

## *John A. Johnson*

WISCONSIN

**N**O. 2, South Francis Street, Madison, Wisconsin, was the home of hard-working Martin Lemberger and his family, which consisted of his wife, their three children—Alois, aged nine, Annie, aged seven, and Martin, Jr., aged six—and their little fox terrier. Very early on the morning of Wednesday, September 6, 1911, the community was startled to learn that little Annie Lemberger had disappeared. The police were called in by the parents. Chief of Police Shaughnessy, Detective Boyd, and several officers answered the summons.

Mrs. Lemberger told the police that, at ten o'clock the night before, she had put Annie in her cot by the window. When she arose early in the morning to prepare her husband's breakfast, she found Annie's bed empty and she couldn't be found anywhere. The two boys slept in another bed in the same room and the door leading into the parents' room had been left ajar. Upon retiring, Mrs. Lemberger said, she had locked all doors and windows, and in the morning, she found them all locked, excepting the one by Annie's empty cot. On examination, a triangular piece was found to have been broken out of the windowpane, and the lath window prop was found outside on the ground, broken in two. Mr. and Mrs. Lemberger both said that Annie must have been taken out of the window. The police found footprints outside.

An immediate search started, for the little girl and for her abductors. Vacant lots, factories, culverts, manholes, and nearby marshes were searched. No tangible clues were found. The city of Madison became aroused. Many clues and rumors came to the officials, as happens in most mysteries, but their investigation led nowhere. Mrs. Lemberger felt sure that gipsies had kidnapped Annie. Her husband said that he had consulted a spiritualist who said that Annie had been kidnapped and carried away in a covered wagon and was being held a prisoner west of the city. These suggestions proved as baseless as the rest. Finally, Chief Shaughnessy appealed to the citizenry through the newspapers:

We have had nothing of the kind before in Madison that I know of. I want to appeal to every citizen who can possibly spare the time to be on hand next Saturday morning at eight o'clock to take part in an extensive hunt. We must find the girl if alive, or her body if dead.

Sheriff Brown came into the case and made use of T. J. Barto's trained bloodhound. After getting the scent from some of Annie's clothing and at her cot, the dog followed it a short distance and lost it at a street crossing. On a retrial, the dog followed the same trail, bolted across the street, and went, according to Barto, on a "dead scent" toward Lake Manona. The dog repeated this several times. This was extraordinary, for it was two days after the disappearance, during which time there had been rain. This led Barto to believe that the girl's body had been taken to the lake the night before—Thursday night.

On Saturday an enormous searching party answered the appeal for assistance. The indignation of the community was running high. Private contributions were made to obtain expert detectives, and official rewards were posted. That day the body of little Annie was found by George Younger in Lake Manona.

The autopsy of Doctors Purcell and Dean disclosed a wound back of the left ear, and at that point a clot on the brain which had probably caused death or unconsciousness before the girl was thrown into the water, for no water was found in the lungs. The discovery that Annie had not been criminally attacked, or more seriously injured, increased the mystery, especially in the search for possible motives for the crime.

The private subscriptions made it possible to retain the W. J. Burns Detective Agency, which assigned shrewd and experienced Edward L. Boyer to the job. He went to Madison at once. It had been reported that the hole in the window-pane was too small even for a woman's hand to get through, so it was thought that possibly a group of boys might have committed the crime; and thorough investigations were made along this line.

Among the many disconnected leads pursued, the police arrested John A. ("Dogskin") Johnson, neighborhood

loafer, barroom hanger-on, and public character. He had been one of the first to hear of the story and had followed all of the excited crowds in the searches. He even nosed around the undertaking parlors, until he aroused Coroner Lynch's suspicions. After an all-night grilling, through which Johnson asserted his innocence, he was released. Johnson was re-arrested, however, when the police learned of his past record of arrests—two commitments to insane asylums for taking liberties with girls, and one sentence for the nonsupport of his wife and two daughters. He was thoroughly questioned, but stoutly maintained his innocence through hours of rapid-fire and relay examination. To sustain him, there was his alibi that he had gone to bed at about nine o'clock on Tuesday evening, September 5, and had not left the house until six o'clock the next morning. His wife, who really supported the family, verified this, and said that he couldn't have left the house without her knowledge that night because she had sat up with a sick daughter. The daughters, Bertha and Selma, both confirmed that fact. Nevertheless, the authorities kept hammering at "Dogskin," with the efficient help of Detective Boyer, but Johnson would not give in.

On Wednesday, September 13, 1911, Johnson was taken to Judge Donovan's court room, where District Attorney Nelson read the charge to him. Johnson pleaded not guilty. Ten thousand dollars bail was set, and the trial continued to September 25. The court assigned Emerson Ela to defend the prisoner.

