, I understand that Mr. Scott did testify yesterday, first that I was discharged, and later in his testimony that I had been requested to resign, now, the fact of the matter is that I was never discharged from the Pinkerton's National Detective Agency, I was never requested by anybody in Pinkerton's National Detective Agency to resign, and up to that very second that I accepted my present employment when General Superintendent Cowardin was with me, at the time, I had the refusal of the superintendency of the Philadelphia office.

I have been in the business of investigation work as a detective about fourteen years. I have been with the Pinkertons about seven, In my opinion, as an expert, as to whether or not the plaintiff did or did not render competent and accurate service in this matter, I would say that there were certain features of that work that were not to my mind as fully carried out as I thought they should have been. I believe the Conley feature the Conley connection with that crime was never as fully investigated as it should have been. After the discovery of the fact that Conley had written those murder notes, I was of the opinion that this phase of the case had not been given all the attention it should have been. I believed that it was not followed out as carefully under the Pinkerton method as it should have been.

After I had sent in my resignation to the Pinkertons, my relations were friendly. I am a patron of the Pinkerton National Detective Agency, at this time. I have employed the Agency continuously ever since. My relations with them are very pleasant, pleasant absolutely. After I had resigned, I accompanied Mr. Cowardin, at his request, to Mr. Rosser's office in an endeavor to collect that bill, and Mr. Rosser at that time stated his reason why he did not believe the bill should be paid.

As to Mr. Rosser's reason for not paying the bill, he stated that it was his belief that that bill should not be paid on the view that he took of Mr. Scott's attitude, that he believed he stated, that in view of Mr. Scott's attitude during the trial and in the light of other things that had occurred which he stated came up during the trial, or that first came to his notice during that period, did not justify the company in paying that bill, he didn't think the pencil company should be called on to pay it.

Re-Cross Examination.

I was of the opinion that there should have been a more general investigation of Conley's whereabouts and his connections, Mr. Scott's time was mostly devoted to his investigation in and around police headquarters, and running out phases with the city officers, he, of course, could not be all over the city of Atlanta, but I mean those who were under his direction, being in charge of the operations, and I being away practically all the time, it was my opinion afterwards, I don't say at that particular time, because I had full faith in Mr. Scott's ability, that after the review of it, after seeing what had been done and what had not been done, I was of the opinion that there were a good many things, quite a number of things connected with Conley's connection with the case that should have been run out afterwards. It was probably during the starting end of the investigation and during the trial of Frank, and afterwards I realized early in the game the enormity of this investigation and went down and asked Mr. Montag for more men. I was after \$8.00 per day per man Mr. Rosser to whom Mr. Montag referred me, said put on as many men as I pleased, as many as I thought were necessary. I put on two men. I didn't believe more were necessary at that time. I reckon Mr. Scott knew more than anybody else about what was necessary at that time. I detailed and increased the number of men on that job to the number I thought necessary.

I did not have the reputation of being a strict superintendent and disciplinarian. I had the name of being somewhat of an easy boss. I had my method of handling men which I thought was the right one. As to whether if I had thought any man was shirking his duty on that case, I would have fired him, the fact is, as I have repeatedly stated, I was so seldom directly connected with that case that I didn't know but very little about it. It is true that I was so little connected with the case that there is not one five cents charged for my services. My opinion about the case is not from work actually done, but just from hearsay. I never saw Conley but once. It was down at police headquarters one Sunday morning. As to why, if I thought Conley's actions and whereabouts should have been run out, why I did not go ahead and do it, if I thought anything was being neglected. I had other things to do and I had other men attending to that. I mean Whitfield and McWorth and I turned them over to Mr. Scott and he had just as much authority, of course, to put on men or detail men on other work and to direct their work as I had. Yes, I went to the people and asked for additional men and they gave me those two. I believe there were other men. Hannon and Peace were put on. Mr. Scott was finally cut off by the City detectives from interviewing Conley. I sent Mr. Scott down to police headquarters with instructions to stay with Conley until hell froze over. They finally moved him over to the tower. I believe it was to get him away from the Pinkertons. I think that had a good deal to do with it. Mr. Scott told me they would not permit him to see him. I directed Mr. Scott to go down there and stay with Conley and get a full statement from him. They took him away. I don't know whether further efforts were made to get to him after he was put in jail. I believe that Mr. Scott knew how to handle men on work of this kind, and that he was a keen man for criminal work.

Further Direct Examination.

I regarded the one interview that I had with Conley as being of the greatest importance. To my mind, there was no more important interview with Conley in the whole case. To my mind that was the critical point in the case. The crux of the whole thing.

Mr. Scott had an absolute right, without instructions from me or anybody else to put more men to work on the case, if he needed them.

Further Re-Cross Examination.

I think it was on Sunday, May 18th, that I interviewed Conley at police headquarters. That was the time he first wrote.

Mr. Scott and I went down to police headquarters after Mr. Scott's return to Atlanta. Men were put on the case to run down the affidavits made by Conley.

L. Z. Rosser, for the defendant, testified:

At no time prior to the trial of the Frank case, was I informed verbally by Mr. Scott, assistant superintendent of the Pinkertons, that he intended to change the testimony that he gave at the Coroner's inquest and the information that he gave me in his reports as to the matter of Frank's saying "no" or "I don't know" to Mary Phagan when she asked about the metal.

Mr. Scott gave me no information that he had intentionally or through carelessness or inadvertance omitted from his original reports sent me the fact that in the night interview between Frank and Lee on the night of April 29th, at police headquarters that he and John Black had heard the latter part of the conversation and that Frank exhibited great nervousness on that occasion. We knew nothing about that, and received no information about that. He made no report as to that matter. He told me nothing except that which is in the written report.

Neither Mr. Scott nor any of the Pinkertons gave me any oral report, that they had gotten the information that Conley could write through Leo M. Frank.

Mr. Scott has no oral report as to the manner in which the affidavit of May 24th, May 28th, and May 29th, were obtained from Conley, and the method that he and Black employed in getting those affidavits. He might have mentioned the affidavits to me in a usual conversation, but I answer emphatically "no" that he did not tell me the methods employed by him in getting them. He never told me that he and Chief Lanford had pointed out to Conley that certain things would not fit; that certain things were unreasonable and improbable and that he would have to do better. I never heard of that only as Mr. Scott told it as he went on the stand. In my opinion, as an attorney, it was material that I should have known how those affidavits were obtained in advance so as to give me an opportunity to prepare with reference to those statements.

In my opinion, as an attorney, it was material that I should have known beforehand the information that the Pinkertons had that Leo Frank had said that Conley could write, and that information should have been given to me by the Pinkertons from an independent source. I learned that they had given the information that Frank claimed to have given the information. I had that information from the outside. Whether he did, I didn't know that he had given the impression. I did not have the information that was the source of the Pinkertons knowledge from the Pinkertons indeed. I don't know whether they ever admitted that they got it from Frank.

Q. When Mr. Scott took his stand at the trial and testified that he has gotten the information about Conley writing from sources entirely disconnected from the pencil factory, would it or would it not have been material to you? A. Oh, quite.

Q. To have know that the Pinkertons themselves. A. Sure.

Q. Had gotten that information? A. I could have then had the opportunity to disprove their statements if I was able to do so.

Q. You could have disproved it by their own reports, couldn't you if Mr. Scott, had-- A. If they had reported to me, I could have shown it in their reports, of course.

Q. Yes, if it was in that report that they got it from Leo Frank? A. If they had given me that information I could have just handed it up to him, and said: "What did you report that to me for?"

Cross Examination.

These people reported to me frequently and continuously in writing. Mr. Pierce nor any other official of the agency never suggested to me that they needed more help on the case. I did not undertake Mr. Alston to direct the Pinkerton operations, nor the operations of any detective in the Frank case, I was undertaking to do the law work, and never undertook to do that, and they never made any suggestion that they needed more help to me, and they would not have made it to me, I take it for granted I did not employ them, and I did not pay them, and I was not the man that they were likely to come to. I never had the opinion that Mr. Scott was much my witness. I don't remember whether we had a formal conference with him prior to the trial for the purpose of ascertaining the line of his evidence. He had furnished me in writing with everything that he was supposed to know about the case, and I took it for granted I was getting everything he knew in writing. I saw no necessity for such a conference I won't say we did not talk about the case before the trial. I always understood he and Mr. Pierce were in charge of the investigation I didn't know which it was Pierce was supt., and Scott Asst. Supt.

As to what effect the matters which I have testified were material had on the final outcome of the trial. I cannot say, of course, what influenced the brain of any particular juror, I couldn't know that, but I do know taht it was exceedingly material to furnish some excuse for Frank to go from the front of the building to the back of the

building with that little girl, I do know, if when she asked him if the metal had come, Frank had answered "no" that would have furnished no excuse to go back, I do know that if he had answered "I don't know", that might have been some excuse for him to go back and investigate, and as a lawyer, I know that was material. I cannot say what effect it had on the trial, except I know what it ought to have had. Any honest juror ought to have considered that question as a material matter.

The reports that came to me were more or less voluminous. They were supposed to give me a complete and correct statement of the investigation to the Pinkertons. As to why, although the chief investigator of the Pinkertons was making these reports, I did not have a conference with him as to what his line of testimony at the trial would be, I think I have already stated, and I don't mind stating it again, that I never understood that it was necessary for a man who had been reporting to me in writing for several months, or a long time, and who was under instructions and obligations to give me everything he had, that I had to go to him and get an oral statement from him as to what he would testify to on the trial; I supposed that I was safe in assuming that he would testify from that writing. I did not feel that there was any necessity for me to talk to him. I had those reports before me at the time.

Mr. Scott never made any effort to get a conference with the attorneys for the defense before the trial. I did not know that Mr. Scott had any opinion about the case that had not been communicated to me, he was a very intelligent man, and everything he knew was supposed to have been put in writing in the reports, that he had made to me, and I supposed that those reports were true, if I had thought that Mr. Scott was going to testify anything different from what was in the writings that had been submitted to me, I would have wanted to talk to him.

I do not care to testify against the record. As to whether these people reported or did not report to me, the records will speak for themselves. As to whether or not I was specially concerned as to the methods that a detective might use, as to how he would go at a discovery of things connected with the case, or how he would get affidavits or any other information, I think it would be of the most material importance, if I should take a case, and an affidavit was to be introduced it would be of the highest importance for me to know whether that man gave it voluntarily or whether a policeman coerced him into making it. I think that would be of the greatest materiality, because then I could determine how valuable it was or how little value ought to be given to it, I think it was of the highest importance. I think the detective who was reporting to me should have given me that information fully. I don't think he ought to have told me all he did, every move he made, and all that, but what an affidavit was to be used as a basis for conviction, and that affidavit was gotten by saying again and again to the man who made it, that that is not the truth, and this is better, and then he changes it to meet the opinion of the detective, as to what is better, and he says "Does that do?" and they go on and say "Well, this will be better, this is better, and that was exactly the statement that was made on the trial by Mr. Scott that that was the way the affidavit was secured, I think I ought to have known that I don't think any lawyer would differ with me. I understood the object of Mr. Scott was to make that man confess and there were four separate and distinct affidavits turned over to me. I heard that after the fourth affidavit was gotten, they (the city authorities) denied him further access to Conley.

I never understood that Mr. Scott in getting those affidavits from Conley on May 24th, 28th and 29th, was trying to get him to confess that he was the principal in that murder. I had very little information as to how Scott got those affidavits. I learned all I know about it at the trial, where all these things were thrown suddenly at me.

Cross Examination.

