

**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:

*Leo M. Frank*

Plaintiff in Error.

vs

*The State of Georgia*

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 15<sup>th</sup> day of November 1913

*Arnold Douglas*

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

Case No. \_\_\_\_\_ Atlanta Circuit,

Term, 191\_\_\_\_\_

*Leo M. Frank*

VERSUS

*The State of Georgia*

**Bill of Exceptions**

Filed in office \_\_\_\_\_ 191\_\_\_\_\_

*Wm. B. Jones* Clerk.

Filed in office \_\_\_\_\_ 191\_\_\_\_\_

Clerk.

18

File 10852

Criminal Docket,

*October*

Term, 1913

SUPREME COURT OF GEORGIA.

*Frank*

THE STATE.

BILL OF EXCEPTIONS.

Filed in office

NOV 15 1913

*W. E. Galley, D.*

C. S. C. GA.

File

No.

Atlanta Circuit,

Term, 191\_\_

*Leo M. Frank*

VERSUS

*The State of Georgia,*

**Transcript of Record**

Filed in office

191\_\_

Clerk.

V. 10-852 Frank v. State

( I N D E X . )

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WRINKLED PAPER

( B I L L O F I N D I C T M E N T . )

The State, ( ). No. 9410.  
Vs. ( ). Fulton Superior Court.  
Leo M. Frank. ( ). May Term 1913.

True Bill.

L. H. Beck, Foreman,  
24th day of May 1913.

Hugh W. Dorsey, Sol. Gen'l  
J. N. Starnes, Prosecutor.

STATE OF GEORGIA,  
FULTON COUNTY.

The Grand Jurors, selected, chosen and sworn for the County of  
Fulton, to-wit:

1. J. H. Beck, Foreman.
2. A. D. Adair, Sr.,
3. F. P. H. Akers,
4. B. F. Bell,
5. J. G. Bell,
6. Sol. Benjamin,
7. Wm. E. Besser,
8. C. M. Brown,
9. G. A. Cowles,
10. Walker Dunson,
11. Geo. A. Gershon,
12. S. C. Glass,
13. A. L. Guthman,
14. Chas. Heinz,
15. H. G. Hubbard,
16. R. R. Nash,
17. W. L. Percy,
18. R. A. Redding,
19. R. F. Sams,
20. John D. Wing,
21. Albert Boylston,

In the name and behalf of the citizens of Georgia, charge and  
accuse Leo M. Frank, of the County and State aforesaid, with the  
offense of Murder, for that the said Leo M. Frank in the County  
aforesaid on the 26th day of April in the year of our Lord Nine-  
teen Hundred and thirteen, with force and arms did unlawfully and  
with malice aforesaid kill and murder one Mary Phagan by then

and there choking her, the said Mary Phagan, with a cord placed around her neck, contrary to the laws of said State, the good order, peace and dignity thereof.

Hugh W. Dorsey, Sol. Gen'l.

J. N. Starnes, Prosecutor.

Fulton Superior Court 1913.

WITNESSES FOR THE STATE.

J. W. Hurt, Dr.  
L. S. Dobbs, (Police)  
J. N. Starnes "  
R. P. Barrett,  
W. W. Rogers,  
Harry Scott,  
B. B. Haslett,  
Grace Hicks,  
E. F. Holloway,  
N. V. Darley,  
H. L. Parry,  
J. M. Cantt,  
William A. Ghesling.

Copy Bill of indictment and list of witnesses before Grand Jury, waived before arraignment. Full panel Waived.

Rosser and Brandon,

R. R. Arnold,

Herbert Haas, Deft's Attys.

( P L E A . )

July Term 1913.

The defendant Leo M. Frank, waives being formally arraigned,  
and pleads not guilty.

F. A. Hooper,

E. A. Stephens and

Hugh M. Dorsey,

Sol. Gen'l.

Rosser and Brandon,

R. R. Arnold,

Herbert Haas.

Deft's Attys.

:-----:

( V E R D I C T . )

We, the jury, find the defendant guilty.

Date August 25th, 1913.

F. E. Winburn, Foreman.



( S E N T E N C E . )

The State,                    ( ).                    No. 9410.  
Vs.                            ( ). Indictment for Murder. Fulton Superior  
Leo M. Frank.                ( ). Court, May Term, 1913, Verdict of  
                                  ( ). Guilty, July Term, 1913.  
                                  Aug. 25, 1913.

Whereupon, it is considered, ordered and adjudged by the Court that that the defendant, Leo M. Frank, be taken from the bar of this court to the common jail of the county of Fulton, and that he be safely there kept until his final execution in the manner fixed by law.

It is further ordered and adjudged by the Court that on the 10th day of October, 1913, the defendant, Leo M. Frank, shall be executed by the Sheriff of Fulton County in private, witnessed only by the executing officer, a sufficient guard, the relatives of such defendant and such clergymen and friends as he may desire, such execution to take place in the common jail of Fulton County and that said defendant, on that day, between the hours of 10 o'clock A. M., and 2 o'clock P. M., be by the Sheriff of Fulton County hanged by the neck until he shall be dead, and may God have mercy on his soul.

In Open Court, this 26th day of August, 1913.

L. S. Roan,

J. S. C. St. Mt. Ct. Presiding.

Hugh M. Dorsey,

Sol Gen'l.

( M O T I O N F O R N E W T R I A L . )

State of Gerogia,                    ( ).     Conviction of Murder.  
Vs.                                   ( ).     In Fulton Superior Court.  
Leo M. Frank.                       ( ).     Motion for New Trial.  
                                      :-----:

And now comes the defendant in the above stated case and moves the court for a new trial upon the grounds following, to-wit:

1. The verdict is contrary to the evidence.
2. The verdict is contrary to the law.
3. The verdict is against the weight of the evidence.
4. The court, over the objection of the defendant, heard evidence of other transactions and tending to establish other crimes and offenses, wholly separate and distinct from the charge in the Bill of Indictment, to the injury and prejudice of the defendant.

Wherefore, for these and other good grounds to be urged upon the hearing, the defendant, Leo M. Frank, moves that said verdict be set aside and a new trial granted.

Reuben R. Arnold,  
L. Z. Rosser,  
Herbert J. Hass.  
Attys. for Leo M. Frank, Movant.

:-----:

Read and considered. Let the foregoing motion for new trial be filed and let a copy thereof be served upon the Solicitor General.

It is ordered that the State show cause before me on the 4th day of October 1913, at my Chambers Thrower Building Atlanta, Ga. why the verdict should not be set aside and a new trial granted. In the meantime, and until after this motion may be heard, it is ordered that the movant have the right to have approved and filed a proper brief of the evidence in said case; and that should said motion be postponed, that such right to prepare and have approved and file such brief of the evidence shall exist and remain in the movant until such time as the motion may be finally heard.     5.

In the meantime let the execution of the court's sentence be suspended. It is further ordered that until such time as this motion may be heard and decided, that the movant have full leave to amend this motion for new trial.

This 26th day of August, 1913.

L. S. Roan,  
Judge S. C. St. Mt. Ct. Presiding

Filed in office this the 26th day of August, 1913.

F. M. Myers, D. Clk.

GEORGIA, FULTON COUNTY.

Service acknowledged, copy received all other and further service waived. This Aug. 27th, 1913.

F. A. Hooper,  
Hugh M. Dorsey,  
E. A. Stephens  
Solicitor General Fulton County, Georgia.

We further agree to the order within giving time to prepare and file a legal brief of the evidence.

Aug. 27th, 1913.

Hugh M. Dorsey,  
Sol. Gen'l.



jailer, had interviewed Lee just before the present trial.

The solicitor, over the objections of Frank's atty's that the evidence offered was immaterial, irrelevant, and the expression of an opinion, was permitted by introducing said evidence to draw a comparison of the time occupied by Frank and Arnold to their respective interviews, and, in doing so, the Court erred because the evidence offered was immaterial, irrelevant and the expression of an opinion.

3. Because the Court permitted the solicitor, over the objection of defendant made at the time the evidence was offered that the same was irrelevant and immaterial, to show by the witness J. N. Starnes that the witness Lee, the morning the body was found, while in the office of the pencil factory and when under arrest was composed. Said evidence was objected to as illegal, unwarranted and hurtful to the defendant and movant now says that its admission was error for the same reasons.

This evidence was hurtful, because used by the solicitor in his address to the jury in contrasting the deportment of Frank who was claimed to be nervous and excited.

4. Because the Court erred in permitting the witness Starnes, over objection of the defendant, made when the evidence was offered, because it was a conclusion, to say that his conversation with Frank over the telephone the morning of the finding of the body, was guarded—that he was guarded as to what he said.

This evidence was objected to as unwarranted and a conclusion, and movant here assigns its admission as error for the same reasons

Movant contends this was hurtful to the defendant, and there was a dispute as to what Starnes said to Frank in that conversation, and the solicitor contended that Frank's words and conduct in connection with that conversation was evidence of his guilt. Starne's statement that he was guarded in that conversation as to what he said, tended to impress the jury, that he was accurate in his memory as to the words of the conversation.

Because the Court admitted photographs to be a picture of the second or office floor, the street floor and basement of the factory. On this picture was traced red dotted lines extending from the back of the office floor, down the elevator to the basement, and down the basement near the back of the building. There

were, also, Greek crosses on the picture. It was conceded by the State that these dotted lines and crosses were no part of nor represented any part of the building but were put in the picture for the purpose of illustrating the theory of the State, as showing where the body was found and where it was carried.

The admission of the picture in evidence, with the lines and crosses thereon, was, when offered, objected to because, as movant contends, it was argumentative, representing and illustrating the State's view of the case by means of red lines and crosses, which was no part of, nor illustrated any part of the building.

The admission of said diagram and drawing was error for the same reasons as set out in the above objections, the objection being that the same was illegal and prejudicial, and movant assigns error in their admission for the same reason.

6. Because the Court, over objection made when the evidence was offered, that the same was a conclusion, permitted the witness Black to testify that in a conversation had with Frank months before the tragedy that he didn't remember anything that caused him to believe that Frank was nervous, the hurtful purpose being to compare his then conduct with that after the tragedy.

This evidence here objected to was illegal, a conclusion, and prejudicial and movant says its admission was error for said reasons .

7. Because the Court, over objection made when the evidence was offered that the same was irrelevant, permitted the witness Black to testify that Frank had counsel, Messrs, Rosser and Haas about eight or eight thirty o'clock Monday morning while Frank was in the station house, brought there by detectives Black and Haslett.

Movant contends the employment of counsel, under the circumstances was no evidence of guilt; but the Court's conduct in admitting the fact to the jury was greatly hurtful to the defendant.

said evidence was illegal, irrelevant and prejudicial and its admission over objection is here assigned as error for said reasons.

8. Because the Court refused to permit the witness Black to testify on cross examination that when he found a bloody shirt in the bottom of a barrel in Newt Lee's house, that he carried the shirt to the station house showed it to Lee, and, when Lee was asked by the witness if the shirt was his, the solicitor objected that the witness should not be allowed to answer the question: "Did he (Lee) say that the shirt was his?"

The Court would not permit the witness to give Lee's answer that the shirt was his.

This answer of Lee's was, as movant contends, part of the res gestae of the shirt transaction, and Lee's answer ought to have been heard.

The Court erred, as movant contends, in ruling out the answer of Lee and not allowing it to come out as a part of the entire transaction.

9. Because the Court, over objection made by the defendant at the time the same was offered, that it was immaterial and irrelevant, permitted the witness Darley to testify that on the morning the body was found Newt Lee was composed.

Defendant objected to this evidence as illegal, irrelevant and prejudicial to defendant which objection was overruled and movant assigns its admission as error for said same reasons.

This evidence was not only irrelevant and immaterial as movant contends but hurtful, because this evidence was heard upon the theory of comparison between the conduct of Lee and Frank.

10. Because the Court erred in failing, refusing and declining upon motion of the defendant made while the witness Conley was on the stand, to rule out, withdraw and exclude from the jury each and all of the following questions and answers of the witness Conley:

Q. "What did he mean?"

A. "Well, what I taken it to be, the reason he said he wasn't built like other men. I seen him in a position I hadn't seen any other man in that was got children."

Q. "What position?"

A. "I have seen Mr. Frank, in the office there about two or three times before Thanksgiving and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here

(upto her waist) and Mr. Frank was down on his knees, and she had her hands on Mr. Frank and I found them in that position."

Q. "When you came into the office before Thanksgiving day, now, when the lady was sitting in the chair?"

A. Yes, sir: he saw me when he came out of the office, he saw Me."

Q. What was said when they saw you?"

A. " When Mr. Frank came out of the office Mr. Frank was hollering 'Yes, that is right, that is right' and he said, 'That is all right, it will be easy to fix it that way.'"

Q. " Well, did you ever see him on any other occasion?"

A. "Yes, sir; I have seen him on other times there."

Q. "What other occasions?"

A. I have seen Mr. Frank in the packing room there one time with a young lady lying on the table."

Q. How far was the woman on the table?"

A. "Well, she was on the edge of the table when I saw her."

The motion was made while the witness Conley, was on the stand, and before any cross examination had been had upon either of the circumstances referred to in said questions and answers, but after cross examination upon other subjects had progressed a day and a half. The motion to rule out, withdraw and exclude was made because, as stated to the Court when the motion was made, said questions and answers were immaterial, irrelevant, illegal, prejudicial, and dealing with other matters and things and crimes irrelevant and disconnected with the issue in the case then on trial.

Movant contends this evidence was highly prejudicial, and the failure of the Court, upon proper motion, to rule it out was a great injury to the defendant. And the failure of the Court to rule out said prejudicial and irrelevant and immaterial evidence is here assigned as error and a new trial should be granted.

cial and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

11. Because the witness Conley, at the instance of the solicitor, was permitted to testify that he had seen Frank in a pos-



ition with women than he had not seen any other man in that has children; that he had seen Frank in the office of the Pencil Co., about two or three times before Thanksgiving, and a lady was in the office and she was sitting down in a chair and she had her clothes up about her privates, and Frank was down on his knees, and she had her hands on Frank; that Frank saw Conley when he came out of the office, that when Frank came out of the office he was hollering "Yes, sir, that is right, that is right" and he said "That is all right, it will be easy to fix it that way;" that at another time he saw Frank in the packing room of the factory with a young lady lying on a table---she was on the edge of the table when he saw her.

While Conley was on the stand, and before he was crossed about seeing the circumstances testified about, and after cross examination upon other subjects had been had for a day and a half, counsel for the defendant moved the Court that the next above stated testimony of the witness Conley be ruled out, withdrawn and excluded from the jury, stating at the time that such motion ought to be granted, because the testimony was irrelevant, immaterial, illegal, prejudicial, and dealing with other matters and things, and crimes, irrelevant and disconnected with the issues in this case.

The Court declined to rule out, withdraw, or exclude this testimony from the jury, but permitted the same to remain before the jury.

The action of the Court was erroneous and highly prejudicial to the defendant, and demands a new trial.

Such action of the Court was error because said evidence was illegal, irrelevant and hurtful to the defendant and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

~~3. Because the witness Conley, as above stated, testified~~  
that he watched for Frank, at the Pencil factory, four times on Saturdays, not on the day of the murder, and once on Thanksgiving day 1912, while Frank was with women in his office, detailing certain signals by which the witness Conley was to look and

open the door. When the first question was asked by the solicitor seeking to elicit whether witness had ever seen Frank up there in his office doing anything with young ladies before April 26, 1913, the defendant objected on the ground that the evidence sought was irrelevant and immaterial. The Court ruled that the evidence would be immaterial, but further questions were asked by the solicitor and elicited the evidence here complained of.

While Conley was still on the stand, and after cross examination a day and a half on other subjects, defendant's counsel moved to rule out, exclude and withdraw from the jury all the testimony, both direct and on cross, detailing Frank's association with women and Conley's watching at other times than the Saturday of the murder, to-wit: April 26, 1913. Said motion was made upon the grounds stated and argued at the time the motion was made, that such testimony was immaterial, irrelevant, illegal, prejudicial, and dealt with other matters and things and crimes irrelevant to and disconnected with, the issues on trial on this case.

The Court declined the motion made at the time upon the grounds, as stated, and in doing so erred, because the evidence sought to have been ruled out for the reason stated, and the same amounted to accusing the defendant of other and independent crimes.

