

vicarious pleasure of reading Conley's whole story because the newspapers held that "the most startling features of the negro's testimony are unprintable."¹²

Rosser and Arnold cross-examined Conley for sixteen hours on three consecutive days. By the end they had forced the sweeper to admit that he had lied on a number of previous occasions, that he had told only partial truths in previous affidavits, and that his memory was exceedingly poor except for the specific questions which Hugh Dorsey had required him to answer. Yet the defense attorneys, in their attempt to confuse Conley and catch him in a major misstatement, forced him to talk of the other times that he had "watched for" Frank and the witness vividly described other women who had come to "chat" with the superintendent while he had guarded the front door. Most important, however, was the sweeper's admission that he had defecated at the bottom of the elevator shaft on the morning of the murder. It was an extremely significant remark, but its import escaped both reporters and jurors. There is no indication, either, that Frank's attorneys realized its implications.¹³

Conley's revelations shocked the spectators "into almost irresponsible indignation. . . ." After he stepped down from the witness stand one reporter wrote, "If so much as 5 per cent" of the story sticks, it "likely will serve to convict" Frank. The *Journal* questioned whether "this illiterate negro [could] have conceived and fitted together such a set of detailed circumstances without some foundation in fact?"¹⁴

The weight of Conley's words assumed greater import because the defense attorneys had failed to upset his account. Many Georgians assumed that Conley must have told the truth because Luther Rosser, "the most dreaded cross-examiner at the Georgia bar, and who knows the negro character thoroughly . . . was unable to make a dent in the negro's story."¹⁵ People believed Conley could not be flustered because he told what he had seen and done rather than what he might have been drilled to say. Fifty years after sit-

ting in the courtroom and listening to the sweeper's testimony, McLellan Smith, who had covered the trial as a cub reporter for the *Georgian*, was still certain that Conley had told the truth. "A man of his mental capacity," Smith insisted, "could have been broken if he was lying." ¹⁶

That the defense attorneys permitted Conley to discuss previous occasions on which he had "watched for" Frank while the superintendent entertained women in his office seemed strange to many observers. Why they pursued this line of questioning was never explained, but speculators assumed that Rosser and Arnold felt confident that they could break the sweeper's story. After a day of cross-examination, however, which failed to change any major aspect of the narrative, defense counsel moved to have the testimony referring to Frank's alleged assignations struck from the record. Instantaneously the prosecutors jumped to their feet. One of Dorsey's assistants agreed that the testimony should have been ruled out, but he doubted the right of the defense to ask for this after having examined the witness on these points. Dorsey echoed his assistant's protest: ". . . able attorneys here have sat and let testimony enter the records without making protest, cross-examine him for two days, and twenty-four hours later, decide to complain." ¹⁷

The motion to strike incriminating remarks from the record backfired. "By asking that the testimony be eliminated," the *Constitution* wrote, the defense "virtually admit their failure to break down Conley." Throughout Atlanta the "news spread that the negro had withstood the fire and that Frank's attorneys were seeking to have the evidence expunged from the records." This serious defense miscalculation "made Frank's road to acquittal a thousand times harder to journey." ¹⁸

The presiding judge, Leonard S. Roan, allowed Conley's remarks to remain as recorded. The Judge observed that while the words "may be extracted from the record . . . it is an impossibility to withdraw it from the jury's mind." Roan's