I never talked to the Pinkertons about their purpose in trying to get these affidavits from Conley and did not know what their purpose was. I, of course, wanted them to interview Conley, I never undertook to dictate how the detectives should operate, I wasn't connected with the detective department, and I didn't pretend to have any skill in that line, and I had nothing to do, as I said awhile ago, with the detectives, except to receive their reports, nor with any detective at all, I had nothing to do with that part of the case except that I was to receive the information that I was to get from them in preparing the case for trial. Mr. Scott gave me almost daily reports, at least sometimes they were daily, I had very frequently reports and I had understood always that the plan of the detectives was to make reports in writing, and I looked for them in writing. It was impossible for me to tell what the purpose of Mr. Scott or any man might be, so far as that is concerned in doing any particular thing in getting those affidavits. I don't remember that the attorneys for the defense ever gave Mr. Scott instructions to go down and endeavor to have a final talk with the negro Conley. I had not questioned that, after Mr. Scott had gotten four or these affidavits in succession, I would have thought it wise for him to get about fifteen more, if he could have drawn that many, and without undertaking to direct Mr. Scott, which I would not have done, I might have said that a negro who would

give four, who could write four right along like that, could give four thousand and four hundred and forty four just as well.

As to my recalling asking Mr. Scott to go down there and try to get another affidavit, if I said anything to Mr. Scott about it, or if he asked me about it, I probably told him I thought it would be a wise thing. Mr. Scott, my recollection is, expressed the opinion about that time, that the negro had already delivered himself to the limit, and that he had told the whole truth, and if he had there would have been no necessity of bothering him any more.

I have no doubt that he probably reported to me that the negro had been removed where he could not get to him. I am sure I gave him instructions, but believing myself to be fairly sane, if I could see a negro trot off four affidavits in succession like that, and four different ones like they were, I would have been pretty well satisfied that he would have trotted off four thousand four hundred and four as easy.

I don't know what Mr. Scott was trying to do, he expressed no opinions to me after that final affidavit was obtained, as to whether he wanted any more or not. I know, if I had been a detective I would have gotten just as many as he would have turned out, but as I am not much of a detective, I don't know whether that would be wise or not.

Further Direct Examination.

I don't know anything about the methods of Mr. Scott in getting the affidavits except as he testified to at the trial.

Herbert Schiff, for the defendant, testified:

I am at present superintendent of the National Pencil Company. I was appointed to that position after April 26th, 1913. I recall the Pinkerton operatives, McWorth and Whitfield, coming down to the factory in the investigation of the crime, I remember the occasion when they came down there and inquired whether or not Conley could write, I think it was early in the month of May. I don't remember exactly what day, that Whitfield and McWorth came to the factory, and asked me if I knew Conley could write, I told them I did; my reason for thinking that was, Conley had written notes to the office on many occasions for loans of money, and had borrowed paper to carry in the basement and write. I then started at their request to try to find some specimens of Conley's writing, but was unable to find it. I don't know whether Leo Gottheimer was in the office at that time, or whether he came in during our conversation, and I think Mr. McWorth took him out into the larger office and suggested that we send him down to the Tower and see Mr. Frank, and he left, and I continued to look for specimens of Conley's hand writing. Later I remember that Conley had bought a watch, and the installments had been paid to a man who had visited the office once every week, and I looked into the safe, into a little box where we kept such papers, and there I found a card of a jewelry store on Mitchell street, and I gave this card to McWorth, and in the meantime Whitfield had left, had gone out, I don't know where, and he returned, and told McWorth of the card, and they left together then.

The report made to these operatives by the messenger who had gone over to the Tower was that Mr. Frank stated that Conley could write, and that there was a card in the safe that would show where he had signed papers for the receipt of this jewelry, and these jewelry people would be able to show the specimen of his signature.

At that time, neither I nor any of the officers or agents of this National Pencil Company knew that Conley was denying that he could write. That was the first I knew of it, the morning they asked me.

McWorth and Whitfield spoke to me about the conditions in their Atlanta office in regard to the investigations of the Phagan murder. They visited my office very frequently and on several occasions they told me of the dissention in the office, and of the things that they put up that never seemed to agree with Mr. Scott, and Whitfield told me on one occasion that Mr. Scott called him into the private office and told him that if Leo Frank wasn't convicted it would be the last of the Pinkerton agency in Atlanta. They were at the factory numerous times. They were making a number of investigations. They examined the place, the building, and took statements from the employees.

Cross Examination.

The National Pencil Company is operating over there. The place is marked up for rent. We are working about thirty five of forty people at one plant and the other plant is running full. That is here in Atlanta. We are not going to

move to Richmond or Chattanooga.

Whitfield told me that Scott took him into his private office, and told him that if Frank was not convicted it would be the end of the Pinkertons in Atlanta. As to whether I have been waiting until today to tell that, as to whether I testified at the Frank trial, yes, sir, I was not questioned about that at the trial.

Re-Direct Examination.

It was not a case of the attitude of the plaintiff toward me and the defendant. It was a case of so many things happening, that if I had reported everything that occurred, I would have been on the stand yet.

This question of the Pinkertons being paid has never come up to me before, nor the correctness of their bill. It was not presented to me nor have I ever been consulted with by any of the attorneys about it.

Re-Cross Examination.

There were so many reports rendered that I would have been busy running back over them yet. I saw no reason not to believe what Whitfield and McWorth told me, that if Frank was not convicted the detective agency would be out of business. As to whether I did not think it obligatory on me to carry that information to Mr. Rosser or anybody else, or divulge it at the trial, there were many other things I did not divulge. As to whether here at this late day I come down and say that Whitfield told me that unless Frank was convicted the Pinkerton's would be out of business here yes, that is a fact. If the bill had been presented to me, I would not have had authority to pay it. I would not have paid it.

Edward Crusselle, for the defendant, testified as follows:

I am a public reporter and general stenographer, I have been in that business fifteen years. I took the evidence at the coroner's inquest in the case of the State V. Leo M. Frank. The document that you presented me is the report of the testimony taken before the Coroner of Fulton County upon the inquest as to the death of Mary Phagan reported by myself as the reporter engaged by the coroner for that purpose. It was accurately taken.

Britt Craig, for the defendant, testified.

I am on the staff of the Atlanta Constitution, and will have been for five years next March. I write some special stuff sometimes. I wrote the article in the Constitution of July 13, 1913, which you show me. There are parts of it that were not obtained from any source at all. You will notice in the lead here where it is just a sort of dissertation on a hunch. I got it from conversations and gossip round about Police Headquarters. I can not say that Mr. Scott gave me any of the information in that article. The article was not from an interview with Mr. Scott.

John Black, for plaintiff in rebuttal testified:

I am a plain clothes policeman. I recollect the investigation of the Mary Phagan murder. Mr. Scott worked with me in this case. I was working for the City. Mr. Scott and I worked constantly together. I interviewed Conley when he was under arrest. To a certain extent access to Conley was denied to me and Mr. Scott. It was after Conley had made his first statement. After his first statement, I never personally interviewed Conley with Mr. Scott. That was the time he said he could write. Mr. Scott was present when he did the first writing.

As to how he happened to write, we got the information that he could write, and then we carried him up there and then he finally admitted he could write. We had him up several times and he made out like he could not write. Mr. Scott was present trying to get him to write. I think Chief Lanford was also present.

The object of these interviews with Conley was to find out who had written the notes found in the Pencil Factory. We were endeavoring to get a confession from Conley. Mr. Scott took part in that effort. Mr. Scott was pretty busy in those days investigating the case. We worked from seven or eight o'clock in the morning to as late as twelve o'clock at night sometimes.

Cross Examination.

I have been in the police business with the City department about nine years. I am forty five I have had experience around the City here as a police officer and have had a good deal of work to do.

As to Conley's movements, I know that he was at police headquarters for two or three weeks and then he was put in jail. They got an order from Judge Roan and brought him back to police headquarters. I was not present at the time that Conley was brought back to police headquarters and turned out on the sidewalk and then rearrested. I cannot say how long Conley was in jail.

As to my knowing why it was that I and Mr. Scott were taken off the Conley side of the case and Starnes and Campbell were put on in our place, Campbell and Starnes were put on the case immediately after Jim Conley was arrested; Mr. Scott came to police headquarters and he said that the Pinkerton Detective Agency had been employed by the pencil factory, and he wanted to work in conjunction with the police department, he stated it was their rule that anything they worked on, and of course that has always been the understanding, if they were working on anything, we were to know it, we were to know the men, and have the names of all the men that were on it, it is known that all over the country, and my experience is, and I have been around several places where they have agencies, that they are always on good terms with the police department. Chief Beavers and Chief Lanford detailed me to work with Scott.

Burns made a speech down at the Auditorium one night previous to this time, and stated that he was the only honest private detective in the world, and of course we want to do the right thing here, our crowd does, we are working for the City and for the public, getting our little salaries, we don't get anything from citizens only the tax money, it seemed we didn't I say we, Chief Beavers didn't know the Pinkertons were going to the fair with us or not, and I was detailed to work with Scott; the information that I got was to be reported to our department, Stearns and Campbell wasn't to report anything that they would get to the Pinkertons, and of course I was instructed from time to time about what was going on; Scott didn't know what Starnes and Campbell was doing, and I was never debarred from seeing Jim Conley; I didn't see Jim Conley any more after the first interview, I left here on Friday night after the interview with Jim Conley on Friday morning, if you remember, that was the first time he ever admitted he could write, you remember the instance where this old lady out here beyond the Federal Prison, her house burned down, and at that time we suspected her son, and I left to go to Chattanooga on Friday night in regard to that case, and I think I returned on the following Tuesday, or Tuesday night, and I brought those two boys back from Chattanooga that they suspected of killing this boy that killed his mother and suspected him of burning the house down, and I never had another interview with Jim Conley in the presence of Scott.

Afterwards, from time to time, I saw Conley at the station house, not in Scott's presence. I don't recall whether I talked to him after May 30th, or not. I could have talked to him but I wanted to be fair with Scott. He seemed to be working there with us and I didn't want to take advantage when Scott had been debarred from seeing Conley. I knew what was going on all the time through the police department from Chief Lanford, Starnes and Campbell. If Scott wanted to give me facts, it would have been foolish for me not to have taken them. I would not say that the police department took Scott into their confidence. I did, I had absolute confidence in him, but Chief Lanford put two other men to work on the case and they did not communicate with Scott. Well, I don't think they ever found out anything we didn't find out I'll say, I know they didn't. They did not produce anything in court that we didn't have already, Chief Lanford took two of his men and put them to work on the case under instructions not to communicate with Scott and Scott was well aware of what was going on. He was well aware that there were other men working. We talked with them from time to time and they talked with Scott, but they were under instructions that if they found anything that we didn't find, it was not to be communicated to Scott, but they never sprung anything new in Court. I saw the original murder notes. I would not swear that those papers shown me are the original notes. I had the originals in my hand at one time. It was on the Sunday morning following the crime which was supposed to have been committed on Saturday.

I saw them again after that several times, and compared Jim Conley's handwriting with them a lot of times, I say a lot of times; on one occasion I remember very distinctly, it was the Friday morning that he first admitted that he could write. The original notes were down there at police headquarters at that time. I don't know when they were put in the Solicitor's charge. I saw the notes at the time that we made Conley write, and we compared them with his handwriting. Mr. Scott was with us.

We had copies of the reports the Pinkertons made to the National Pencil Company. I am not sure we had every one

of them, but I think we did. My chief had a copy every day of the work. Occasionally I would look them over. In my way of thinking, I thought the work was reported very accurately. It was correct as to the work we had done as far as I was concerned, in the work I was doing with Scott, I should have said I did not notice any discrepancies between those reports and the testimony of Mr. Scott at the trial.

Re-Direct Examination.

I would not swear that the papers shown me are the original notes. I think they are.

The first time that Conley admitted that he could write, I don't think there was anybody there but Mr. Scott and Chief Lanford and myself.

As to whether I know whether Mr. Scott saw the original murder notes that morning or not, yes sir, I think he did. I am almost positive they were there and we compared the notes with Conley's handwriting. The notes had been printed in the newspapers. The newspapers were there at the time we were trying to get this writing. I won't be positive whether Mr. Scott actually saw the original murder notes or some newspaper copies.

I understand that Mr. Scott was cut off by Chief Lanford or Chief Beavers from seeing Conley after he had got four affidavits out of him. It was the practice of the prison there to say that a man should or should not see certain people as occasion arose. Mr. Scott succeeded in seeing Conley at least three times after the interview that we had with him together. I don't know how many other occasions that he may have seen him. I was in Chattanooga at the time.