13. Because the Court, upon motion made when the witness Conley was still on the stand, declined to rule out, exclude and withdraw from the jury each and all the below questions propounded to witness Conley, and his answers thereto:

Q. Now, tell what kind of work you had done for him the other Saturdays. A. I always stayed on the first floor, like I stayed on the 26th of April, and watched for Mr. Frank, while he and a young lady would be on the second floor chatting.

Q. You say chatting. Do you know what they were doing? A. No, sir. I don't know what they were doing. He only told me that he wanted to chat.

Q. Did you ever see him up there doing anything with young ladies?

A. Well, I have---

Q. Well, what would you do before when young ladies come there?

A. I would sit down on the first floor and watch the door for him.

Q. And watch the doors for him? A. Yes, sir.

Q. How many times did you watch the door previous to Saturday, the 26th of April, 1913?

A. Well, I couldn't exactly tell you; it has been several times I watched for him.

Q. Who was there when you were watching the door? A. Well, I don't know, Sir, who would be there when I watched the door, but there would be another young man and another young lady there during the time I was at the door; a lady for him and one for Mr. Frank.

Q. Now, was Frank ever there alone? A. Mr. Frank was there alone once, and that was Thanksgiving day, that I watched for him.

Q. Well, do you know or not the lady--did any woman come there that day? A. Thanksgiving day?

Q. Yes. A. Yes, sir.

Q. What kind of a looking woman? A. She was a tall, heavy built lady.

Q/ What did you do on that occasion? A. I stayed down there and watched the door, just as he had told me to do this last time.

Q. Then what was done? A. Well, after the lady came and he stamped for me, I went and unlocked the door as he said. He told me when he got through with the lady he would whistle, and when he whistled for me to go and unlock the door.

Q/ That was on Thanksgiving day of what year? A. Of last year, 1912.....

Q/ He says: "What I want you to do, I want you to do, I want you to watch for me today as you have on other Saturdays".

A. And I says: "All right.".....

and he  
did before."

Q. What did he mean? A. I have seen Mr. Frank in the office there about two or three times before Thanksgiving, and a lady

was in the office, and she was sitting down in a chair, and she had her clothes up to here (indicating), and Mr. Frank was down on his knees, and she had her hands on Mr. Frank, and I found them in that position.

Q. Well did you ever see him on any other occasion? A. Yes, I have seen him another time there.

Q. What other occasion? A. I have seen Mr. Frank in the packing room one time with a young lady laying on the table.

Q. How far was the woman on the table? A. Well, she was on the edge of the table when I saw her,-----

Q. Do you know the name of the woman that was up there with Mr. Frank? A. Thanksgiving day?

Q. Yes, A. No, sir, I don't know her name.

Q. Do you know the name of the other woman? A. No, sir. I know the young man's name that was with one of the ladies, but I don't know the other lady's name. I know where she lives at.

Q. What is the name of the man? A. That man's name is Mr. Dalton.

Q. Now, what kind of looking woman was it that you saw there Thanksgiving day in Mr. Frank's office. A. Well, she was a tall built lady, heavy weight, she was nice looking, she had on a blue looking dress with white dots in it, and she had on a greyish looking coat with kind of tails to it. The coat was open like that (indicating), and she had on white slippers and stockings.

Q. Did Mr. Frank see you that time? A. Thanksgiving day?

Q. Yes, A. Yes, sir, he told me to come to the office---to come to the factory.

Q. When you come up into the office before Thanksgiving day now, when the lady was sitting in the chair? A. Yes, sir. He saw me when he come out of the office, he saw me.

Q. What was said when they saw you? A. When Mr. Frank come out of the office he was hollering: "Yes, that is right, that is right", and he said: "That is all right, it will be easy to do it that way".-----

CROSS EXAMINATION.

Q. Now, you said you watched for Mr. Frank? A. Yes, sir.

Q. When was the first time you ever watched for Mr. Frank ?

A. The first time I ever watched for Mr. Frank alone and knowed he was in the office-----

Q. When was the first time you ever watched for Mr. Frank alone or with somebody else? Don't make any difference. A. I couldn't exactly give you the-----

Q. Tell us the best you can? A. Some time during last summer, when I was watching for him.

Q. That was the first time, now? A. Yes, sir.

Q. Whereabouts in the summer; what part of the summer did you do that watching that time? A. Somewhere about in July.

Q. That's the first time; there was somebody with him that time?

A. Yes, sir. Somebody was with him all the time, off and on.

Q. Let's take the first time, now; what did Mr. Frank say to you that time; what did he say--what did he say to get you to watch for him? A. I would be there sweeping, and Mr. Frank come out and call me in the office.

Q. What? A. I would be there sweeping and Mr. Frank come out and call me in the office.

Q. When was the first time he ever did that? A, That was on Saturday he done that.

Q. He never had called you in there before when you were sweeping, except on Saturday? A. He called me in there but never talked to me about that matter.

Q. Did he talk to you about anything? A. Yes, sir.

Q. About what? A. Something about the work, something like that.

Q. You mean during the week? A. No, sir; he talked to me them Saturdays about it.

Q. When was the first time he called you in there to talk about the work or anything else? A. How do you mean?

Q. On Saturday, when was the first time he called you in there to talk to you about the work or anything else? A. I don't know about that.

Q. Tell us about that? A. That was right after I started work

there when he called me and talked to me about the work.

Q. And that was on Saturday? A. Yes, sir, that was on a Saturday.

Q. About what time, now? A. I don't know somewhere about three o'clock, though.

Q. Sometime about three o'clock? A. Yes, sir.

Q. What was your Saturday hours, Jim? A. I always generally have to work from the time I get back there until half past four that evening.

Q. What time would you usually get back there? A. I would leave away from there about half past twelve, ring out the clock, and come back about half past one or two o'clock.

Q. Would you ring in again? A. Yes, sir; sometimes I would and sometimes I wouldn't----

Q. The first time you say you ever watched, you say you watched for Frank and somebody else last July? A. Yes sir.

Q. You don't know who the man was? A. Yes, sir, I know who the man was.

Q. Who was he? A. Aman named Mr. Dalton.

Q. Where is he? A. I don't know where he is now.

Q. How do you spell that? A. I don't know how you spell it.

Q. What did he do? A. A young lady that worked at the factory-- I don't know what her name was---she would go off and get him and bring him in there.

Q. You don't know where he lived? A. No, sir; I don't know where he lived, but I know where she lived.

Q. How come him to tell you who she was? A. She was the one told me his name.

Q. Where is the young lady? A. I don't know, sir, if she's anywhere in the room and if she'll stand up I can tell you if it is her.

Q. Give us her name? A. I don't know, sir, what her name is; the detectives know the name, I don't.

~~Q. How come him to tell you who she was? A. She was the one told me his name.~~  
Q. How come him to tell you who she was? A. She was the one told me his name. They didn't tell me who she was, I described to them where she lives at

Q. Where does she live? A. She lives on West Hunter Street.

Q. Where? A. Between Hunter and Haynes Street, around about Magnolia Street, down there.

Q. How come you to know she lived there? A. Because I passed her house every morning.

Q. And the man was named Dalton? A. Yes, sir:

Q. Who was with Mr. Frank? A. The lady that was with Mr. Frank was Miss Daisy Hopkins.

Q. Where did she live? A. I don't know, sir, where Miss Daisy Hopkins lived.

Q. Where did she work? A. She worked up on the fourth floor.

Q. Do you know where she is now? A. No sir.

Q. Now, what time of day was that? A. It would always be somewhere about three or three thirty.

Q. Where did Mr. Frank tell you to watch, that time? A. I would be up there sweeping, and Mr. Frank-----

Q. That time---that particular time, I mean? A. Well, I would be sweeping.

Q. I'm talking about that time----that particular time? A. When he told me to watch?

Q. Yes, what did he say to you when he told you? A. I'm going to explain to you now-----

Q. That particular time, now? A. Yes, sir.

Q. Give it to me, now? A. I would be there sweeping----

Q. Oh, don't give me what you would be doing. ~~I want you would be doing.~~ I want to know about that particular time? A. I was at the factory.

Q. Where? A. Sweeping on the second floor.

Q. Now, what time was that? A. Somewhere about three o'clock or three thirty.

Q. Somewhere about three or three thirty? A. Yes, sir.

Q. Then what happened? A. Well, there would be one lady in the office.

Q. I am talking about that particular time. ~~It's the first time~~ he ever talked to you there, you were in the pencil factory?

A. Yes, sir.

Q. When Mr. Frank called you? A. Yes, sir.

Q. You were on the second floor? A. Yes, sir.

Q. Then Mr. Frank called you and then you went to Mr. Frank's office? A. Yes sir.

Q. Was there a woman in there with him? A. Yes, sir, a lady was in there with him.

Q. Called you in the presence of the lady? A. Yes, sir.

Q. Talked you <sup>to</sup> in the presence of the lady? A. Yes, sir.

He talked to me in the lady's presence.

Q. And that was Miss Daisy Hopkins? A. Yes, sir.

Q. And that was about three o'clock? A. Or half past three.

Q. In July last? A. Yes, sir.

Q. What did Mr. Frank say to you in that lady's presence? That's the time (first) time he ever talked to you about that matter, what did he say to you? A. Yes, sir; he says: "Did you see that lady go out there?"-----

Q. Why, I thought you said the lady was present? A. Yes, sir, this lady was present. He would say: "Did you see that lady go out there"? I say: "Yes, sir", and he says: "You go down there and see nobody don't come up here, and you'll have a chance to make yourself some money.

Q. And the lady was present? A. Yes, sir:

Q. Where was the other lady? A. The other lady gone on out and to get that young man.

Q. She went with the man? A. No, sir, she went out by herself, to get the man and come back with the man.

Q. How long was she gone? A. I don't know, sir, how long she was gone.

Q. And that was about half past three? A. Yes, sir.

Q. The beginning of that transaction was about half past three? A. Yes, sir.

Q. How long was she gone? A. I don't know, sir, how long she was gone.

Q. You don't know how long she was gone? A. No, sir; I don't know how long she was gone.

Q. Was she back after awhile? A. Yes, sir.

Q. She came back after awhile and brought a man with her, and that man----- A. Yes, sir-----

Q. And Dalton's name you don't know? A. Yes, sir; his name was Mr. Dalton.

Q. I know, but you don't know where he lives--nothing of that kind? A. No, sir.



Q. When this young lady went off and came back and brought Dalton back, where did you see her again? A. I saw her and Mr. Dalton when they come in at the door.

Q. You were watching then? A. Yes, sir.

Q. Then where did they go? A. Upstairs to Mr. Frank's office.

Q. Did you see them go to Mr. Frank's office? A. I heard them walking in Mr. Frank's office.

Q. Then how long did they stay in Mr. Frank's office? A. They didn't stay in there long, ten or fifteen minutes I reckon.

Q. Then where did they go? A. They came back down, and she say: "All right, James."

Q. Then his name was James Dalton? A. No, sir; that was talking to me--- said all right to me.

Q. You saw them go in the factory and heard them go to Mr. Frank's office, and how long did they stay there? A. About fifteen minutes, I reckon.

Q. Then all of them came down together? A. No, sir. They didn't all come down together--just this lady and Mr. Dalton.

Q. Then how long before Mr. Frank came down? A. He was the last one that came down.

Q. How long? A. About an hour after that.

Q. You never heard any of them come out of Mr. Frank's office after they went in? A. Yes, sir; this lady and this man come back down.

Q. They came back and went down? A. No, sir, they didn't go out. She came down and say: "All right, James", and I would say: "ll right". and a place on the first floor that leads into another department, and after you get into this other department, there's a trap door and stairway that leads down in the basement, and they pull out that trap door and go down in the basement.

Q. And that time, she came down and says: "All right, James"?

A. Yes, sir.

Q. She knew you? A. Yes, sir.

Q. Because she worked in the office? A. No, sir, she didn't work in the office, she worked on the fourth floor.

Q. Then you went through that door--a door right behind the

elevator? A. No, sir, there isn't a door back of the elevator; there's a big wooden door, just a step there.

Q. I know, but it goes back in the back there? A. Yes, sir.

Q. Then you opened that door? A. Yes, sir.

Q. Then came back and opened that trap door? A. I came and pulled up the trap door.

Q. And then they went down there? A. Yes, sir.

Q. She said "All right, James"? A. Yes, sir.

Q. Then you went and opened that door? A. Yes, sir.

Q. She didn't tell you to open it? A. Yes, sir; she said, "All right, James"--something like that.

Q. She said All right, and then you opened the door? A. Yes, sir.

Q. What made you open the door? A. Because she said she was ready. I knowed where she was going; Mr. Frank told me to watch.

Q. Mr. Frank told you to watch? A. Yes, sir.

Q. But he didn't tell you where they were going? A. Yes, sir, he told me where they were going.

Q. How came him to tell you that? A. I don't know, sir.

Q. When did he tell you that? A. That day.

Q. That they were going to the basement? A. Yes, sir.

Q. That he was going to stay in his office? A. He didn't say where he was going to stay.

Q. Well, he stayed there? A. As long as I stayed there I didn't see him go out.

Q. She said all right, and went through that door? A. Yes, sir.

Q. Opened it and they went down? A. Yes, sir.

Q. You shut that trap door? A. Yes, sir.

Q. And that was in July? A. Yes, sir.

Q. And the first time that ever happened? A. Yes, sir.

Q. First time anybody ever asked you or talked to you about it? A. Yes, sir.

Q. Now, they went down the basement? A. Yes, sir.

Q. How long did they stay there? A. I don't know, sir how long they stayed there.

Q. What became of them? A. Well, they came back up.

Q. About what time? A. I couldn't give no time, because I don't know what time it was when they went down there.

Q. Well, about what time? A. I don't know, sir;

I couldn't give you what time they came back up.

Q. It was after 3:30 when this whole thing started? A. Yes, sir  
it was after 3:30 when this whole thing started.

Q. He told you to go down; they came up after a while?

A. Yes, sir, they came up after a while.

Q. Came up the same way they went down? A. Yes, sir.

Q. Up through the same door? A. Yes, sir.

Q. You kept that door locked all the time? A. No, sir, I didn't  
keep it locked, I just kept it shut and stayed there by it.

Q. Stayed there the whole time? A. Yes, sir.

Q. And never left? A. No, sir.

Q. Well, what did they do after they came up through the door?

A. After they came up through the door me and Mr. Dalton stood  
and talked at the steps. Mr. Dalton gave me a quarter and he  
went out laughing, and she went up the steps.

Q. Where did she go? A. She went and stood at the top of the  
steps a little while first, before she ever went to the office.

Q. Did she go to the office? A. Yes, sir, she went to the  
office.

Q. How do you know she did, you couldn't see her go there, could  
you? A. No, sir, I couldn't see her go in the office, but I  
could hear her go there. I heard her walking in there.

Q. How long did they stay before they came down?

A. Didn't stay very long before they came down.

Q. What next happened? A. They came down and left, and then  
Mr. Frank came down after they left away.

Q. What time did Mr. Frank leave? A. I don't know, Sir, what  
time Mr. Frank left.

Q. Give us the best you can? A. Frank left some time about half  
past four, I believe.

Q. Then they stayed there an hour. A. I don't know, sir; I guess  
so.

Q. Then Mr. Frank left, and you locked the door and you left?

A. No, sir, I left before he did. He came down and gave me a  
quarter out of his pocket. He says: "Is that all right?", and I  
say:

say: "That's all right". and then left.

Q. Then he came out behind you and left? A. Yes, sir.

Q. Now, that's the first time? A. Yes, sir.

Q. Now, when was the next Saturday? A. The next Saturday was mighty near the same thing.

Q. Well, what was the next Saturday; I didn't ask you whether it was the same thing or not? A. That was about two weeks after that.