A short time after being returned to jail, Johnson called Turnkey Foye, who took him to the authorities, where he made the following statement:

I had been drinking hard the last two months and on this night I went to bed drunk. Sometime after one o'clock I awoke and wanted another drink of whisky. I got out of bed and dressed quietly and crept downstairs and got my shoes from behind the stove. When I got outside I put them on with the intention of going to some saloon close by and begging for a drink.

I walked up Francis Street as far as the Lemberger house which is four doors away from my home. When I reached there I remembered I had often looked into the window of the little cottage and seen the Lemberger children going to bed. Some devilish impulse caused me to step over to the window and reach my hand through

the broken pane and raise it. I lifted Annie out without making any noise and the cold air awakened her and she saw me and yelled, "Johnson!" I hit her with my fist and began to run. She kept making a noise and I kept hitting her until she was limp in my arms. By that time I had reached the middle of the vacant lot and I laid her down in the weeds to catch my breath and get my bearings.

In a few seconds I began to realize what I had done and I thought I had better throw the body into the lake. I walked to the bay, five blocks away, and by keeping in the shadows of the barns and fences I got there without any one seeing me. I threw the body as far as possible out into the water and then ran home. I took off my shoes and put them back and got upstairs without waking any of the family. I want to plead guilty and make this confession so I will be taken to prison today.

Johnson insisted that the trial be held immediately, that he be sentenced and taken to Waupun penitentiary that day.

The various officials were quietly called together. Attorney Ela explained to the defendant the seriousness of the plea; yet he persisted in his confession and his desire to change his plea to guilty. Thereupon, Judge Donovan of the Municipal Court for Dane County sentenced Johnson to life imprisonment at hard labor, with the anniversary of the murder, September 5, to be spent in solitary confinement.

Johnson was slipped out of a little-used side door of the courthouse, secreted in a car by a blanket, and rushed out of Madison before the populace knew of the rapid turn of affairs. When about ten miles out of town, he was permitted to come up from under the blanket. When he reached the penitentiary he appeared to be greatly relieved. To Sheriff Brown's, "Well, Johnson, here is where you will spend the rest of your life," Johnson is said to have replied: "I don't care. The mob didn't get me anyway. I know I did not kill Annie Lemberger."

Although the city of Madison had been most indignant over the murder, there did not appear to be much enthusiasm over the trial and sentencing of Johnson—as was quite evident from the newspapers. The question arose at once whether or not an innocent man had not been "railroaded." Johnson wrote letter after letter from his prison cell, starting immediately upon his arrival at Waupun, asserting his

innocence and alleging that he had pleaded guilty solely to save himself from death at the hands of the mob which, the officers said, was after him. In view of his past record and the belief that he was not entirely sound of mind, his pleas were not taken seriously, until August, 1920, when former judge A. O. Stolen became interested as the result of a pleading letter from Johnson to look into his case. Mr. Stolen interviewed Johnson and, after studying the record, became thoroughly convinced of his innocence. Upon petition, on September 14, 1921, Gov. James G. Blaine appointed the late Rufus B. Smith as commissioner to conduct a hearing on Johnson's pardon application. At the hearing Johnson was represented by Mr. Stolen; Theodore G. Lewis, District Attorney for Dane County, represented the state. The hearings started on September 27, 1921, and continued during six days of tense excitement for those attending the trial, the public, and the press. It was rumored about that Mr. Stolen was going to prove who the actual murderer was, thereby freeing Johnson from guilt. The granting of a pardon was obstinately opposed by the state.

Mr. Stolen began by proving that the hole in the window-pane at Annie's bed was far too small to admit the hand of a man, and that since the whole area of the Lemberger house was not over twenty feet square, any intruder from the outside must have awakened some of the family or the dog. Then he called Mrs. Johnson and the two daughters to establish the alibi that Johnson had retired at ten o'clock on September 5, 1911, and had not left the house until six o'clock the next morning. These witnesses were cross-examined by District Attorney Lewis and their testimony remained unshaken.

Johnson was then called to the stand, and the hearing room settled into perfect silence. Johnson was a ready witness and told of the third-degree methods that had been used on him by the police. It appears that the officers had learned that on one occasion Johnson had seen a negro lynched—strung up with a rope, riddled by bullets, cut down, and stabbed. This had made a deep impression on his unstable mind, and the mention of it made Johnson cringe.