Harry Scott, for plaintiff in rebuttal, testified:

As to the testimony of Mr. Pierce about the employment of men, etc., and Mr. Rosser's evidence, as far as Mr. Pierce's end of the investigation was concerned, he left the matter entirely in my hands, and it was up to me to detail the men, instruct the men, and he knew very little of the minute details of the case, so he is not in a position to qualify as an expert on anything regarding the Frank case, or really my work on the case. Now, as far as Col. Luther Rosser's statement is concerned. I had various conferences with him, for instance, to show my interest in the investigation I first went to him and pleaded with him to allow me to let Conley face Frank, and he said "I would rather you not do that;" well, I said "If you want me to run down this crime, you ought to let me do it." That was one of the first interviews I had with Luther Rosser to show my aim in the matter was to get at the truth and the truth only. Towards the close of the investigation, or I should say the week before the trial, Luther Rosser and Reuben Arnold both requested me to go down to Solicitor Dorsey, they knew at that time that I was subpoenaed by the state, and they told me to go down and see Solicitor Dorsey, and learn what evidence he wanted to obtain from me, and come back and report to them, and they would then discuss with me the evidence that they themselves wanted me to testify to. I made every effort of course I went down to see Solicitor Dorsey, and I made every effort to bring about that interview, and I called Mr Rosser up and asked him when he could see me, and he was too busy that day, he couldn't see me; then I communicated with Herbert Haas, and I said to him "You see Col. Rosser, and tell him that I know what Mr. Dorsey wants me to say "but he saw fit to disregard it. Now, I was simply arriving at the truth, but they would not give me their cooperation in helping me to do that.

As to the statement of Mr. Schiff about my conversation with Whitfield, that statement made by Mr. Schiff in reference to my making the statement that I was afraid of the Pinkerton's position in Atlanta, that we would be run out of town if I took any stand other than Frank, is absolutely ridiculous, and without any foundation in truth.

I heard Mr. Schiff's testimony at the trial. He did not give such evidence there. I don't know where Whitfield is. He went with the Burns agency, he was discharged by the Pinkertons. During the investigation, we discharged Whitfield for going out to Marietta one Sunday morning and making a stump speech, declaring that he was a Pinkerton man, working for Scott, and that the Pinkertons were going to get Conley and Conley only, there was nothing to Frank, and a reporter there for the Journal named Carter, told him he had better get the first car back to Atlanta, because the crowd was going to get after him, and he did so, and we made an immediate investigation in Marietta to determine if that was true, and discharged Whitfield.

McWorth is now the manager of the Burns agency at Montreal, Canada, or connected with that office. He was manager, but I understand he is traveling for them now.

As to Black's testimony about seeing the murder notes, at the station house, positively I did not see those notes. I have never seen them. Neither Starnes nor Campbell showed them to me.

Cross Examination.

I heard Mr. Schiff's testimony at the trial. I sat with the Solicitor there for quite a while after I was let out by the defense, they allowed me to sit there.

In addition to the foregoing, there was also an agreement of counsel that the time sheets of the Pinkerton National Detective Agency kept by Assistant Superintendent Harry Scott, and stated by him to be complete accurate and correct in every particular, and the original expense bills of operatives marked receipts by them which were put in evidence by the plaintiff, bore out and verified in every respect the account of the plaintiff attached to its petition, and showed the same to be accurate, complete and correct.

The plaintiff also put in evidence the reports rendered by the plaintiff to the defendant bearing on their work in the investigation of the murder of Mary Phagan. A tabulated statement of said reports follows:

In the first column is stated the number of the report, in the second column, the name of the operative making the report; in the third column, the date of the report, in the fourth column, the date when the report was sent to the defendant, and in the fifth column, the number of typewritten pages covered by the report.

Gentlemen of the Jury:

This is a suit brought by Pinkerton's National Detective Agency, originally in the papers alleged to be a corporation, but by way of amendment to the original petition now charged to be a partnership, against the National Pencil Company, charged to be and admitted to be a corporation.

The plaintiff's petition alleges that about the 28th day of April, 1913, this detective agency was employed by the National Pencil Company in the matter of procuring evidence to convict the murderer of Mary Phagan, who was alleged to have been slain on the premises of the National Pencil Company in the City of Atlanta, on or about the 26th of April, 1913.

The plaintiff charges that, in pursuance of such employment, they rendered services as a detective agency for the National Pencil Company from the 28th day of April 1913 to the 18th day of August of that year. They charge in their petition that the National Pencil Company agreed to pay eight dollars a day for each person used by the agency in said services, and in addition thereto agreed to pay the expenses of the persons employed by the agency in those services, while so employed, and also to pay proper incidental expenses incurred by this detective agency.

The plaintiff charges that, on account of the services rendered in pursuance of the above mentioned contract, the National Pencil Company is indebted to the plaintiff in the sum of \$1286.09 besides interest from the 1st day of January, 1914, at the rate of seven percent per annum.

The plaintiff charges that it has attached to its petition an itemized statement of the services rendered and the expenses charged for. And attached to that petition is this alleged itemized statement, showing the amount of work sued for and expenses claimed.

This petition with the exhibit thereto constitutes the plaintiff's statement of its case, and you will have it out with you, and can read it for yourselves, and see with more particularity than the Court has given you, exactly what the plaintiff claims, and this itemized statement, being a part of the petition, will be out with you, and you can examine that--will examine that.

The defendant in the case, Gentlemen, has filed an answer, in which it admits the allegation of paragraph 1, and admits the allegation of paragraph 3, which was an admission that it employed the plaintiff; it denies paragraph 3, which is an allegation that the petitioner rendered services as a detective agency from the 28th of April through the 18th of August, 1913. It admits the allegations of paragraph 4 of plaintiff's allegations, to-wit, paragraph 4 was the allegation that it agreed to pay eight dollars a day for each person used by the petitioner, and to pay the expenses of the persons employed, but denies the addition to that paragraph which says they were to pay proper incidental expenses incurred by the petitioner in this behalf.

The defendant denies the allegations of paragraph 4, following the paragraph numbered 4 and marked 4.

Defendant denies the allegations of paragraph 5, and denies that it is indebted to the petitioner in the amount stated, or in any other sum, and denies that petitioner is entitled to any judgment against the defendant.

That is the answer, Gentlemen, and you will have that out with you, and you can read it for yourselves, and see with more particularity than the Court has given you, exactly what the answer admits, and what it denies. The substance of this answer Gentlemen of the Jury, is that the defendant admits that it made a contract with this plaintiff, and it admits the terms of this contract, except as stated, about those incidental expenses, but the defendant denies that the plaintiff rendered the services that they contracted to render, and that the plaintiff's agents fulfilled the contract that they made, and that therefore they are not entitled to any verdict or judgment. In fact, this answer denies the right of the plaintiff to any verdict in its favor in this case.

Gentlemen of the Jury, the obligation of a juror is to render a true verdict according to the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge without favor or affection to either party, and according to the law as given you in charge by the Court. Now, it is presumed that a jury will do its duty, and I call your attention to this obligation of yours merely to emphasize to you the fact that it is just as necessary for the jury to listen to the charge of the Court, as it is for the jury to listen to the witnesses. You want to listen to the charge of the Court, to understand as far as you are able the law applicable to the case, and you want to listen to the

witnesses in order to discover the truth. Verdict means truth.

Now, I want to say to you that the finding of the facts of the case, the truth of the case, from the evidence, is peculiarly the duty of the jury. You are responsible for finding the truth from the facts in the case, according to the law as given you in charge. In any rulings the judge or the Court has made on the admissibility of testimony, or on any other proposition that has arisen in the course of the case, the Judge has expressed no opinion on the question of facts, and the Judge does not intend to express any opinion or to intimate any opinion about what has or what has not been proven. The responsibility of the court is to impartially, uprightly and intelligently express to you the law of the case, according to his best skill and ability, and the entire responsibility of finding the truth from the evidence in the case is on you.

Upon the filing of this answer, Gentlemen, the law casts the burden of proof on the plaintiff, to establish to your reasonable satisfaction by a preponderance of the evidence its right to recover. As I illustrate in a practical way to the jury, the law holds the scales perfectly balanced between the plaintiff and the defendant at the beginning of the trial, you have seen the old time scales that are balanced, on either side, there is a receptacle, and the most weight will carry down the scales on one side or the other, according to where this superior weight is placed. Now, the preponderance of the evidence means the greater weight of the evidence, it means that superior weight of the evidence which, though not necessarily strong enough to exude a reasonable doubt, must be strong enough to incline an impartial mind to one side of the issue, rather than the other. For the plaintiff's to recover the scales must go down on their side with the superior weight of the evidence, the preponderance of it. If the scales stand perfectly balanced at the end of the trial, there could be no recovery, because there would be no preponderance of the evidence. If the scales go down on the side of the defendant, the plaintiff could not recover, because the preponderance of the evidence would then be with the defendant. In order for the plaintiff to recover, as I have stated, they must go down on its side of their side, by a preponderance of the evidence.

Now, in a civil case, reasonable and moral certainty is all that is required in determining an issue; in other words, in a civil case, a preponderance of the evidence would control; the law does not require mathematical certainty.

This question of preponderance or evidence means that you must weigh the evidence, and the law prescribes certain rules for you to go by in weighing evidence. Documentary evidence has been introduced in this case, and you will consider that, and give it just such weight as you think it entitled to receive. When you come to consider the oral evidence in this case, you have the right to look to the manner and deportment of the witnesses, as they have been examined on the stand in your presence, you have the right to consider whether a witness is a party or not a party to the case, whether he is interested or not interested in this case, whether he is related or not related to the parties in the case, and this relationship would mean relationship by blood or relationship in business. The law permits a jury to go to the extent of considering the opportunities of witnesses for knowing the truth of the facts to which they have testified, and even to allow you to judge of the probability or improbability of the truth of the evidence given by witnesses. You are permitted to judge of the personal credibility of witnesses, in so far as it may legitimately appear from the trial, and you may consider the number of witnesses, though the law says that the preponderance of the evidence is not necessarily with the greater number of witnesses; that is a matter for the jury.

Where there is conflicting evidence in a case, if there is conflicting evidence, the law makes it the duty of the jury to so reconcile it, if it can be reconciled, as to make all the witnesses speak the truth, and perjury be imputed to none of them. Now, in making up your verdict, in finding where the preponderance of the evidence is, you must look to all the evidence in the case, and determine the issues by the preponderance of it on the issues that you are considering; consider the oral testimony, consider the documentary evidence, take all the evidence and weigh it carefully and well, and then find a verdict according to the preponderance of the evidence on the issues involved.

Under this contract which is set up in this case, and not denied, except as to the qualification mentioned, in order to recover, the plaintiff must establish by a preponderance of the evidence to your reasonable satisfaction that it performed the services, or that they, it is a partnership, that they performed the services they agreed to render.

If you believe under the evidence in the case, that the plaintiffs rendered the services for which they were employed, to the extent of the amounts charged in the petition, you would be authorized to find, and it would be your duty to find for the plaintiff, the principal, and seven percent per annum interest thereon, from the time that amount, whatever it was, was due to the plaintiffs. If you find that the plaintiffs rendered a part of this service, or at least that they rendered work in so many days for so many men, at the price named, and that was less than the

amount charged for, you might rendered a verdict for the amount which your consciences approved as being correct, and the interest on that. If you believe that some expense was incurred for which the plaintiffs were entitled to be reimbursed under the contract, and that there was not such expenses as the plaintiff claimed, you would be authorized to add that to any other sum that you might find for the time of the employment.

If you find that the plaintiffs did not render any services under the contract, why, of course, you would find for the defendant.

If you should find that this contract existed, and to the extent that it existed, that the plaintiffs entered into this work, then the plaintiffs were bound to exercise reasonable diligence in the performance of the work.

