

WRONGLY ACCUSED, **FALSELY CONVICTED,** **WANTONLY MURDERED**

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**And the Dead Shall Rise:
The Murder of Mary Phagan and the Lynching of Leo Frank**
Steve Oney
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I am thankful to have lived to see the appearance of Steve Oney's *And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank*, the great definitive book on the Leo Frank case, which Oney aptly labels "one of the most complex and incendiary episodes in Georgia's past." The result of 17 years of research and investigation, Oney's beautifully written masterpiece examines in exquisite detail two heinous murders—the strangulation of young Mary Phagan and the lynching of Leo Frank, the innocent man who had been erroneously convicted of murdering her.

The unusually savage slaying of Mary Phagan, the beautiful, voluptuous daughter of a working class family who like other Southern youth in the early twentieth century was forced into child labor by harsh economic times, and who in the springtime of life was sexually violated and then choked to death with a cord by her bestial killer, continues to engender primordial fears about the ultimate crimes of murder and rape. Her murder is emblematic of the tragedy of youth and beauty suddenly, senselessly destroyed by unexpected bloody violence.

The lynching of Leo Frank is, in the words of literary critic Warren Goldstein, "the single most famous lynching in American history." It was the first lynching in which automobiles were utilized. It was the only instance in American history of a Jewish person being lynched, and the only lynching in this country in which anti-Semitism was a factor. It was the only lynching in which the victim was seized from a state prison (as opposed to a county jail). It was the only lynching to take place not within a few hours or days of the crime the person lynched was suspected of committing, but more than two years after that crime. It was the only lynching in which the victim was

transported a large distance—over 150 miles—before he was killed. It was the only lynching in which government officials were so deeply involved in its plotting and carrying out—and in the subsequent coverup of the identity of the lynchers—that the lynching can truly be called (in the words of Oney) “a state-sponsored crime.” And unlike most lynchings, the Leo Frank lynching was committed not by persons acting excitedly in a heat of passion, but by persons acting with cold calculated premeditation, persons who were driven not by alcohol but by a primitive instinct for grisly vengeance.

Mary Phagan, who had lived the first seven years of her life in Marietta in Cobb County, was murdered in the National Pencil Company Building in Atlanta on Apr. 26, 1913. The manager of the factory, Leo Frank, was indicted for the murder, given an appallingly unfair trial, found guilty, and sentenced to death. After Frank’s appeals in the courts had been unsuccessful, Georgia’s Gov. John M. Slaton, alarmed by grave doubts about Leo Frank’s guilt, commuted Frank’s sentence to life imprisonment on June 21, 1915. Thereafter, on Aug. 16, 1915 a group of men from Cobb County drove in a caravan of automobiles to the prison where Frank was confined, forced their way into the prison in the late evening, laid violent hands on Frank, took him on a six or seven hour drive back to Cobb County, and about 7 a.m. on Aug. 17 murdered him in cold blood by hanging him from an oak tree two miles from Marietta. No one was ever criminally charged in connection with Frank’s abduction and murder. In 1986 Frank was posthumously pardoned.

The Leo Frank case, which encompasses the Mary Phagan murder, as well the criminal proceedings against and illegal execution of Leo Frank, has never been recounted more thoroughly and vividly than in Steve Oney’s book, and I do not intend in this book review to retell the story of the case.

However, for those who before or after reading Oney’s book seek a better understanding of the Leo Frank case, I have prepared and inserted at the end of this book review the following informational material: (1) A Chronology of the Leo Frank Case; (2) A List of the Principal Characters Involved in the Leo Frank Case, together with brief biographies of these persons; (3) A List of the Leo Frank Lynchers Identified by Oney, together with biographical information on the lynchers; and (4) A Bibliography of Readings on the Leo Frank Case.

The remainder of this book review will be devoted to answering this all-important question: Who murdered Mary Phagan?

At Leo Frank’s trial prosecutors maintained that Frank killed Phagan in a room on the second floor of the pencil factory, the same floor on which Frank’s

business office was located. Their principal witness, the man without whose testimony Frank would never have been convicted, was Jim Conley, a black man who worked in the building as a janitor. Conley testified that he was sitting on a box on the first floor near the stairs on the day of the murder; that he saw Mary Phagan enter the building and walk up the stairs to the second floor where Frank's office was located; that later Frank called him up to the second floor, admitted killing Phagan, and asked him to help with the disposal of the corpse; that he and Frank carried the body to the elevator and took it down to the basement where they left it on the ground; that he and Frank then went up to Frank's office where Frank dictated four notes which Conley wrote on paper procured from Frank's office; and that two of these handwritten notes—known to history as the murder notes, or the death notes, because they purport to have been written by Phagan while she was being assaulted—were the notes later found by police near the body in the basement.

The defense, on the other hand, contended that Conley's testimony was false and Frank was wholly guiltless of the murder; that Conley was the murderer; that Conley had attacked Phagan after she had left Frank's office and come down the steps to the first floor; that Conley then tossed Phagan down a nearby trapdoor hole into the basement; and that Conley had written the murder notes in the basement on his own (presumably in an effort to point the finger of guilt at another black man). Taking the stand in his own defense, Frank vehemently denied murdering Phagan and branded Conley's testimony a vast mass of lies.

If the prosecution's theory of the case was correct, Leo Frank was the murderer; if the defense's theory was correct, Jim Conley was the murderer. One of the theories must be right and the other must be wrong; there are no other possible theories or suspects. Although it has been suggested that perhaps some unknown person secretly entered the factory, committed the murder, and stealthily departed, there are many reasons why this is impossible. For example, if neither Frank nor Conley murdered Phagan, then how did Conley come to write the murder notes? (Conley acknowledged writing the notes, the notes are in his handwriting, and it is indisputable that he wrote them.) So was it Frank or was it Conley who killed Phagan?

Amazingly, despite its immensity and comprehensiveness, Oney's book (as literary critic Theodore Rosengarten reminds us) does not "come flat out and say who killed Mary [Phagan]." Although the book does assert that the weight of the evidence "strongly suggests Frank's innocence," it also claims that "the argument [over whether Frank or Conley is the guilty party]" will "never move beyond that of Conley's word versus Frank's." On the other hand, in a recent press interview Oney stated that "I'm pretty certain that Frank was innocent,"

and “I’m 95 percent certain Conley did it.” And in a short magazine article published in March 2004 Oney “declared [his] belief in Frank’s innocence.”

Based on the trial evidence and on evidence discovered after the trial, I propose now to dispel any lingering doubts about who killed Mary Phagan. *Beyond a reasonable doubt, beyond any legitimate doubt whatsoever, Leo Frank was innocent of killing Mary Phagan, and Jim Conley was her murderer.*

I begin with the evidence introduced at Leo Frank’s trial. For, as historian C. Vann Woodward wrote, the trial evidence was “overwhelmingly more incriminating [of Conley] than any produced against Frank.”

In the first place, there was not the slightest doubt that Conley had written the murder notes, and yet the notes were more highly incriminating of Conley than of anyone else, in that they purported to blame the crime on a black male who did not look like Conley. (The notes attributed the crime to someone described as “a long tall negro black,” a “long sleam [sic] tall negro,” and a “long tall black negro.” This fit the description of the building’s night watchman; Conley himself was short, stocky, and light-colored.) It is utterly nonsensical to think that Leo Frank told Conley, a black man, to write out notes designed to incriminate another black man. Who but Conley would have conceived the notion of describing the murderer as a black male who did not look like Conley? In this respect the contents of the notes irresistibly suggest that Conley, not Frank, was responsible for the contents of the notes—and therefore was the killer (as well as a perjurer). As Berry Benson, a code deciphering expert who scientifically studied the notes many years ago, astutely observed: “If Frank did not dictate the notes, then Conley was the murderer.”

Second, the timeline of the story Conley testified to was physically impossible. Mary Phagan arrived at the building no earlier than 12:11 p.m. and it was undeniable that Frank left the building shortly after 1 p.m. Yet Conley claimed that during this interval of less than one hour the following happened: Frank took Phagan from his office to another room on the same floor at least 150 feet away and strangled her; Frank walked nearly 150 feet back to the stairway and summoned Conley to come up from the first floor; Conley walked up the stairs to the second floor and had a conversation with Frank; Conley walked to the room where the victim was lying, saw she was dead, returned to Frank, and noticed that the time was 12:56 p.m.; Conley went back to where the victim was and tried to pick up the body (which weighed 107 pounds) but found it was too heavy and summoned Frank to come help him; Conley and Frank carried the body to the elevator near Frank’s office, took the body to the basement on the elevator, and left it there in the basement (at a spot 136 feet from the

elevator shaft); Frank and Conley went up to Frank's office where the two conversed; while the two were in the office two women, Corinthia Hall and Emma Clark, approached Frank's office, causing Frank to hide Conley in a wardrobe where Conley remained for some time; then, Hall and Clark having left the office, Conley came out of the wardrobe and Frank dictated four notes to him, including the two notes found near the body which contained a total of 128 words written by Conley.

Third, Conley's testimony materially conflicted with the testimony of numerous reliable witnesses. Here are a few good examples. Conley testified that three women employees—Monteen Stover, Corinthia Hall, and Emma Clark—arrived at the building after Mary Phagan, even though it is obvious from their testimony that they arrived and left the building before Phagan. Conley's testimony conflicted with that of building superintendent Lemmie Quinn who saw Frank in Frank's office at 12:20 p.m. Conley's testimony conflicted with that of Mrs. Arthur White who entered the building at 12:30 p.m. and saw Frank near his office as she was going up the stairs, who saw Frank at 1 p.m. when he came up to the fourth floor and spoke to her, and who shortly afterward saw Frank at his desk in his office as she left.

Fourth, one of the murder notes contradicted Conley's claim that the notes had been written in Frank's office instead of (as the defense claimed) the basement, for it began, "mam that negro hire down here did this ...". If the note had been written in Frank's office, it would have said "down there" rather than "down here." The note also contradicted Conley's claim that Mary Phagan had been taken to the basement in the elevator (and confirmed the defense position that Phagan had reached the basement by being thrown through the first floor trapdoor hole), because it said: "he push me down that hold [sic]..."

Fifth, the other murder note used the term "night witch," a reference to a legendary hobgoblin then well known in Southern black culture but entirely unknown to Northern whites such as Frank (who Conley said had dictated the notes).

I now turn to the newly discovered evidence which was not available to the jury but was presented by Leo Frank's attorneys to the trial court in posttrial motions or to Gov. Slaton in connection with Frank's request for commutation of his sentence. This evidence falls into four categories: (1) the Annie Maude Carter affidavit and correspondence, (2) the testimony of Henry F. Becker, (3) the testimony of Dr. Henry F. Harris, and (4) what Oney calls "the shit in the shaft" evidence.

Annie Maude Carter was a girlfriend of Jim Conley's. After Frank's trial Carter prepared an affidavit for Frank's lawyers in which she revealed that Conley had confessed to her that he had murdered Mary Phagan, telling Carter that on the day of the murder he was sitting on a box in the factory when Phagan came down the staircase; that he told Phagan someone had called her; that Phagan turned back and he then struck her with his fist, knocking her down; that he dropped her through the trapdoor hole; that he put her down there to make people believe the building's night watchman did it; that afterward he found a piece of blank paper, tore it in two, picked up a pencil, and wrote the death notes and put them near the corpse; that he kept the money he found in Phagan's purse; and that he then pulled the staple out of the back door and fled the building. There are no valid reasons for doubting the truth of Carter's affidavit, which confirms the view of the facts that Frank's defense took at the trial. It is also another indication that Conley lied under oath.

The Annie Maude Carter correspondence consisted of a batch of letters Conley wrote to Carter in late 1913 and early 1914. Conley admitted writing the letters, which are in his handwriting, and there is no question that he wrote them. In their frequent use of monosyllabic words and compound adjectives, and in several other respects, the letters are quite similar in their composition to the murder notes. The letters prove that Conley, not Leo Frank, composed the murder notes, and that Conley lied when he claimed that Frank dictated them. And who would compose the death notes except the murderer?

Henry F. Becker was a former employee at the National Pencil Company Building. He stated under oath that when he left his job in 1912, he had personally packed up all of the factory's outdated carbon copy order sheets and sent them down to the basement. Since one of the murder notes had been written on an outdated carbon copy order sheet, Becker's evidence tends to prove that the murder notes had been written in the basement (as the defense maintained) and not in Leo Frank's office (as the prosecution claimed and as Jim Conley swore).

Dr. Henry F. Harris was the physician who performed Mary Phagan's autopsy. In a posttrial affidavit he certified that before the trial he microscopically examined head hair found in the second floor room where the prosecution claimed Mary Phagan had been murdered by Leo Frank, and discovered that it did not come from Phagan. During the trial the prosecution repeatedly suggested to the jury that the hair came from Mary Phagan, and that it ended up in that room due to injuries inflicted on Phagan in that room. Dr. Harris' affidavit on the hair evidence supports the defense's contention that Mary Phagan had been killed in the basement by Jim Conley. (At the trial the fact

that Dr. Harris had made this discovery that the hair was not Phagan's was concealed by prosecutors from the court, the jury, and the defense.)