Johnson told Commissioner Smith that the officers informed him that there was a mob outside the jail just waiting to get at him. In this ruse, Sleuth Boyer of the Burns Agency took a prominent part. He said that he was warned to keep away from the jail windows, because men were on nearby buildings waiting for a chance to get a shot at him. Johnson said that he was livid with fear of being lynched, and, when Boyer said that he could escape lynching by making a confession, which Boyer helped to prepare, that he availed himself of what seemed to him his one chance of getting safely into the Waupun penitentiary before the mob could get him and tear him to pieces. He said that he always told the officials, even Judge Donovan, that he was innocent, as he had maintained for days under the most grueling pressure. It was hard for the Commissioner to believe this statement, especially in view of the denials by court *attachés* and the fact that the Commissioner had known Judge Donovan personally. District Attorney Lewis attacked Johnson's whole story of third-degree methods by producing the testimony of the officials attached to the courthouse, and of Defense Attorney Emerson Ela, men of high standing in the community, all of whom contradicted Johnson and insisted that Johnson had not displayed any fear and that the plea of guilty was not the result of duress. Mr. Nelson, the District Attorney at the time of conviction, however, testified that he had always been morally certain that Johnson was not guilty and that he had urged Johnson not to plead guilty if he were really innocent, but Johnson had persisted. With this testimony, Johnson's chances of winning a pardon seemed rather slim.

Then one night, just before the hearings were about to terminate, Attorney Stolen received first an anonymous letter and then a telephone call. Mrs. Mae Sorenson of 612½ West Johnson Street offered to tell who killed Annie, if she would be protected from the murderer. Stolen at once called Judge Hoppman, who got out of bed and opened his court at midnight to take Mrs. Sorenson's testimony, and to issue warrants for the persons named by her. The man she named had been attending the hearings daily.

When the hearing convened on the last day, Mrs. Sorenson was called to the stand. The crowded audience had no inkling of what she would say, but after the first dozen words or so, the whole room was electrified. This was her story: She was a good friend of Mrs. Lemberger and on the morning of September 6, 1911, went to console her on the disappearance of Annie. She found Mrs. Lemberger in the kitchen burning a bloodstained nightgown of Annie's. Blood spots were on the bed sheet and pillow slip. Mrs. Lemberger was weeping bitterly and finally fainted. As she was regaining consciousness, she cried, "Martin, Martin, why did you do it?" On the day of Annie's funeral, little Alois Lemberger told Mrs. Sorenson that his father, in company with other men, had been drinking heavily on Tuesday evening. Annie had risen to get a drink, and on passing through the kitchen, was asked by her father to hand him the poker. She couldn't find it. In a drunken fury, he struck her behind the ear with a beer bottle and she fell against the stove—unconscious. Lemberger then carried her to her cot, and later she was found dead by her mother. The body was then hidden in the basement and the next night a negro named Davis was hired to take the body to the lake.

The Lembergers were called to the stand and they denied the truth of Mrs. Sorenson's story. Martin Lemberger, however, was arrested as he left the stand and charged with second-degree murder; his wife and son were arrested and charged with perjury.

At Lemberger's preliminary hearing, January 5, 1922, his attorneys, Hill and Spohn, relied on Section 4629 of the Wisconsin code, which provides that a charge of second-degree murder is outlawed in ten years. Reluctantly, Judge Hoppman felt obliged to dismiss the charge; and Lemberger was released the same day.

In the meantime, on December 13, 1921, Commissioner Smith rendered his report to Governor Blaine, and recommended the granting of a pardon to Johnson in the following words:

Upon the hearing before me, no testimony was offered by the present District Attorney tending to show Mr. Johnson's guilt,

except the testimony of his confession and his plea of guilty. The District Attorney who was in office at the time of the conviction, was a witness at the present hearing, and was interrogated by me as to whether or not at the time of the conviction the State had any evidence of Mr. Johnson's guilt. The response of the District Attorney and the other evidence adduced satisfies me that the State and the prosecuting officer at the time of Mr. Johnson's confession had absolutely no evidence tending to show his guilt of the crime. There was testimony that he hung around the undertaker's establishment, to which the body of Annie Lemberger was carried, and some vague testimony that he was seen near the shore of Lake Manona, apparently looking through the bushes near the shore of the lake, but I cannot be made to believe that these matters were or are sufficient to raise even a suspicion of his guilt. . . .