Some reference has been made, almost unavoidably in the trial of this case, to the criminal trial of Leo Frank. The Court would admonish you that that trial is not an issue here; the thing you are to determine is this contract about the employment of this agency, you are not concerned with the results of the investigation, what you are concerned about is, was the Agency employed and did it perform its contract of employment, and if not entirely to what extent, if any?

If you find for the plaintiffs in this case, the form of your verdict will be: "We, the Jury, find for the plaintiff, so many dollars, and cents, if any, for principal, and so many dollars for interest, if you find interest."

If you find for the defendant, the form of your verdict will be;

"We, the Jury, find for the defendant".

Whatever verdict you find ought to be written on the original petition, and it ought to be dated and signed by your foreman.

Retire, Gentlemen, and make up your verdict.

The above and foregoing charge is hereby approved as correct, and is ordered filed as a part of the record in the above stated case.

This the 27th day of December, 1915.

W. D. Ellis,
Judge Presiding.

Filed in office this the 27th day of Dec., 1915.
T. C. Miller, D. Clk.

Pinkerton National Detective Agency vs. National Pencil Co.

#31231 Superior Court of Fulton County.

Now comes the plaintiff and having first obtained leave of the Court amends its petition by striking from the second line thereof the word Corporation and adding the word Partnership.

Robert C. & Philip H. Alston,
Attys. for Plaintiff.

Allowed by consent and ordered filed. This Nov. 17, 1915.

W. D. Ellis,
Judge S.C.A.C.

Filed in office this 22nd day of November, 1915.

J. C. Lewis,
Deputy Clerk.

Min. 74, page 596.

JUDGMENT.

The jury having rendered a verdict for the plaintiff it is therefore ordered and adjudged that Pinkerton's National Detective Agency do have and recover of the defendant, National Pencil Co., the principal sum of \$1286.09 and \$170.52 interest to date and future interest at the rate of 7% per annum and _____ dollars cost of court. This 11/22/15.

Robt. C. & Philip H. Alston,
Attys for Plff.

Due and legal service of the within motion for new trial, rule nisi and order of court acknowledged.

This 22 day of November, 1915.

Robert C. & Philip H. Alston,
Attorneys for Plaintiff.

Filed in office this 23rd day of November, 1915.

J. C. Lewis,
Deputy Clerk.

Min. 74, page 557

Read and considered. Let the foregoing motion for a new trial be filed to the right of amendment. It is further ordered that the Pinkerton National Detective Agency, the plaintiff, show cause before me at 9 o'clock A.M. on the 18th day of December, 1915, or as soon thereafter as a hearing can be had, why the foregoing motion should not be granted and a new trial ordered. In the meantime, a super sedeas is granted to the defendant in so far as to stay any levy under the verdict and judgment until this motion is disposed of.

It is further ordered that movant shall have until said motion for a new trial is heard and finally disposed of, whenever it may be, within which to amend its motion for a new trial, and prepare and present a brief of the evidence for approval and filing.

It is further ordered that the plaintiff or its attorneys of record be served with a copy of this motion and order 10 days before the date set for a hearing.

In open court this 22nd day of November, 1915.

W.D. Ellis,
Judge Superior Court, Atlanta Circuit.

Pinkerton National Detective Agency v. National Pencil Co.

No. 31231.

Fulton Superior Court,

Motion for New Trial.

Verdict in favor of the plaintiff and against the defendant at the November Term, 1915, Superior Court of Fulton County, on November 22, 1915.

The defendant, the National Pencil Company, being dissatisfied with the verdict and judgment in said case, comes during said term of court, and before adjournment thereof, within thirty days from said trial, and moves the Court for a new trial upon the following grounds, to-wit:

1- Because the verdict is contrary to the evidence and without evidence to support it.

2- Because the verdict is strongly against the weight of the evidence.

3- Because the verdict is contrary to law and the principles of justice and equity.

4- Wherefore the National Pencil Company, the defendant, prays that these its grounds for a new trial be inquired into by the Court, and that a new trial be granted.

H. A. Alexander,

Attorney for Movant.

VERDICT.

We the jury find for the plaintiff \$1,286.09 with interest at 7 per cent
170.52 to date

Nov. 22, 1915.

J. L. Peacock, Foreman.

11-22 1915

Pinkerton's National Detective Agency v. National Pencil Company.

No.

In the Superior Court of Fulton County, Georgia.

This the petition of Pinkerton's National Detective Agency, a corporation, respectfully represents unto this Honorable Court as follows:

1

The National Pencil Company is a corporation organized under the laws of the State of Georgia, having its principal place of business in the County of Fulton, State of Georgia.

2

On or about the 28th day of April, 1913, petitioner was employed by the National Pencil Company to render services as a detective agency in the matter of procuring evidence to convict the murderer of Mary Phagan, who was alleged to have been slain on the premises of the National Pencil Company in the City of Atlanta, Fulton County, Georgia, on or about the 26th day of April, 1913.

3

In pursuance of said employment petitioner rendered services as a detective agency for the said National Pencil Company from the said 28th day of April, through the 18th day of August, 1913.

4

The said National Pencil Company agreed to pay petitioner for the aforementioned services the sum of eight (\$8.00) dollars per day, for each person used by petitioner in said services, and in addition thereto agreed to pay the expenses of the persons employed by petitioner in the aforementioned service, while so employed, and also to pay proper incidental expenses incurred by petitioner in this behalf.

5

On account of the services rendered in pursuance of the above mentioned contract the National Pencil Company is indebted to your petitioner in the sum of Twelve hundred and eighty-six and 9/100 dollars (\$1286.09), besides interest from the 1st day of January, 1914, at the rate of seven (7%) per cent. per annum.

6

A statement of items making up the aforementioned account is hereto attached and marked "Exhibit A", and made a part of this petition, reference to which is prayed as often as necessary.

Wherefore petitioner prays that process issue requiring the defendant to be and appear at the next term of this court to answer petitioner's complaint; that it have judgment against the defendant in accordance with the allegations of this petition.

Robert C. & Philip H. Alston,
Attys for Petitioner.

The following pages contain a correct copy of the report of the said assistant superintendent Harry Scott, dated April 28, 1913, and sent to the National Pencil Company on May 2, 1913;

Asst. Supt. H. S. Reports:

Atlanta, Ga. Monday, April 28th, 1913.

Late this afternoon, I held a conference with Mr. Leo M. Frank, Superintendent, and Mr. Darley his assistant and the officers of the National Pencil Co., #37-39 S. Forsyth st., Atlanta, Ga. Mr. Frank stated that on Saturday, April 26th, 1913 the factory of the National Pencil Co., was closed down and that only two of the employees reported for work during the entire day and these men were Harry Dunham and J. A. White, who are employed on the fourth floor of the building. Mr. Frank stated that he was in the office up until about 1:00 P.M., that at 12:10 P.M. a girl employee of the factory named Mary Phagan called at the office of Mr. Frank for her wages, and she received \$1.20 either in a \$1.00 bill and two dimes or two half dollars and two dimes. Mr. Frank personally handed this girl her wages, after which the Phagan girl left Mr. Frank's office and walked towards the door of the office adjoining Mr. Frank's office, which door leads into the factory. Miss Phagan turned to Mr. Frank and asked him if the metal had arrived yet, to which Mr. Frank replied "no" and the girl then went on her way out of the factory, as far as Mr. Frank knows, as he did not see anything of her during the afternoon.

About 12:00 o'clock noon Mrs. J. A. White entered the factory and went to the top floor, where her husband, J. A. White was working, and at 12:25 P.M., Mr. Frank went to the fourth floor and in the presence of Mrs. White told Denham and White that he was going to lock the doors and Mrs. White then left the factory, but White and Denham informed Mr. Frank that they had not finished their work, and Mr. Frank then told them to remain until they had done so.

Mr. Frank left the factory about 1:00 P.M. Saturday, while White and Dunham were still working on the top floor. Mr. Frank then went to his home to dinner, returning to the factory at about 3:00 P.M. and he saw that White and Denham were about through with their work, and both of these men left the factory at about 3:09 P.M. As far as Frank knows, he was the only person left in the factory after that hour.

On Friday, Mr. Frank had instructed his negro night watchman, Newt Lee, to report at the factory on Saturday at 4:00 P.M. on account of it being a holiday and none of the employees working. At 4:00 P.M., the negro Newt Lee arrived at the factory reporting for work to Mr. Frank, who told him that it was not necessary for him to go to work at that time, but that he could go out on the street and have a good time until about 6:00 P.M., and that in the meantime Mr. Frank would stay in the factory. The negro left the factory returning again at 6:00 P.M. and at 6:05 P.M., Mr. Frank left the factory for his home, and on his way out of the factory by the Forsyth St. door, he saw the negro night watchman Newt Lee talking to a bookkeeper named John M. Gantt, who had recently been discharged by Mr. Frank. It developed that Gantt was asking the negro watchman Newt Lee to allow him to go to the second floor of the factory and secure a pair of shoes that he had left there, as he wanted to go to his home at Marietta, Ga., and do some plowing, and the negro Newt Lee then asked Mr. Frank if he would allow Gantt to enter the building. Mr. Frank knowing that he had discharged Gantt for thievery, hesitated about allowing Gantt to enter the building, but finally told the negro watchman to let Gantt in, but to stay with him until he secured his shoes, and then see that Gantt left the building without taking anything that did not belong to him.

About 7:30 P.M., Mr. Frank states that he called up the factory, as he knew that Newt Lee, the night watchman, was about to punch his clock at that hour and could hear the telephone bell ringing inside the office, and Newt Lee answered the telephone. Mr. Frank states that he inquired of Lee if Gantt had left the building, to which Lee replied in the affirmative. Mr. Frank then asked Lee if everything else was all right, to which Lee responded "Yes". Mr. Frank states that this was the extent of his telephone conversation with Lee.

Mr. Frank then stated that about 6:00 A.M., Sunday, April 27th, several city detectives called at his home in an automobile and requested that he accompany them to police headquarters, and Mr. Frank accompanied the officers to police barracks, and they informed him that they had found the body of Mary Phagan in the basement of the National Pencil Company's plant. Mr. Frank states that this was the first that he knew of the murder of the Phagan girl. The National Pencil Company's factory is a four story building with a basement. The police had already been engaged on this matter and they had moved the body from the place where it was found, and it was almost impossible for me to state the exact position of the body, condition of same, how it was laying, etc., or just where the wounds on the body were. Accompanied by Mr. Frank and Mr. Darley I went to the basement of the building,

which can only be entered from the factory through a scuttle hole and a ladder suspended from this hole to the ground. However, there is a large sliding door in the rear of the building which opens into the basement. We went through the scuttle hole and down the ladder into the basement, and walked past the elevator shaft, which is about 15 feet from the ladder, after which we passed a large bin about 75 feet long on the left, and about the middle of this bin on the right hand side there is a trash pile, on which old papers pencils and other trash is piled, until a sufficient quantity has been accumulated for burning, and right above this trash pile was a boiler about 15 feet long, in which the trash is burned and above this boiler is a water closet, which is about 12 feet from the end of the large bin, on the right hand side, when walking toward the rear door. It is claimed by the negro watchman, Newt Lee, that the body when found was laying with the arms folded and face down, with the head towards the ladder and feet towards the rear door, there was a wound in the back of the murdered girl's head over the left ear, and the blood flowing from this wound was a little warm at the time the body was discovered. The top of the murdered girl's head was about 6 in. from the end of the bin.