Finally, there is the evidence relating to the human feces found in the building's elevator shaft pit not long after the Phagan murder. It was undisputed at the trial that police investigating the murder found formed human feces in the pit and that when they rode the elevator to the basement the bottom of the elevator car smashed the excrement, producing a foul odor. It was also undisputed at the trial that Jim Conley had been the person who, not long before the murder, had defecated into the shaft; while testifying Conley freely admitted being the one who had deposited the excrementitious mound which police saw there in its natural condition. After the trial it was discovered (and Gov. Slaton himself verified this by visiting the building and using the elevator several times) that whenever the elevator car traveled to the basement it came into contact with the basement floor before coming to a stop. Now Conley had testified that he and Leo Frank had taken Phagan's corpse to the basement in the elevator. If that had been true, however, the fecal mound previously deposited in the shaft would have been mashed when the elevator car containing Phagan's body reached the basement and would not still have been in formed condition at the time police used the elevator. Contrary to Conley's testimony, therefore, the elevator had not been used to transport the body to the cellar. In addition to showing that in still another respect Conley was a perjurer, this evidence also supported the defense's position that Conley had attacked Phagan on the first floor and then flung her body down the nearby trapdoor hole into the basement.

I now turn to the newly discovered evidence which did not surface until after Leo Frank's murder. This includes: (1) the bite evidence discovered by Pierre Van Paassen in 1922, and (2) the 1982 affidavit of Alonzo Mann.

Van Paassen was a Dutch journalist who in the 1920's, while working as a reporter for *The Atlanta Constitution*, conducted his own investigation of the Leo Frank case by going over the evidence (including documents and photographs) on file at the courthouse. He discovered that Mary Phagan "had been bitten on the left shoulder and neck before being strangled," and that "photos of the teeth marks on her body did not correspond with Leo Frank's set of teeth of which several photos were included."

Alonzo Mann worked as Leo Frank's office boy and was 13 years old at the time of murder of Mary Phagan. In 1982, now 83 years old and in poor health, he prepared an affidavit for a newspaper in which he explained why he was now breaking his silence after all these years and announcing to the world that

he knew for sure that Leo Frank was innocent and Jim Conley was guilty. Shortly after noon on the day of the murder, Mann had entered the building through the main entrance on the first floor and saw a surprised Conley near the trapdoor hole carrying the limp body of Mary Phagan on his shoulder. After Conley threatened him to kill him, Mann ran outside and did not tell anyone what he had seen except for his parents (who insisted that he remain silent). After making the affidavit Mann passed a lie detector test, and no has seriously suggested that Mann's allegations are not the gospel truth.

Curiously, Oney downplays the tremendous significance of Mann's affidavit. In the book, Oney says that Mann's assertions "added little of probative value," and further says: "True, Mann's story, by placing Conley in the factory lobby, did give the lie to [Conley's] contention that he'd used the elevator to transport the remains, but far from being a revelation, this assertion merely corroborated what the so-called shit in the shaft had indicated a lifetime before." And in a recent press interview, Oney said: "Mann's story was incredibly dramatic, and I believe it. However, both the defense and the prosecution were in accord that Conley had carried Mary Phagan's body."

Oney's obtuseness as to the importance of Mann's affidavit is a stupefying lapse on his part. Although it is true that both the prosecution and defense agreed that Conley carried Phagan's body, they most certainly did not agree on where this had happened. Prosecutors contended that Conley and Frank carried the body across the second floor to the elevator, descended in the elevator with the body directly to the basement, and then carried the body out of the elevator into the basement, and Conley testified to this effect. That Conley had at any time carried the body, or been with the body, on the first floor was contrary to the entire theory of the prosecution's case and to the testimony of its star witness. It was the defense which contended that Conley had attacked Phagan on the first floor, taken her body to the trapdoor hole, and then dumped it into the basement. Mann's affidavit therefore does not under any reasonable construction simply confirm something on which prosecutors and defense lawyers were in agreement. On a vital point on which the prosecution and the defense were in disagreement—whether at any time Conley carried Phagan's body while he was on the first floor—the affidavit flatly contradicts the prosecution's case and confirms the defense's contentions. It is also still another indication that Conley lied under oath.

There is another important respect in which Mann's affidavit contradicts the prosecutors and their star witness. According to Jim Conley's testimony, from the time he allegedly tried to pick up the dead body lying on the ground on the second floor until the time the body was left in the basement, he and Frank

were together. Yet when Mann saw him on the first floor carrying the body Conley was alone and Frank was nowhere in sight. The affidavit therefore rebuts Conley's claim that Frank helped carry the body, and confirms Frank's statement at the trial that Conley's story was a lie.

Thus, despite Oney's unaccountable inability to comprehend it, Mann's revelations provide a colossal refutation of the prosecution's claim that Conley was both truthful and innocent and that Frank was guilty. They show that Conley lied when he said that Mary Phagan was taken to the basement in the elevator. They show that Conley lied when he said that he and Frank together carried Phagan's body. They show that the defense was correct in maintaining that Conley was with the dead or dying girl on the first floor, and that the prosecution was wrong in denying this. They also confirm the defense contention that Mary Phagan was probably tossed into the basement via the trapdoor hole in the first floor.

More importantly, Mann's revelations prove that Frank was innocent and Conley was guilty of Mary Phagan's murder. Conley, as I have noted, testified that he and Frank conveyed Phagan's body in the elevator directly from the second floor to the basement. He said nothing about taking the body out of the elevator on the first floor, and it would have been unnecessary, foolish, and dangerous for him to have done anything other than descend nonstop to the basement. Proof that Conley was carrying Phagan in his arms on the first floor does more than demolish his claim that he and Frank transported the body to the basement in the elevator and it does more than prove that Conley was a perjurer. Because it is incompatible with any theory of Conley's innocence, it is proof that Conley was the murderer. For what other explanation can there be for the indescribably incriminating conduct of Conley which Mann saw with his own eyes on the first floor—especially when that conduct is combined with Conley's later conduct in writing the murder notes blaming another black man for the murder? Under all the circumstances, the only plausible interpretation of the fact that Jim Conley was observed with an apparently unconscious Mary Phagan draped over his shoulder on the first floor of the factory is that Jim Conley was the murderer of Mary Phagan.

The unfair trial and wrongful conviction of the innocent Leo Frank, the myriad violations of his rights in the criminal proceedings against him, the perjuries used to shatter the presumption of his innocence, the abominable bursts of anti-Semitism directed at him by Georgians, his illegal execution, the failure to bring his dastardly murderers to justice—these have, in the prescient words of William Randolph Hearst, “involve[d] ... Georgia in everlasting and unavailing sorrow and regret.”

The rabbi was right when on the eightieth anniversary of Leo Frank's pitiless murder he put up at the site of the lynching an inscribed memorial plaque which says:

*Wrongly Accused,
Falsely Convicted,
Wantonly Murdered.*

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CHRONOLOGY OF THE LEO FRANK CASE

Apr. 26, 1913 Today, a Saturday, is Confederate Memorial Day, an important holiday in the early twentieth century South. Sometime in the very early afternoon, soon after being paid in cash the \$1.20 in wages due her, Mary Phagan, 13 years old and an employee of the National Pencil Company, is murdered inside the National Pencil Company Building, a four-story, city-block-long stone structure with a cavernous, crypt-like basement, located at 37 South Forsyth St. in downtown Atlanta.

Today is not a workday for Phagan, who enters the building by the main entrance shortly after noon for the sole purpose of picking up her payroll envelope, which is handed to her by Leo M. Frank, the factory superintendent of the National Pencil Company, in his office on the second floor. Five feet six inches tall, weighing 120 pounds, Frank, 29 years old, is a small man of delicate physique who wears thick spectacles.

About eleven or twelve minutes after noon, Mary Phagan walks into the building through the front door on the first floor and heads for the staircase leading to the second floor. Only a few feet away on the right is a scuttle hole, which can be closed off by a trapdoor, and leads via a ladder down to the tomblike basement. As Mary Phagan walks toward the stairs she is unaware that she is being watched by a man who has been drinking heavily and is

concealed from view by boxes stacked in front of him. For unknown to Mary Phagan, Jim Conley, 29 years old, a short, strong, muscular light-colored black man who has been working as a janitor at the National Pencil Company Building since 1911, is sitting on a box in a dark place under the stairwell. The foot of the stairs is within a few feet of Jim Conley's hiding place. From his vantage point in the gloom, Conley can observe persons walking to or from the stairs but is invisible to them. Conley has been drinking beer, wine, and whisky for several hours. While sitting there in the darkness this morning he has been carefully observing the persons who enter the building and ascend the stairs, and he will later testify in court as to the clothes and footwear the females were wearing. He silently watches Mary Phagan as she approaches the stairs and begins walking up the steps.

Leo Frank and Jim Conley are the last two persons known to have seen Mary Phagan alive.

Shortly after 1 p.m. Leo Frank leaves the building, boards a street car around 1:10 p.m., and arrives at his home for lunch around 1:20 p.m. He returns to the building around 3 p.m.

Apr. 27, 1913 Around 3 a.m. Mary Phagan's dead body is discovered in the basement by the National Pencil Company Building's night watchman, a black man named Newt Lee who immediately telephones the police station.

Police rush to the building by automobile. They find the corpse lying face down at the rear of the 200-foot long, earthen-floor basement, a filthy catacomb littered with trash, coal dust, sawdust, and ashes, and lighted by a gas jet. The body is 136 feet from the elevator shaft.

Phagan has been strangled with a seven-foot length of cord tied in a slipknot still tightly wrapped around her neck. (Quantities of cord of this character are found throughout the building.) Her tongue is swollen and protruding. She has soot on her face, dirt in her eyes, and cinders in her mouth and nostrils. She has a black eye, there are wounds on her scalp and below the knee and scratches on the elbow, and her clothing has been torn. There is fresh blood in her underclothing, and she appears to have been raped vaginally or anally. She has also been robbed: her purse containing the \$1.20 is missing.

The exit route of the murderer is unmistakable. Someone has pulled out an iron staple sealing shut a wooden sliding door which at the rear of the basement opens into an alley. Nearby, leaning against the wall of the basement, is the piece of metal pipe used to lever open the staple.

Police find two murder notes, handwritten in pencil, near the corpse. Riddled with misspellings, monosyllabic words, and grammatical oddities, the notes, which together contain 128 words, purport to have been written by the murder victim as she was being attacked (!), and blame the attack on someone described variously as “a long tall negro black,” a “long sleam tall negro,” and “that long tall black negro.” (There is a photograph of both notes in Steve Oney’s book.)

One murder note, purportedly addressed to the victim’s mother (!), was written on a lined carbon copy of a National Pencil Company blank order sheet, with “Atlanta Ga. 190_” across the top. It reads: “mam that negro hire down here did this i went to make water and he push me down that hold a long tall negro black that hoo it was long sleam tall negro i wright while play with me.” This note was probably the one written first. The other murder note, written on a white piece of lined paper, states: “He said he wood love me and land down play like night witch did it but that long tall black negro did buy hisslef.”

Suspicious police accuse Lee (who is tall, slim, and dark-complexioned) of the murder and arrest him on the spot.

Later in the day, during a search of the basement, police discover a mound of formed human excrement (which a policeman says “looked like someone had dumped naturally”) in the elevator shaft pit. Shortly afterwards, when the elevator car is lowered down to the basement, it stops when it comes into contact with the ground, mashing the naturally formed feces and filling the air with a fetid odor.

Apr. 28, 1913 The first newspaper articles about Mary Phagan’s murder are published in the three Atlanta dailies: *The Atlanta Constitution*, *The Atlanta Journal*, and *The Atlanta Georgian* (recently been purchased by William Randolph Hearst). The early 1900’s is the high point of titillating partisan journalism in America, and not surprisingly today’s articles are sensationalized accounts of the murder tragedy. *The Georgian* devotes five pages to the murder and even features a ghoulish photograph, taken by a newspaper photographer, of Mary Phagan on a slab at the undertaker’s. At least eight and perhaps as many as 20 *Georgian* extra editions, with red headlines, are published today, according to Oney’s book.

Between today and the end of August these three newspapers, in a revolting manifestation of yellow journalism, boost their circulation figures and compete with each other by acting as if the murder of Mary Phagan was the world’s biggest news story. There are screaming headlines, lurid stories, heartrending

accounts of people and events, lugubrious interviews with friends and relatives of the murder victim, wild allegations and false rumors repeated as gospel, barbarous cries for vengeance, grim offers of reward, and excited promises of draconian justice. The attention given to the Phagan murder is staggering. From the end of April through August the *Georgian*, for example, devotes the equivalent of 100 pages the size of *The New York Times* to the case. *The Georgian* triples its sales during this time. Once Leo Frank is arrested, the newspapers publish numerous items falsely alleging or implying not only that his guilt is certain, but also that he is of depraved and lecherous character and a sex pervert. The fact that Frank is Jewish is not ignored by the press, and this fans the flames of the anti-Semitic rumors running rampant through Atlanta, such as the ugly canard that (in the words of history professor Leonard Dinnerstein) “the tenets of the Jewish faith forbade the violation of Jewish, but not Gentile, women.” (“It is ridiculous to protest that there has been prejudice against the Jew in the Frank case,” a contemporary will write in 1915, “the whole atmosphere of the case reeks with it.”) The trial of Leo Frank in July and August will, therefore, occur during a period of what historian Dinnerstein accurately describes as “newspaper hysteria.”