Q. Was that in August or in July? A. Well, it was about the last of July or the first of August.

Q. Well, do you remember the date? A. No, sir, I don't remember the date at all.

Q. Where did you get your money that time; did you draw it?

A. Yes, sir, I drew my money that time.

Q. Go up and draw it yourself? A. I disremember whether I drew it myself or not.

Q. Can't remember anything about that? A. No, sir.

Q. The first time it happened, did you draw it yourself?

A. I can't remember whether I did or not.

Q. You can't remember that? A. No, sir.

Q. Tell us the next Saturday- You think it was about two weeks after that? A. Yes, sir.

Q. Now, when did Mr. Frank first mention it to you that Saturday? When did he first mention it, that Saturday, to you?

A. Mr. Frank mentioned it to me the same Saturday I was there.

Q. About three o'clock? A. I don't know, sir, what time it was.

Q. About half past two, was it? A. About half past two. I guess, that Saturday.

Q. About half past two, you think, that Saturday?

A. Yes sir.

Q. Where were you then? A. At the factory.

Q. Mr. Frank came and got you? A. No, sir, he told me that morning before ever they paid off.

Q. What time was that he told you? A. I don't know, sir, it was near twelve o'clock when he did tell me.

Q. Where did he tell you that? A. In the box room

Q. Anybody else present? A. No, sir, not as I know of.

Q. What were you doing in there? A. What was I doing in there, I was looking after the boxes.

Q. What did he tell you then? A. He told me, "Now you know what you done for me last Saturday"-

Q. He told you: "You know what you done for me last Saturday"?

A. The other Saturday. I says: "Yes, sir, I remember". He says: "I want to put you wise to this Saturday". I says; "All right, sir, what time". He says: "Oh, about half past". I says: "All right, sir".

Q. You remember that distinctly? A. Yes, sir.

Q. What time did he go to dinner that day? A. I don't know, sir, what time he went to dinner that day; I wasn't there when he went to dinner.

Q. What time did he get back that day? A. That was somewhere about quarter past two. I saw him going up the steps with his clothes and his hat on. I don't know where he had been.

Q. What was the next that happened? A. He went in his office next that happened.

Q. Then what was the next that happened? A. Mr. Hollaway, he came on out.

Q. Mr. Hollaway was there? A. Yes, sir.

Q. That was half past two o'clock? A. No, sir, it wasn't half past two.

Q. I thought you said he always left about half past two?

A. No, sir, I didn't say he always done it.

Q. Now, when was that; give us the best estimate about it?

A. Its pretty hard to give the best estimate about the time, because I wasn't looking at the clock at all.

Q. What was the next? A. After Mr. Hollaway left away, Miss Daisy Hopkins come on in there.

Q. What happened next? A. She came into his office.

~~Q. Yes, she come into his office, and that time.~~

Q. Did she see you? A. Yes, sir.

Q. Then what happened? A. Well, Mr. Frank come out and popped his finger and bowed his head like that and went back in the office.

Q. Where were you at? A. I was standing there by the clock.

Q. He popped his hand? A. No, sir, he popped his finger.

Q. He popped his finger and bowed to you? A. Yes, sir.

Q. Then you went down? Yes, sir, then I went down.

Q. And stood by the door? A. Yes, sir.

Q. Didn't lock it? A. No sir, I didn't lock it; I shut it.

Q. Then what next happened? A. I don't know, sir, what next happened.

Q. Did you hear Mr. Frank come out of his office at all?

A. No, sir, I didn't hear Mr. Frank come out of his office at all.

Q. You could have heard him if he went out? A. No, sir, I couldn't have heard him if he went out.

I couldn't have heard him if he went out.

Q. Well, how comes it you could hear him go in there and not hear him come out? A. Because I was up there on the floor when she went in there, in the office.

Q. When you went down, she was in Mr. Frank's office? A. No, sir, I was standing at the clock and saw her go into Mr. Frank's office.

Q. Then you went down and watched? A. Yes, sir, I went down and watched.

Q. Did you hear her come out of his office? A. No, sir.

Q. Didn't you say a while ago that, while you were at the door you heard these other people coming out of his office?

A. No sir, I said this--this was what I said: after I got to the top of the steps, I could hear them going into his office.

Q. I know but you said this lady went and got a fellow; you stood by the door and heard them going into his office. A. No, sir, I said her and this man's foot steps, I heard them go into Mr. Frank's office. I said I stood down at the door and watched.

Q. You were watching when they came in, didn't you say?

A. Yes, sir, I said I was watching when they came in.

Q. You could see them when they came in there? A. Yes, sir, I could see them when they came in there, and I said I went up and heard the foot steps going in Mr. Frank's office.

Q. Didn't you sit there and watch all the time? A. I didn't

sit there at the door until he notified me to do that.

Q. I'm talking about the time she went and got that man and came back? A. I was standing by the door, yes, sir.

Q. Stood there from that on? A. No, sir, I didn't stand there from that on.

Q. What did you do? A. I stood there about the trash barrel then.

Q. On the first floor? A. Right there by the side.

Q. And then you heard them going back? A. I heard them go to Mr. Frank's office, yes, sir.

Q. When you were standing at the door, you couldn't see them go into Mr. Frank's office? A. No, Sir, I couldn't see them go into Mr. Frank's office.

Q. Wasn't you at Mr. Frank's office at that time? A. Not at the door, no, sir, when you are at the door you aint there at Mr. Frank's office.

Q. When do you hit his office? A. When you hit that trash barrel.

Q. Now, did anybody else come that day? A. This second time?

Q. Yes, No sir, nobody else didn't come

Q. How long did Mr. Frank stay there that time? A. I don't know sir how long he stayed there that time.

Q. About how long? A. Stayed there that time about a half a hour, I reckon, something like that.

Q. Then the girl went out? A. Yes, sir; then the girl went out.

Q. Mr. Frank came and went out? A. No, sir, he called me up there then asked me was I there: I told him yes sir, I was about through now.

Q. Did he know whether you were through or not? A. I don't know, sir, whether he did or not.

Q. He gave you some money? A. He gave me half a dollar.

Q. And the other time they ~~gave~~ gave you but a quarter.

Q. Then you left? A. Yes, sir.

Q. Give the next time? A. Pretty hard for me to remember.

Q. It was Thanksgiving day, the next time, wasn't it?

A. No, sir, it wasn't Thanksgiving day, the next time; I had

watched for him and Mr. Dalton, too, before that Thanksgiving day.

Q. Give us the best you can, of the next time? A. That was somewhere along in the winter time; I don't know, sir, the exact time.

Q. Well, Thanksgiving time is winter time, aint it Jim?

A. Yes sir, but this is before Thanksgiving.

A. Yes, sir, but this is before Thanksgiving.

Q. How many times before Thanksgiving? A. I watched for him there three times before Thanksgiving Day.

Q. Well, you've given me two of these times? A. Yes, sir.

Q. When was the the next one--about when? A. I don't know, sir; I couldn't exactly tell. Somewhere about the middle of August. I guess, or the last part of August.

Q. You said it was winter, didn't you? A. Well, that's somewhere near the winter, aint it?

Q. Might cold about the middle of August, aint it?

A. I said it was somewhere-----

Q. Beginning to be mighty cold about the middle of August, aint it? A. No sir, not so cold.

Q. Pretty cold, though, aint it? A. No sir, not so cold.

Q. But its obliged to be cold thought, aint it?

A. No sir, not so cold.

Q. Pretty cool though? A. No sir, not so cold. Some days is cool.

Q. What made you say it was near winter though, Jim? A. It's near winter.

Q. All right, how did that happen. Just give it to me like it happened. What time did that happen? A. I don't know, sir, what time it was that it happened.

Q. About what time? Sometime after Mr. Frank come back from dinner; I don't know what time it was.

Q. About what time? A. I don't know, sir.

Q. What did he tell you--he wanted you to watch that time?

A. He told me that time on the fourth floor.

Q. What time was that? A. This was somewhere---I don't know, sir, what time; I couldn't exactly tell.

Q. It was morning or evening? A. It was in the evening.



Q. About what time? A. I don't know, sir. I couldn't tell you exactly.

Q. Where was you when he told you? A. Right at the elevator.

Q. Was it before twelve o'clock? A. I don't know, sir, whether it was twelve o'clock or not.

Q. After twelve? A. I don't know whether it was after twelve or not.

Q. You don't know anything about that; you can't remember that?

A. No sir.

Q. Anybody standing around there then? A. There was Gordon Bailey standing there.

Q. That's Snowball? A. Yes, sir.

Q. Anybody else there? A. Not to my knowing, it wasn't

Q. Wasn't the office force there at that time? A. They were not standing at the elevator; they were back at work.

Q. It must have been before twelve o'clock then, if they were back at work? A. I guess so; I don't know whether it was twelve or not.

Q. What did he tell you then? A. He told me: "I want to put you wise again for today".

Q. "I want to put you wise again for today"? A. Yes sir.

Q. That is the same words he used every time? A. He didn't use that every time, but he used that more often than anything else.

Q. What else did he say. He hadn't seen you but three times; hadn't watched for him but three times--two times before that?

A. Yes, sir.

Q. You say that's the word he usually used? A. I don't know about the usual, but he used that the other two times.

Q. Up to that time he used the same words every time, that:

"I want to put you wise," Is that correct? A. Yes, sir. but he said sometimes in a funny way.

Q. Well, sometimes. But you said you hadn't watched but three

times, and every time he said them. "I want to put you wise"

He done that, didn't he, Jim? A. And he would say that and say it in another way, too.

Q. But the three times, he said: "I want to put you wise"

A. Yes sir, the three time he said: "I want to put you wise"

Q. And that was the three times--say it the three times up to that time? A. Well, yes sir, to my remembrance it was.

Q. You don't know that then? A. No sir, I don't know that.

Q. Well, you said that though? A. Yes, sir, I said it.

Q. Did he say anything else to you but "I want to put you wise" at that time and place? A. Yes sir, "I want to put you wise like I been doing the other Saturdays down there". I said: "All right, sir"

Q. All right, now, what time did that happen? A. Well, just happen in the evening.

Q. About what time? A. I don't know, sir, what time it happen.

Q. Give us the best estimate you have got? A. Well, some time half past, I reckon.

Q. Sometime half past, half past what--half past two or half past three? A. It was half past two, I reckon.

Q. He came back you say. What made him come; did he come back and hunt you? A. No, sir, he didn't hunt me.

Q. Where were you? A. I was standing by the office when he got there.

Q. Then he came in there with you? A. Yes, sir.

Q. What did he say to you? A. He told me, he says: "She be here in a minute."

Q. Then where did you go? A. I stayed there at the office.

Q. Did you see her come in there? A. Yes, sir. I seed her come in there.

Q. Who was she? A. She was a lady what worked on the fourth floor, but I don't know her name.

Q. The same woman? A. No, sir, she's not the same woman.

Q. Miss Daisy had been there twice, and this was a new woman?

A. Yes, sir.

Q. Does she work there now? A. I don't know, sir, whether she is or not. I'm not working there, and I don't know who all's working there now.

Q. What kind of looking lady was she? A. Nice looking lady, kinder slim.

Q. What kind of eyes did she have? A. I don't know, sir, I never paid no attention to hereyes.

Q. What kind of hair? A. I don't know, sir, exactly-had hair like Mr. Hooper there got.

Q. How do you know Mr. Hooper so well; you seem to know him pretty well, don't you Jim? A. No, sir, I don't know, sir, I have seen Mr. Hooper before.

Q. He had a good deal to do with you down there? A. No sir, I seen him once when he come down to the cell to see me.

Q. Was she grey haired, like Hooper-you say she had hair like Hooper's? A. Yes sir, she had hair like Mr. Hooper's.

Q. Aint that a gray-headed fellow, sorter measely and broken down with age? A. Don't look like he's gray to me.

Q. You have been right close to him, too, haven't you? A. I've been right close to him, but not to pay no attention to his hair.

Q. Well, she had hair like Hooper? A. Yes sir.

Q. If he's grey-haired, she had too? A. Well, she had hair like Mr. Hooper's,

Q. Was she blonde or brunette? A. I don't know, sir, what you mean by that?

Q. You don't know what a blonde is? A. No sir.

Q. You don't know what a brunette is? A. No sir.

Q. Did she have light hair? A. She had hair like Mr. Hooper's

Q. What sort of clothes did she have on? A. She had a green suit of clothes.

Q. Green all over? A. As far as I could see.

Q. What kind of shoes and stockings did she have on?

A. I didn't pay no attention to her shoes and stockings.

Q. But Miss Daisy Hopkins, what sort of clothes did she have on the first time that she came there? A. The first time that she came there she had on a black skirt and a white waist.

Q. What kind of shoes and stockings? A. I didn't pay no attention to what kind of shoes and stockings she had on.

Q. Didn't you tell Mr. Dorsey, what kind of shoes and stockings she had on? A. No sir, I told him the lady that was there

Thanksgiving Day had on white shoes and stockings.

Q. Now, the next day what did she have on? A. The next day she had on the same thing, black skirt and white waist.

Q. She had on exactly the same thing? A. Yes sir.

Q. And this other---There was a girl dressed in green all over?

A. Yes, sir, there was a girl dressed in green all over, this last one.

Q. And you don't know who she is? A. No sir; she worked up there on the fourth floor, but I don't know her name.

Q. You don't know whether she works there now or not? A. No sir, I don't know whether she works there now or not. I haven't been there----

Q. She worked there when you left? A. She had been there that morning; I don't know whether she was there that evening.

Q. And you saw her there? A. Yes sir.

Q. Did she have on a green dress that morning? A. No sir, she didn't have on a green dress that morning.

Q. What kind? A. A dirty black dress with paints on it.

Q. Well, they all have that don't they? A. Yes sir, when they are at work.

Q. You didn't see her when she had her working dress off?

A. No sir, I didn't see her that day when she had her working dress off.

Q. You never inquired who she was? No sir, I never inquired who she was because it wasn't none of my business.

Q. Did she speak to you? A. No sir.

Q. Well, she's the one anyway? A. Yes sir.

Q. She was the other one? A. Yes sir.

Q. Now Jim, don't everybody in that factory know Jim Conley?

A. No sir, didn't everybody in that factory know me.

Q. Given me one of them? A. I don't know, sir, I don't know whether they all knew me or not.

~~Q. Didn't she say go up to the fourth floor?~~  
A. No sir, the girls never did.

Q. You swept on the fourth floor? Q. Yes sir, I swept on the fourth floor a while. 31

Q. How long did you sweep on the fourth floor? A. Been

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sweeping up there ever since last January.

Q. You saw that little girl every day, that went to meet Mr. Frank, didn't you? A. This last one.

Q. Yes, A. I didn't see her every day, but I seen her there.

Q. Saw her many times and didn't ask who she was? A. No sir, I didn't ask who she was.

Q. Don't know who she was? A. No sir, I don't know who she was.

Q. Now, when she came in, did she see you when she came in?

A. Yes sir, she seen me as she come in.

Q. Where did she go? A. She went to Mr. Frank's office.

Q. Then you went and watched? A. Yes sir, then I went and watched.

Q. You didn't see them leave nor hear them leave Mr. Frank's office? A. No sir, I didn't see them leave and I didn't hear them leave Mr. Frank's office.

Q. How long did you stay there? A. Half an hour, I reckon.

Q. And she came out? A. Yes sir.

Q. What became of Mr. Frank? A. He came out and left me up in the office and he went out somewhere. I don't know where he went, and then he came back and says: "That's all right, I didn't take out any money".

Q. He went out somewhere? A. Yes sir.

Q. You mean he went out in town somewhere? A. I don't know whether he went out in town or not.

Q. Didn't you open the door? A. Yes, sir, I opened the door.

Q. Well, he went out of the factory? A. Yes sir.

Q. And then went back? A. Yes sir.

Q. And you stayed there waiting for him? A. Yes sir.

Q. What did you say he said? A. He said "I didn't take out that money, didn't you see I didn't?" I says: "Yes sir, I seed you didn't". He said "That's all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here".

Q. He told you he didn't want you to tell Darley? A. Yes sir.

Q. And then the next time, now, was Thanksgiving Day?

Yes sir, the next time was Thanksgiving Day.

Q. What hour was it Thanksgiving Day? A. I don't know, sir,

what hour; I met Mr. Frank there that morning about eight o'clock.

Q. Anybody else there? A. I didn't see anybody else there.

Q. Where did you meet him then? A. I met Mr. Frank right at the door; I was sitting on the box when he come in.

Q. That's when he mentioned it to you again? A. That's when he taken me on the inside and told me---

Q. Tell me the words? A. After he went on the inside, he says: "How are you feeling"? I says: "I'm feeling all right, Mr. Frank". He says: "Come here" he says, "a lady will be here a little while, me and her going to chat. I dont want you to do no work, I just want you to watch."

Q. About what time was that? A. Somewhere between eight and half past eight.

Q. Nobody there then.? A. I didn't see nobody.

Q. Where did you go then? A. He went upstairs.

Q. He went upstairs? A. Yes sir.

Q. Where did you go? A. I stayed down on the first floor.

Q. How long was it before the lady came? A. I don't know. sir. somewhere about half and hour.

Q. Something about nine o'clock that morning? A. I don't know sir, what time it was, it was about half a hour.

Q. Well, you said you got there about half past eight? A. I said somewhere between eight and half past eight.

Q. Well a half hour, then, would be somewhere between half past eight and nine, the lady came? A. Yes sir. It was a half hour.