The police, who arrived on the scene after the negro night watchman Newt Lee reported finding the body, claim that they found traces of where the girl's body had been dragged from the elevator shaft to the point where her body was found, and some of the officers claim to have seen signs of someone being dragged along the ground. The murdered girl's face was all covered with back dirt, her tongue was full of sawdust and dirt, and her hair, which was hanging down her back, was also full of sawdust. The girl was laying with her dress pulled above her knees. She wore a light lavender colored dress, white petticoats, white underwear and holes were in her stockings at the knees, and her knees were scratched and the slipper on her left foot was missing, as was also her hat, and both of these articles were found in the trash pile. The girl's umbrella was found at the bottom of the elevator shaft. The girl had on a dark blue hat, which showed that the same had been struck with some blunt instrument on the back of the hat. The police claim that they found strands of the girl's hair on a lathe on the second floor, about 10 ft. from the lathe there were some blood stains, which were chipped up by the Police and no other blood stains could be found on the lathes, trucks, elevator or in the basement, except at the point where the girl's body was found. Inside of the large bin in the basement, there are several boxes covered over with corded bags, but there was no evidence of anyone having slept on these bags, although the Police claim that they found foot prints around these bags. The evidence of foot prints, dragging or any scuffle or dragging to where the body was found, was covered by curiosity seekers and the police, who trampled the ground and covered all signs of such evidence. It was my understanding that there were some signs of the girl's body bearing finger prints or their impression.

The staple and padlock on the rear sliding door leading into the basement were pulled out and were laying on a bench----inside of the door, which would make it appear as if the murdered had left the factory by this door. There were no blood stains around the entrance to the door and no other evidence showing that the door had been forced from the outside and the staple was very thin and wiry and could easily have been pulled out from the inside.

No money was found on the girl's body at the time same was found. The County Physician who examined the body stated that the girl has been criminally assaulted and that there were some blood stains on her underwear and also on her shirt.

The factory employs about 170 male and female hands.

Tonight I went to Bloomfield's undertaking establishment, and viewed the body of Mary Phagan, and noticed that there were three large bruises on her forehead and the right ear was badly bruised and there were finger nail impressions under the ear and there were also some finger nail impressions on her face. There was a deep gash in her neck and my understanding was that when the body was found, there was a piece of twine tied very tightly around her neck and the rim of her underskirt was also tied tightly around her neck. I was unable to make a thorough examination of the body as same was prepared for burial.

As there was nothing else that could be accomplished tonight. I discontinued at 11:30 P.M.

Reported
Atlanta 5/2/13.

S.

The following pages contain a correct copy of the report of W. D. McWorth dated May 16, 1913, and sent to the

National Pencil Company on May 21, 1913.

W. D. McW. reports.

Atlanta, Ga. Friday May 16th, 1913.

At 7:00 A.M. on my way to Police Headquarters I met City Detective John Black, and questioned him in a general way regarding James Conley and Gordon (Snow) Bailey, Detective Black stated that both negroes were still confined at Police Headquarters, that Bailey had made a written statement, but that Conley stated that he could neither read nor write, but had stated that on Saturday, April 26th, 1913, he had been on Peters St. from 9:00 A.M. until 6:00 P.M., at about which hour, having no more money for beer, he had gone home.

At 8:30 A.M. in company with L. P. W. I went to #56 Bonnie Brae Ave., the residence of Mrs. White, finding that she had moved across the street to #59 Bonnie Brae Ave., Mrs. J. A. White, stated that on Saturday, April 26th, she had gone to the factory at about 12:30 P.M. to see her husband, who is employed as a machinist at the factory and was engaged in making repairs to the machinery on the top floor. Mrs. White left the factory at about 1:00 P.M., and as she went out, she noticed a negro sitting on a box at the left of the stairs on the ground floor. To the best of her recollection he was a black negro and dressed in dark clothing and hat, the particular style of which she did not note. We informed Mrs. White that we would send for her to see and possibly identify the negro she had seen on the box, and she stated that she was not positive that she could identify the negro, although she might be able to do so if he was sitting in the same position as she remembered him on Saturday, April 26th, 1913.

We then returned to Police Headquarters and there again interviewed Detective Black, who read us a memorandum of the statement of John Conley, who had stated to Black that he could not read or write and that therefore he could not make a written statement. The statement Conley did make to the Police was that on Saturday, April 26th, 1913, he had left his home at 9:00 A.M. and going to Peters St., had remained there until 6:00 P.M. and his money then giving out, he had gone home.

On leaving Police headquarters we went to the pencil factory, where I questioned Messrs, Holloway, Schiff, and Darley, as to Conley's ability to write. Mr. Holloway stated that Conley could read and write for he had often seen the negro with pencil and pad taking stock in the various bins. Both Messrs Schiff and Darley stated that to the best of their knowledge and belief Conley was able to read and write, Mr. Wade Campbell also stated that he had seen Conley writing. From Mr. Schiff I learned that Mr. Frank was paying one dollar per week from the salary due Conley to the jewelry firm of Patrick and Thompson, Alabama and Broad Sts.

We left the factory, and went to Patrick and Thompson's store, where I was given the contract that Conley had signed in purchasing a watch, paying for same on the installment plan. Mr. Boozer, collector for Patrick and Thompson, witnesses Conley's signature to the contract and stated that the negro could write. Mr. Boozer further stated that he had heard the collectors for Jones and Phillips, #297 Marietta St., and Saul and Abelson on Broad St. (both jewelry firms) state that Conley had bought watches from them also on the installment plan. Mr. Boozer further stated that on Saturday, April 26th, 1913, he had gone to the National Pencil Co. factory a little after 3:00 P.M. and had thought of going in to collect the dollar due from Conley, but as it was late and a holiday, he decided that no one would be in and he therefore continued on the Peters St., where between the hours of 3:30 P.M., and 6:00 he, Boozer, saw the negro Conley several times loitering around Peters St. Mr. Boozer is positive that he saw Conley, for he asked the negro the whereabouts of other negroes owing money on jewelry.

After obtaining the contract signed by Conley, we went to Saul & Abelson and Jones and Phillips, getting a contract signed by Conley.

We then proceeded to the Coleman home, #146 Lindsay St., and interviewed Mr. and Mrs. Coleman relative to a mesh bag, which was described by Mrs. Coleman, as being about five inches square with a bead fringe on the bottom. On the bag and up near the clasp on one of the flat sides, several links are missing and the chain handle has been broken and repaired. Mrs. Coleman could not recall that his daughter had any gold pins or other jewelry. In talking with Mr. Coleman he stated that the cord tied around the Phagan girl's neck had cut deep into the skin and flesh and that it was partly over and under the hem of the underskirt tied around her throat.

The cut and bruise which had flowed blood was located over and to the rear of the left ear. Mary Phagan had never

mentioned any of the negro employees at the factory being familiar towards her or taking any liberties. Mrs. Coleman stated that it was the habit of her daughter to bring home her pay envelope intact except on occasions when she had to open it for the purpose of getting car fare or to make purchases for the home.

On leaving the Coleman home, we returned to town and to the Agency where comparison was made of Conley's signature on the three contracts and photographic reproductions in the newspapers of the notes reported to have been found beside the body of Mary Phagan. The handwriting appears to be identical, all characteristics being similar, particularly the "an" in Conley, which Conley writes "an" and the "on" in "long" of the sentence "long tall black" of the note found, this also being spelled "an" and not "on".

We then proceeded to the residence of Dr. Palmer (col) #283 W. Mitchell St., who stated that James Conley had been employed by him about four years ago for a period of one year, driving the doctor's buggy and taking care of the doctor's horse. The doctor found Conley to be honest but lazy and thriftless. The doctor has known the Conley family for about ten years, and to the best of his belief Conley can both read and write.

We then went to #92 Tatnall St., the residence of Conley's aunt, who stated that Conley did not live there, but had told her one day, about three months ago when she had met him in front of a motion picture theatre on Peters St., that he was living on Electric Ave. The name of the woman he lived with was Lorena. Conley's mother lived out on Humphries St., a block below the Baptist Church. She worked at the Capital City Laundry. Conley's aunt stated that she had not seen him for four or five weeks and then on Peters St., where she often saw him late in the afternoon or early evening. She further stated that Conley could read and write, he having attended the Mitchell St. school for two or three years.

We then went to #172 Rhodes St., and there interviewed Lorena Conley, (wife or sleeping partner of James Conley). She stated that she had lived with Conley for about three years and at first said they were married, but afterwards admitted they were not. Her former husband, by whom she had three children, died six years ago, his name being Jones.

She stated that on Friday evening, April 25th, 1913, Conley came home from work at about 7:30 P.M. She smelled beer on him, but he was not intoxicated. Conley left the house on Saturday at 8:00 A.M. saying that he had business on Peters Street returning not later than 2:00 P.M. She informed Conley that her rent was due and Conley gave her \$3.00 (two paper dollars and two half dollars) for the rent, and then gave her a dollar and a quarter and a dollar and a half with which to buy groceries. She bought the groceries going alone. Shortly after Conley came home, she stepped down the street to borrow some snuff, and returning to the room, found it apparently unoccupied. She thinking that Conley had gone to town went to the washstand for some vaseline, and as she stooped to get it, Conley arose from behind the washstand with hat and coat on, frightening her badly, Conley stated that he had done this merely to frighten his wife. Conley did not leave home until Monday, April 28th, 1913, about 5:30 A.M. remaining at the house all day Sunday.

The blue shirt, for the washing of which at the factory Conley was arrested, had been worn all week previous to the murder by Conley without having been washed. Conley had one other shirt, a white one. Mrs. Conley is absolutely positive that Conley arrived home not later than 2:00 P.M., on Saturday, April 26th, 1913, and did not leave home again until Monday morning, April 28th, 1913.

We discontinued at 10:00 P.M.

Reported
Atlanta, 5/21/13

The following pages contain a correct copy of the report of assistant superintendent Harry Scott dated May 18, 1913, and sent to the National Pencil Company on May 23, 1913;

Asst. Supt. H. S. reports.
Atlanta, Ga.
Sunday, May 18th, 1913.

This morning I went to Police Headquarters with Supt. H. B. P. and Detective John Black, and arranged to take a statement from James Conley, the negro sweeper formerly employed at the factory of the National Pencil Co., who has been under arrest for the past two weeks, he being arrested on suspicion when he was seen washing one of his shirts in the pencil factory, and it was not known why he attempted to wash the shirt.

I took the enclosed brief statement from Conley regarding his movements on Saturday, April 26th, 1913.

James Conley had previously told Detective Black that he could not read or write. However, he wrote several words and sentences at my dictation and I finally had him write the words "But that long tall black negro did by hisself". These were the concluding words of one of the notes found beside the body of Mary Phagan in the basement of the pencil factory. Conley's handwriting is a great many respects resembled the writing on the note, the characteristics being alike.

I then took up with the question with Conley as to why he had hidden behind the packing box on the second floor of the factory when he saw the detectives entering the factory on Monday, April 28th, 1913, but he denies this emphatically. He also denied making ungentlemanly remarks to the girls Helen Ferguson and Lilla Mae Pettis.

I then had Mrs. J. A. White brought to Police Headquarters and stood Conley up with 12 other negro prisoners, and requested Mrs. White to pick out the negro she saw sitting on the packing box at the base of the stairway on the ground floor of the pencil factory on Saturday, April 26th, 1913, when she left the factory at about 1:00 P.M. Mrs. White after scrutinizing the negroes closely, picked out a negro wearing a green derby hat, and being smooth shaven, as resembling the man she saw, she was asked to again scrutinize the line of negroes, after which she picked out James Conley as looking like the man she saw.

I then dismissed all of the negro prisoners with the exception of the one wearing the green derby hat and James Conley, and stood these two men up together and asked Mrs. White to pick out the negro she saw at the factory and she picked out James Conley. However, she was not at all positive in her identification, and she has for the past week or two stated repeatedly that she would not know the negro again if she saw him.

James Conley's negro woman companion, who admitted that her name was Lorena Jones, was brought to Police Headquarters and questioned by Supt. H. B. P. and Chief of Detectives Lanford.

Conley denied emphatically that he had any connection whatever with the murder of Mary Phagan, and stated positively that he was not near the pencil factory on Saturday, April 26th, 1913. We were unsuccessful in having Conley make any damaging admissions in this case.

We remained with Conley until 7:00 P.M., at which time I discontinued.

Reported
Atlanta 5/23/13.
S

The following pages contain a correct copy of the report of assistant superintendent Harry Scott dated May 23, 1913, and sent to the National Pencil Company on May 26, 1913.

Asst. Supt. H. S. reports:

Atlanta, Ga. Thursday, May 22, 1913.