Apr. 29, 1913 Around 11:30 a.m. two Atlanta police detectives arrest Leo Frank in his office for the murder of Mary Phagan. Frank will never have another day of freedom. As he is being led into the police station, Frank tells reporters: “I am not guilty. Such an atrocious crime has never entered my mind.” Today’s *The Atlanta Georgian* announces the arrest under the headline “Police Have the Strangler.” It also reports: “Frank and Negro [Newt Lee] Are Given the Third Degree.”

Also on this day Mary Phagan’s funeral is held, and she is buried in Marietta, the city where she lived for most of the first eight years of her life.

May 1, 1913 Jim Conley is arrested after the National Pencil Company Building’s day watchman spots Conley washing red stains out of a blue work shirt on the second floor of the building. Police fail to have the shirt tested for the presence of blood. Conley will remain in police custody until after Leo Frank’s trial.

May 16, 1913 In his first written statement to police, Jim Conley says that on the day of Mary Phagan’s murder he got up from bed after 9 a.m., that he left his home at 10:30 a.m., visited a number of saloons, purchased a half pint of whisky on the street, visited another saloon, won 90 cents throwing dice, bought some beer, visited another saloon where he bought beer and wine,

arrived home at 2:30 p.m., went out and bought beer about an hour later, and then returned home, where he remained that night.

May 24, 1913 On this day Jim Conley, after being subjected to third degree interrogation tactics for a week, verbally admits to police that he can read and write and that he wrote the murder notes. (During the previous weeks he had repeatedly told police he was illiterate. Police have discovered Conley's literacy due to a remark made by Leo Frank. "I know he can write," Frank told a private detective. "I have received many notes from him asking me to loan him money.") Conley then makes his second written statement to police, in which he claims that he wrote the notes on the day prior to Mary Phagan's murder under the following circumstances: on the afternoon of the Friday the day before the murder, Frank had summoned him to his office; Frank had then inquired whether Conley could write, to which Conley answered, "Yes;" Frank had then told Conley to write the notes; and Frank had then composed and dictated the contents of the notes, which Conley wrote out. Conley also says that after writing the notes that Friday Frank "told me he had some wealthy people in Brooklyn and then ... said, 'Why should I hang?'"

A few hours later, unaware that Conley has confessed to being the author of the murder notes, the Fulton County grand jury indicts Leo Frank for the murder of Mary Phagan. A dozen or more men have been arrested as suspects in connection with the murder of Phagan, but Frank is the only person ever indicted for the crime. If the grand jury had known about Jim Conley's confession to writing the murder notes, it is certain that Conley also would have been indicted for the murder.

May 28, 1913 Jim Conley, who has now been in police custody for four weeks, makes his third written statement to police, this one notarized. In today's statement Conley acknowledges being in error in his previous statement when he said that he wrote the murder notes on the day before the murder; he now says he wrote them on the day of the murder. Conley claims that he was summoned up to Frank's office to write the notes "about four minutes to one o'clock." Today's statement is similar to the statement Conley will give on the following day, except that today's statement is less detailed and says nothing about the murder of Mary Phagan or the disposal of her body or about any alleged incriminating admissions made by Frank. In today's statement Conley repeats what he said in his May 16 statement about his visits on the morning of April 26 to numerous saloons and about his drinking beer, wine, and whisky that morning.

Later, at Leo Frank's trial, a police detective explains how and why and he and other police interrogators induced Conley in his May 28 statement to alter his story as to the day on which the murder notes were written. The detective testifies:

"We tried to impress him with the fact that Frank not would not have written those notes on Friday, that that was not a reasonable story. That showed premeditation and that would not do. We pointed out to him why the first statement would not fit. We told him we wanted another statement. He declined to make another statement. He said he had told the truth.

"On May 28th Chief Lanford and I grilled him for five or six hours again, endeavoring to make clear several points which were farfetched in his statement. We pointed out to him that his statement would not do and would not fit, and he then made the statement of May 28th, after he had been told that the previous statement showed deliberation and could not be accepted."

May 29, 1913 After four hours of what *The Atlanta Georgian* the next day will call "merciless sweating" (and Oney characterizes as "ruthless grilling"), Jim Conley makes his fourth written statement to police, this one also notarized. Much of this statement is substantially similar to testimony Conley later gives on direct examination at the trial of Leo Frank. In today's statement Conley claims for the first time that Frank led him to a dead girl on the second floor and admitted killing her, and that he helped Frank carry the corpse to the elevator and transport it to the basement. He also now claims that once the dead girl was deposited in the basement he returned to the first floor on the elevator, that Frank returned to the first floor by climbing a ladder that led to the trapdoor hole on the first floor, that both men then rode on the elevator from the first floor to the second floor, and that it was after they arrived in Frank's office that Frank composed and dictated the murder notes. Conley also says that after he wrote the notes Frank gave him a cigarette package inside which Conley later discovered \$2.50, prompting him to exclaim, "Good luck has done struck me."

June 4, 1913 Lucille Frank, Leo Frank's wife, releases a statement accusing Hugh Dorsey of "torturing" witnesses to give false testimony incriminating her husband. She says: "[T]he action of the [district attorney] in arresting and imprisoning our family cook because she would not voluntarily make a false statement against my innocent husband, brings a limit to patience." Tomorrow, Hugh Dorsey will issue a statement denying any wrongdoing, and on the following day Lucille Frank will repeat her charges.

June 28, 1913 John M. Slaton is inaugurated as Governor of Georgia, succeeding Joseph M. Brown.

July 21, 1913 With difficulty prosecutor Hugh Dorsey persuades a newly convened Fulton County grand jury not to indict Jim Conley for the murder of Mary Phagan. Unlike the grand jury that indicted Leo Frank, this grand jury knows that Conley has confessed to writing the murder notes.

July 27, 1913 *The Atlanta Constitution* publishes a full page article heaping praise on the police who had “solved” the murder of Mary Phagan.

July 28, 1913 Leo Frank’s jury trial, which *The Atlanta Constitution* predicts will be “The Greatest Legal Battle in the History of Dixie,” begins on this Monday in the Superior Court of Fulton County, Judge Leonard S. Roan presiding. It will be longer than any previous criminal trial in Georgia history, with court sessions held on 25 days over a period of four weeks. Seated near Frank during the trial, in addition to his counsel, are his wife Lucille, 25 years old, and his elderly mother, Rachel Frank.

During the morning session of this first day of the trial, the all male, all white jury is selected and sworn, and both sides make opening arguments. After lunch, the prosecution begins its presentation of the case. The first witness to testify is Mary Phagan’s mother, dressed in black mourning clothes and wearing a heavy veil. While on the stand she weeps and sobs.

Leo Frank’s trial is taking place in the old Chamber of Commerce Building-City Hall (since demolished) on the northeast corner of Pryor and Hunter Streets. (A new courthouse for the Fulton County Superior Court is under construction nearby.) The cramped courtroom in which the trial takes place formerly was used for city council meetings and features a dozen electric chandeliers hanging from the tin ceiling. During the trial the room is oppressively hot and humid, with the thermometer in the nineties.

The case for the prosecution is tried by the district attorney, Hugh M. Dorsey, and his assistants. From the beginning of their involvement in the case last May, these prosecutors have time after time displayed a disturbing proclivity to see Frank convicted at all costs and by any means. For example, they repeatedly arrange for police to arrest persons who have made statements or given affidavits helpful to Frank, and the persons so arrested usually are not released until they retract their previous declarations. During the trial and in the posttrial proceedings, Hugh Dorsey and his fellow prosecutors present the case for the prosecution with craftiness and overzealousness; and by the use of

what Oney calls “uncanny dexterity” they extract every possible advantage flowing from the widespread community enmity toward Leo Frank. The prosecutors remorselessly press two overarching assertions—that their principal witness, Jim Conley, is a paragon of veracity and that Leo Frank is an inhuman, perverted child murderer.

The chief defense lawyers, Luther Rosser and Reuben Arnold, are talented, highly experienced practitioners, but they inexplicably commit blunder after blunder before, during, and after the trial, doing overall a wretched job of defending their client. Prior to the trial, for example, despite overwhelming community hostility to their client, they do not move for a change of venue. During the trial they botch the cross-examination of Jim Conley, underestimating Conley’s intelligence and wiliness. After the trial they fail to raise in a procedurally correct manner some of Frank’s strongest claims of violations of his constitutional rights, and as a result the courts deem these, the best of Frank’s constitutional claims, to have been waived due to the procedural defaults of his attorneys. Louis Wiley, a business manager of *The New York Times* who carefully follows the Leo Frank trial as it unfolds, will write with great perspicacity in 1914: “I am strongly inclined to believe that [Frank] was not adequately defended. If he had been it seems to me the dreadful situation now before us might have been prevented.” The consensus of modern opinion is that, in the words of DeWitt H. Roberts, a scholar who carefully studied the trial, “the defense of Leo Frank was one of the most ill-conducted in the history of Georgia jurisprudence.”

Throughout the trial Judge Roan struggles to maintain order and decorum and to suppress outbursts among the 250 spectators in the courtroom. The courtroom is packed with unruly spectators hostile to Frank. They frequently cheer and applaud the conduct of prosecutor Hugh Dorsey, as well as court rulings in favor of the prosecution, whereas they laugh at arguments or motions made by defense counsel. Because of the blistering summer heat the windows of the main floor courtroom are kept open. And yet just outside those windows, in the adjoining streets and alleys, large crowds hostile to Frank are milling about, vociferously expressing their barbarous feelings. The noises emanating from these crowds can be clearly heard inside the courtroom, and sometimes, when the prosecution scores a point, the courtroom spectators and the crowds outside applaud simultaneously.

A member of the lower house of the Georgia General Assembly who visits the courthouse during Leo Frank’s trial will later recall: “There was a thirst for the blood of Mary Phagan’s murderer. So intense was this feeling that the very atmosphere in and about the courthouse was charged with the sulphurous fumes

of anger. I was in the courthouse several times during the trial, and the spirit, the feeling, the thought of the crowd affected me. Without reason I found myself prejudiced against Frank. Prejudiced, not from facts and testimony, but by popular belief and hostile feeling manifested by the crowd.”

The prosecution’s theory of the case is that not long after she entered his second floor office Leo Frank, acting alone, killed Mary Phagan in the metal room (where Phagan usually worked), which was located on the same floor over 150 feet from Frank’s office; that Frank killed Phagan because she had just refused his unwanted sexual advances; that Frank sought help from Jim Conley to dispose of the body; that Frank and Conley carried the dead girl from the metal room and put her in the elevator and took her down to the basement; and that thereafter both men went to Frank’s office where Conley wrote the murder notes at the dictation of Frank.

The case for the defense is that, unknown to Leo Frank, Jim Conley attacked Mary Phagan after she had left Frank’s office and had descended the staircase to the first floor; that Conley threw her body down the nearby trapdoor hole into the basement and then wrote the murder notes there in the basement in an attempt to cast the blame for the murder on Newt Lee; and that Frank had nothing to do with the crime.

July 29, 1913 Atlanta police detective John Black, who had gone to the basement where Mary Phagan was found to investigate her murder, testifies: “There was some excrement in the elevator shaft. When we went down on the elevator, the elevator mashed it. You could smell it all around.”

July 30, 1913 During cross-examination by defense attorneys, Boots Rogers, a civilian who had accompanied police searching the basement, testifies: “In the elevator shaft there was some excrement. When we went down on the elevator, the elevator mashed it. You could smell it all around. It looked like the ordinary healthy man’s excrement.... [T]hat was before the elevator came down. When the elevator came down afterwards it smashed it and then we smelled it.”

July 31, 1913 Monteen Stover, 14 years old and an employee at the National Pencil Company Building, testifies that on the day of the Mary Phagan murder she went to Leo Frank’s office on the second floor of the building to pick up her wages, arriving at 12:05 p.m. to find that Frank was not in his office. She waited for five minutes and when she left the office at 12:10 p.m. Frank still had not showed up.

Wherever Frank might have been during the brief interval between 12:05 and 12:10 when he was absent from his office (assuming the accuracy of Stover's testimony), it is certain that—contrary to the contentions of the prosecutors—he was not with Mary Phagan. Stover left Frank's office at 12:10 p.m. The street car bringing Phagan to downtown Atlanta arrived at its destination, the intersection of Marietta and Forsyth streets, no earlier than precisely 12:07½ p.m. (according to the testimony of the motormen operating the street car). At the trial civil engineers testified that the intersection was 1,016 feet, or a four and a half minute walk, from the building. Because of the holiday crowds, it might have taken longer than normal for Mary Phagan to walk to the building. Thus, Mary Phagan did not arrive at the building until at least 12:11 p.m., which was after Stover had left it. "[I]t hardly seems possible under the evidence," Gov. John M. Slaton will later write in his 1915 order commuting Frank's sentence, "that Mary Phagan was at [the] time [of Stover's visit to Frank's office] being murdered."