Q. Did you know that lady? A. No sir, I didn't know that lady. I had never seen her around the factory.

Q. She had never worked there? A. No sir.

Q. And you never saw her before nor since? A. I think I saw her in the factory two or three nights before the Thanksgiving Day, in there in Mr. Frank's office.

Q. You didn't have any talk with her that night? A. No sir.

Q. Nor with Mr. Frank eight? A. No, sir, I had some talk with Mr. Frank about explaining about that clock.

Q. But about the lady? A. No sir, didn't say nothing at all about that lady.

Q. Now, you had, you say, seen her there a few nights before?

A. Yes sir.

Q. Sitting in Mr. Frank's office, was she? A. Yes sir.

Q. What time? A. Somewhere near eight o'clock.

Q. What did you have to do there? A. I had to stack some boxes up on the fourth floor.

Q. Eighth floor? You had to stack some boxes? A. No sir, I said fourth floor.

Q. That was about Thanksgiving Day? A. Yes sir.

Q. Was it the same week of Thanksgiving you saw her up there?

A. I don't know sir, whether it was the same week of Thanksgiving but somewhere near Thanksgiving; it wasn't many days.

Q. How was she dressed that night? A. I disremember how she was dressed that night.

Q. What sort of looking face did she have? A. She was a nice looking lady.

Q. What kind of hair did she have? A. I didn't pay no attention because I didn't go that close.

Q. What sort of complexion? A. I don't know, sir, I didn't get that close.

Q. You don't know what sort of clothes, nor what sort of shoes?

A. I think she had on black clothes.

Q. How tall was she? A. she was a very tall, heavy built lady.

Q. You are certain of that? A. Yes sir.

Q. Then, between half past eight and nine, she came to the factory? A. Yes sir, between half past eight and nine, o'clock.

Q. Where were you? A. I was standing down on the first floor.

Q. Standing down on the first floor? A. Yes sir.

Q. Was the door open when she came? A. The front door was open when she came.

Q. You closed it? A. I closed it after he stamped for me to close it.

Q. He stamped that time? A. Yes sir.

Q. He didn't do it before? A. No sir, because I would be down there and know.

Q. You heard her go into his room? A. Yes sir, I heard her go.

into his office.

Q. Where was he standing? A. Standing by the trash barrel, smoking a cigarette.

Q. She went upstairs and went into Mr. Frank's office, and you heard her? A. I heard her going towards Mr. Frank's office.

Q. You heard her go in there? A. I couldn't hear them go in; I heard her going towards it.

Q. Didn't you say you heard those others go in? A. No sir, I said I heard them going towards the office.

Q. You didn't say you saw them go in? A. No sir, I said I heard them go towards it.

Q. And you didn't say you heard them go in? A. No, sir, I said I heard them go towards the office.

Q. You didn't say you saw them go in? A. No sir, I said I heard them go towards it.

Q. And you didn't say you heard them go in? A. No sir, I said I heard them go towards his office.

Q. But you didn't see the others? A. I don't remember saying I seen the others.

Q. Now she came and she went up and towards Mr. Frank's office, and he stamped? A. Mr Frank came out there and stamped.

Q. Where did he come to and stamp? A. Came to the trash barrel where he had told me---

Q. You mean upstairs? A. Yes sir, he was up on the second floor stamping.

Q. And you were on the first floor? A. Right about the trash barrel.

Q. And you were on the first floor? A. Right about the trash barrel.

Q. And he told you he was going to stamp? A. Yes sir, two times.

Q. And then he stamped? A. Yes sir.

Q. And then you closed the door? A. Yes sir, like he said so.

Q. How long did you stay there? A. I didn't stand in the door after I closed the door. I came back and sat down on the box.

Q. How long did you stay there? A. About a hour and a half.

Q. That would have been until about 10:30--about 10 o'clock



that you stayed there? A. I reckon so; I don't know how long exactly it was.

Q. Then the lady came down? A. No, sir Mr. Frank says: "I'll stamp after this lady comes, and you go and close the door and turn that right latch"

Q. That was the first time he ever told you about the night lock?

A. Yes sir.

Q. The other times, he told you just to close it?

A. Yes sir.

Q. But that time he told you to put the night lock on? A. Yes sir, and he says: "I'll stamp, and if everything is all right, you take and kick against the door"

Q. And that time you kicked against the door? A. Yes sir, I kicked on the door.

Q. You didn't kick against the door the other times?

A. No sir, because the ladies always went upstairs---

Q. Well, she went up then, too, didn't she? A. Yes sir.

Q. But he told you to stamp and everything would be all right?

A. No sir, he didn't tell me to stamp and everything would be all right, he didn't say that. He said he would stamp, and for me to kick the elevator door if everything was all right.

Q. And then you stayed an hour and a half that time?

A. Yes sir.

Q. Then the lady came down? A. No sir, Mr. Frank come down--

Q. He left the lady up there? A. No sir, Mr. Frank come down to the two doors and unlocked the doors and went on---come back and says: "Everything all right?" I says: "Yes sir", He went to the front door and fixed it himself, unlocked the front door himself, he went and looked up the street like that (illustrating) and come to the steps and taken the knob and turned it, there at the head of the stair door, and told her to "come on "

Q. He turned the knob and told her to come on down?

Q. Told her to come down? A. Yes sir.

Q. And she left? A. No sir, she come down; and after she got to me, she says to Mr. Frank, "Is that the nigger?"

and he says: "Yes"; and she says: "Well, does he talk much"; and he says: "No, he's the best nigger I've ever seen."

Q. She stopped there and looked at you? A. No sir.

Q. Didn't you say she stopped and asked Mr. Frank: "Is that the nigger?" A. She asked Mr. Frank that.

Q. She stopped and said to Mr. Frank: "Is that the nigger?"

A. No sir, she didn't stop.

Q. She just kept walking? A. Yes sir.

Q. Neither stopped, neither one of them stopped?

A. No sir, neither one of them stopped at all; she just said that

Q. Said: "Is that the nigger", and just kept walking on?

A. Yes sir, she kept on walking.

Q. And kept on walking off? A. Yes sir, she kept on walking, and—

Q. Just kept on walking, and Mr. Frank said: "Yes, that's the best nigger I ever saw"? A. Yes sir.

Q. You didn't see them stop at all? A. No sir, I didn't see them stop at all.

Q. Went out together? A. No sir, they never went out together.

Q. What did Mr. Frank do then? A. Mr. Frank went up and opened the door and come back up stairs.

Q. How long did he stay there? A. I don't know, sir, how long he stayed there.

Q. You left there? A. He told me to go back in the office—

Q. You went in the office? A. Yes sir; he called me. I went in the office, and Mr. Frank come and gave me a dollar and a quarter.

Q. Give you \$1.25 that time? A. Yes sir, he gave me \$1.25 that time.

Q. You went out then? A. No sir. I stayed there a little bit. He asked me where I was going that day. I says: "I aint going nowhere: I am going on home". He says: ". I'm going home directly too". I says: "Is that all, Mr. Frank". He says: "Yes", and I left away.

Q. Where did you go when you left? A. I went to the beer saloon over there on Hunter and Forsyth Street.

Q. How long did you stay there? A. I don't know, Sir; about an hour, I reckon.

Q. Then went home? A. No sir, I went to Peters Street and stayed a good while.

Q. Drank some more beer over there? A. No sir, I didn't drink no beer over there.

Q. Didn't drink but one beer that day? A. I don't know, sir, how many I drank at that saloon on Forsyth and Hunter.

Q. About what time did you leave the factory? A. I don't know, sir, it was a little before twelve o'clock, but I don't know what time.

Q. So the girl didn't come out of the factory that day until a little before twelve o'clock. A. I don't know, sir, what time she came out of the factory that day?

Q. you said you saw her leave? A. I said she stayed about an hour and a half.

Q. Well, what time did she leave? A. I don't know, sir, what time.

Q. What kind of dress did she have on? A. Blue skirt with white dots in it.

Q. She had on a blue skirt with white dots in it?

A. Yes sir, and white slippers and white stockings, and had a grey tailor-made coat--what I call a grey tailor-made coat--looked to me like with pieces of velvet on the edges of it.

Q. What kind of velvet was it? A. Black velvet.

Q. What color was the cloth that made the coat? A. It was grey.

Q. Did she have on any jewelery? A. I didn't notice her hands.

Q. What sort of a hat? A. Hat a black hat, with big, black feathers over.

Q. What else? A. That's all I paid any attention to.

Q. And she had white shoes and white stockings? A. Yes sir.

Q. Then Mr. Frank said he was going to dinner, and you didn't go back any more that day? A. No sir, I didn't go back any more that day: I left him there at the office.

Q. You left him at about twelve o'clock? A. Yes sir, a little before that.

Q. And wasn't anybody else there that day? A. No sir, not while I was at the office, I didn't see nobody else there that day.

Q. The next time now? A. Next time was Saturday when I watched.

How long was that after Thanksgiving? A. That's somewhere after Christmas, way after Christmas, when I watched for him.

Q. That was in the dead of winter, then? A. Yes sir, in the dead of winter.

Q. About when? A. About January, I reckon.

Q. About the middle of January, or when? A. I don't know, middle first or last, I can't say--somewhere in January.

Q. How do you know it was somewhere in January? A. Because it was right after the first of the year.

Q. Well, if it was right after the first of the year you know what time it was in January? A. I said somewhere about the first or middle.

Q. Well, was it middle, or first, or last? A. I don't know, sir, somewhere one of them parts; it was right after New Year, I don't know whether one or two days after, or three or four days after.

Q. You couldn't tell any better than that? A. No sir, I couldn't tell any better than that.

Q. That was another Saturday? A. Yes sir, that was another Saturday.

Q. When did he first talk to you about that? A. Well, I disremember when he first talked to me about that.

Q. You don't remember what he said to you? A. No sir, I don't remember what he said to me.

Q. But you know you were down there watching; that's the only thing you can remember about that? A. I can remember one thing-- He said----

Q. You said a minute ago you couldn't remember anything. A. I couldn't remember anything about him telling me about the watching, but I can remember about him telling me about who was coming.

Q. What did he tell you? A. Said it be a young man with two ladies.

Q. When did he tell you that? A. That was Saturday morning.

Q. What time? A. Soon Saturday morning.

~~Q. About what time? A. I reckon about half past seven o'clock.~~

Q. Was Mr. Halloway there at that time? A. No sir, I had seen him but I was on the elevator.

Q. He came and got on the elevator with you? A. No sir, I was standing by the side of Gordon Bailey, and he came and told me.

Q. You can't remember what he told you except he was going to have a man and two ladies after awhile? A. Said: "A man and two ladies will be there this evening" and said I may can make some money off this man.

Q. Said what? A. That I could get to make a piece of money off this man.

Q. That was all he said to you about that? A. Yes sir.

Q. Didn't tell you when they would come? A. Said be there this evening about the same time.

Q. You didn't say that awhile ago when I asked you what he said did you? A. You out me off so quick I didn't have time to say it.

Q. Well, I'm sorry I cut you off, I'll open it again and give you a better chance. That was about half past seven? A. Yes sir.

Q. What floor of the factory? A. I can't remember now just what floor it was on.

Q. You didn't see anybody at the time, except Mr. Holloway?

A. I saw Gordon Bailey; me and him was on the elevator together.

Q. He was talking to you so Gordon Bailey could hear him?

A. I don't know, sir, I reckon he could hear; he was talking so he could hear.

Q. He was talking so Snowball could hear it? A. Yes sir.

Q. Just talking to you about meeting a woman and let Gordon hear it? A. He said them words, yes sir.

Q. Right before Gordon? A. Yes sir.

Q. And you remember what floor it was on? A. No sir, I don't remember what floor it was on.

Q. He didn't say anything more to you after that?

A. No sir, he didn't say anything more to me after that.

Q. Then what did you do that evening? I went and go through cleaning up about quarter after two, and I went and stood at the door.

Q. He hadn't told you to stay at the door--just told you some woman was coming? A. Told me two ladies and a young man coming, and I could make myself some money off this man.

Q. All right, Then you went and stood at the door. A. Yes sir.

Q. Was the door open? A. One door was.

Q. Broad, open daylight? A. Yes sir.

Q. What time did the man and the ladies come? A. Somewhere about half past two or three o'clock.

Q. About half past two or three o'clock, they came? A. Yes sir.

Q. They come right in? A. No sir, they didn't come right in.

The two ladies stayed back; the young man, he come in. He asked me was Mr. Frank in the office; he says: "Mr. Frank put you wise?" I says: "Mr. Frank put me wise, how?" He says: "Didn't he tell you to watch the door, two ladies and a young man would be here?" I says: "He didn't tell me to watch the door" He says! "Two ladies and a young man be here" and, he says, "Well, I'm the one"

Q. Him and Mr. Frank used the same terms, then. Frank says: "I'll put you wise": and he said: "I'll put you wise"?

A. Mr. Frank didn't say it that day.

Q. Well, but he said it the other times? A. Yes sir. Q. And the two ladies stayed out there and talked to you? A. Yes sir, then he come and told them to come on.

Q. They went up to Mr. Frank's office. A. I don't know, sir, where they went after that, after they went upstairs, I don't know where they went after they got upstairs.

Q. You were near enough, wasn't you, to see? A. No sir, I was at the door.

Q. You don't know which way they went? A. I saw them when they turned that way, towards the clock.

Q. You say it was about half past two? A. Yes sir, it was about half past two or three o'clock.

Q. How long did they stay there that time? A. Stayed there, looked to me about two hours, I reckon.

Q. Then half past two and that would make it half past four o'clock? A. I don't know, sir, what time it would make it.

Q. Did you lock the door? A. No sir, I stood just inside the door.

sir, didn't nobody come in while I was there and didn't nobody come out.

Q. Did you know either one of those ladies? A. No sir, I didn't know either one of those ladies.

Q. Give me a description of those young ladies?

A. Well, I disremember what the ladies did have on.

Q. Can't you remember what either one of them had on?

A. No sir, I can't remember what either of them had on; I didn't pay much attention.

Q. Can't described either one of those women at all, can you?

A. No sir.

Q. What sort of looking man was he? A. He was tall, slim built, heavy man.

Q. Ever see him before? A. I have seen him there talking to Mr. Holloway.

Q. Did he work there? A, No sir, he didn't work there.

Q. When did you ever see him there talking to Mr. Holloway?

A. Seen him quite often talking to Mr. Holloway through the week.

Q. Seen him quite often? A. Yes sir.

Q. Quite often? A. Yes sir, through the week, come there talking to Mr. Holloway.

Q. Give us a description of him? A. Well, I said he was a tall man.

Q. Well, did he had black hair? A. I couldn't see his hair; he had on a hat.

Q. Had light eyes? A. I don't know, sir, what you mean by that.

Q. Did he have grey eyes or blue or black? A. I didn't pay much attention to his eyes.

Q. You had seen him there frequently talking to Mr. Holloway, though? A. Yes sir.

Q. Where did he talk to Mr. Holloway at? A. Sitting out on the bench up there.

Q. Did you hear any conversation between him and Mr. Holloway?

A. No sir, I couldn't hear anything between them.

Q. Ever seen him since then? A. I seen him since he was talking to Mr. Holloway then.

Q. But you don't know who he was? A. No sir.

Q. Never saw the girl before or since? A. No sir, never saw

A. Now Jim, you were talking to me when we left off about the time you say you watched for Mr. Frank? A. Yes sir,

Q. Did you watch for him again? A. In January, yes sir.

Q. Well, I am talking about January. Is that the last time you watched for him until this time? A. Yes sir, I think it was---if I am not mistaken.

Q. Well you aint mistaken about it, are you Jim? A. I don't know sir, I couldn't tell you about that.

Q. You have no recollection of any other time? A. No sir, no recollection of any other time.

Q. You have got no recollection, you can't remember it, if you did? A. Well, I don't know, Sir.-----

Q. Now let us take that time about the middle of July you say you watched for him the first time. What did you do the Saturday before you watched for him the first time? A. The Saturday before I watched for him the first time?

Q. Yes. A. I disremember now, went ahead with my work, I guess.

Q. You have no recollection of that at all? A. No sir.

Q. Now, let us take the Saturday before you say you watched for him, what did you do that Saturday? A. Well, I thought you said to take the Saturday before I had watched for him.