An attentive consideration of all the testimony taken before me and of all the facts and circumstances attending the disappearance of Annie Lemberger, has produced the profound conviction in my mind that Mr. Johnson was not guilty of the crime. There is much in Mr. Johnson's previous history which would tend to show a tendency on his part to take liberties with little girls, but I regard that as having little bearing here, because I am satisfied that the person committing this horrible crime, did not misuse this little girl in that respect. There is some vague testimony about some quarrel between Mr. Lemberger and Mr. Johnson some time previous to Annie's disappearance, but there is nothing in it which shows any adequate motive for this crime. There is so much in the situation in that house, that night, which shows that it would have been almost impossible for a person from the outside to open that window and take that child out, that I cannot believe that the crime was committed by any one from the outside in the way in which it is now claimed the thing was done. When it is considered that if some one from the outside opened that window and took the child out, and killed her, that the noise necessarily occasioned by so doing would probably have alarmed Annie or some of the other children or Mr. and Mrs. Lemberger, or the dog, it seems to me that the theory of the District Attorney involved so many difficulties and so many improbabilities, that it ought not to be entertained, unless there was some evidence connecting Mr. Johnson with the matter.

Much stress was laid by Mr. Lewis upon the credit to be given to Mr. Johnson's confession. It is of course clear that ordinary people do not ordinarily accuse themselves falsely of the commission of crime. If Mr. Johnson were a man of ordinary strength of character, and of ordinary prudence and sagacity, I should find it difficult to disbelieve him when he stated that he committed this offense. But I find that he was and is far below the ordinary individual in mentality. The testimony establishes in fact, to my satisfaction at least, that he was a man conspicuously weak, weak almost to the



degree of irresponsibility. *There was no sufficient reason why he should have feared mob violence, but I am satisfied that he got that idea into his mind, and did fear it,* and I am satisfied that groundless fear suggested to him the idea, that by admitting this crime, he could be at once taken to Waupun and escape the mob violence, which he so much dreaded. *Mr. Johnson, I am sure, did not tell the truth upon this hearing when he testified that he told the District Attorney and the presiding Judge that although he pleaded guilty, he was not guilty in fact, but the testimony satisfies me that he did feel the fear which he now describes, and that that fear caused him to take the foolish course he did take.*

Under all the circumstances of this case, I am constrained to recommend that pardon be granted to Mr. Johnson.

Governor Blaine concurred in Commissioner Smith's conclusion that Johnson did not kill little Annie Lemberger, and commuted his sentence to expire at once on February 17, 1922. He had spent over ten years in the penitentiary for another's crime.

Mr. Stolen applied for compensation under the Wisconsin statute of 1913 which allows compensation to innocent persons erroneously imprisoned. The state board administering the statute denied Johnson's claim on December 5, 1922, on the ground that he had contributed to his conviction and imprisonment, and therefore he was excluded from the benefits of the statute. An appeal from this decision was taken to the Circuit Court of Dane County, which sustained the ruling of the Board on March 21, 1923. In 1925 and 1927 bills to compensate Johnson were introduced in the State Legislature, but they failed of enactment. In 1929, over three thousand persons signed petitions requesting the Legislature to grant the compensation, but nothing was accomplished. Of recent years, Johnson has been employed by the city of Madison. When last heard from in 1929, he was in ill health and aging rapidly.

FROM the investigation conducted by Judge Stolen, it is not to be doubted that the most extraordinary pressure was brought to bear to produce a confession from Johnson and thus solve the "mystery." When Detective Boyer learned of Johnson's obsession on lynching, he evidently conceived the

idea of staging a continuous mob scene and thus preyed on Johnson's weak mind until he finally caved in. But the state, especially in view of the District Attorney's doubts, might have been more astute. Any number of facts pointed to the impossibility of the crime having been committed from the outside—the small aperture in the windowpane, the fact that nobody heard the window opened or the girl removed, not even the terrier, who usually barked at the faintest sound, the fact that the girl had evidently been dead before she was taken from the house and before she reached the lake and that she had not been assaulted. There was no reason at all to connect Johnson with the crime; but the need for a scapegoat seemed to furnish the necessary motive for pinning the crime upon the poor fellow. A community does not like to be baffled, and when some plausible culprit is caught in the toils, especially if his record is unsavory, social pressure demands a conviction. Detective Boyer and the court officials had these factors on their side. In face of them, Johnson's alibi, though absolutely sound and true, was ignored, and he was psychologically "beaten" into a confession. It is strange that so many persons in the Lemberger household could stand for ten years the torture of having sent an innocent man to the penitentiary for life, but the fear of the consequences of telling the truth was doubtless as powerful to produce silence as a different fear was to produce from Johnson a confession of guilt. It is true that the Wisconsin law denies indemnity to those who contributed to their conviction, and Johnson's confession comes within this category. But it does seem that a confession extorted as was Johnson's should not have been given the same weight as a voluntary confession. This is a matter not for a statute, but for the discretion of administrative authorities, who might well have exercised it in favor of Johnson.

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