Monteen Stover's testimony conflicts with Jim Conley's Aug. 4 direct examination testimony. Conley claims that Stover came to the building after Mary Phagan. But is clear from Stover's own testimony that Stover arrived before Mary Phagan. Stover says, without dispute, that she left Frank's office at 12:10 p.m., and it is indisputable that the earliest time Mary Phagan could have reached the building was 12:11 p.m. "Therefore," Gov. Slaton will write, "Monteen Stover must have arrived before Mary Phagan ..."

Aug. 1, 1913 Mrs. Arthur White testifies as follows: Her husband was doing some repair work up on the fourth floor of the National Pencil Company Building on the day of the murder. She entered the building at 12:30 p.m. and went up to the fourth floor. As she was going up the stairs she saw Leo Frank standing outside his office near the safe. At 1 p.m. Frank came up to the fourth floor and said that unless she wanted to stay until 3 p.m. she had better leave because he was going to lunch. She left shortly afterward, and saw Frank at his desk in his office as she left.

Mrs. White's testimony conflicts with the testimony Jim Conley will give when he takes the stand. Mrs. White says she saw Frank in his office at 12:30 p.m., whereas, according to Conley, Frank must at that time have been in the metal room (with Mary Phagan), over 150 feet from his office. Mrs. White says she talked with Frank on the fourth floor at 1 p.m. and saw him alone in his office shortly afterward; Conley will testify that he was with Frank on the second floor, apparently near the stairs, "about four minutes to one o'clock," and that afterward he and Frank were busily involved in moving Mary Phagan's corpse to the basement.

Aug. 4, 1913 On this, the seventh day of the trial, Jim Conley takes the stand as the chief (and final) prosecution witness. He testifies on direct examination for four hours.

In essence, the story of the Mary Phagan murder Conley tells today on direct examination is a dressed up, fleshed out version of his May 29 written statement to police. (Conley's May 29 statement was, it will be recalled, his fourth written statement to police.)

Here are a few key excerpts from Conley's trial testimony on direct examination, arranged in paragraphs (the original transcript is unparagraphed):

“And I sat there [on the first floor of the building] on a box....

“The next person I saw was Miss Mary Perkins, that's what I called her, this lady that is dead. I don't know her name. After she went upstairs I heard footsteps going toward [Leo Frank's] office and after she went in the office, I heard two people walking out of the office and going like they were coming down the steps, but they didn't come down the steps, they went towards the metal department. After they went back there, I heard the lady scream, then I didn't hear no more, and the next person I saw coming in there was Miss Monteen Stover.... She stayed there a pretty good while, it wasn't so very long either. After she came back down the steps and left, I heard somebody from the metal department come running back there upstairs on their tiptoes, then I heard somebody tiptoeing back towards the metal department. After that I dozed off and went to sleep.

“Next thing I knew Mr. Frank was up over my head stamping and ... then I went up the steps. Mr. Frank was standing there at the top of the steps and shivering and trembling and rubbing his hands like this. He had a little rope in his hands and a long wide piece of cord. His eyes were large and they looked right funny. He looked funny out of his eyes. His face was red. Yes, he had a cord in his hands just like this here cord. After I got up to the top of the steps, he asked me, ‘Did you see that little girl who passed here just a while ago?’ and I told him I saw one come along there and she come back again, and then I saw another one come along there and she hasn't come back down, and he says, ‘Well that one you say didn't come back down, she come into my office awhile ago and wanted to know something about her work in my office and I went back there to see if the little girl's work had come, and I wanted to be with the little girl, and she refused me, and I struck her and I guess I struck her too hard and she fell and hit her head against something, and I don't know how bad she got hurt. Of course, you know I ain't built like other men.’ The reason he said

that was, I had seen him a position I haven't seen any other man that has got children. I have seen him in the office two or three times before Thanksgiving and a lady was in his office, and she was sitting down in a chair, and she had her clothes up to here, and he was down on his knees. I have seen him another time there in the packing room with a young lady lying on the table, she was on the edge of the table when I saw her....

“He asked me if I wouldn't go back there and bring her up so that he could put her somewhere, and he said to hurry that there would be money in it for me. When I came back there, I found the lady lying back flat on her back with a rope around her neck.... I noticed the clock after I went back and found the lady was dead and came back and told him. The clock was four minutes to one.... I found I couldn't get [the body] on my shoulder, it was heavy... and when I got away from the little dressing room that was in the metal department .. I let her fall ...and I said, 'Mr. Frank, you have to help me with this girl, she is heavy,' and he came and caught her by the feet and I laid hold of her by the shoulders ... and we went on the elevator ... and the elevator went down to the basement ... and we carried her out ... and rolled her out on the floor, and Mr. Frank turned about and went up the ladder [to the first floor] ... and I got on the elevator and started it on to the first floor.... [then] Mr. Frank ... stepp[ed] on to elevator [with me] ... and we ... got ... [to] the second floor....

“I followed him into his private office and I sat down and he commenced to rubbing his hands and began to rub back his hair and after a while he got up and said, 'Jim,' and I didn't say nothing, and all at once he happened to look out the door and there was somebody coming and he said, 'My God, here is Emma Clark and Corinthia Hall,' and he said 'Come over here, Jim, I have got to put you in this wardrobe,' and he put me in this wardrobe, and I stayed there a good while and they come in here and I heard them go out, and Mr. Frank come there and said, 'You are in a tight place,' and I said, 'Yes,' and he said, 'You done very well.'....

“[A]nd then he said, 'Can you write,' and I said, 'Yes, sir, a little bit,' and he taken his pencil to fix up some notes. I was willing to do anything to help Mr. Frank because he was a white man and my superintendent, and he sat down and I sat at the table and Mr. Frank dictated the notes to me. Whatever it was it didn't seem to suit him, and he told me to turn over and write again, and when I done that he told me to turn over again and I wrote on the next page there and he looked at that and kind of liked it and he said that was all right. Then he reached over and got another piece of paper, a green piece and told me what to write....

“And Mr. Frank turned around in his chair ... and he looked back at me and folded his hands and said, ‘Why should I hang, I have wealthy people in Brooklyn.’”

After Jim Conley completes his direct examination, he is cross-examined by Frank’s attorneys for a total of 12 hours over the course of the rest of today and the next two days. Although the cross-examination shows that Conley has previously told lies and half-truths to the police and that his memory is suspiciously poor except as to the matters he testified to on direct examination, defense attorneys are unable to seriously damage his credibility or shake his story. They do not even ask Conley, in front of the jury, to put the contents of the murder notes in writing, so as to let the jury see what he does, and to see how long it actually takes Conley to write the notes Frank allegedly dictated. (A police detective has testified that he dictated eight words to Conley, and it took Conley about six minutes to write them.) Furthermore, during the cross-examination defense lawyers egregiously err by allowing Conley to amplify his sinister, devastating claim, originally made on direct examination, that Frank is a sexual degenerate who performed oral sex on numerous women in his office and other rooms in the building.

The defense attorneys do elicit from Conley an admission that he had, on the day of Mary Phagan’s murder, defecated at the bottom of the building’s elevator shaft prior to the murder. It will not be until after the trial, however, that the inept defense lawyers will comprehend the significance of this admission by Conley. For it means that Conley’s tale that Mary Phagan’s body was transported to the basement via the elevator cannot be true. Whenever the elevator car reaches the basement, it does not stop until it comes into contact with the floor. Therefore the elevator cannot have been used to reach the basement once Conley had (before the murder) excreted into the bottom of the elevator shaft, for the formed excreta there would necessarily have been mashed when the car carrying the corpse (as Conley claimed) reached the basement floor. It was, however, still there the day after the murder, and was mashed only when police investigating the murder rode the elevator down to the basement.

Aug. 7, 1913 On this, the tenth day of the trial, when the cross-examination of Jim Conley finishes, the prosecution rests its case and the defense begins its presentation.

Aug. 12, 1913 Two foreladies at the National Pencil Company Building, Corinthia Hall and Emma Clark, who are entirely reliable and quite positive in their recollections, testify that they visited the building on the day of Mary

Phagan's murder, arriving at 11:35 a.m. and departing about ten minutes later, at around 11:45 a.m. This means that they must have left the building long before Mary Phagan's arrival (which did not occur until nearly a half hour later, around 12:11 p.m.).

The testimony of Corinthia Hall and Emma Clark conflicts with Jim Conley's testimony. The two ladies testified that they left the building at 11:45 a.m., which was half an hour before Phagan arrived. Conley, on the other hand, testified that Hall and Clark had come to Frank's office after Mary Phagan had been murdered. Conley further testified that when he first saw the corpse (in the metal room on the second floor) it was four minutes before one o'clock, and that it was not until later, after he and Frank had moved the body to the basement and entered Frank's office, that Hall and Clark came to the office—which contradicts the foreladies' testimony that they left the building a quarter hour before noon. Conley is saying that the ladies arrived well after 1 p.m.; the ladies are saying that they left before noon.

Aug. 13, 1913 Lemmie Quinn, a foreman at the National Pencil Company Building, testifies that he paid a surprise visit to the building on the day of the murder and found Leo Frank working alone at his desk in his office around 12:20 p.m. Quinn's testimony contradicts Jim's Conley's testimony. According to Conley's version of the facts, at around 12:20 p.m. Frank would have been in the metal room over 150 feet away, with Mary Phagan.

Aug. 15, 1913 The Georgia Court of Appeals hands down its noted decision in *Underwood v. State*, 13 Ga. App. 213, 78 S. E. 1103 (1913), unanimously reversing the conviction of a man tried in Americus for violating a state liquor prohibition statute. In its eloquent decision the Court delivers what is obviously a stinging reprimand of Atlanta police for their widespread use, in violation of basic constitutional rights, of the third degree against numerous suspects and witnesses taken into custody in connection with the investigation of the Mary Phagan murder.

(The third degree—the infliction of mental or physical suffering upon a person to obtain information about a crime—was a common law enforcement practice in American police departments in the early twentieth century, and the Atlanta newspapers covering the Mary Phagan murder case frequently referred to use of coercive interrogation techniques against persons held incommunicado in police custody. “[T]he specialty of the station house,” Oney remarks, “[was] the third degree.” Prisoners were, the newspapers dutifully reported, “grilled,” “sweated,” or subjected to “sweating” or “merciless sweating.” “Conley in Sweatbox,” one headline said; a later headline said, “Conley in Sweatbox

Again;” and another headline announced, “Frank and Negro are Given Third Degree.” “For three days,” historian Leonard Dinnerstein tells us, “they kept the night watchman [Newt Lee] manacled to a chair and put him through a searching, grilling third degree that left him weeping and nerveless.”)

In *Underwood*, the Court of Appeals condemns these inquisitorial techniques in these memorable words:

“The [constitutional rights of Americans] are the sacred civil jewels which have come down to us from an English ancestry, forced from the unwilling hand of tyranny by the apostles of personal liberty and personal security. They are hallowed by the blood of a thousand struggles, and were stored away for safe-keeping in the casket of the Constitution. It is infidelity to forget them; it is sacrilege to disregard them; it is despotic to trample upon them. They are given as a sacred trust into the keeping of the courts, who should with sleepless vigilance guard these priceless gifts of a free government.

“We hear and read much of the lawlessness of the people. One of the most dangerous manifestations of this evil is the lawlessness of the ministers of the law. This court knows and fully appreciates the delicate and difficult task of those who are charged with the duty of detecting crime and apprehending criminals, and it will uphold them in the most vigilant legal discharge of all their duties, but it utterly repudiates the doctrine that these duties can not be successfully performed without the use of illegal and despotic measures. It is not true that in the effort to detect crime and to punish the criminal, ‘the end justifies the means.’ This is especially not true when the means adopted are violative of the very essence of constitutional free government

“What is commonly known as the methods of the ‘third degree,’ so frequently used by zealous officials or interested detectives, may be an appropriate part of that jurisprudence which holds that every man is guilty when accused of crime until he proves his innocence, but it has no place in the jurisprudence of a land where the cardinal principle of humanity and justice is that every man is presumed to be innocent until his guilt is shown by legal evidence beyond a reasonable doubt. These arbitrary methods of discovering crime are subversive of the fundamental principles of law, liberty, personal security, and private property, and place at the mercy of every petty official and conscienceless criminal the life, liberty, and reputation of the citizen. They flourished in the days of the Star Chamber and the Spanish Inquisition, but could not exist in the clear atmosphere of political liberty and personal freedom.... Therefore courts of justice will not approve such methods to discover crime....”

Aug. 18, 1913 On this, the nineteenth day of the trial, Leo Frank makes a four-hour unsworn statement to the jury detailing his knowledge of events in the National Pencil Company Building on the day of the murder and vehemently denying that he had anything to do with the murder. He says Conley's testimony is a pack of odious lies. (Prior to 1961, criminal defendants tried in Georgia were prohibited from taking the stand and testifying under oath, but were permitted, if they wished, to make an unsworn statement not subject to cross-examination.)