Q. Well, I did, and I will now take the Saturday after you watched for him the first time? A. Well, the Saturday I watched for him the first time/--I disremember.

Q. You can't remember what happened that day?

A. No sir.

Q. Nothing on that day? A. No sir.

Q. Well, the next Saturday? A. Well, I watched for him that Saturday.

Q. You say you didn't watch for him until three weeks?

A. That would make three weeks.

Q. One Saturday and two Saturday make three? A. That is what I call three, three times that I watched for him.

Q. One Saturday would be one week? A. Yes sir.

Q. The next Saturday would be two weeks? A. Yes sir.

Q. And the next Saturday would be three weeks? A. Yes sir, and the next Saturday would be three weeks.

Q. But I am not asking about that. I am talking about the second Saturday? A. You asked me what I did the second Saturday well, I don't remember.



Q. You mean you watched for him one Saturday and then the second Saturday you watched for him again? A. Then the second Saturday after that, I watched for him.

Q. You missed a Saturday? A. Yes sir.

Q. And then you watched the next Saturday? A. Yes sir.

Q. That is what you say about it now? A. Yes sir, that is what I say now and what I said before.

Q. Now the Saturday after you watched for him the second time, what did you do? A. I don't know sir, I disremember what I did.

Q. You don't remember anything about what you did at all now that day, do you? A. No sir, I don't remember.

Q. And the Saturday after that. Do you remember anything about that?

A. Well, I don't know, sir, about the Saturday after that.

Q. Nor the Saturday after that? A. Yes sir, the Saturday after that, I think about the first of August, I did some more watching for him, somewhere along there.

Q. You did some more? A. Yes sir.

Q. Then you watched about the middle of July? A. About the middle of July.

Q. And about the first of August; three times?

A. Yes sir.

Q. Right there together? A. Yes sir, not one Saturday right after the other Saturday, though.

Q. One Saturday after that you didn't watch? A. Yes, sir.

Q. And the next Saturday you didn't watch? A. My best memory, the next Saturday, then I watched again, yes sir.

Q. That is the way you remember it now? A. Yes sir. That is the way I had it before.

Q. But that is the way you now remember it? A. Yes sir.

Q. Not let me see if I have got that right. You watched one Saturday in July, the next Saturday you watched? A. Yes sir.

~~Q. And the next Saturday you did~~

Q. And the next Saturday you didn't watch, and the next Saturday you did? A. Yes sir.

Q. That is the way you remember it now? A. Yes sir.

Q. You are certain that is the way it happened; that is your

best recollection? A. Yes sir.

Q. Of course, you don't know except from you best recollection.

Then you didn't watch for him until Thanksgiving Day?

A. Until Thanksgiving Day.

Q. What did you do the Saturday before Thanksgiving Day? A. I don't remember what I did.

Q. What did you do the Saturday after Thanksgiving Day?

A. I don't know what I did.

Q. And the next Saturday? A. Well, the next Saturday, I could tell you what I did that Saturday.

Q. And the next Saturday? A. Well, I don't know, sir, what I did the next Saturday.

Q. And the next? A. The next Saturday I did some watching for him, then.

Q. Let me see if I get that now? You watched Thanksgiving Day?

A. Yes sir.

Q. The next Saturday you didn't watch, and the next Saturday you did? A. I watched somewhere along about the last of Sept.

Q. That is your recollection? Yes sir, somewhere about the last of September, somewhere like that.

Q. That is your recollection? A. Yes sir, about the last of September, somewhere like that.

Q. Well now, that is you best recollection? A. I say somewhere about the last of September.

Q. Well, I gave it right, didn't I? A. I don't know, sir, I can't count by the week.

Q. Well did you say that? A. No sir.

Q. What did you say? A. I said something like that.

Q. Well, that means you are doing the best you can to give me the best memory you have? A. All right sir.

Q. Isn't that correct, Jim? You and I don't want to misunderstand each other now? A. No sir, we wont misunderstand each other.

Q. Well, is that correct? A. I say sometime about the last of September I did the last watching.

Q. That was after tThanksgiving? A. Yes, after Thanksgiving.

Q. In September after Thanksgiving is your recollection?

A. Yes sir, after Thanksgiving Day.

Q. About the last of September? A. After Thanksgiving Day; yes sir.

Q. About the last of September? A. After Thanksgiving Day, yes sir.

Q. Now Jim, you don't remember any of these dates?

A. No sir, I don't remember any of these dates. I can't tell about them.

Q. Let us see how much <sup>money</sup> you drew that Saturday that you watched for him; how much money did you draw that day?

A. I don't know, sir.

Q. What time did you draw it? A. I don't know, sir, what time I drew it.

Q. Did you draw it at all, or did somebody draw it for you?

A. Well, I don't know, sir, whether somebody drew it for me or I drew it.

Q. You don't remember about that? A. No sir.

Q. You have no memory at all about that? A. No sir.

Q. What time did you get home the first morning you watched for him? A. I couldn't tell you to save my life.

Q. Nor what time you went home, you couldn't tell me?

A. No sir, I couldn't tell you.

Q. You couldn't tell me anything at all about that?

A. No sir.

Q. The second time you watched for him. Can you remember the time you got back to the factory? A. No sir, I couldn't tell you what time I got to the factory.

Q. Or what time you left to go home? A. Well, I don't know, sir, what time I left to go home.

Q. You can't remember? A. No sir, I don't know what time I left to go home.

Q. Now the second Saturday did you draw your money- the second time you watched for him, did you draw your money?

or not? A. I disremember now.

Q. Did you draw it, or did somebody draw it for you?

A. I disremember.

Q. How much did you draw? A. I don't know, sir.

Q. Now, that third time, on the day before Thanksgiving; that is, three times before Thanksgiving, according to your recollection? A. Yes sir.

Q. Now did you draw your money that week? A. Before Thanksgiving I couldn't tell you about that.

Q. You don't know whether you drew your pay or whether somebody drew it for you? A. No sir.

Q. Or how much you drew? A. No sir.

Q. You don't remember that, do you? A. No sir.

Q. When did you draw your pay, before or after Thanksgiving, that week of Thanksgiving? A. The week of Thanksgiving when did I draw my pay?

Q. Before or after Thanksgiving Day? A. Well, to tell you the truth I disremember.

Q. You don't remember? A. No sir.

Q. You can't remember whether you drew your pay before or after Thanksgiving? A. No sir.

Q. Can you remember what day of the week Thanksgiving was?

A. No sir, I don't remember.

Q. And you don't remember what time you got down in the morning or what time you left? A. No sir.

Q. You have no memory at all about that, have you?

A. No sir.

Q. The day after Thanksgiving. Do you remember what you had been doing that day? A. No sir, but to my remembrance I think I came back to work the day after Thanksgiving.

Q. Are you certain about that, or have you any memory at all about it? A. I think I came back to work.

Q. What time did you get there? A. I don't know, sir, what time I got there.

Q. What time did you leave that day? A. I don't know, sir.

Q. You can't remember anything about that? A. No sir.

Q. The day before Thanksgiving, what time did you get down to the factory that day? A. I don't know, sir, what time I got to the factory that day.

Q. How many hours did you make that day? A. I don't know, sir.

Q. When did you leave that day? A. I don't know, sir

Q. Who did you see at the factory that day, that you remember?

A. Well, I saw, I reckon, most everybody there.

Q. Well, who do you remember seeing there? A. I remember seeing Mr. Frank.

Q. You do remember seeing Mr. Frank? A. Yes sir.

Q. The day before Thanksgiving? A. Yes sir.

Q. Did you see him the day after Thanksgiving?

A. Yes, sir, I saw him the day after Thanksgiving.

Q. You remember those two facts well? A. Yes sir, I remember those two.

Q. You saw Mr. Frank the day before Thanksgiving when you got there. A. Yes sir.

Q. And you saw him the day after Thanksgiving? A. Yes sir.

Q. Who else did you see? A. Well, I don't remember, now, who else I did see.

Q. You don't remember who else you saw? A. No sir.

Q. Did you see Mr. Darley? A. I don't think I saw Mr. Darley.

Q. Who is the foreman in the place where you work?

A. Well, they have got foreladies there.

Q. Who is the forelady? A. One was Miss and Miss Clark and Miss Willis.

Q. In the place where you work, where is that? A. On the fourth floor.

Q. Did you see either one of them there that day? A. I don't remember.

Q. Let us take the first Saturday you said you watched for him. How many hours did you make that day? A. I don't know, sir, how many hours.

Q. You can't remember anything about that? A. No sir.

Q. Or the second day, do you know how many hours?

A. No sir.

Q. Or the third? A. No sir.

Q. Or Thanksgiving? A. No sir.

Q. Do you know how much you were paid for either one of those days? A. Yes sir. I can tell you what I was paid Thanksgiving Day when I watched for him. 48.

Q. Well, you know that was \$1.50? A. No sir, I said it was \$1.25.

Q. Well, outside of the factory, do you remember what you got for your services? A. Outside of the factory, I remember once I got a half a dollar, then, again, I remember getting half a dollar.

Q. That is when you were watching for him, you say?

A. Yes sir.

Q. And you got how much on Thanksgiving Day? A. I got \$1.25.

Q. The day before that? The day just before that, I don't remember just how much I got from him that day.

Q. The Saturday before that? A. You mean for watching?

Q. Yes. Q. Well, the Saturday before that, I don't know, sir, what I got that Saturday. I don't think I done any watching that Saturday.

Q. Well, you watched three Saturdays before Thanksgiving?

A. Yes sir.

Q. And then you watched again about the last of September?

A. Yes sir.

Q. How much did you get the first time? A. The first---

Q. But let us take them up the other way. How much did you get the first Saturday before Thanksgiving? How much did he pay you then. A. I remember getting 75 cents then; 50 cents from him and a quarter from the other man.

Q. Well, the next time? A. The next time I remember getting 50 ¢

Q. The next time? A. I remember getting 50 cents then.

Q. But you don't know how much you got for your regular work for any of those days? A. No sir.

Q. You can't remember anything about that? A. No Sir-----

Q. The first day you said you watched for Mr. Frank, was Snowball there that day? A. No sir, Snowball was not there.

Q. You didn't see him. A. No sir, I didn't see him. I think he laid off.

Q. How about the next day? A. I don't remember about the next day.

of not. I don't remember about where he was.

Q. Well, the third one, was Snowball there that day?

A. I disremember about the third Saturday.

Q. Well the next one was Thanksgiving. Did you see him

Thanksgiving morning? A. I didn't see him Thanksgiving morning, but I saw him the day before Thanksgiving.

Q. That is the time when you heard Mr. Frank talking in the presence of Snowball? A. Yes sir.

Q. He didn't hesitate to talk for Snowball? A. No sir.

Q. He talked before Snowball just like he did before you?

A. Yes sir.

Q. The first time he did that was Thanksgiving Day, that he talked before Snowball? A. Not Thanksgiving Day, no sir.

Q. The day before Thanksgiving? A. Yes sir, the day before.

Q. When was that when you and him and Snowball were talking together? A. I don't know what time it was.

Q. You don't know what time that was? A. No sir, I

Q. You don't know what time that was? A. No sir, I don't know what time it was.

Q. Was it in the morning? A. Yes, sir, somewhere along in the morning.

Q. Or in the afternoon? A. It was somewhere in the morning.

Q. About what time in the morning? A. I don't know, sir, what time it was, I reckon somewhere before 12 o'clock.

Q. Was Snowball the elevator man? A. Yes, he was running the elevator that day.

Q. The date you don't remember; but it was sometime in Sept., before Thanksgiving Day? A. Yes sir.

Q. The day before Thanksgiving? A. Yes sir.

Q. And Snowball was the elevator man at that time?

A. No sir.

Q. How came him to be running the elevator? A. Because he wanted me to swap places with him, and I wouldn't do it; and he went to work and swept some trash in the box, and I had to sweep it out.

Q. You were the elevator man? A. Yes sir.

Q. But he was running it? A. Yes sir, he was running it then.

of you? A. No sir, he didn't say a word.

Q. It didn't attract his attention at all? A. No sir, didn't attract his attention at all.

Q. How long had Snowball worked at the factory? A. I don't know sir-----

Q. Now, that time when you watched in January, was Snowball there that day--I believe you said in was in January?

A. Yes sir, I said I watched one time in January.

Q. Well, was Snowball there? A. I don't know whether he was or not.

Q. Now, the only time you ever heard Mr. Frank say anything in front of Snowball was that time you have just mentioned?

Thanksgiving is that what you said? A. Yes sir.

Q. You heard him say something before Snowball then?

A. One time was in January.

Q. Where was that, in January? A. He said that in the box room. In the box room, he told me.

Q. Snowball was in there? A. Yes sir, he was helping me to stand the boxes.

Q. Snowball was in there? A. Yes sir, he was helping me to stand the boxes.

Q. He walked up there and told you before Snowball?

A. I don't know whether he knew Snowball was there or not.

Q. Was he close to Mr. Frank? A. No sir, Snowball was sitting up in the rack.

Q. Was he in sight, or not? A. Yes sir, he was in front of the little partition, between me and Mr. Frank.

Q. You could see him, could you? A. No sir, I couldn't see him from where he was standing, but I knowed he was there.

Q. Mr. Frank wouldn't hide it from Snowball; he would talk before Snowball all right? A. I don't guess he would if he had seen him.

Q. Tell a single one he has ever talked to you about, except business, before that first time you watched for him.

Give us the day and time he ever talked to you, and what he talked about. A. I can't give you size up, I never heard him at all.

Q. Give the day when he ever jollied with you, prior to the time he talked to you the day before he talked to you the daybefore



you watched for him? A. I couldn't give you the date. I couldn't tell you the date about it at all-----

Q. How long was that before the day you watched for him?

A. I don't know, just directly after Mr. Darley had come there.

Q. That was after he had that talk with you that you are talking about? A. After he had what talk with me?

Q. The one that he had with you in the elevator?

A. Yes sir, that was after that time.

Q. The first time you ever saw him have any talk at all with Snowball, except on business, was that day he talked about that girl right before you and Snowball? A. Yes sir, that was the first day.

Q. That is the first time? A. Yes sir, the first time I saw him talk in front of Snowball.

Q. He just come in that and commenced talking to you, and paid no attention to Snowball? A. He didn't know Snowball was in there.

Q. In the elevator. How could he help seeing him if he was in the elevator? A. The elevator was gone down. Whenever I would get ready to work at night, he would send the elevator to the basement, and we would go in the back room.

Q. You were not on the elevator when you had that talk?

A. No sir, that talk was in the back room.

Q. I am talking about just before Thanksgiving. You were in the elevator that day? A. Yes sir, we were in the elevator then. I was standing right there beside the elevator.

Q. Well, Snowball was standing right here by you? A. Snowball was standing right there by me, yes sir.

Q. He could have seen him, Mr. Frank, couldn't he?

A. Yes sir, he was where he could have seen him, and he was where he could have heard anything that was said.

Q. And Mr. Frank knew that he could have heard anything that was said? A. Yes sir, he knew he could have heard anything that was said.

Q. He saw Snowball standing there? A. Yes sir, he saw Snowball standing there-----

Q. Well, take last Thanksgiving Day. How many was there?

A. This gone Thanksgiving?

Q. Yes, A. I don't know; there was a big crowd.

Q. When did Miss Daisy Hopkins work there? A. Oh, she worked in 1912.

Q. 1912? A. Yes sir.

Q. You are certain of that? A. Yes sir, I am certain she worked there in 1912.

Q. What floor did she work on. A. She worked on the fourth floor

Q. The fourth Floor? A. Yes sir.

Q. And she worked there in 1912? A. Yes sir.

Q. What time in 1912 did she quit there? A. I don't know what time.

Q. About when, Jim? A. I don't know when she quit there.

Q. What time of the year did you see her working there?

A. I saw her working there in 1912.

Q. What part of the year? A. Well, I saw her working there from June on up.

Q. June on up? A. Yes sir, up until about near Christmas.

Q. All right, you saw her working there from June or July of 1912 until Christmas? A. Yes sir.

Q. Or about that time? A. Yes sir.

Q. And she worked on the fourth floor? A. Yes sir, she worked on the fourth floor.

Q. Has she worked there in 1913? A. I don't know; I don't remember seeing her there; I don't know whether she has worked there in 1913 or not.