This morning I had a long conference with Chief of Detectives Lanford, relative to the case in hand and reviewing what investigation has been made by the Agency and City Police in connection with the case. City Detective Black and myself were then requested to report at Solicitor General Dorsey's office for a conference, which we did, and remained in conference with Solicitor Gen'l. Dorsey until 2:00 P.M. Solicitor G. Dorsey reviewed the case thoroughly and made arrangements to present same to the Grand Jury, when that body convenes tomorrow morning.

I then discontinued.

Reported

Atlanta 5/26/13.

The following pages contain a correct copy of the report of assistant superintendent Harry Scott, dated May 24, 1913, and sent to the National Pencil Company on May 26, 1913:

Asst. Supt. H. S. reports:
Atlanta, Ga. Saturday, May 24th, 1913.

This morning the negro James Conley sent for City Detective John Black, as he stated that he was going to tell him the truth. I accompanied Detective Black to James Connally's cell at Police Headquarters, when Connally voluntarily stated that he had written notes for Mr. Frank on Friday, April 25th, 1913 and that as he recalled it Mr. Frank made him address the notes-

"Dear mother-That long tall black negro did this by himself."

It will be noted from previous reports that James Connally's handwriting bears a very strong resemblance to the handwriting on the notes found beside the body of Mary Phagan in the basement of the National Pencil Company's factory, and today we had Connally write again what he claimed Mr. Frank told him to write on Friday, April 25th, and he wrote almost an exact facsimile of the hand writing that is on the notes found beside the slain girl, and today he made no effort whatever to disguise his handwriting.

Detective Black and myself then took Connally up to the office of Chief of Detectives Lanford and an affidavit copy of which is herewith enclosed was taken from Connally.

I then went to the court house, as I had been subpoenaed as a witness to appear before the Grand Jury, and at 12 o'clock noon I went before the Grand Jury as a witness and gave testimony in behalf of the State against Leo M. Frank. The grand jury adjourned at 1:15 P.M. and returned a true bill of indictment against Leo M. Frank, charging him with the murder of Mary Phagan. Several other witnesses were heard by the Grand Jury during its session today.

James Connally was then taken before Solicitor General Hugh Dorsey to whom he repeated the affidavit he made to Detective Black and myself this morning, and all efforts to shake his story proved to be unsuccessful, and Connally states that he will stick to this story until the end, as it is the absolute truth.

Detective Black and myself then took Connally to the jail, as it was our intention to place Leo M. Frank and Connally together and have Connally repeat his statement in Mr. Frank's presence. However, Mr. Frank refused to grant us an interview and stated that we would have to see his Attorney, Luther Z. Rosser, before gaining an entrance to his cell with the negro Connally.

Shortly after noon today, Detective Black and myself went to the National Pencil Company and interviewed Messrs. Darley and Schiff, the only two men who would have likely been inside of Mr. Frank's office about 1:00 P.M. Friday, April 25th, when Connally alleges to have been in there with Mr. Frank, Mr. Darley stated that he was at lunch at that hour, and Mr. Schiff is not at all positive as to his movements at that particular time and cannot say positively whether or not he was in or about the office at 1:00 P.M. on April 25th.

After returning to Police Barracks with Connally, an effort was again made to shake his statement, but he stuck to it that what he told us this morning as being the truth, was positively the truth, and stated that any efforts on our part to break the story down would be worthless and a waste of time.

I discontinued at 6:00 P.M.

Reported
Atlanta, 5/26/13.

The following pages contain a correct copy of the report of assistant superintendent Harry Scott, dated May 25, 1913 and sent to the National Pencil Company on May 26, 1913.

Asst. Supt. H. S. reports:

Atlanta, Ga. Sunday, May 25, 1913.

This afternoon Detective Black and myself were at Police Headquarters again and had another interview with the negro James Connally, and questioned him very closely regarding the statement made to us yesterday morning by him, but he maintained that it was the truth and we could not secure any further information from Connally.

Atlanta, Ga. 5/26/13.

Reported.

F.

The following pages contain a correct copy of the report of assistant superintendent Harry Scott, dated May 27, 1913, and sent to the National Pencil Company on May 31, 1913:

Asst. Supt. H. S. reports:

Atlanta, Ga. Tuesday May 27th, 1913.

This afternoon detective John Black and myself again closely questioned the negro James Conley, and he began to show signs of weakness. We endeavored to impress upon him the importance of telling us the truth and left him to believe that Mr. Frank would not commit a crime of this sort and have him write the notes for Mr. Frank on Friday as stated by Conley in his previous affidavit.

We were unable, however, to get Conley to change his statement and I discontinued at 8:00 P.M.

Reported.

Atlanta 5/31/13.

S

The following pages contain a correct copy of the report of assistant superintendent Harry Scott dated May 28, 1913, and sent to the National Pencil Company on May 31, 1913;

Asst. Supt. H. S. reports:

Atlanta, Ga. Wednesday, May 28th, 1913.

Today Chief of Detectives Lanford and myself had an interview with the negro James Conley again, and after about four hours questioning, we succeeded in having Conley make the enclosed statement to which he made affidavit.

We stayed with Conley throughout the entire day, endeavoring to make clear certain points outlined in his statement, which we thought were a little far fetched. Conley stated that he had no further statement to make today and that what he had already told us was the truth.

We were able to corroborate Conley's statement today by Mr. Darley and Mr. Holloway, two of the officials at the factory, and Conley explained to these two men the movements they made while they were in the factory on Saturday, April 26th, 1913, and convicted both of these men that he, Conley, had seen both of them inside of the factory on that date.

In reference to the statement made by the negro regarding the girls Emma Clark and Corinthia Hall, the negro Conley stated that he would not be sure that these two girls came into Mr. Frank's office when Mr. Frank put him inside of the wardrobe and that he only had accepted Mr. Frank's word for it about the two women coming there. This could have been Mrs. J. A. White.

It seems now that Conley is reaching the truth in this matter, and it will not be but a very short time when we are able to get a complete confession from him. Personally, from the negro's actions I do not believe that he had any part in the murder, but it is my belief that he knows more than he had already told us in this connection. However, we could not get him to change the enclosed statement.

I discontinued at 7:00 P.M.

Reported.

Atlanta 5/31/13.

S.

The following pages contain a correct copy of the report of L. P. Whitfield, dated May 16, 1913, and sent to the National Pencil Company on May 21, 1913.

L.P.W.

Atlanta, Ga. Friday, May 16th, 1913.

At 7:00 A.M. I went to Police Headquarters and met W. D. MacW. and city detective Black. We requested Black to secure the handwriting of Conley and Bailey, the two prisoners now in the barracks and to learn their movements on April 26th, 1913.

At 8:30 A.M. W.D. MacW. and myself went to #59 Bonnie Brae Ave., in East Point, Ga., for the purpose of interviewing Mrs. J. A. White, who stated that on April 26th, 1913, she went to the pencil factory for the purpose of seeing her husband, who is an employee of the factory, and who was working on that day, and that she went into the factory twice. The second time she entered the factory was at 12:30 P.M., and she then went to the fourth floor of the building and talked to her husband a few minutes and then came downstairs and out of the factory about 1:00 P.M. and as she came out of the room on the ground floor, she saw a negro sitting on a box near the elevator; that she did not pay very much attention to this negro and did not know whether she could identify him or not, that this negro had on a dark suit of clothes and appeared to be a black negro, but it was dark and she could not give a good description of him. I asked Mrs. White if she would go to Police headquarters and see if she could identify Bailey or Conley as the negro whom she saw, and she stated that she could not go at that time, as she had a baby that she could not carry on account of her health.

I then returned to Police Headquarters and met Detective Black, who stated that he had interviewed James Conley, and the latter stated that he could not write, and that he left home on Saturday April 26th, 1913, at 9:00 A.M. and went to Peters St. remaining there until 6:00 P.M. at which time he went home.

I then went to the pencil factory and interviewed Mr. Schiff for the purpose of learning whether or not Conley could write. Schiff stated that he did not know, and informed me that Conley had bought watches from various jewelry stores.

W. D. MacW. and myself then went to Patrick & Thompson's jewelry store, Alabama and Broad Sts., and secured a contract which had been signed by James Conley, but he had signed this contract as Willie Conley. We then went to Jones and Phillips Jewelry store, #287 Marietta St., and secured another contract signed by James Conley, after which we went to Saul and Abelson's jewelry store, corner of Broad and Luckie Sts., and secured another contract signed by James Conley.

We then returned to the Agency and compared the handwriting of Conley with that found on the note that was alongside of the body of Mary Phagan, and the handwriting appeared to be identical.

We then went to the home of Mr. and Mrs. Coleman on Lindsey St. for the purpose of securing a minute description of the mesh bag that Mary Phagan carried with her away from home the day she was murdered. Mrs. Coleman stated that this mesh bag was about 5 inches square and had a fringe on the bottom, and had a hole on one side of it, that the chain handle had been broken, but had been repaired, that it had been in use for about two years and cost about \$2.50. Mrs. Coleman also stated that Mary always brought her pay envelope home intact, so that she could see how much salary Mary drew, and that Mary seldom if ever opened her pay envelope unless it was to make a purchase, and Mary never spent any money unless she, her mother, told her to do so or Mary told her what she had spent the money for.

W. D. MacW. and myself then went to the residence of Dr. Palmer (col) on Mitchell St. for the purpose of learning the habits of James Conley, as one of the contracts which had been obtained from a jewelry store stated that Conley had been employed by Dr. Palmer. Dr. Palmer stated that he had known James Conley for about ten years, that Conley worked for him about two years ago and he considered Conley a good reliable negro at that time, as he would always be at his work on time, but that Conley was a thriftless boy and had always been that way. Dr. Palmer stated that he was sure that Conley could write.

We then went to #92 Tatnall St., and interviewed the aunt of James Conley, who stated that James did not live with her, nor had he lived there for about two years, and that Conley lived with a woman on Rhodes St., that Conley's

mother lives on Humphries St. and worked at the Capitol City Laundry, that James Conley could read and write, and that he had attended the Mitchell St. school for two terms.

We then went to #172 Rhodes St., and met James Conley's wife, who stated that her name is Lorena Conley and that she had been married to Conley about three years, that on April 26th, 1913, James Conley left home about 8:00 A.M. and returned at about 2:00 P.M., that Conley did not leave the house again until Monday, April 28th, 1913; that Conley gave her \$3.00 to pay her rent with after he returned home on April 26th, 1913, and that he also gave her some more money and she went to a nearby store and bought about \$1.25 worth of groceries, that about 3:00 P.M., on Saturday, April 26th, 1913, she left James Conley sitting in front of the fireplace in her home while she went to a nearby store to get some snuff, that when she returned to her home she did not see Conley and she stepped to a washstand to get some vaseline and Conley jumped up from behind the washstand and she said that she screamed and Conley said he hid from her just to scare her. I inquired of Lorena if James Conley brought home the mesh bag that he bought and she stated that he did not bring any mesh bag to her house. She also stated that Conley had four shirts but that two of his shirts were in the laundry and that she had lost the laundry ticket, and he had one white shirt now, which was in the bureau drawer, that Conley had the shirt that he wore to the factory on Friday, April 25th, 1913; that he did not change shirts on Saturday or Sunday, but that he walked about in his undershirt all day on Sunday, April 27th. She also stated that it was unusual for Conley to remain at home on Saturday afternoons and evenings. I endeavored to secure some of Conley's handwriting but Lorena stated that there was none in the house.

I discontinued at 10:00 P.M.

Reported.

Atlanta 5/21/13.

S

Statement of James Conley, of Atlanta, Ga. made to John R. Black and H. S. at Police Barracks, Atlanta, Ga. on Sunday, May 18th, 1913.

My full name is James Conley. I reside at 172 Rhodes St. with Lorena Jones, who claims to be from Marietta, Ga. This woman is not my wife, and I have been living with her a little over two years. I have been having intercourse with Lorena Jones.