Here are a few excerpts from Frank's unsworn statement about his activities on the day of Mary Phagan's murder:

"I went to the second floor or office floor, and I noticed the clock and it indicated five minutes after eleven o'clock.... [Later] Mrs. Emma Clark Freeman and Miss Corinthia Hall, two of the girls who worked on the fourth floor, came in, and asked permission to go upstairs and get Mrs. Freeman's coat, which I readily gave, and I told them at the same time to tell Arthur White [who was repairing equipment on the fourth floor] that his wife was downstairs.... Mrs. Emma Clark Freeman and Miss Corinthia Hall came into my office and asked permission to use the telephone.... Miss Clark and Miss Hall left the office, as near as may be, at a quarter to twelve, and went out, and I started to work reading over the letters and signing the mail....

"It must have been from ten to fifteen minutes after Miss Hall left my office, when this little girl, whom I afterward found to be Mary Phagan, entered my office and asked for her pay envelope. I asked for her number and she told me; I went to the cash box and took her envelope out and handed it to her identifying the envelope by the number. She left my office and apparently had gotten as far as the door from my office leading to the outer office, when she evidently stopped and asked me if the metal had arrived, and I told her, no. She continued on her way out and I heard the sound of her footsteps as she went away. It was a few moments after she asked me this question that I had the impression of a female voice saying something: I don't know which way it came from; [it] just passed away and I had that impression....

"She had left the plant hardly five minutes when Lemmie Quinn, the foreman of the plant, came in and told me that I could not keep him away from the factory, even though it was a holiday.... I then gathered my papers together and went upstairs to see the boys [Arthur White and Harry Denham, who were servicing equipment on the fourth floor] on the top floor. This must have been, since I had just looked at my watch, ten minutes to one. I noticed in the evidence of one of the witnesses, Mrs. Arthur White, she states it was twelve

thirty-five that she passed by me and saw me. That is possibly true; I have no recollection about it; perhaps her recollection is better than mine; however, I expect that is so. When I arrived upstairs I saw Arthur White and Harry Denham who had been working up there and Mr. White's wife. I asked them if they were ready to go and they said they had enough work to keep them several hours.... I asked Mr. White's wife if she was going or would stay there as I would be obliged to lock up the factory, and Mrs. White said, No, she would go then. I went down and gathered up my papers and locked my desk and went around and washed my hands and put on my hat and coat and locked the inner door to my office and locked the doors to the street and started to go home.

“Now, gentleman, to the best of my recollection from the time the whistle blew for twelve o'clock until a quarter to one when I went upstairs and spoke to Arthur White and Harry Denham, to the best of my recollection, I did not stir out of my inner office; but it is possible that in order to answer the call of nature or to urinate I may have gone to the toilet....

“I continued up to Forsyth to Alabama and down Alabama to Whitehall where I waited a few minutes for a car, and after a few minutes a Georgia Avenue car came along; I took it and arrived home at about one twenty. When I arrived at home, I found that my wife and my mother-in-law were eating their dinner, and my father-in-law had just sat down and started his dinner....

“Gentleman, I know nothing whatever of the death of little Mary Phagan. I had no part in causing her death nor do I know how she came to her death after she took her money and left the office. I never even saw Conley in the factory or anywhere else on that date, April 26th, 1913....

“The statement of the Negro Conley is a tissue of lies from first to last. I know nothing whatever of the cause of the death of Mary Phagan and Conley's statement as to his coming up and helping me dispose of the body or that I had anything to do with her or to do with him that day, is a monstrous lie.

“The story as to women coming into the factory with me for immoral purposes is a base lie and the few occasions that he claims to have seen me in indecent positions with women is a lie so vile that I have no language with which to fitly denounce it

“I have no rich relatives in Brooklyn, New York. My father is an invalid....

“I have told you the truth, the whole truth.”

Aug. 20, 1913 On this, the twenty-first day of the trial, the defense rests.

Aug. 21, 1913 Both the prosecution and the defense make closing arguments to the jury. In their closings the prosecutors hammer away at their two favorite themes: Jim Conley is truthful and trustworthy, and Leo Frank is a murderous sex fiend.

Frank Hooper, an assistant district attorney, argues that “Conley ... had arrived at the truth, and the truth is stronger than these [defense] lawyers.... The idea that Jim would have written those notes himself is absurd. You know these negroes. You know their traits. Would one of them have done a thing like that? What object could Conley possibly have had in planting those notes by the body saying that a negro had committed the crime?” He also argues to the jury that Leo Frank is a “Dr. Jekyll and Mr. Hyde. This defendant, like Dr. Jekyll when the shades of night come, throws aside his mask of respectability and is transformed into a Mr. Hyde.”

Aug. 22, 1913 Hugh Dorsey begins making the final arguments for the prosecution. Dorsey’s peroration—which *The Atlanta Georgian* describes as “a white-hot philippic”—will take up nearly three full days of the trial and will last for a total of nine hours, a new record for a criminal trial in the South. *The Atlanta Constitution* calls Dorsey’s performance “the most remarkable speech which has ever been delivered in the Fulton county courthouse” and “one of the most wonderful efforts ever made at the Georgia bar.”

In his closing arguments, Dorsey concentrates on doing what he and his assistants have been doing throughout the trial—depicting 27-year old Jim Conley (whom Dorsey, using the racist cant then prevalent in Georgia’s Jim Crow system, persists in calling “Old Jim Conley” and “Old Jim”) as honest and reliable (“it’s a reasonable tale that old Jim tells you”), and defaming and smearing Frank by depicting him as a fiendish killer (“a lust murderer”) and comparing Frank at length to Theodore Durrant, nicknamed “the Demon of the Belfry,” an infamous bloodthirsty California multiple killer from two decades before who had been hanged in 1898 for murdering two women inside San Francisco’s Emmanuel Baptist Church. Durrant, who taught a Sunday School class at the church, had left the mutilated corpse of one of the victims in the church library and hidden the other body in the church’s bell tower.

The murder notes, Dorsey tells the jury, incriminate Frank, not Conley (“you tell me that ever a negro lived on the face of the earth who, after having killed and robbed, or ravished and murdered a girl down in that dark basement, or down there in that area, would have taken up the time to have written these

notes”). In addition to making what Oney calls “ugly insinuations” about Leo Frank, Dorsey addresses Frank personally and accuses him of being a sex monster who lusted after Mary Phagan, raped and strangled her, and denied responsibility “to save your reputation with ... your kinfolks in Brooklyn”

Aug. 23, 1913 Hugh Dorsey continues his presentation.

Concerned about the excited, boisterous crowds inside and outside the courtroom, Judge Roan, in the presence of the jury and while on the bench, confers with the Atlanta chief of police and the uniformed colonel of the Fifth Georgia Infantry Regiment (a unit of the state militia stationed in Atlanta), who are well known to the jury.

Also on this day, representatives from Atlanta newspapers, fearful of possible mob violence if the trial should continue today, request Judge Roan to adjourn proceedings until the following Monday.

Aug. 25, 1913 Today, a Monday, is the twenty-fifth and final day of the trial. Hugh Dorsey takes three hours, from 9 a.m. to noon, to complete his fiery closing argument, after which Judge Roan gives the jury its instructions and the jury retires to consider its verdict. After deliberating for only one hour and 45 minutes, the jury returns with a verdict of guilty. Neither Leo Frank nor his defense lawyers are present in the courtroom at the reception of the jury’s verdict. Why? Because Judge Roan, in a private conference with defense counsel held just before the jury was charged, has requested that both Frank and his counsel absent themselves when the jury returned its verdict, and counsel has agreed without consulting with or obtaining consent from Frank himself. Judge Roan appears to have made the request because he thought Frank and his counsel might be danger of violence in the courtroom in the event of an acquittal or a hung jury.

As Dorsey leaves the building after the verdict he is rapturously greeted by a huge cheering crowd of 5,000—“a shrieking throng that wildly proclaimed its admiration,” tomorrow’s *The Atlanta Constitution* announces. Among these masses of people “the cry of guilty took winged flight from lip to lip. It traveled like the rattle of musketry. Then came a combined shout that rose to the sky. Hats went into the air. Women wept and shouted by turns. Few will live to see another such demonstration.”

In celebration of the guilty verdict, a large crowd gathers in front of the National Pencil Company Building and cakewalks for an hour. The rejoicing in Atlanta is described a contemporary observer as “a Roman holiday.” The

jury's verdict is welcomed with expressions of great joy and grinning happiness not just by almost all the citizens of Atlanta, but also by almost all Georgians.

Upon receiving word in his cell of the verdict, Frank issues a one sentence official statement: "I am as innocent today as I was one year ago." Tomorrow's *Constitution* carries the headline "Frank Convicted, Asserts Innocence."

In a statement to a *Constitution* reporter, Hugh Dorsey says: "I want to say that I am entirely satisfied with the manner in which the trial has been conducted and also with the verdict returned."

Aug. 26, 1913 In a closed and hurried court session, Judge Roan sentences Frank to death by hanging and fixes Oct. 10, 1913 as the date for carrying out the sentence. Before imposition of sentence Frank is allowed to address the judge, and says: "I say now, as I have always said, that I am innocent. Further than that, my case is in the hands of my lawyers." Shortly after the sentencing Frank's attorneys file a motion for a new trial, which is later amended several times.

Also on this day Leo Frank's defense lawyers issue the following public statement:

"The trial which has just occurred and which has resulted in Mr. Frank's conviction was a farce and not in any way a trial. In saying this we do make the least criticism of Judge Roan, who presided. Judge Roan is one of the best men in Georgia and is an able and conscientious judge. The temper of the public mind was such that it invaded the courtroom and pervaded the streets and made itself manifest at every turn the jury made; and it was just as impossible for this jury to escape the effects of the public feeling as if they had been turned loose and allowed to mingle with the people. In doing this we are making no criticism of the jury. They were men and unconsciously this prejudice rendered any other verdict impossible. It would have required a jury of Stoics, a jury of Spartans to have withstood this situation. The time ought to come when this man will get a fair trial, and we profoundly believe that it will. The final judgment of the American people is a fair one. It is sometimes delayed in coming, but it comes. We entered this case with a profound conviction of Mr. Frank's innocence. The result has not changed our opinion. Every step of the trial has intensified and fortified our profound conviction of his innocence."

Oct. 31, 1913 Judge Roan denies Frank's amended motion for a new trial. However, before announcing his decision, he surprisingly states in open court and for the record: "I have thought about this case more than any other I have ever tried. I am not certain of this man's guilt. With all the thought I have put on this case, I am not thoroughly convinced that Frank is guilty or innocent."

Feb. 14, 1914 The Atlanta Journal breaks the story that prosecutor Hugh Dorsey has suppressed the fact that prior to the trial the doctor who performed Mary Phagan's autopsy, Dr. Henry F. Harris, Secretary of the Georgia Board of Health, had microscopically examined head hair found in the metal room of the National Pencil Company Building and discovered that it did not come from Phagan (thus undermining the prosecution claim that Leo Frank killed Phagan in the metal room).

Feb. 17, 1914 On direct appeal, the Georgia Supreme Court affirms Leo Frank's murder conviction and death sentence by a 4-2 vote. *Frank v. State*, 141 Ga. 243, 80 S. E. 1016 (1914). The majority opinion is by Justice Samuel C. Atkinson. The two dissenting judges are Chief Justice William H. Fish and Justice Marcus W. Beck. The dissenters maintain that Jim Conley's testimony concerning Frank's supposed lascivious behavior with other women or his supposed sexual abnormality was "calculated to prejudice the defendant in the minds of the jurors, and thereby deprive him of a fair trial."

Feb. 24, 1914 Jim Conley is tried and convicted of being an accessory after the fact to the murder of Mary Phagan and sentenced to one year on the chain gang. Hugh Dorsey prosecutes the case for the state; Conley is represented by his criminal defense attorney, William M. Smith. After serving 10 months of his sentence, Conley is released on Dec. 9, 1914—the very day when, for the third time, the trial court fixes a date for Leo Frank's execution.

Mar. 7, 1914 A hearing is held in the trial court to fix a date for executing Leo Frank. This is the second such hearing for Frank. (The first was when Frank was originally sentenced.) Judge Roan having resigned from the superior court and joined the Georgia Court of Appeals, this and all subsequent proceedings in the trial court are presided over by a new superior court judge, Benjamin H. Hill. Hill has just resigned from the Georgia Court of Appeals after serving there as its first chief judge from 1907 to 1913. (Hill was the author of that court's great opinion in the famous *Underwood v. State* decision seven months ago.) Judge Hill fixes Apr. 17, 1914—Leo Frank's thirtieth birthday—as the date for putting Frank to death.

At the hearing, addressing Judge Hill, Frank proclaims:

“In your Honor’s presence, representing human law, and in the presence of the Supreme Judge who at this very moment is casting the light of His omnipotent and omnipresent eye upon me from His throne on high, I assert I am innocent of little Mary Phagan’s death and have no knowledge of how it occurred.