Q. You can't remember that? A. No sir, I can't remember that

Q. You worked on the same floor with her, didn't you?

A. I didn't work with her at all. I worked on the same floor.

Q. And you don't know whether she worked there in 1913 or not?

A. No sir, I don't remember.

Q. But you know she worked there from June until about Christmas?

A. Yes sir, I know she worked there from about June until about Christmas.

Q. You are very certain of that? A. Yes sir.

Q. Do you know when Miss Daisy left Miss Daisy Hopkins?

A. No sir.

Q. You don't remember when she left? A. No sir, I don't remember that.

Q. Was she married or a single lady? A. I don't know.

Q. Now, describe Miss Daisy to us? A. Well, Miss Daisy, she was low lady, kind of heavy, and she was pretty, low, chunky, kind of heavy weight, and she was pretty.

Q. Can't you give a better description of her than that?

A. No sir, that is the best I can give of her.

Q. What sort of color hair did she have? A. Well, I don't remember what color hair she had.

Q. What color eyes? A. I didn't pay no attention to her eyes.

Q. What sort of complexion? A. What do you mean by complexion?

Q. Well, don't you know what complexion means? A. No sir, not complexion.

Q. You don't? A. No sir.

Q. You are dark complexion and I am white? A. Yes sir.

Q. Well, with that definition? A. She was white complexion.

Q. Well, I know but was she fair or brunette, or was she blonde, or what was she? A. I don't know nothing about no brunette.

Q. Was she dark skinned, or fair skinned, for a woman. I know, of course, she was a white woman; but there are some dark skins and some light skins, aren't there? A. Yes sir, there is some dark skins and some light skins.

Q. Which was she? A. She was light skinned.

Q. She was light skinned? A. Yes sir.

Q. But you don't remember what sort of hair, what sort of nose did she have? A. I didn't pay any attention to her nose.

Q. What sort of ears did she have? A. She had ears like people.

Q. Like folks? A. Yes sir.

Q. I didn't expect her to have them like a rabbit; and she didn't have, did she? A. No sir, she didn't have ears like a rabbit.

Q. Well, did she have large or small ears? Do you remember that?

A. No sir, I didn't pay any attention to her ears, whether

Q. You can't give any description of her at all now, can you, Jim? A. I can't give a description of her, except she was a white lady.

Q. You say she was a white lady? A. Yes sir, and she was low and chunky.

Q. How old was she? A. I don't know how old she was.

Q. How old did she look to be? A. She looked to be like about 23 years old.

Q. About 23 years old? A. Yes sir.

Q. Was she working there when you went there or not?

A. I don't know.

Q. You don't know? A. No sir.

Q. The only time you can remember was that she worked from June, 1912, until Christmas, 1912? A. Yes sir, <sup>that is it,</sup> ~~or near about Christmas.~~

Q. You can remember that? A. Yes sir, or near about Christmas.

Q. Now, the very first time you ever saw Miss Daisy Hopkins was sometime in June 1912? A. Yes sir.

Q. The first day you ever knew she was there was the day that note was sent down? A. Yes sir.

Q. The first day you ever knew she was there was the day that note was sent down? A. Yes sir.

Q. You don't remember ever to have seen her there before that?

A. Yes sir, I remember seeing her there after that time.

Q. I said before? A. No sir, I don't remember seeing her there before that time.

Q. That is the way you fix it now, how do you fix the time she left there? A. How do I fix the time she left there during Christmas?

Q. That is what I want to know? A. Because Mr. Dalton told me she wasn't coming back.

Q. Mr. Dalton told you? A. Yes sir.

Q. Did Mr. Dalton work there? A. No sir, he didn't work there.

Q. Where does Mr. Dalton work? A. I don't know where Mr. Dalton works at.

Q. When Mr. Dalton told you Christmas that she was going away,

~~he was there.~~  
Q. I know, but where was he when he told you that? A. He was coming out of the factory.

Q. When was that? A. It was Saturday: I don't know the date.

Q. You don't remember the date? A. No sir.

Q. You don't remember the date now? A. No sir.

Q. You don't remember his name? A. I know his name was Dalton.

Q. What else besides Dalton? A. No sir, I don't know his first name.

Q. You don't know where he lived? A. No sir.

Q. Or where he works? A. No sir.

Q. Describe Mr. Dalton to me? A. Do what?

Q. Tell me what kind of a looking man Mr. Dalton was?

A. He was a slim looking man, and tall with it.

Q. A slim looking man, and tall with it? A. Yes sir.

Q. And what else? A. That is all I can tell you about him.

Q. You can't give any other or better description? A. No sir; his eye lashes seemed to be a little thick.

Q. Eye lashes thick? A. Yes sir.

Q. What was the color of his eye lashes? A. I disremember now what color his eye lashes was.

Q. What was the color of his hair? A. His hair was black, I think; I am not sure.

Q. Are you certain? A. No sir, I am not.

Q. You are not certain about that? A. No sir.

Q. What sort of complexion did he have? A. What kind of complexion?

Q. Was he light complexion, or dark complexion? Was he darker or lighter complexion than I am? A. He was just about your complexion.

Q. About my complexion? A. Yes sir.

Q. Well, would you call me a light complected man or a dark complected man? A. I could call you a light complected man.

Q. Light? A. Yes sir.

Q. How much did Mr. Dalton weight-about how much? A. I don't know, about 135 pounds.

Q. About how tall was he-would you say he was? A. Well, he was tall I guess he was about as tall as that young man sitting there.

Q. About as tall as this man (indicating Mr. Arnold)?

A. Yes sir.

Q. Weighing about as much? A. I don't know whether he would weigh as much as that man or not.

Q. Does he look he would weight about that much? A. Yes sir, he looks like he would weight about that much.

Q. Then he was about the size of Mr. Arnold, Mr. Dalton was? A. Yes sir just about that size.

Q. How old a man did Mr. Dalton look to be? A. He looked to be a man somewhere about 35 years old.

Q. About 35 years old? A. Yes sir.

Q. You don't know where he lived? A. No sir.

Q. You don't know anything about that? A. No sir. I don't know where he lived at.

Q. How many times did you ever see him? A. I don't know about that.

Q. Did you see him around the factory? A. I saw him around there, coming around the factory after a girl.

Q. Did you ever see him any other place except around the factory? A. No sir, I never saw him anywhere except around the factory.

Q. How many times did you see him around the factory?

A. Several times I saw him there.

Q. About how many? A. I don't know.

Q. You saw him one time coming out with a girl; what was he doing the other times you saw him? A. The first time I saw him he was going out with a lady that he brought in there.

Q. That is the time you have done told about? A. Yes sir.

Q. What date was that, about when? A. That was on Saturday.

Q. Well, about what month? A. Somewheres along in June.

Q. Somewheres along in June or July? A. July.

Q. Sometime in July? A. Yes sir.

Q. That is the first time you ever saw him? A. some time about the last of July.

Q. Where did you see him then? A. Around at the factory.

Q. What was he doing then? A. He come there with a lady.

Q. That same one? A. Yes sir.

Q. That same lady? A. Yes sir.

Q. When did you see him again? A. I saw him again about two weeks after that.

Q. What was he doing then? A. I just met him in the door then.

Q. Met him in the door? A. Yes sir.

Q. What date was that, about when? A. I don't know; it was on a Saturday; I disremember the time.

Q. That is the time you have already talked about. You have done told about that? A. Yes sir, I have done told about it.

Q. This morning? A. Yes sir.

Q. What month was that? A. I don't know, somewhere about the last of August, I reckon.

Q. About the last of August, you reckon? A. Yes sir,

Q. When did you see him again? A. I didn't see him no more, I don't reckon, until along up to that Thanksgiving time.

Q. Where did you see him then? A. I saw him there, coming in there with a lady.

Q. That is the same Thanksgiving Day you have already told about? A. Yes sir.

Q. He came in there Thanksgiving? A. No sir, I didn't say Thanksgiving; it was before Thanksgiving. I said before Thanksgiving.

Q. When did you see him again? A. No more then until after Christmas.

Q. Then, where did you see him? A. I saw him there to the factory with a lady.

Q. Did you ever see him anywhere else, except those times coming out of the factory? A. No sir, that is all.

Q. You saw him about Christmas? A. Yes sir, I saw him coming in to the factory.

Q. You said until after Christmas? A. I said this last time, I didn't see him no more until after Christmas.

Q. It was Christmas? A. I didn't see him on Christmas day.

Q. About what time did you see him? A. Sometime along in January.

Q. Somewhere along in January? A. Yes sir.

Q. Who did he come out with? A. He came out that time by himself.

Q. By himself, where had he been? A. Him and the lady was down in the basement.

Q. Down in the basement? A. Yes sir.

Q. Do you know who she was? A. I don't know her name, but I know her face, and I know where she lives.

Q. How long since you have seen Mr. Dalton? A. Well, I haven't

seen Mr. Dalton now in about a month or more.

Q. Where did you see him the last time? A. The detectives brought him down there to the station house, and said had I ever seen him about in there.

Q. And you told them what you knew? A. Yes sir, I told them about what I knew.

Q. And you haven't seen Mr. Dalton since then? A. No sir.

Q. Now Jim, how was Mr. Dalton dressed the first time you ever saw him? A. Well, I disremember now how he was dressed.

Q. Can't you give us any help about that at all? A. All I can remember him having on, I think, was a brownish looking suit of clothes.

Q. What sort of hat did he have on? A. I didn't pay no attention to his hat.

Q. What sort of shoes did he have on? A. I didn't pay no attention to the shoes.

Q. When was the next time you happened to see him? A. The next time I saw him.

Q. What sort of clothes did he have on then? A. I disremember. I didn't pay no attention to his clothes.

Q. The next time, what did he have on? A. I don't know what he had on the next time: I didn't pay no attention to that.

Q. And the next time? A. I didn't pay no attention to his clothes that time.

Q. The last time you saw him, what did he have on?

A. I didn't pay no attention to his clothes the last time.

Q. You can't tell me anything about what sort of clothes he ever wore, except the one time that he had on a brown suit? A. Yes sir; he looked like a man that had just got off from work and put on clothes enough so as to go through the streets.

Q. He had on a brownish suit? A. Yes sir.

Q. Did he have any mustache the first time you ever saw him?

A. I didn't have any mustache.

Q. Did you ever see him with any mustache? A. Not to my knowing.

Q. You know you saw him? A. Yes sir, I know that I saw him, but I didn't pay no attention to his mustache.



Q. Did he have any whiskers? A. No sir, he didn't have any whiskers.

Q. And you don't remember whether he ever had any mustache? A. No sir, I can't remember whether he had a mustache or not.

Q. You wouldn't want to say about that? A. No sir, I wouldn't want to say about that, because I don't remember about that.

Q. Now, take the first day you said you waited there for Mr. Frank. Did you see anybody, Mr. Darley, that day about the factory, or Mr. Holloway? A. The first Saturday?

Q. Yes, A. Yes, sir, I saw Mr. Holloway there on the first Saturday.

Q. What time did he leave there? A. Well, I don't know. He left away from there somewhere about two or half past two, I reckon.

Q. Well, don't reckon, please, tell what you remember?

A. He left away from there about two or half past two, all right: I couldn't say just what time it was.

Q. You don't know what time it was? A. He generally stayed-----

Q. Not what he generally did, but, on that particular day,<sup>3</sup>---

that day, what time did he leave, the first time you said you waited for Mr. Frank? A. He left away from there somewhere about two or half past two.

Q. Do you remember it? A. Yes sir, I can remember it.

Q. Did you see Mr. Darley that day? A. I saw him that morning.

Q. Well, now, what time did he leave? A. I don't know what time he left.

Q. Well, now, why can't you tell when he left the factory, if you know when Mr. Holloway left? A. Because I always met Mr. Holloway when he was leaving, because he was always leaving, too.

Q. Always leaving? A. Yes sir.

Q. You don't know how late he stayed there that day, do you, nor whether he came back or not? A. No sir, I don't know whether

Q. The next time you watched, did you see Mr. Holloway that day? A. The next Saturday I watched, I don't think Mr. Holloway was there, the next Saturday, he was sick.

Q. You don't think you saw him? A. No sir, I don't think I saw him.

Q. He was sick? A. He was sick that Saturday.

Q. He was sick on that Saturday? A. Two Saturdays in June.

Q. He was sick one Saturday when you watched? A. Yes sir.

Q. About what date was it; about what date was it, when you watched, when he was sick? A. It was somewhere about three o'clock I reckon.

Q. What month was it that old man Holloway was sick when you watched? A. I don't know whether he was sick or not: they told me he was sick.

Q. You said he was sick? A. They told me he was sick.

Q. They reported to you that he was sick? A. Yes sir.

Q. What date was that? A. It was about the last of July, the first or last-- or something like that.

Q. What date was it? A. It was the last of July or first of August, or something like that.

Q. You said he was sick again. When was he sick again?

A. He was sick again up in this year.

Q. This year? A. Yes sir.

Q. I am not talking about that. Did you see Mr. Darley that time when Mr. Holloway was sick? A. When Mr. Holloway was sick, I disremember now whether I seen Mr. Darley that day or not.

Q. Did you see Mr. Schiff that day? A. I disremember whether I saw Mr. Schiff or not.

Q. You disremember that. A. Yes sir.

Q. Did you see anybody that day? A. Yes sir, I seen somebody that day.

Q. Who? A. I saw Mr. Frank that day for one person.

Q. I know; but outside of Mr. Frank who else of the office force did you see that day--anybody or not. A. The office force, well, I disremember now.

Q. Well, now the next time you watched there, that was Thanksgiving wasn't it? A. No sir, that was before Thanksgiving.

Q. Before Thanksgiving? A. Yes sir.

Q. About what time? A. Well, it was somewhere about the last of August.

Q. Last of August? A. Yes sir.

Q. Well, now, did you see anybody there that day? Was Mr. Holloway sick that day, too? He was sick that day, too, wasn't he? A. No sir, he wasn't sick that day.

Q. Did you see him. A. Yes sir, I saw him that day.

Q. What time did he leave that day? A. I don't know; he left about two o'clock I reckon.

Q. Don't reckon, please, Jim, tell us if you have any memory about it, say so, and if you haven't, say you haven't, please?

A. He left away from there about two o'clock.

Q. Then awhile ago you said about half past two, and now you state two? Q. No sir, I said he left away from there about half past two the first time.

Q. And this time, what time did you say he left? A. I said he left away from there about two.

Q. About two o'clock? A. Yes sir, that time.

Q. Did you see Mr. Darley that day? A. I disremember whether I did or not.

Q. You disremember that? A. Yes sir.

Q. The next time was Thanksgiving day-- that you watched for him?

A. The next time I watched for him---

Q. Was Thanksgiving Day? A. Was the last day the last of Sept., behind Thanksgiving Day.

Q. That was behind Thanksgiving Day? A. Yes sir.

Q. Before or after Thanksgiving, Jim? A. This here was before Thanksgiving.

Q. Haven't you said half a dozen times that you watched in September, and that was after Thanksgiving? Haven't you told that a dozen times to the jury? A. I said it was after Thanksgiving. Q. Yes? A. Well, September is after Thanksgiving.

Q. Your understanding is that it was after Thanksgiving?

A. Yes sir, it was after Thanksgiving.

Q. So that it was in September after Thanksgiving?

A. Yes sir.

Q. That is correct, now Jim? A. Yes sir, after Thanksgiving

Q. Yes that is right, Well now, that day Mr. Darley was there that day? A. Yes, sir I remember seeing him there that day.

Q. Was Mr. Schiff there? A. Yes sir. Mr. Schiff was there that day.

Q. What time did Mr. Darley leave? A. I don't know what time he left.

Q. What time did Mr. Schiff leave? A. I don't know what time he left.

Q. What time did Mr. Holloway leave? A. Mr. Holloway left away from there about half past two.

Q. Do you remember that? A. Yes, sir, I can remember that.

Q. How can you remember when Mr. Holloway left and, yet, don't remember when anybody else left? A. I can always remember when he leaves, because you always have to tell him when you have to leave out and how long you are going to stay.

Q. You tell him when you are going to leave, and how long you are going to stay? A. I didn't tell him that time, because I was going to work that evening.

Q. The next time, did you tell him you were going to ring out?

A. No sir, I didn't tell him that I was going to ring out.

Q. The next time, did you tell him? A. No sir, I just told him I was going to work.

Q. If you never told him that you were going to ring out, how do you remember when he left? A. Because, I will tell you, if I didn't have any other work to do, I would go down to the first floor and sit on a box and go to smoking, and he worked down there.