I have been employed as elevator man and roust about at the National Pencil Co. factory in Atlanta for the past two years. Before going to the pencil factory, I was employed by Dr. Palmer at Broad and Mitchell Sts., Atlanta, Ga., as a buggy driver, and I worked for him about one year. Previous to that time I worked for the Orr Stationery Co., Atlanta, as a driver of wagons. Previous to that time I worked for Adam Woodward as a stable hand for a year and three months. Previous to that time I worked for Mr. Copes, wood yard, Atlanta for five years.

I am now 27 years of age, and am single.

On Saturday, April 26th, 1913, I arose between 9:00 A.M. and 9:30 A.M. and ate my breakfast. At 10:30 A.M. I left the house #172 Rhodes St., and went to Peters St., and visited a number of saloons between Fair and Haynes St. On Peters St. I purchased a half pint of rye whiskey from a negro who was walking along Peters St. about 11:00 A.M. paying 46 cents for this whiskey. I visited the "Butt In" Saloon and went back to the pool tables and saw three colored men shooting dice and I joined them and won 90 cents from them.

I then purchased some beer, paying 15 cents for some, after which I walked up the street and visited Early's Beer Saloon purchasing two beers and some wine, paying 10 cents for same. This was all the money I spent on Peters St., and I arrived home at 2:30 P.M. and found L. Jones there, and she asked me if I had any money. I replied "Yes" and gave her \$3.50, one dollar a green back and the rest in silver money. I drew \$3.75 from the pencil factory on Friday, April 25th, 1913, between 6:00 P.M. and 6:30 P.M. I spent 15 cents for meat on Friday night. Before receiving the \$3.75, I did not have any money in my pocket.

At 3:30 P.M. or 4:00 P.M. on Saturday, April 26th, I purchased 15 cents worth of beer, and then returned to the house and sent the little girl out to get 10 cents worth of stove wood and 5 cents worth of pan sausage.

I remained at home all Saturday night and at 12:00 o'clock noon Sunday April 27th, I walked up on Mitchell St. and got a cigarette, remaining there until 12:45 P.M., and then returned home, remaining until 6:30 P.M., when I went to my mother's home #93 Tatnall St., got my lunch and then returned home and I remained at home until Monday, April 28th, 1913.

On April 28th, 1913 I reported for work at the pencil factory at 7:05 A.M.

(Signed) James Conley.

Reported
Atlanta 5/23/13.
S.

Statement of James Conley of May 24, 1913.

State of Georgia,
County of Fulton.

Personally appeared before me, the undersigned, a Notary Public, in and for the above stated and county, James Conley, who being sworn on oath says:

On Friday evening before the holiday, about four minutes to one o'clock, Mr. Frank came up the aisle and asked me to come to his office. That was the aisle on the fourth floor where I was working, and when I went down to the office he asked me could I write and I told him yes I could write a little bit, and he gave me a scratch pad and told me what to put on it, and told me to put on there "dear mother" "a long, tall, black negro did this my himself", and he told me to write it two or three times on there. I wrote it on a white scratch pad, single ruled. He went to his desk and pulled out another scratch pad, a brownish looking scratch pad, and looked at my writing and wrote on that himself, but when I went to his office he asked me if I wanted a cigarette, and I told him yes, but they didn't allow any smoking in the factory, and he pulled out a box of cigarettes that cost 15 cents a box, and in that box he had \$2.50, two paper dollars and two quarters, and I taken one of the cigarettes and handed him the box and I told him he had some money in the box, and he said that was all right I was welcome to that for I was a good working negro around there, and then he asked me where Gordon Bailey (snowball, they call him) was, and I told him on the elevator, and he asked me if I knew the night watchman and I told him no sir. I didn't know him, and he asked me if I ever saw him in the basement and I told him no sir, I never did see him down there, but he could ask the fireman and maybe he could tell him more about that than I could, and then Mr. Frank was laughing and jollying and going on in the office, and I asked him not to take out any money for that watchman I owed for I didn't have any to spare, and he told me he wouldn't, but he would see to me getting some money a little bit later. He told me he had some wealthy people in Brooklyn, and then he held his head up and looking out of the corner of his eyes and said "Why should I hang?" and that's all I remember him saying to me. When I asked him not to take out any money for the watch, he said you ought not to buy any watch, for that big fat wife of mine wants me to buy her an automobile but he wouldn't do it, I never did see his wife. On Tuesday morning after the holiday on Saturday, before Mr. Frank got in jail, he come up the aisle where I was sweeping and held his head over me and whispered to me to be a good boy and that was all he said to me.

(Signed) James Conley.

Sworn to and subscribed before me this 24th day of May, 1913.

(Signed) G. C. February,
N. P. Fulton Co., Ga. (Seal.)

State of Jim Conley, May 28, 1913.

State of Georgia,
County of Fulton.

Personally appeared before me, a Notary Public, in and for the above State and County, James Conley, who being duly sworn on oath says:

I make this statement, my second statement, in regard to the murder of Mary Phagan at the National Pencil Factory. In my first statement I made the statement that I went to the pencil factory on Friday, April 25, 1913, and went to Frank's office at four minutes to one, which is a mistake. I made this statement in regard to Friday in order that I might not be accused of knowing anything of this murder, for I thought if I put myself there on Saturday, they might accuse me of having a hand in it, and I now make my second and last statement regarding the matter freely and voluntarily, after thinking over the situation, and I have made up my mind to tell the whole truth, and I make it freely and voluntarily, without the promise of any reward or from force or fear of punishment in any way.

I got up Saturday morning, April 26th, between 9 and half past 9. I was at home 172 Rhodes Street. There is a clock on the Atlanta University and I looked at that clock after I put on my clothes; I went to the door and poured some water out of the wash pan and then I looked at the clock on the Atlanta University, but I forgot what time it was exactly, but I remember it was between nine and half past nine. Then I washed my face and I eat some steak and some liver and bread and drank a cup of tea, and then I sat down in a chair a little while, about ten minutes, I guess, and then I told my wife to give me back the three dollars and I would get some paper money to keep her from losing it, to pay her rent with, and she gave it to me, and I told her I was going to Peters street, and I went to Peters street, and stopped at the beer saloon near the corner of Peters and Haynes street and I bought two beers there for myself and gave another fellow a beer, I don't know what his name was, but they call him Bob. I don't know where he works, but he had a whip over his shoulder. I stayed in that saloon 3 or 4 minutes, just long enough to drink that beer, and then I walks up to the Butt-In Saloon and walks back to the pool table, and there was four fellows back there shooting dice, five with me, one was named Joe Bobs, and one was named Bob Williams and I won 90 cents, I don't know how long we were shooting for we were shooting on the sly, unbeknownst to the bartender. I guess we were shooting about ten minutes, and then I come to the bar and bought a glass of beer there at the Butt-In Saloon, and then I went to Early's beer saloon on Peters St., and I bought a glass of beer there and I walked back to the toilet and stood there and made a cigarette and then bought another glass of beer, and I come out and bought a half-pint of whiskey and I drank some of the whiskey, and then I started to the Capital City Laundry and on my way there I met Mr. Frank, at the corner of Forsyth and Nelson streets going to Montags, and he told me to wait a few minutes, and he asked me where I was going, and I told him I was going to the Capital City Laundry to see my mother, and he didn't say nothing, only he said to wait a minute until he come back, that he was going to see the Montags, and I stood there until he come back, that he was going to see the Montags, and I stood there until he come back, he was gone about 20 minutes, I guess. He come back and told me to come to the factory that he wanted to see me, and I went to the factory with him, walking behind him, and he stopped at the Curtis Drug Store at Forsyth and Mitchell Sts., and he got a drink, and I waited on the outside until he come out, and then he told me to come on and I went to the factory with him. He had a box with him, which he carried with him to the Montag's; it has an opener to it, and after we got to the factory, Mr. Frank took the box and put it there at the trash barrel, which was just to the right of the steps as you go in, he put a box there for me to sit on, there was some great big boxes back further. He told me to sit down there until I heard him whistle. He just took his foot and pushed a box over there for me to sit on. Then he told me not to let Mr. Darley see me, and after Mr. Frank went up the steps, in a few minutes here comes a young lady downstairs, that was Miss Mattie, I think she had on a dark red suit and a rain cloak and a parasol in her hand, but I didn't notice her hat. Then here comes Mr. Darley down, and he had on a gray suit of clothes, didn't have any hat on his head, and he stopped Miss Mattie with a handkerchief wiping her eyes, it seemed to me like she had been crying, and then I heard Mr. Darley say to her, "Don't worry, I will see that you get that next week", and they stood there and talked awhile, but I could not hear anything else they said, then she went on out of the door and Mr. Darley came back up the steps, and Mr. Darley stayed up there a good while, then he come down and left and I did not see him anymore.

Then here comes Mr. Holloway down, about five minutes after Mr. Darley had gone: Mr. Holloway went out on the sidewalk and stood there three or five minutes and then he come and went back up the steps, and then here come another colored fellow, a pegged-legged one, and he went up the steps, he had some bills in his hands, and Mr. Holloway come back down with the pegged legged one and went out on the sidewalk and looked at the

fellow's wagon, but what he said to him I don't know. It was a wagon that had sides to it and I didn't see the name on it. I wasn't a regular dray, I don't think, it looked like it might have come from that plate glass company on Alabama Street. Then Mr. Holloway went back upstairs and it wasn't long before Mr. Holloway come back down and was gone for good. I don't know how long, but I guess he stayed upstairs long enough to put on his coat and hat. I saw Mr. Holloway turn up to his right towards Hunter street, then there comes another lady into the factory, and she had on a green looking dress, she works on the fourth floor, and she walked with her head down, sort of stoop shouldered, she works for Arthur White. She stayed up there 7 or 8 minutes and then she come back down with her money in her hand, and she stood just a little opposite me and tore the envelope open right there and took her money out and counted it, and she shut her hand up and went out the door and she turned towards Hunter street, and about 15 or 20 minutes after there, there wasn't any passing at all, and I sat there on the box with my head against the trash barrel. I stretched my feet out and put my hat in my lap but I couldn't say whether I went to sleep or not, and the next thing that attracted my attention, Mr. Frank whistled for me twice just like this (indicating), and when he whistled I went on up the stairs and the double doors on the stairway were closed and I opened them and they shut themselves, and Mr. Frank was standing at the top of the steps and he said, "You heard me, did you?" and I said "Yes sir," and Mr. Frank grabbed me by the arm and he was squeezing my arm so tight his hand was trembling. He had his glasses on, and he had me just like he was walking down the street with a lady, and like he didn't want me to look behind me at all, and I thought it was because he had me so tight that made him tremble, and he carried me through the first office and into his private office, and then he come back in there, and he didn't say nothing, he grabbed up a box of sulphur matches, and he went back in the outer office, the door was open between his office and the outer office, and then he saw two ladies coming and he said to me, "Gee, here comes Miss Emma Clark and Miss Corinthia Hall", and he come back in there to me, he was walking fast and seemed to be excited, and he said to me, "Come right in here, Jim", and he motioned to the wardrobe and I was a little slow about it and Mr. Frank grabbed me and gave me a shove and put me in a wardrobe and he shut the doors and told me to stay there until after they had gone, and I just heard Miss Emma say "Good morning, Mr. Frank, are you alone" and Mr. Frank said "Yes", and I couldn't hear them say nothing else, but I didn't know it was Miss Corinthia Hall until Mr. Frank spoke and said it was, but I heard Miss Emma's voice; they didn't stay there long, until they were gone. I didn't hear them. The next move was Mr. Frank come and let me out of the wardrobe. I don't remember Miss Hall and Miss Clarke using the telephone, if they did I didn't hear them and I didn't see them myself. I stayed in the wardrobe a pretty good while, for the whiskey and beer I had drank got me to sweating. I couldn't hear them talking, only I heard Miss Emma say, "Good morning." If they had been talking loud I could have heard them, but if they were talking low I couldn't. If they went upstairs Mr. Frank must have kept right behind them, to see that they didn't take off anything. Then after awhile Mr. Frank he come into the office and he pulled out one of those round chairs from under the desk. The first thing, he let me out of the wardrobe and I said, "I got too hot in there," and he said "Yes, I see you are sweating", When he opened the door I was fixing to step out, and his eyes were looking larger than they usually look, and he jerked the door open and I was right there in front of the door, and then Mr. Frank said to me to sit down in a chair, in the one that turns all the way around, and when I sat down he told me to get up and shut the door; that was the door between his office and the stenographer's office and I got up and shut it, and he said, "Jim, can you write?" He was sitting down facing me and he brushed back his hair and I said "Yes sir, I can write a little bit, Mr. Frank," and then he give me a pencil that he got off the top of his desk, and there was nothing on it, he turned sheet over for me to write, and then he told me what to put there, he told me to put on there "dear mother, a long tall black negro did this by hisself," and when I went to put down "negro" I put it "N-e-g-r-o-s" and he said don't put no "s" there, he said that means negroes and he said now rub the "s" off and I rubbed the "s" out, and he said, "It means just one person like yourself," and he told me to write it again and I written it, and he looked at it and slapped me on the back and said "That's all right, old boy," and he said "write it again," and I written it for him three times. Then Mr. Frank reared back in his chair and asked me if I wanted a smoke and I told him "Yes sir", and he taken out a cigarette for himself and handed me the box and he sort of turned around when he handed me the box and I taken out a cigarette and he handed me the box of matches, and I taken out a cigarette and lit it and saw some money in the box and I handed the box of cigarettes back and he told me that was all right to keep them, and I told him he had some money in the box and he said that was all right, I could have that. I taken it and stuck it in my pocket and then Mr. Frank looked around at me and held up his hand towards the top of the house and said "Why should I hang, I have wealthy people in Brooklyn." I didn't know what he was talking about, I didn't have any idea in the world what he was talking about, and he was winking and rubbing his hands together and touching me on the chank with his foot and took a deep breath, he said "Why should I hang?" and shook his head and rubbed his hands together. Then he asked me where was Snowball (Gordon Bailey), and I told him I didn't know sir: and he asked me did I know the night watchman, and I told him no sir, I didn't know the night watchman personally. I just knew him by passing him, and he asked me if I had seen him in the basement at any time and I told him no sir, that