“Your Honor, an astounding and outrageous state of affairs obtained previous to and during my trial. On the streets rumor and gossip carried vile, vicious and damning stories concerning me and my life. These stories were absolutely false, and they did me great harm, as they beclouded and obsessed the public mind and outraged it against me. From a public in this state of mind the jury that tried me was chosen. Not only were these stories circulated in the street, but to the shame of our community be it said that these vile insinuations crept into my very trial in the courtroom, creeping in insidiously, like a thief in the night. The virus of these damning insinuations entered the minds of the twelve men and stole away their judicial frame of mind and their moral courage. The issue at bar were lost. The poison of unspeakable things took their place....

“But I am innocent of this crime. And the future will prove it.”

Mar. 8, 1914 Henry A. Alexander, a lawyer newly hired to represent Leo Frank, meets with newspaper reporters to announce the results of his study of the murder notes, a study which (along with facsimile photographs of the notes and of a specimen of Conley’s handwriting) has recently been published as an eight page pamphlet, “Some Facts About the Murder Notes in the Phagan Case.” Alexander is an 1893 graduate of the UGA law school, and a former college roommate of Hugh M. Dorsey.

In his pamphlet Alexander persuasively argues the probable purpose of the clause “i wright while play with me” on the carbon copy order sheet:

“Realizing dimly that the question would arise how the girl mortally injured or dead could have done any writing, or how he, the murderer, standing over her and watching every movement, came to permit her to write notes incriminating himself, this was intended as an explanation. In other words, the reader of the notes was expected to believe that she wrote them without the murderer seeing her do it while he was ‘playing’ with her.” That Leo Frank, a college educated engineer, would have intended to offer such an explanation—or, indeed, would have ever have conjured up in the first place the wacko notion of manufacturing notes supposedly written by the victim, and then having the notes, which blame a particular black male, handwritten by another black male—is preposterous on its face.

According to Alexander's pamphlet, the term "night witch" appearing in the other note is not a misspelling for "night watch." "While the writer of the notes made repeated errors in his spelling, he made none in correctly reproducing the sound of words, and it is extremely unlikely that he intended to say 'night watchman' when he wrote 'night witch.'" Instead, Alexander maintains, "night witch" refers to a hobgoblin figure then well known in Southern black culture but entirely unknown to a Northern white person such as Frank. (In the superstitious beliefs of black people in the South back then, history scholars tell us, the night witch was said to be a ghoulish apparition who could kill children crying out in their sleep at night.) Jim Conley had testified, of course, that Frank had composed the notes (and therefore had been the one who had selected the term "night witch").

Alexander also points out that the carbon copy order sheet on which one of the notes was written almost certainly had come from the basement, not Frank's office. The dateline on the sheet was "190_" and thus outdated, and the order sheets in use at the time of the murder were datelined "191_;" it was thus unlikely that the sheet came from a pad in Frank's office. Furthermore, the scratch pad from which the sheet was torn had been found by police in the basement, not far from the note itself. This tended to exculpate Frank and to inculpate Conley. The defense theory at trial had been that Conley wrote the notes in the basement, whereas the prosecution had maintained, and Conley had testified, that the notes had been procured from and written in Frank's second floor office.

Mar. 10, 1914 *The Atlanta Journal* publishes a searing editorial, "Frank Should Have a New Trial." The shocking murder of Mary Phagan, "a young girl just budding into womanhood," had, the editorial stated, "unhinged" the community and produced a "degree of frenzy almost inconceivable."

The editorial continues:

"*The Journal* cares absolutely nothing for Frank, or for those who were engaged in his defense or prosecution. If Frank is found guilty after a fair trial, he ought to be hanged and his case should be a horrible example to those who would destroy human life, for generations to come....

"Leo Frank has not had a fair trial. He has not been fairly convicted and his death without a fair trial and legal conviction will amount to judicial murder.

"We say this with a full understanding of the import of our words and the responsibility that rests upon us in making this appeal. We do so, not in

disrespect for the court or the lawyers or the jury. They did the best they could with the lights before them. We honor them for faithfully performing a most unpleasant duty as they saw it.

“But we do say this without qualification: it was not within the power of human judges and human lawyers and human jurymen to decide impartially and without fear the guilt or innocence of an accused man under the circumstances that surrounded this trial.

“The very atmosphere of the courtroom was charged with an electric current of indignation which flashed and scintillated before the very eyes of the jury. The courtroom and streets were filled with an angry, determined crowd, ready to seize the defendant if the jury had found him not guilty. (When the jury returned the guilty verdict, Frank was not in the courtroom. He was at the Fulton Tower.) Cheers for the prosecuting counsel were irrepressible in the courtroom throughout the trial and on the streets unseemly demonstrations in condemnation of Frank were heard by the judge and jury. The judge was powerless to prevent these outbursts in the courtroom and the police were unable to control the crowd outside.

“So great was the danger that the Fifth Regiment of the National Guard was kept under arms through a great part of the night, ready to rush on a moment’s warning to the protection of the defendant. The press of the city united in an earnest request to the presiding judge not to permit the verdict of the jury to be received on Saturday as it was known that a verdict of acquittal would cause a riot such as would shock the country and cause Atlanta’s streets to run with innocent blood. Under such indescribable conditions as these, Frank was tried and convicted. Was a fair trial, under these circumstances, possible?

“The evidence on which he was convicted is not clear (the evidence was circumstantial, but on the strong side). Suppose he is hanged and it should develop that the man was innocent as he claims? The people of this state would stand before the world convicted of murdering an innocent man by refusing to give him an impartial trial. Such a horrible thing is unthinkable. And yet it is possible; yea, an absolute certainty, that we are going to do that very thing unless the courts interfere.

“Ought Frank to have a new trial? The question carries its own answer: Let Justice be done, though the Heavens fall.

“In the name of Justice and in the name of the good people of the State of Georgia, who believe in fair play, who stand for the enforcement of law and the

punishment of crime, after legal conviction, let this man be fairly tried. If he is guilty, he will be convicted.”

Other Georgia newspapers editorializing in favor of a new trial for Leo Frank include *The Albany Herald*, *The Dalton Citizen*, and *The Thomasville Times-Enterprise*.

Mar. 19, 1914 Frenziedly reacting to *The Atlanta Journal's* plea for a retrial of Leo Frank, Tom Watson publishes his first attack on Frank and Frank's defenders in his weekly newspaper *The Jeffersonian*. Over the next 18 months Watson will publish hundreds of pages of articles and items calumniating Frank and his supporters and heaping vituperative scorn on any suggestion that Frank does not deserve to hang. Many of these writings fester with the purulence of anti-Semitism. In today's article, "The Frank Case: When and Where Shall Rich Criminals be Tried?," Watson vitriolically asks: "Does a Jew expect extraordinary favors and immunities because of his race?"

Due to Watson's incendiary writings, a contemporary Georgian soon observes: "No one has yet dared publicly to express his belief in Frank's innocence without being accused of having been bought with Jewish money."

Apr. 16, 1914 Leo Frank files two postsentence motions in the trial court: an extraordinary motion for a new trial, and a motion to set aside verdict. The first motion raises the claim that there is newly discovered evidence of Frank's innocence. The second motion raises the claim that Frank's involuntary absence from the courtroom when the verdict was returned violated due process.

Apr. 24, 1914 At a hearing on its extraordinary new trial motion, the defense introduces an affidavit of Annie Maude Carter, Jim Conley's girlfriend, in which she swears that in a conversation with Conley while both she and Conley were in jail Conley had confessed to murdering Mary Phagan:

"During Christmas week [1913] I was talking with Conley in his cell and he said he would tell the whole truth about it. I asked him why he waited so long and he said, 'If I tell you, will you marry me?' and I told him, 'Yes.' He then told me that he really did the murder of Mary Phagan, but that it was so plainly shown on Mr. Frank that he let it go that way. He begged me never to say anything about this.

"He said he was sitting on a box in the factory when the girl came down; that he told her someone had called her; that she turned back and he then struck her

with his fist, knocking her down; that he dropped her through the hole; that he then took her around by the furnace, starting to burn her, but his conscience wouldn't let him; that he put her down there to make people believe Newt Lee did it; that afterward he found a piece of blank paper, tears it in two, picks up a pencil, and puts the paper on the cellar door and writes the notes; that he first took the notes and put them in her bosom, then he took them out and laid them by her side; that he then took a thing they opened boxes with and pulled the staple out of the back door and went out.

“He told me that he kept the money he found in her purse....”

In the affidavit Carter also confirms that the Annie Maude Carter correspondence—a bundle of letters written to her between December 1913 and February 1914—had been written by Jim Conley. (This correspondence had been located by private detectives working for the defense in April 1914. Gov. John M. Slaton will later write: “These letters are the most obscene and lecherous I have ever read.” In the letters Conley repeatedly says how much he enjoys having anal intercourse with women. The letters are unquestionably in Conley's handwriting. Conley at first denies authorship of the letters, but in 1915 admits he wrote them. In their syntax and phraseology—for example, their frequent use of monosyllabic words and compound adjectives—the letters are quite similar to the murder notes.)

The Annie Maude Carter affidavit and the letters to her from Jim Conley constitute strong evidence that it was Jim Conley, not Leo Frank, who murdered Mary Phagan and composed the murder notes.

May 6, 1914 The trial court denies Leo Frank's extraordinary motion for a new trial.

June 6, 1914 The trial court denies Leo Frank's motion to set aside the verdict.

Oct. 2, 1914 In an interview with a reporter for *The Atlanta Constitution*, William M. Smith, Jim Conley's attorney, now sure of Leo Frank's innocence and feeling partly responsible for Frank's erroneous conviction, describes Conley's testimony as “a cunning fabrication” and expresses the view that Conley is the murderer of Mary Phagan. He adds: “I have come to the conclusion—or at least this is my personal judgment—that Leo M. Frank is innocent.” Smith's words are published the next day under the headline: “Frank Not Guilty, Believes Conley's Lawyer.” *The Atlanta Georgian* repeats the story the same day under the banner “Conley is Guilty Says His Lawyer.”

The following day *The New York Times* follows suit under the banner “Conley, Not Frank Called Slayer; Attorney Smith Now Convinced His Negro Client Killed Mary Phagan.”

Oct. 14, 1914 Without assessing the merits of the newly discovered evidence adduced below by Leo Frank, the Georgia Supreme Court affirms the trial court’s denial of Frank’s extraordinary motion for a new trial, on the ground the trial judge did not abuse his discretion in denying the motion. *Frank v. State*, 142 Ga. 617, 83 S. E. 233 (1914).

Nov. 14, 1914 The Georgia Supreme Court affirms the trial court’s denial of Leo Frank’s motion to set aside the verdict, on the ground the issue of the Frank’s involuntary absence from the courtroom when the jury returned its verdict should have been raised by Frank’s attorneys in the original motion for a new trial, filed in 1913. *Frank v. State*, 142 Ga. 741, 83 S. E. 645 (1914). Due to attorney error, Frank cannot prevail in court on his very substantial claim that he was unconstitutionally denied the right to be present in court when the jury returned its verdict.

Nov. 29, 1914 Judge Roan, who presided over Leo Frank’s trial and is now dying of cancer in a Massachusetts hospital, dictates a letter recommending that Frank’s sentence be commuted to life imprisonment, saying:

“I wish to say that at the proper time I shall ask the prison commission to recommend and the governor to commute Frank’s sentence to life imprisonment....

“It is possible that I showed undue deference to the opinion of the jury in this case, when I allowed their verdict to stand. They said by their verdict that they had found the truth. I was still in a state of uncertainty and so expressed myself....

“After many months of continued deliberation I am still uncertain of Frank’s guilt. This state of uncertainty is largely due to the character of the Negro Conley’s testimony, by which the verdict was evidently reached. The execution of any person whose guilt has not been satisfactorily proven to the constituted authorities, is too horrible to contemplate. I do not believe that a person should meet with the extreme penalty of the law until the Court, Jury, and Governor shall all have been satisfied of that person’s guilt.”

Dec. 7, 1914 The U.S. Supreme Court denies Frank's request for appellate review of the Georgia Supreme Court's Nov. 14 decision upholding the denial of the motion to set aside the verdict. *Ex parte Frank*, 235 U. S. 694 (1914).

Dec. 9, 1914 For the third time, the trial court fixes a date for executing Leo Frank's death sentence—Jan. 22, 1915. In open court Frank again protests his innocence.

Also on this day Jim Conley completes his sentence for being an accessory after the fact to Mary Phagan's murder, and is released from custody.

Dec. 17, 1914 Leo Frank files a petition for a writ of habeas corpus in the United States District Court for the Northern District of Georgia, claiming that his trial violated due process requirements because it was mob-dominated and because of his involuntary absence from the courtroom at the time the jury returned its verdict.

Dec. 19, 1914 The federal district court dismisses Frank's habeas corpus petition.

Dec. 28, 1914 U.S. Supreme Court Justice Joseph R. Lamar (a Georgian), grants Frank permission to appeal the dismissal of his habeas corpus petition to the U.S. Supreme Court.