Q. And you didn't tell him when you were going to ring out? A. No sir, I didn't tell him when I was going to ring out.

Q. Therefore, your ringing out had nothing to do with when he left, because you never told him? A. No sir, I never told him that.

Q. You never told him anything about it? A. Well, now, in September, after Thanksgiving was Mr. Darley there that day?

A. Yes sir. I remember seeing Mr. Darley that day.

Q. Was Mr. Schiff there that day? A. Yes sir, I remember seeing him there.

Q. What time did Mr. Holloway leave? A. Mr. Holloway left away from there about two o'clock. 63.

Q. The next time you watched was right after Christmas?

A. No sir, the next time I watched was Thanksgiving Day, then-

Q. You said awhile ago September was after Thanksgiving?

A. Yes sir, after Thanksgiving day.

Q. All right. Well, now Thanksgiving Day, the day you have told about in January, who did you see there in January, I mean who of the force? A. I disremember now who I did see in January when I was there that morning.

Q. You disremember? A. Yes sir, I disremember.

Q. Can you remember anybody you saw there? A. Nobody I saw there at all. Mr. Holloway, I can remember.

Q. Jim, isn't it true, that on every Saturday morning a number of people come there to that factory always? A. Well, I don't know. I couldn't tell; nobody but just them that worked there.

Q. The first you watched, tell us anybody that came there that day? A. I couldn't remember that, I couldn't tell you.

Q. You don't know about that? A. No sir.

Q. The second time, you don't know whether anybody was working there or not? A. To my memory, I think there were some young ladies working up on the fourth floor.

Q. Some ladies working there that evening up on the fourth floor? A. Yes sir.

Q. That is your memory about the second time? A. Yes sir.

Q. Then, the third time, was anybody working there that evening, Saturday evening? A. I don't know about the third time.

Q. You don't remember whether there were some young ladies working up there that evening? A. No sir, I don't know about the third time.

Q. You can't remember about that? A. No sir.

Q. Well now Thanksgiving do you know whether anybody was working there Thanksgiving evening? A. No sir, I don't know whether anybody was working there Thanksgiving evening or not.

Q. You don't know whether Mr. Schiff worked there that evening?

A. No sir, I don't know whether Mr. Schiff worked that evening or not.

Q. You can't remember that, can you? A. I didn't see Mr. Schiff at all.

Q. You can't remember whether he was there or not?

A. No sir.

Q. You wouldn't swear that he was not there? A. I will swear I didn't see him; I will swear he wasn't in the office with Mr. Frank.

Q. You swear to that? A. Yes sir.

Q. Will you swear he wasn't there that day? A. I will swear Mr. Irby was working in the office.

Q. Thanksgiving Day? A. No sir, he wasn't working in the office on Thanksgiving.

Q. The next time, was there any ladies working on the fourth floor? A. I don't remember.

Q. You don't remember whether there were or not?

A. No sir.

Q. You can't remember that? A. No sir.

Q. They might have been? A. I didn't see none of them there.

Q. You didn't see them? A. No sir.

Q. You only saw them working there one day? A. I saw them working there the second evening.

Q. On the fourth floor-----

Q. Did you say anything else about it? Do you think that you told about watching for Frank at that time. You think you told that at that time? A. I don't know whether I told them at that very time.

Q. Didn't you say that you did? A. No sir.

Q. That's your opinion that you did? A. I aint got no opinion about it.

Q. Well, that's your best recollection that you did?

A. No sir, its not my best recollection.

Q. Well, what is your best recollection, that you didn't then?

A. What do you mean by that.

Q. Did you or did you not? A. I don't know, sir, I'm telling you the truth-----

Q. Well, he had already had that signal about stamping and whistling a long time. What did he give it to you over again for?

A. He told me that Thanksgiving, but didn't do it until I set then on the box.

Q. Didn't you say he always gave you that signal? A. Nos sir, I didn't say he always gave me that signal.

Q. Gave it to you Thanksgiving? A. Yes sir.

Q. And repeated it to you that day again? A. Yes sir.

The witness Conley was examined by the solicitor, who brought out the direct questions and answers Supra, and was then cross-questioned by the defendant, when counsel brought out the cross-questions and answers Supra.

Thereafter, and while the witness Conley was still on the stand. Defendant's counsel moved to rule out, exclude, and withdraw from the jury each and all of the said questions and answers, upon the grounds stated at the time said motion was made that said questions and answers were irrelevant, immaterial, prejudicial, and dealt with other matters and things irrelevant and disconnected with the issues in the case.

The Court denied this motion in writing, making in so doing the following order:

" When the witness Conley was still on the stand his testimony not having been finished, the defendant, by his attorneys, moved to rule out, withdraw and exclude from the jury each and all the above questions and answers, because the same are irrelevant, immaterial, prejudicial, and deals with other matters and things irrelevant and disconnected with the issues of this case. After hearing argument of counsel, the Court overruled the motion to rule out, withdraw or exclude said above stated question and answers from the jury, but permitted the same to remain before the jury.

In making said order and declining to rule out, exclude and withdraw said questions, and each of them as well as all of the answers and each of them, the Court erred, for the reason that said questions and answers, each and all of them were irrelevant immaterial, illegal, prejudicial, and dealt with other matters and things wholly disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes. Defendant contends that this ruling of the Court was highly prejudicial to the defendant, tending to disgrace him before the jury and expose him to a conviction, not because

he had committed murder, but because he was accused of depravity and degeneracy.

When the third of the direct questions here sought to be excluded was asked by the solicitor the defendant objected because the evidence sought would be immaterial. The Court sustained the objection but the solicitor continued with the balance of the direct questions and answers here objected to and the cross questions where thereafter asked and the answers given. The Court therefore erred in not excluding and withdrawing all of said testimony.

14. Because the Court erred in not ruling out, excluding, and withdrawing the following evidence direct and cross of the witness Conley, upon motion of defendant's counsel, made while Conley was still on the stand.

" I always stayed on the first floor like I stayed April 26th and watched for Mr. Frank while he and a young lady would be up on the second floor chatting. I don't know what they were doing; ~~he only told me they wanted to chat.~~ When the young ladies would come there, I would sit down at the first floor and watch the door for him. I watched for him several times, There will be one lady for Mr. Frank and one lady for another young man who was there. Mr. Frank was there along on Thanksgiving Day. I watched, for him several times. ~~A tall, heavy built lady for him several times.~~ A tall, heavy built lady came there that day. He told me when the lady came he would stamp and let me know that was the lady, and for me to go and lock the door. Well, the lady came, and he stamped and I locked the door. He told me when he got through with the lady he would whistle for me to go and unlock the door--- And he says; ( on April 26th, ) "Now, when the lady comes, I will stamp like I did before"---I have seen Mr. Frank there in the office two or three times before Thanksgiving, and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here, and he was down on his knees, and she had her hands on him. I have, also, seen Mr. Frank another time with a young lady lying on the table. She was on the edge of the table. I don't know the name of the woman that was there Thanksgiving Day; the man that was there was



Mr. Dalton---The lady that was there was a tall built lady, heavy weight, she was nice looking, had on a blue looking dress with white dots in it, had on a greyish looking coat with kind of tails to it, white slippers and white stockings.

Cross Examination.

-----The first time I watched for Mr. Frank was sometime during last summer, about in July. I would be there sweeping and Mr. Frank come out and called me in the office. That was on a Saturday, about three o'clock. As to what Mr. Dalton would do, the young lady that worked at the factory would go out and get him and bring him back there. That was Mr. Dalton's lady. The lady that was with Mr. Frank was Miss Daisy Hopkins. She worked up there on the fourth floor. When Mr. Frank called me, there was a lady in the office with him. He talked to me in the lady's presence. She was Miss Daisy Hopkins. That was three or half past three. He would say: "Did you see that lady go out there? You go down and see nobody don't come up here and you will have a chance to make some money". One lady had already gone on out to get that young man, and the other lady was present. She came back after a while and brought Mr. Dalton with her. They walked into Mr. Frank's office and stayed there ten or fifteen minutes, came back down, and she says: "All right, James", and I say: "All right": and I would go back there to the trap door that leads down to the basement, and I pulled up the trap door, and they went down there. I opened the door because she said she was ready; I knowed where she was going. Mr. Frank told me to watch; he told me where they were going. I don't know how long they stayed there: I don't know what time they came back, but they came back after a while, the same way they came down. I kept the doors shut--not locked--all the time, and never left it. Mr. Dalton gave me a quarter and went out laughing, and the lady went up the steps. She didn't stay very long and came down, and after that Mr. Frank came down and left. That was about half past four. I left before Mr. Frank did. He gave me a quarter That was the first Saturday. The next Saturday was about two weeks after that, about the last of July or the first of August. He told me the same Saturday that I was there: "Now, you know

what you done for me last Saturday. I want to put you wise, this Saturday". I says: " All right, what time"? He says: "Oh, about half past". He got back from lunch about a quarter past two, then Mr. Holloway left, and then Miss Daisy Hopkins came into his office. Mr. Frank came out, popped his fingers and bowed to me - bowed his head to me, and then went back in the office. Then, I went down and stood by the door. I didn't lock it: I shut it. I don't know what happened next: I didn't hear him come out of his office at all. Then I went down and watched. No, I didn't hear her come out of his office. Mr. Frank stayed there about a half an hour that day, then the girl went out. He gave me a half a dollar, this time. The next time I watched for him was before Thanksgiving Day, sometimes in the winter, about the last part middle of August. When he told me he wanted me to watch for him that time, it was on the fourth floor, right at the elevator. Snowball was standing there then. Mr. Frank says: "I want to put you wise again for today." He came back about half past two, and he says: "She will be here in a minute". The lady that came in was one that worked on the fourth floor. I don't know her name. It wasn't Miss Daisy Hopkins. She had hair like Mr. Hooper's grey haired. She had a green suit of clothes. She went to Mr. Frank's office, and then I watched. I didn't hear them leave Mr. Frank's office. Then she came out, and then he came out and went out the factory, and then he came back, I stayed there waiting for him. He said: "I didn't take out that money". I says: " I seed you didn't". He said: "That's all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here". The next time I watched was Thanksgiving day. I met Mr. Frank there about eight o'clock in the morning. He says: " A lady will be here in a little while; me and her are going to chat. I don't want you to do no work; I just want you to watch". The lady came in about a half an hour. I didn't know her; I have never seen her working at the factory. I had seen her at the factory two or three nights before Thanksgiving day in Mr. Frank's office, about eight o'clock. She was a nice looking lady. I think she had on black clothes. She was <sup>a</sup>very tall, heavy built lady. The front door was open when she came Thanksgiving Day. She went up stairs <sup>69.</sup> and went in Mr. Frank's office. Mr. Frank

came out and stamped right above the trash barrel. I was down stairs about the trash barrel. He told me he was going to stamp two times; then he stamped, and I closed the door, and then I came back and sat on the box about an hour and a half. Mr. Frank says: "I'll stamp after this lady comes, and you go and shut the door and turn that night latch" That's the first time he told me to lock the door, and he says: "If everything is all right, you take and kick against the door". And I kicked against the door. I stayed there about an hour and a half that time. Then, Mr. Frank came down and unlocked the front door, looked up the street, and then went back and told the lady to come down. She came down and said to Mr. Frank, while they were walking: "Is that the nigger?" and he says: "Yes" And she says: "Well, does he talk much?"; and he says: "He's the best nigger, I've ever seen." They went on out together. Mr. Frank came back. I went in his office. He gave me a \$1.25. The lady had on a blue skirt with white dots in it, and white slippers and white stockings, and a grey tailormade coat with pieces of black velvet on the edges of it, and a black hat with big black feathers over. The next time I watched for him was a Saturday in January, right after the first of the year. He said there will be a young man and two ladies that would be there that Saturday morning. I was standing by the side of Gordon Bailey on the elevator when he come and told me that, about half past seven in the morning, and he said I could make some money off this man. Gordon Bailey and me was on the elevator together. He could hear what Mr. Frank was saying. I got through cleaning at about a quarter after two and stayed at the door. It was open, and the ladies came about half past two or three o'clock, and the young man came in and says: "Mr. Frank put you wise?" "Didn't he tell you to watch the door, two ladies and a young man would be here?" He said: "Well, I'm the one". Then he come and told the ladies to come on, and they went up stairs towards the clock; they stayed there about two hours. I didn't know either of the ladies. I don't know what they had on. The man was tall, slim built, heavy man, he didn't work there. I seen him talking to Mr. Holloway frequently during the week. That's the last time I watched for him. Snowball and I were in the box

room when he told me to watch for him that time. I don't know if he knew Snowball was there or not. The day before Thanksgiving when he talked to Snowball, we were on the elevator. Snowball could have heard anything that was said; Mr. Frank saw Snowball standing there---Miss Daisy Hopkins, worked at the factory from June 1912 until Christmas. I worked on the same floor with her. I am sure she worked there from June until about Christmas. She was a low lady, kind of heavy; she was pretty, chunky, kind of heavy weight. I remember that she was there in June because I took a note to Mr. Herbert Schiff which she gave me. Mr. Schiff said it had June on it, when he read it. It was on the outside of the note. I looked and seen something on it; I don't what what it was. It was on the back of the note--June something, and he laughed at it. I know Miss Daisy Hopkins, left at Christmas, because Mr. Dalton told me that she wasn't coming back. It was one Saturday. Mr. Dalton was a slim looking man and tall, with thick eye lashes, black hair, light complected, weighed about 135 pounds, about thirty five years old. I seen him around the factory several times. The first time was somewhere along in July, when he come in there with a lady. About two weeks after that, I met him at the door, about the last of August. The next time was just about Thanksgiving Day. Then I saw him after Christmas when he come there with a lady. Him and the lady was down in the basement. I don't know who she was Last time I saw him was down at the station house. The detectives brought him down there. First Saturday I watched for Mr. Frank, I saw Mr. Holloway there, he left about half past two. I saw Mr. Darley that morning; don't know what time he left. The next Saturday I watched, Mr. Holloway wasn't there, he was sick. That was about the last of July or first of August. The next time I watched about the last of August, I saw Mr. Holloway. He left about two o'clock. The day I watched for him in September, after Thanksgiving Day, I saw Mr. Holloway leave about half past two. Schiff and Darley were there. I disremember who I saw there in January, except Mr. Holloway. Sometimes some of the girls worked there on Saturdays. Don't remember any girls that worked there on the first Saturday that I watched. The second time I watched,

I think some ladies were working up on the fourth floor. I don't know about the third time, and I don't know whether anybody was working there Thanksgiving afternoon or not. I didn't see Mr. Schiff at all that day. I will swear he wasn't in Mr. Frank's office that day. I don't remember whether any ladies worked there the other times I was watching, or not....., I don't <sup>know</sup> whether I told them (detectives) about watching for Frank at that time. I haven't got any opinion about it. I haven't got any recollection. He told me about stamping and whistling on Thanksgiving Day, but didn't do it until I set them on the box.

Conley had testified both on direct and had been cross examined for a day and a half on other subjects, as above set out, and while on the stand and after testifying as above set out, counsel for the defendant moved to rule out, exclude and withdraw each and every part of the evidence given by the witness as to all transactions had between Frank, and other women at other times than on the day of the alleged murder, upon the grounds, made at the time, that evidence of such transactions was irrelevant, immaterial, illegal, prejudicial, and dealt with other matters and things irrelevant to and disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes.

The evidence next above set out was, and is, all the evidence given by Conley dealing with Frank's transactions with women at other times than on the day of the murder, and was the evidence sought to be ruled out, excluded, and withdrawn from the consideration of the jury.

The Court declined, upon the motion made and for the reasons argued, to rule out, exclude and withdraw such evidence from the jury, but left the jury free to consider the same.

The ruling of the Court was, and is, erroneous, for the reasons alleged above, and the Court ~~was~~ in not granting the order asked, ruling out, excluding, and withdrawing such evidence from the jury.

When the solicitor first sought from the witness Conley the evidence here sought to be excluded the defendant objected because the evidence sought <sup>72</sup> to be brought out would be immaterial

The Court ruled that such evidence would be immaterial, but after this ruling the solicitor brought out the direct testimony and excluded. After the direct testimony supra had been brought out money here sought to be ruled out after the Court's ruling, the cross testimony supra here sought to be withdrawn was also brought out in an effort to modify or explain the direct evidence. Under the circumstances the Court ought to have granted the motion to exclude and withdraw all such evidence and for failing to do so committed error.