he would have to ask the fireman about that, for he was down in the basement more than any of us was, and when I told Mr. Frank that he stuck one finger in his mouth and said "S-s-sh, that's all right", and then Mr. Frank told me he was going to take that note I had written and send it off in a letter to his people when he wrote, and recommend me to them, because I was a good working negro around there and he liked me, and when Mr. Frank said that I said "Don't take out another dollar for that watchman," and he said "all right, I won't" and he said, "I don't see why you want to buy a watch, because that big fat wife of mine wanted me to buy her an automobile but I won't do it," I didn't say anything about that for it didn't concern me, and didn't seem to concern the subject he was talking about at first, and then Mr. Frank told me when he wrote that letter he would not forget about me and he said "Well, I will see you later about this," and I said "All right Sir," and then he reached in his pocket and pulled out his watch and said, "It is nearly time for me to be going to dinner," but I didn't look at the watch. Then I asked Mr. Frank if that was all he wanted with me right now, and he said yes, and then I asked him again, "Do you mean I can have what's in the box sure enough, Mr. Frank," and he said "Yes" but all the time though he was talking and jolly and going on with me, and I began to think it was something, for a white man to be playing with a negro, and during the time he cast his eyes up to the top of the house and said, "Why should I hang, I have wealthy people in Brooklyn". I never did know where Mr. Frank's home was, I thought this was his home all the time. Then Mr. Frank said "I will see you Monday, if I live and nothing happens, James," and I said "well, is that all you want for good, Mr. Frank?" and he said "Yes", and I saw him go to his desk and take out a brownish-looking scratch pad. The one I wrote on was white and was single ruled and I saw him take out a brownish looking one from his desk and he took his pencil and made a mark on it. I took it to be an "M", but he shut the tablet up and looked at me and told me that was all he wanted with me, and he come all the way to the top of the steps and he come three or four steps down to where he could see me until I hit the sidewalk, it seems as if he was watching me to see if I would take anything as I went out, but there was nothing to take unless I took a great big box, but when I passed those two doors on the steps there. Mr. Frank told me to leave one of them open, and I taken a little piece of iron they have there, and pushed it against the door to keep it from shutting and went on out in the street, and I pulled the front doors to as I went out, and I went to the beer saloon across the street and opened the cigarette box and it had two paper dollars in there and two silver quarters, and I laughed and said "Good luck has done struck me", and I bought a ten cent double header and then went back to Peters street, and hadn't none of the boys got there that I run with and I walks up there to the moving picture show and looked at the pictures and they didn't seem to be any good, and I come back down Peters street looking for that fellow I got the half pint whiskey from, but I couldn't find him, and I struck out for home, and when I got home it was about half past two o'clock, and I took the bucket and went to Joe Carr's at Mangum and Magnolia street, and got fifteen cents worth of beer in it and come back home and sent the little girl to get a dime worth of stove wood and a nickle's worth of pan sausage, and I eat half the pan sausage up raw, and I give my old lady \$3.50 and the other little change I kept it, and I layed down across the bed and there is where I stayed until about half past eight that night, and I got up and set in front of the first a little while and got to swimming at the head, and then here comes her sister, and after she left I went to bed and I didn't leave home no more until twelve o'clock Sunday, in the day time, and I walked up Mitchell street and stayed up there until a quarter to one, and I come on back home, I was feeling bad, and I layed down across the bed and stayed there until 6 o'clock or 6:30 that night, and I walked up to my mother's at 92 Tatnall street, and they gave me a lunch up there and I brought it on back home and I stayed there and eat it up and stayed at home until 10 minutes to 7 the next morning, and when I got to the corner of Forsyth and Mitchell street, the W. & A. blowed for 7 o'clock and then I went running on to the factory, and it was four or five minutes after 7 o'clock, the clock may have been a little fast, and when I got there I went upstairs to the dressing room and in comes Gordon Bailey, and here come Joe Williams, and then Mr. Wade Campbell, the lead inspector, and he comes in there and says "Wasn't it bad about that girl being killed," and we asked him "which girl" and it seemed like he said "Mary Puckett". and we asked him whereabouts and he said "in the basement", and we asked him if it was a white or colored girl", and he said "It was a white girl," and we told him "yes it was", and we asked him how she got killed, and he said he didn't know, and then he come on out the door first and I come right behind him with the sprinkler in my hand, and then he went to the toilet and I went right behind him and got a sprinkler full of water and I stayed down the aisle until about 9 o'clock, and I went and got my saw stuff on the third floor and brought it up to the fourth floor and unloaded it, and then I said I would go to the basement and see who that was that got killed, and when I got there there was such a crowd of white people there I couldn't go back there, and then the fireman sent me to get him a nickle's worth of onions and a loaf of bread, and then here comes Gordon and he give me a nickle and the fireman give me a nickle and told me to get them a dime's worth of beer and I got it and we all drank it. I went back upstairs and stayed there until about 15 minutes to 10, and the whistle blowed for the factory to shut down, and I heard Mr. Joe Stelker say the factory was going to close and to come back tomorrow, and I went and changed shoes and pulled off the pants and put on my hat and come down at 10 minutes to 10, and didn't go back any more until Tuesday morning, and went to work at Tuesday morning and got through with my work and went downstairs

about half past 9 and there was such a crowd down there I didn't stay long, and I come back up the aisle and went taking up some trash and about half past 10 or 11 o'clock, Mr. Frank come back up the aisle and leaned over to me and said "Jim be a good boy" and I said "Yes, sir, I am, Mr. Frank," and when I heard from Mr. Frank again he was arrested.

I come to work Wednesday morning and started down to the basement and there was such a crowd down there I couldn't get to use the toilet, and I goes back upstairs and finished my work and works all that day, and Thursday morning I come to work and got caught up by 10 o'clock, and I went downstairs and the fireman and another colored fellow was down there and I asked the fireman where it was that they say the young lady got killed at, and he told me right around there, and I took a little piece of paper and went around there to see if I could see, but I couldn't see where anybody had been laying at, and I come on back and found he was throwing some stuff into the furnace, and I went on upstairs and stayed there until 25 minutes to 12, and the detectives were giving us all subpoenas and I got my subpoena and went back upstairs and stayed up there until 5 minutes to 12, and I come down and went out in the streets and heard the whistle when it blowed for 12 o'clock, and I went back and started to cleaning up at half past twelve, and got through cleaning at half past one. Then I went down to wash my shirt so I could have a clean one to wear to court, for I had been wearing this one for three weeks and when I got back there and pulled off my shirt and washed it, then there comes Mr. Quinn and I asked him where was the dry house and he showed me where it was, and he told me, he said "Jim, there ain't no steam in there now", and I said to myself I will have to hang this on the steam pipe to get it dry, and by me hanging it on there I got a little rust on it, and some of them saw me back there washing my shirt and called up the detectives and when the detectives come up there I had done put on my shirt and they asked me where was the shirt I was washing and I told them this here was the shirt, and they said yes, because it was not good dry, and then told me to come and go with them, and I did. They brought me down here and found there was no blood on the shirt, and gave me my shirt back, and that's all I know.

(Signed) James Conley.

Sworn to and subscribed before me this the 28th day of May, 1913.

G. C. February,
Notary Public, Fulton County, Georgia.

Testimony of Helen Kerns, at trial of Leo M. Frank.

Direct.

I work for the Dodson Medicine Company as stenographer. My father works for Montag. I took shorthand under Professor Briscoe last winter. I have seen Mr. Frank in his factory. I went there with Professor Briscoe to get a job, I didn't get the position. I was working on the 26th day of April for Bennett Printing Company. That day I got off about 12 o'clock. I then went around in town to the different stores and did some trading. I had an appointment to meet a girl at 1:15 at the corner of Whitehall and Alabama Sts., at Jacob's Drug Store. About 5 minutes after one I came out of Kress' store on Whitehall Street, I looked at the clock in front of Freeman's Jewelry Store, I immediately went to Jacob's corner, I had been standing there about five minutes and I turned around and saw Mr. Frank standing there right up against the building at the corner of Alabama and Whitehall street. I do not know how long he had been there. That was about ten minutes after one. After I saw him I waited about ten minutes until my friend came, she was a little behind time. She came about twenty minutes after one. I read about this tragedy about the middle of the week. I then recalled seeing him about that place and told my father.

Cross Examination.

Yes, there was a large crowd on the street that day. I had been standing there about five minutes when I turned around and saw Frank. It was not packed and jammed at that time, not up against the building. The procession did not come along until almost three o'clock. There was plenty of room on that corner, I stood there from five minutes after one until twenty minutes after one. After I met my friend we went back to Kress'. I did not speak to Mr. Frank. He was standing up against the building up Alabama street. It was not real crowded up Alabama street, you could not stand in the middle of the sidewalk. I got a clear view of Mr. Frank. I don't think he saw me. I don't think he would have recognized me because he sees so many faces every day he would not know mine. I had only met him once. I recognized him. I can't be mistaken about the time I saw him because I looked at the clock just before I got there. When my friend met me we went around the corner. The clock stood twenty minutes after one. Kress' store did not close at 12, because I was in there after 12. I am sure of that. I was watching the clock because I had an appointment at a quarter after one. I left Kress' at five minutes after one and went down Whitehall street to Jacob's corner. Whitehall Street was badly crowded. It didn't take me more than a minute or a minute and a half to walk down there to the corner. It was only a few steps. There was no one standing between Mr. Frank and myself on Alabama Street.

Pinkerton's National Detective Agency Vs. National Pencil Company.

No. 31,231.

Fulton Superior Court

Motion for New Trial

Agreement of Counsel as to Brief of Evidence.

We agree that the foregoing 134 pages are a true and correct brief of the evidence produced in the trial of the above stated case on November 17-22, inclusive, 1915.

This 3 day of February 1916.

R. C. and P. H. Alston,

Attys. for Plff.,

H. A. Alexander,

Atty. for Deft.