Feb. 23, 1915 Judge Leonard S. Roan dies of cancer in a New York City hospital.

Feb. 25 and 26, 1915 The U.S. Supreme Court hears oral arguments on Frank's appeal from the dismissal of his habeas corpus petition.

Apr. 12, 1915 Taking a narrow view of due process protections (a view it repudiates beginning in the 1930's and 1940's), the U.S. Supreme Court by a 7-2 vote affirms the dismissal of Frank's federal habeas corpus petition. *Frank v. Mangum*, 237 U. S. 309 (1915). The majority opinion is by Justice Mahlon Pitney. The two dissenting justices are Oliver Wendell Holmes and Charles Evans Hughes. They believe that Frank should be given an opportunity in the district court to prove the claims raised in the habeas corpus petition. They write: "[Due process] embraces the fundamental conception of a fair trial with opportunity to be heard. Mob law does not become due process of law by securing the assent of a terrorized jury." Two days later, a California newspaper asserts: "The opinion of the country will be with the dissenting justices."

Apr. 22, 1915 Having been reluctantly persuaded by his attorneys that it would be counterproductive to request a pardon, Leo Frank signs an application for gubernatorial commutation of sentence. It concludes:

“I am absolutely innocent of the crime of which I was convicted. I have no personal knowledge of the crime other than the facts related by me in my statement made at the trial. Beyond these facts, I know no more than any other person who was present in the courtroom and heard the evidence.”

May 10, 1915 At a hearing the trial court fixes June 22, 1915 as the new date for Leo Frank to be executed. This is the fourth time Frank has heard the trial court set a date for him to be put to death. Before the date is announced, Frank is permitted to address the trial judge and says:

“Again, I can but reiterate that I am innocent of the murder of Mary Phagan. I have absolutely no knowledge of that tragic occurrence. My execution will not avenge Mary Phagan’s death. A life will have been taken for a life, but the real culprit will not have paid the penalty. I will suffer for another’s crime. My trust is in God, who knows that my protestations of innocence are the truth. At some future date the whole mortal world will realize it.”

May 31, 1915 In Atlanta, the Georgia Prison Commission, a three member body that supervises the prison system and acts as a sort of pardons and parole board, opens a public hearing on Leo Frank’s application for commutation. The Commission does not have power to grant or deny the application, but is responsible for making a recommendation to the governor, who alone may grant a pardon, commutation, or other executive clemency to convicted persons. Frank’s attorneys appear before the Commission in support of commutation. Hugh Dorsey does not appear before the Commission, but does send a letter opposing commutation. Popular sentiment in Georgia is overwhelmingly against commutation.

Also on this day a crowd of 1,000 assembles in the Cobb County Courthouse in Marietta to protest any commutation of Frank’s sentence. The first speaker, state legislator John Tucker Dorsey (soon to be one of Frank’s lynchers), shouts, “Let him hang!,” producing extended applause from the crowd.

June 1, 1915 A group of 14 prominent citizens from Cobb County attends the commutation hearing to oppose commutation. Many of these citizens will later be involved in the lynching of Leo Frank, including former governor Joseph M. Brown, prosecutor Eugene Herbert Clay, John Tucker Dorsey, former Cobb County Sheriff William J. Frey, Marietta Mayor E. P. Dobbs, Fred Morris, and

Bolan Glover Brumby. Clay hyperbolically tells the Prison Commission: “[I]f you commute this sentence, capital punishment might as well be abolished.”

June 6, 1915 A crowd of 2,500 assembles at the state capitol building in Atlanta to protest any grant of commutation to Frank.

June 8, 1915 By a 2-1 vote the Prison Commission recommends that Frank’s application for commutation be denied. The majority gives no written reasons for its decision. However, Thomas Patterson, the valiant Commission member who favors granting the application, releases a lengthy statement setting forth his reasons. Jim Conley, Patterson notes, “had the highest motive for placing responsibility for the crime on Frank—that of self-protection.” Patterson strongly objects to executing a person convicted of murder “on the testimony of an accomplice, when the circumstances of the crime tend to fix the guilt upon the accomplice.”

June 12, 1915 In Atlanta, Gov. John M. Slaton, who has exactly two weeks remaining in his gubernatorial term, opens a public hearing, over which he personally presides, on whether Leo Frank’s sentence should be commuted. Frank’s attorneys are present to argue in favor of commutation, and Hugh Dorsey is present in opposition. Also present to oppose commutation is a deputation from Cobb County, including Joseph M. Brown and Eugene Herbert Clay. Brown tells Slaton that “the word mercy is not in the Constitution of Georgia, and nowhere in the Bible is it used as having the right to defeat justice.” Brown sternly warns that commutation will “ensure lynch law in Georgia” and “hopelessly weaken trial by jury,” and shrilly claims that commutation will “strike .. [a] dangerous blow at our institutions and our civilization....” In making these remarks Brown is, as Oney observes, “tacitly endors[ing] a lynching.”

June 14, 1915 The commutation hearing continues. During a break Gov. Slaton visits the National Pencil Company Building, the scene of the crime.

June 16, 1915 The commutation hearing ends. (The transcript of the hearing, recently donated to the Emory University Library, is, Oney informs us, as “thick as a New York telephone book, [and] contains much new evidence suggesting Frank’s innocence.”)

June 18, 1915 To see whether the elevator car always hits the bottom when it descends to the basement, Gov. Slaton makes a second visit to the crime site. He finds that it does. This means that Mary Phagan was not taken to the basement in the elevator and that Jim Conley’s version of how her body arrived

in the basement is certainly false. It also tends to support the defense theory that Conley threw Mary Phagan through the trapdoor hole after attacking her on the first floor, and that the murder notes were written in the basement.

June 21, 1915 Gov. Slaton commutes Leo Frank's sentence to life imprisonment, and in the early hours of this day, a Monday, Frank is unobtrusively transferred from Atlanta's Fulton County Jail to the state prison in Milledgeville.

In a statement to the press accompanying his commutation order, Slaton announces:

"Feeling as I do about this case, I would be a murderer if I allowed that man to hang. I would rather be ploughing in a field than to feel for the rest of my life that I had that man's blood on my hands.

"All I wish now is that the people of Georgia withhold judgment until they have given calm and careful consideration to the statement I have prepared on the case. I am sure that my action has been the right one, the just one and the one that all patriotic Georgians will agree with. Of course I care for the public approbation, but should I have failed to commute Frank's sentence I would have been guilty, as I see it, of murder. I can plow and hoe and live in obscurity if necessary, but I could not afford not to commute him. It was a plain case of duty as I saw it, and I believe the people will realize that this was my only course."

The public in Georgia is stunned. News of the commutation is instantly received with disbelief, outrage, and hoots of derision all over the state. Before today is ended Gov. Slaton has become the most unpopular, reviled politician in Georgia history, and soon effigies of the governor are being hanged, shot, or burnt everywhere in the state. He will shortly be contemptuously regarded by many Georgians as "The King of the Jews and Traitor Governor of Georgia."

In the afternoon an outraged crowd of 5,000 gathers at Atlanta City Hall to angrily protest the commutation. Excited throngs burst into the state capitol building's senate chamber where speaker after speaker excoriates Slaton.

The text of Gov. Slaton's commutation order is approximately 30 printed pages long. The order reflects Slaton's assiduous examination of the trial record and his sedulous consideration of newly discovered evidence not available to the jury. Several provisions of the order evince racist attitudes then prevailing in the South, and the organizational structure of the order is muddled. On the

whole, however, the commutation order is the product of a powerful, open mind fixed on the noble goal of doing justice based upon an impartial consideration of all the evidence, without regard to prejudice or public clamor. For this reason it must be regarded as one of the greatest—and most courageous—state papers ever prepared by a state governor.

The key portion of Slaton's order is his discussion of Jim Conley's testimony:

“The only question is the identity of the criminal [who murdered Mary Phagan]....

“The most startling and spectacular evidence in the case was that given by a Negro, Jim Conley,” Slaton writes. “[T]he entire case [against Leo Frank] revolve[s] around him. Did Conley speak the truth?... [Conley] not only admits his participation as an accessory, but also glibly confesses his own infamy.” Slaton concludes that there are grave doubts about whether Conley had spoken the truth, and he relies principally upon “three matters [which] have developed since the trial [and] did not come before the jury, to wit: The [Annie Maude] Carter notes, the testimony of Becker, indicating that the murder notes were written in the basement, and the testimony of Dr. Harris, that he was under the impression that the hair on the lathe [in the metal room] was not that of Mary Phagan, and thus tending to show that the crime was not committed on the floor of Frank's office.” While these three matters had been raised unsuccessfully in Frank's extraordinary motion for a new trial, “it is well known,” Slaton observes, “that it is almost a practical impossibility to have a verdict set aside by this procedure.”

Based on his searching examination of the evidence introduced at the trial, and of the Annie Maude Carter correspondence (the letters written to Carter by Jim Conley), Slaton concludes that the correspondence “tended strongly to show that Conley was the real author of the murder notes...” The letters, for example, contain some of the same words and phrases found in the notes, including “Negro” and “play” (used in a sexual sense). Also, compound adjectives are characteristic of the letters (“sweet long dick,” “long ugly dick”), the murder notes (“long tall black negro,” “long sleam tall negro”), and Conley's testimony (“good long wide piece of cord,” “tall, slim build heavy man”). In his testimony Conley used the term “make water” just as it was used in one of the murder notes; also in his testimony he frequently used the word “hissself,” which appears in the other murder note.

“[I]t is possible,” Slaton believes, that Conley wrote the murder notes “to describe the other Negro in the building so that it would avert suspicions.”

Henry F. Becker was a former employee at the National Pencil Company Building who had worked there from 1908 to 1912. His signature was barely visible on the carbon copy order sheet on which one of the murder notes was written. When Becker left his employment, Slaton writes, “the entire supply of blanks containing the figures ‘19_,’ had been exhausted, and blanks containing the figures ‘191_’ had already been put in use.” Furthermore, when Becker left his job, “he personally packed up all of the duplicate orders which had been filled and performed their functions and sent them down to the basement to be burned. Whether the order was carried out, he did not know.” Although prosecutor Hugh Dorsey had produced evidence that no books or papers were kept in the basement, police officers who investigated the murder testified at the trial that there were piles of trash in the basement, including papers and pencils. The evidence from Becker is, therefore, in Slaton’s view, “strongly corroborative of the defense that the death notes were written, not in Frank’s office, but in the basement ...”

Dr. Henry F. Harris, who performed Mary Phagan’s autopsy, had taken a sample of her hair, microscopically compared it to hair found in the metal room of the National Pencil Company Building, and discovered that the hair in the metal room did not come from Phagan. Dr. Harris’ finding, about which the jury never heard, “would have tended to show that the murder was not committed on the floor on which Frank’s office was located,” Slaton writes, especially when it is combined with the evidence that the murder notes were written in the basement.

In his commutation order Slaton finds numerous other reasons for questioning the credibility of Jim Conley’s story and for believing that he was the actual murderer. They include the following: First, the fact that Conley’s excrement in its natural condition was in the elevator shaft after the murder proves that his story that Mary Phagan’s body was taken to the basement in the elevator was not true. “If the elevator shaft was not used by Conley and Frank in taking the body to the basement,” Slaton writes, “then the explanation of Conley, who admittedly wrote the notes found by the body, cannot be accepted.” Slaton himself had ridden the elevator car to the basement several times, and had discovered that it always hit the bottom when it descended to the basement. If Conley’s scenario had been truthful, the excrement would have been mashed, not naturally formed, when police arrived after the murder, but it wasn’t. (“It is disagreeable to refer to it,” Slaton writes, “but delicacy must yield to necessity when human life is at stake.”) Second, there was the testimony of witnesses such as Lemmie Quinn, Mrs. Arthur White, Monteen Stover, Corinthia Hall, and Emma Clark which contradicted Conley’s testimony. Third, Monteen

Stover's testimony that Leo Frank was not in his office between 12:05 p.m. and 12:10 p.m. did not support Conley's claims, because Mary Phagan had not yet entered the building at that time. "Monteen Stover must have arrived before Mary Phagan, and while Monteen Stover was in the room, it hardly seems possible under the evidence, that Mary Phagan was at that time being murdered," Slaton writes. Fourth, the method of egress used by Mary Phagan's killer had previously been Conley's method of exiting the building to escape creditors. Fifth, there was no blood in the elevator car, which there surely would have been if (as Jim Coney claimed) the corpse had actually been inside it.

In formulating his determination to commute the sentence, Slaton has also taken into account the trial judge's doubts about Leo Frank's guilt, and he mentions both the Judge Roan's comments of Oct. 31, 1913 when denying the new trial motion and Judge Roan's 1914 letter recommending commutation of Frank's sentence. Thus, in commuting the sentence Slaton recognizes that he is merely "carrying out the will of the [trial] judge himself in making the penalty ... [the judge] desires ... shall be made."