Movant assigns as error the action of the Court in allowing this evidence to go before the jury because the same was illegal, irrelevant, immaterial and hurtful to the defendant.

15. Because the Court permitted over the objection of defendant's counsel made when the evidence was offered, that such evidence was irrelevant and immaterial, the witness Conley to swear that the police officers took him down to the jail, and to the door where Frank was, but that he never saw Frank at jail and had no conversation with him there.

The Court erred in permitting the introduction of this evidence, for the reasons above stated. It was hurtful for the reason that the solicitor contended, in his address to the jury, that Frank declined to see Conley, and that such declination was evidence of his guilt.

16. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial, and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the Pencil Company, and that she never reported seeing the negro on April 26th, 1913, which she testified she did see, in the pencil factory to the City detectives until May the 7th, 1913.

For the reasons above stated, the Court erred in not excluding evidence, and for the reason that the solicitor, in his address to the jury, contended that the fact that there was a negro (which he contended was Conley) in the factory the morning of April 26th was concealed from the authorities, and that such concealment was evidence of Frank's guilt.

17. Because the Court permitted, over the objection of defendant's counsel made when the same was offered, that the same was irrelevant and immaterial, the witness Mangum, to testify that Conley and another party went down from the pencil factory to the jail, that he had a conversation with Mr. Frank about confronting Conley, Frank then being on the fourth floor of the jail; that Chief Beavers, Chief Lanford, and Mr. Scott, with Conley, came to the jail to see Frank, and they asked him if they could see him; that he said: "I will go and see: and, if he is willing, it is all right": that he went to Frank and said: "Mr. Frank, Chief Beavers, Chief Lanford and Scott and Conley want to talk with you, if you want to see them?" that Frank said: "No my attorney is not here, and I have got nobody to defend me; that his lawyer was not there, and that no one was there to listen to what might be said.

The Court erred in admitting this evidence for the reasons above stated.

The solicitor in his argument pressed on the jury that the failure of Frank to face this negro and the detectives was evidence of guilt, and movant contends same was prejudicial.

18. Because the court erred in permitting the witness, Dr. H. F. HARRIS, over the objection of the defendant, made at the time the testimony was offered that the same was irrelevant and immaterial, to testify:

"I might preface my remarks on this by saying that more than 12 or 15 years ago someone told me that the reason that cabbage was considered indigestible was because they were ordinarily cooked with meat or grease, and with the idea of settling this question, on my clinic I got a lot of patients whose stomachs were not in very good condition, and made a number of experiments, particularly to determine the matter as to whether or not this was the case. During the course of the experiment that I made at that time, I was struck by the fact that the behaviour of the stomach after taking a small meal of cabbage and bread, either corn bread or biscuit,---that the behaviour of the stomach was practically the same as after taking some biscuit and some water alone. 74.

"I discovered, as I say, at that time, that our idea about how quickly cabbage digested were rather erroneous, and as I remarked a moment ago, I observed that the stomach freed itself of a mixture of cabbage and bread just about as quickly as we only gave bread alone; the amount of recovery on the part of the mucous membrane in the way of sufficient gastric juices was about the same practically or probably a little bit more recovery with cabbage.

" It is the only way I can get at it, it is the only real knowledge I have on the subject in connection with the work that was done in this particular instance here.

The witness Harris testified that from the state of the digestion of the food found in the stomach of Mary Phagan he could say she died in 30 or 40 minutes after her last meal of bread and cabbage, over the objection above made and the further objection that the witness could not give the result of other and different experiments made 12 or 15 years ago upon persons "whose stomach were not in a very good condition," and not under the same circumstances and conditions, to sustain and bolster up the experiment made upon the stomach of Mary Phagan, and to sustain his assertion that Mary Phagan died from 30 to 40 minutes after she ate her last meal.

The Court overruled the objection and admitted the testimony and in doing so, the court for the reasons indicated committed prejudicial error.

19. Because the court erred in permitting the witness Dr. H. F. Harris, to testify, over the objection of the defendant made when the evidence was submitted, that the same was irrelevant and immaterial and that experts could not give to sustain their opinions individual and isolated experiments but must answer from their knowledge of the science obtained from all

"Knowing the facts that cabbage would pass out of the stomach very quickly in a normal one, I ascertained her digestion and as soon as I saw the cabbage in this case, I at once felt



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certain that this girl either came to her death or possibly the blow on her head at any rate, a very short time, perhaps three quarters of an hour or half an hour or forty minutes, or something like that, before death occurred. I then began a number of experiments with some gentlemen who had normal stomachs with a view of judging of the time.

" I had the mother of the girl to cook some cabbage and it was given to people with absolutely normal stomachs; that I know from investigations of their stomachs.

". I will state in general terms there were only four persons experimented upon, and two of them were experimented upon twice in this connection, and in every single instance the effect on the cabbage was practically the same, that is it was almost entirely digested, notwithstanding the fact that I had those men given some pieces just as large as were found in Mary Phagan's stomach, and I took pains to see to it that they did not chew this cabbage, but they ate it very rapidly, in three or four minutes, gulped it down, so that we would have as nearly as possible the conditions that I was certain existed at the time Mary Phagan ate her last meal. The result of this, you gentlemen have seen.

The witness here was permitted over objection as above stated to exhibit several small glass jars containing what purported to be partly digested cabbage, resulting from experiments made.

"Now I know from my observations of the cases that I present here that the digestion of these persons was normal. I did not make a microscopic examination of the stomachs of the gentlemen experimented upon, but I made an examination of their stomachs to see how they secrete their food, which is the only way we can tell. You can take the fluids and tell, whether the stomach is normal, it is the only way we possess.

"I merely wish to call attention to the fact that I made experiments which varied in the time that the contents were in the person's stomach, from 38 minutes, which was the time the contents were in the stomach of the boy 14 years of age, to 70 minutes, in another one of my cases, and the results

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indicated in every instance, from 38 to 70 minutes in every single instance, the cabbage was practically digested, practically altogether so.

Over objections made as is above stated, the Court permitted this testimony to go to the jury and in doing so committed prejudicial error. Experts can testify from the given state of any science, but cannot explain the process or results of particular experiments made by themselves.

20. Because the Court permitted the witness Harris to testify as follows:

"I wish to say that I made a microscopic examination of those contents of the stomachs, and while I found in Mary Phagan's case, except in the case of particles of cabbage that were chewed up too small to give sufficient indication the cabbage that was in the stomach gives every indication of having been introduced into it within three quarters of an hour; the microscopic examination showed plainly that it had not begun to dissolve, or at least only a very slight degree, and it indicated that the process of digestion had not go on to any extent at the time this girl was rendered unconscious at any rate.

I wish further to state that on examining Mary Phagan's stomach I found that the starch she had eaten had undergone practically no alteration: there were a few of the starch cells which showed the beginning of the process of digestion, having changed into the substance called erthro-dextrine, but these were very much rarer than is the case in a normal stomach where the contents are exposed to the actions of the digestive fluids for something like, say 50 or 60 minutes. The contents taken from the little girl's stomach were examined chemically, and the result of the chemical examination showed that there were only slight traces of the first action of the digestive juices on the starch thus confirming my microscopic examination, and showed clearly that only the very beginning of digestion had proceeded in this case

". As I was ~~... ..~~, of even greater importance in this matter it was found that there were 160 cubical solids, or about five and a half ounces of total contents remaining in the stomach, and after an ordinary meal of cabbage and bread, this is not the case. Under ordinary conditions, we get out perhaps on

an average of something like anywhere from 50 to 60 or 70 cubic centimeters, or, say from a half to a third of what was found in this case, and it was plainly evident that none of this material, had gone into the small intestine, because that was examined for it from the mouth out to the beginning of the large intestine, which is many feet away from it in the neighborhood of something like 25 feet away, and there was very very little food found in the small intestine, none at all, as a fact in the small intestine, which showed clearly, as I have said, that the contents of the stomach had not begun to be pushed on into the small intestine at the time that death occurred. This pushing on begins in about half an hour after such a meal as this and by the time an hour is reached, the greater part of what is introduced into the stomach is already down in the small intestine so that it becomes very clear from this that digestion had not proceeded to any extent at all.

The above testimony of Dr. Harris was objected to when offered because the same was argumentative. It was not, as movant contends a statement of fact, scientific or otherwise, from which the jury could for themselves draw conclusions, but was a mixture of facts and arguments.

The Court declined to rule out this testimony, and declined to force the witness to abstain from arguments and state the facts. This argument of the witness was clearly prejudicial to the defendant and failure to rule out the testimony was error

31. Because the Court permitted the witness C. B. Dalton to testify over the objection of defendant, made when the evidence was offered and before cross examination, that the testimony was irrelevant, incompetent, immaterial and illegal, dealt with other matters than the issues on trial and was prejudicial to the defendant's case; that he knew Leo Frank, visited the National Pencil Co's plant and saw Frank there four or five times, that he was in the office of Leo Frank, that he had been there three or four times with Miss Daisy Hopkins, and at these times Frank was in his office; that the witness had been in the basement, going down the ladder, that Frank knew he was in the building, but does not know whether Frank knew he was in the

basement; that he saw Conley there when he went there; that sometimes when he saw him in his office there would be ladies there, sometimes there would be two and sometimes one; he did not know how often he saw Conley there, but sometimes he would give him a quarter, that he did that a half dozen or more times that he went to the factory about once a week for a half dozen weeks, that he saw Frank there in the evenings and in the day times, sometimes he would see cold drinks in the office, Coco Cola, lemon limes, etc. that sometimes he saw beer in the office, that he never saw ladies there when beer and cold drinks were there do anything and never saw them do any writing.

The Court permitted this testimony of Dalton to be heard over the objections made as aforesaid and for such reason committed error.

This evidence was peculiarly prejudicial to the defendants because the solicitor insisted, in his argument, that in addition to being independent testimony looking to the same end, that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

22. Because the Court permitted the witness C. B. Dalton to be asked the following questions and make the following answers, over the objection of the defendant made at the time the evidence was offered, and before cross examination, that the testimony was irrelevant, incompetent, immaterial, and illegal, dealt with other matters and things than the issues of the trial was prejudicial to the defendant.

Q. Mr. Dalton, have you ever worked at the pencil factory?

A. No sir.

Q. Do you know Leo M. Frank?

A. Yes sir.

Q. Do you know Daisy Hopkins?

A. Yes sir.

Q. Do you know Jim Conley?

A. Yes sir.

Q. Have you ever visited the National Pencil Factory?

A. Yes, sir, I have been there some.

Q. How many times?

A. I don't know; three, or four, or five times.

Q. Were you ever in the office of Leo M. Frank?

A. Yes sir.

Q. On what occasion?

A. I have been there two or three times with Miss Daisy.

Q. Where was Frank when you were there?

A. He was in the office; I don't know whose office it was, but he was in the office.

Q. Were you ever down in the basement?

A. Yes sir.

Q. What part of the basement did you visit? Can you tell me on that diagram (Indicating).

A. I have been down that ladder.

Q. (Looked at No. 12) Did Frank have any knowledge of your business down there?

A. I don't know; he knowed I was in the basement; he knowed I was there.

Q. Was Conley there when you were there?

A. Yes sir, I seen Conley there, and the night watchman too-- he wasn't Conley.

Q. At the time you saw Frank there was anybody else in the office with him?

A. Yes sir, there would be some ladies there; sometimes two and sometimes one, maybe they didn't work in the morning and would be there in the evening.

Q. How many times did you pay Jim Conley anything?

A. I don't know.

Q. About?

A. Gave him a quarter when I was going in sometimes; I expect I gave him a half a dozen or more-- about every week.

Q. What time of day or night was it that you saw Mr. Frank in his office?

A. It was in the evening, sort of.

Q. What, if anything, would he have up there at the time?

A. Some times he would have cool drinks/

Q. What kind of drinks?

A. Coco Cola, lemon lime, or something of that sort.

Q. What else?

A. Some beer, some times.

A. Some beer?

A. Yes sir.

Q. Were those ladies doing any stenographic work up there?

A. I never seed them doing any writing. I never stayed there long, but I never seed them doing any writing.

Q. You never saw anything of that kind going on?

A. No sir.

The court permitted these question and answers to be heard by the jury, over the objection of the defendant, aforesaid, and committed error, for the reasons aforesaid. His evidence was particularly prejudicial to the defendant, because the solicitor insisted in his argument that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

The Court erred for the reason above stated in not ruling out and excluding from the Jury each and all of the above questions and answers.

① 23. Because the Court permitted, over the defendant's objection, made when the testimony was offered, that it was illegal, immaterial, and because it could not be binding on the defendant, the witness S. L. Rosser, to testify that since April 26, 1913 he had been engaged in connection with this case; that he visited Mrs. Arthur White, subsequent to April 26; that the first time the witness ever knew that Mrs. White ever claimed to have seen the negro at the factory when she went into the factory on April 26th, was some time about the 6th or 7th of May.

The Court, over objections as stated, admitted the testimony just above, and in doing so erred, for the reasons herein stated

This was peculiarly prejudicial to the defendant, because the solicitor contended in his argument to the jury that the fact that factory employees did not disclose the fact that Mrs.

White saw the negro on April 26th was evidence that the defendant was seeking to suppress testimony material to the discovery of the murderer. 81.

24. Because, during the trial, and on August 6, 1913, pending

the motion of defendant(s) counsel to rule out the testimony of the witness Conley tending to show acts of perversion on the part of the defendant and acts of immorality wholly disconnected with and disassociated from this crime. (Such evidence being set out and described in grounds 13 and 14 of this motion)

The Court declined to rule out said testimony, and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury, there was instant, pronounced and continuous applause throughout the crowded court room wherein the trial was being had, by clapping of hands, and by stamping of feet upon the floor.

The jury was not then in the same room wherein the trial was being had, but in an adjacent room not more than fifty feet from where the <sup>judge</sup> ~~jury~~ was sitting and not more than fifteen or twenty feet from portions of the crowd applauding, and so close to the crowd, in the opinion of the Court, as to probably hear the applauding. Immediately upon said applauding the defendant's counsel moved the Court for a mistrial of the cause, and, upon the announcement of the Court that he would not grant a mistrial, moved the Court to clear the court room, so that other demonstrations could not be had.

The Court refused to grant a mistrial and declined to clear the court room.

In refusing a mistrial and in declining to clear the court room, the Court erred. The passion and prejudice of those in the crowded court room were so much aroused against the defendant, as contended by counsel for the defendant, that he could not obtain a fair and impartial trial.

The Court as movant contends, also erred in not clearing the court room of the disorderly crowd, but left them in the court room, where their very presence was a menace to the jury.

It is true that the Court did threaten that upon a repetition of such disorder, he would clear the court room, but such a threat, as movant contends, was wholly inadequate, as evidenced by the fact that during the same day of the trial, while the

witness Harris was upon the stand, the crowd laughed jeeringly when Mr. Arnold, one of the defendant's counsel, objected to a comment of the solicitor, and that, too, in the presence of the jury.

And again, during the trial, when Mr. Arnold, one of the defendant's counsel, objected to a question asked, the following colloquy took place:

" Mr. Arnold: I object to that you Honor; that is, entering the orders on that book merely; that is not the questions he is asking now at all.

The Court: What is the question he is asking now?

( Referring to questions asked by the Solicitor General).

Mr. Arnold: He is asking how long it took to do all this work connected with it. (Referring to work done by Frank the day of the murder.)

The Court: Well, he knows what he is asking him"

Upon this suggestion of the Court, that the Solicitor knew what he was doing, the spectators in the court room applauded creating quite a demonstration.

Mr. Arnold again complained of the conduct of the spectators in the court room. The Court gave no relief, except directing the Sheriff to find out who was making the noise, to which the Sheriff replied that he could maintain order only by clearing the court room.

25. Because the Court erred in admitting, over the defendant's objection, made at the time the testimony was offered, that it was illegal, immaterial and irrelevant, the introduction of certain glass bottles containing partly digested cabbage, which resulted from tests made on other parties by the witness, Dr. Harris, wherein the cabbage which he claimed to be cooked the same was as the cabbage eaten by Mary Phagan, after it had remained in the stomach of such other parties from 30 to 50 minutes were taken out by means of a stomach pump.

The purpose of these experiments was to show the state of digestion of this cabbage in comparison with the state of digestion of the cabbage taken from the stomach of Mary Phagan, so as to sustain the contention of the State that Mary Phagan was killed within 30 or 40 minutes after eating the cabbage and bread.