Near the end of his order, Slaton writes: "I can endure misconstruction, abuse, and condemnation, but I cannot stand the constant companionship of an accusing conscience, which would remind me that I, as Governor of Georgia, failed to do what I thought to be right.... This case has been marked by doubt. The trial judge doubted. Two judges of the Supreme Court of Georgia doubted. Two judges of the Supreme Court of the United States doubted. One of the three Prison Commissioners doubted...."

June 22, 1915 In an item in today's *The Atlanta Constitution* the Mayor of Atlanta, James Woodward, referring to Georgians, asserts: "The larger part of the population believes Frank guilty and that the commutation was a mistake."

Enraged by the commutation, a surging mob of 2,000 approaches and attempts to attack Gov. Slaton's home at 2962 Peachtree Road, N. E., which has been barricaded and is protected by police, deputized citizens, and the Fifth Georgia Infantry Regiment. After it rains stones and bottles on the troops, the mob is driven back by soldiers with fixed bayonets.

Also on this day Gov. Slaton's act of commutation is praised in editorials in *The New York Times*, *The Atlanta Journal*, and *The Atlanta Georgian*. *The Times* says: "[Gov. Slaton] has raised himself [to a high place] in the esteem and admiration of the whole country. Had Georgia sent Frank to the gallows, the good name of the State would have been blackened and its people would

have been under reproach. Governor Slaton has saved Georgia from herself. He has made his name illustrious.” *The Journal* says, “The governor has shown wisdom and courage in his performance of an act of simple justice,” and the *Georgian* says, “The Georgian believes that Governor John M. Slaton deserves the commendation of the people of Georgia.” Several other Georgia newspapers, including *The Augusta Chronicle*, also support Slaton’s act. However, most Georgia newspapers oppose the commutation.

June 26, 1915 Today is Gov. Slaton’s last day in office. Just after 2 a.m. a mob of 200 armed men attempts a second attack on Slaton’s home and is driven off by the Fifth Georgia Infantry Regiment. Later in the day, at the inauguration ceremony in the state capitol building for the incoming governor, Nathaniel E. Harris, Slaton is hissed by the audience, and as he is emerging from the room where the ceremony took place, what Slaton sees is (in his own words) “people on the stairs and in the vestibules gnashing their teeth, shaking their heads, and exhibiting various evidences of hostility.” Shortly thereafter Slaton is almost assassinated. As he and the new governor are departing the state capitol building, a strong, rough-looking man holding in both hands a heavy piece of iron pipe about five feet long darts from the crowd and attempts to crush Slaton’s skull. The murder attempt fails when at the last moment an officer of the state militia seizes the attacker before he can strike his blow.

Later, Slaton is asked to speak at a luncheon at a hotel (the Ansley Hotel, according to Oney, the Piedmont Hotel, according to Harry Golden, author of a 1965 book on the Leo Frank case) in honor of the new governor, and delivers this statement:

“Honest people may disagree with me, but we realize that we must be measured by our consciences. Two thousand years ago another Governor washed his hands of a case and turned a Jew over to a mob. For two thousand years that Governor’s name has been accursed. If today another Jew were lying in his grave because I had failed to do my duty I would all through life find his blood on my hands and would consider myself an assassin through cowardice.”

June 28, 1915 John M. Slaton and his wife depart Atlanta on a passenger train bound for New York. They will be absent from Georgia for three months.

Also on this day, according to Oney, “[a]round the time the Slatons departed Georgia, a number of powerful Mariettans [file] into a building on or just off the town square,” for the purpose of plotting the lynching of Leo Frank. The persons in attendance include Joseph M. Brown, Newton Augustus Morris, Eugene Herbert Clay, John Tucker Dorsey, Bolan Glover Brumby, and Fred

Morris. The “staggeringly audacious” plan is to arrange for a lynch party to abduct Frank from prison and string him up in Cobb County.

July 2, 1915 In a letter to a friend, Leo Frank writes of the commutation: “This is the breathing spell in the present phase of my life to gain the strength and reserve for the spurt to freedom, vindication and that honor which is justly and rightfully mine.

July 12, 1915 As chairman of the Georgia House of Representatives Penitentiary Committee, John Tucker Dorsey, accompanied by the Prison Commission members and a contingent of other legislators, visits the state prison in Milledgeville, ostensibly to investigate sanitary problems there with the prison sewage system, but actually to make arrangements to facilitate the planned abduction of Leo Frank. During a private meeting with the three commissioners and the warden and the prison farm superintendent it is, according to Oney, secretly arranged that the lynch party will have safe passage into and out of the prison.

July 13, 1915 The lynch party, which today was going to drive from Marietta to the state prison to abduct Leo Frank, aborts today’s mission after law enforcement authorities receive a tip about the proposed mission and take steps to prevent it from succeeding.

July 17, 1915 Around 11 p.m., while he is bed in the prison dormitory, a convicted murderer and pathological killer named William Creen, armed with a butcher knife stolen from the prison kitchen, creeps up and stabs and slashes Leo Frank in the neck, inflicting a seven inch wound and severing a jugular vein. Frank also receives stab wound on his right hand. Fortunately, Frank gets prompt, first-rate medical treatment from three nearby doctors who close and treat the wounds, narrowly saving his life.

July 24, 1915 Today, one week after Leo Frank’s prison stabbing, Gov. Nathaniel E. Harris visits Frank in prison. He notices that Frank’s stabbing “gash extended from ear to ear and was so frightful in appearance that I wondered at his being alive.” After a brief talk with Frank, Gov. Harris decides that Frank has “a queer sort of laugh” indicative of “a hard, careless heart,” and concludes that Frank is “undoubtedly a hardened criminal or a reckless prisoner.” As a result of this interview Harris’ concern that Frank might be innocent is “lessened greatly.”

Aug. 11, 1915 In a letter to a friend, Leo Frank writes of his near-miraculous recovery from the stabbing: “Certainly my escape was providential, and the

good Lord must surely have in store for me a brighter and happier day when that honor, justly mine now, will be restored to me. I have been victorious in my struggle with death and I await impatiently for the date of vindication and liberty.”

Aug. 16, 1915 In a letter to a friend written this Monday morning, Leo Frank says: “I have gained and am gaining right along in strength. My appetite is good and I sleep well. I can move my head and neck (within limitations) reasonably well for the time being and this will improve a whole lot in the course of a few weeks. My wound is all healed except in one little place where drainage still obtains. This also will be healed in a few days. In time, I think I will be all right again.”

Late in the afternoon, Leo Frank has a long visit in the prison with his wife, Lucille.

Also in the afternoon, the 25-man lynch party departs Marietta in small groups. Outside of town the members of the lynch party join up and climb into seven automobiles, which begin speeding in a motorcade over the dirt roads toward Milledgeville. According to Oney, three members of the party are its commanders: George Exie Daniell, Gordon Baxter Gann, and Newton Mayes Morris (“Black Newt”). Around 9 p.m. the lynch party reaches the outskirts of the state prison in Milledgeville. This affair has been so meticulously planned that the lynchers have a map of the prison grounds and even have been tipped off as to where in the prison Frank is being housed. The lynchers, all armed, force their way into the prison without being seriously resisted, and several of them rush up the 20 concrete steps of the prison’s main building. They enter and find Leo Frank awake lying in bed wearing a nightshirt. They seize and handcuff the frightened man and take him, barefooted and still in his night clothes, out the door to the top of the stairs. “There,” in words of Oney, “two men [take] him by the arms, two by the legs, and another by the hair, dragging him outside.” They force him into one of the automobiles and someone sadistically brandishes a noose in Frank’s face. The seven automobiles then speed off, the lynch party having been inside the prison only ten minutes. Not a shot has been fired. It is shortly after 10 p.m.

Using dirt back roads, the caravan begins racing along an all-night, circuitous, 175-mile route through rural counties (including Jasper, Newton, Walton, and Barrow) back to Marietta. Frank is, according to Oney, in the second car seated between two brothers, Luther and Emmet Burton.

Aug. 17, 1915 Shortly after 6 a.m., the cavalcade arrives at Frey's Gin, a wooded piece of land in Cobb County two miles east of Marietta. (Frey's Gin is owned by one of the lynchers, William J. Frey, a former local sheriff, who is believed to have fashioned the noose and may have been the person who actually put it around Frank's neck.) The lynchers' noosed rope is thrown over the limb of an oak tree, and the noose is placed on and tightened around Leo Frank's neck. The doomed man is lifted onto a table (placed there earlier by prearrangement), and utters his last words: "I think more of my wife and my mother than I do of my own life." At 7:05 a.m. the table is kicked away by lyncher Newton Augustus Morris. Frank dies a lingering painful death as he slowly chokes to death, his shivering body shaken by violent convulsions, his bare feet jerking spasmodically four feet above the ground. Then the body is still and sways in the wind.

The lynchers scatter.

Soon people are flocking to Frey's Gin. Today's *The Atlanta Journal* reports:

"They swarmed the road from both directions. They seemed to rise up out of the ground, so fast they came. The automobiles came careening, recklessly disregarding life and limb of occupants. Horse-drawn vehicles came at a gallop. Pedestrians came running.

"The vehicles stopped in the road at the grove and soon packed the road and overflowed into the fields. As the vehicles would stop, their occupants would jump out and run to the grove, bending forward, panting, wild-eyed.

"Women came. Children came. Even babes in arms."

By 8:30 a.m. 1,000 people have swarmed to the lynching site, and soon the crowd will number 3,000. Among the gawkers there is, according to Oney, "a grim and terrible satisfaction [and] [t]heir emotions [range] from jubilation to rage to something approaching sexual rapture." One man runs up to the swaying corpse and shouts: "Now we've got you! You won't murder any more little innocent girls!"

At 10:17 a.m. Frank's corpse is cut down, and after a demented individual in the crowd grinds his boot heel into Frank's face more than once, the body is with difficulty spirited away and driven by automobile to an undertaker's establishment in Atlanta.

After Frank's body arrives at the undertaker, thousands of persons surround the place and demand to be allowed in. Police yield to their demands, and 15,000 persons are permitted in orderly fashion to enter the establishment and view the corpse lying in a casket. Most react, Oney notes, "without so much as a look of horror." Outside the establishment, where (as Oney notes) "people linger on the streets and talk excitedly," vendors sell photographs taken of Frank dangling from the tree at the end of a rope.

In Marietta's town square, hundreds of men gather to celebrate and gloat. (There is a photograph of the crowd in Oney's book.)

Today's *The Atlanta Journal* carries the headline "Marietta Officials Didn't Know of Mob" over this statement by Marietta Mayor E. P. Dobbs (now known to have been of the lynchers, having lent his automobile to the lynch party):

"I desire in the interest of justice and truth to say that the Marietta and county officials had no knowledge of any automobiles leaving Marietta last night nor were they apprised of the return of any machines today."

"None of the officials had any intimation of such an undertaking until the body was found about two miles from the city this morning."

Aug. 18, 1915 Leo Frank's remains are taken to the Atlanta train station and placed aboard a passenger train car for shipment to New York City.

In today's *The New York Times* Atlanta Mayor James Woodward is quoted as saying: "Seventy-five percent of the people of Georgia are convinced that the man lynched [Tuesday morning] committed the deed, and they are on the ground and ought to know."

Also in today's *Times* Georgia's new governor, Nathaniel E. Harris, is quoted as saying:

"I am greatly shocked and aggrieved [by the lynching] .. and I am extremely sorry it occurred...."

"I will use my every power to see to it that the members of this mob receive fitting punishment for their crime...."

Today's *The Macon Telegraph* reports that the investigation Gov. Harris has ordered probably won't amount to much: "There are of course to be

investigations—the usual thing presumably. It is said every effort will be made to apprehend these men. Doubtless they can be apprehended—doubtful they will.”

Today’s *The Atlanta Constitution*’s front page headline is “Mob’s Own Story in Detail.”

Another article on the front page of the *Constitution* carries the banner “Mob Hanging Better Than Judicial Murder Says John M. Slaton.” Slaton is quoted as saying that, tragic as things were, it was better for Leo Frank to be illegally executed by a mob than legally executed in the name of the law, for “one reached the soul of civilization, the other merely reached the body.”

The lynching is denounced in editorials in today’s *Constitution* and *The Atlanta Journal*. The *Constitution*’s editorial appears under the headline, “GEORGIA’S SHAME!,” and begins with this sentence: “No word in the language is too strong to apply to the deliberate and carefully conspired deed of the mob.” Most other Georgia newspapers condemn the lynching, including notably *The Augusta Chronicle*, *The Columbus Enquirer*, *The Macon News*, *The Macon Telegraph*, and *The Savannah Press*. One of the few newspapers in Georgia refusing to rebuke the lynchers is *The Marietta Journal and Courier*, which announces: “We regard the hanging of Leo M. Frank as an act of law abiding citizens.”

Aug. 19, 1915 Leo Frank’s remains arrive at Pennsylvania Station in New York City.

An article in *The New York Times* reports:

“Nobody talks seriously of the investigation Governor Harris is promising, and there are very few who believe there is the slightest chance of any of the murderers being put to any grave trouble, much less punished. They are known to many of the citizens of Marietta, who would rather die than reveal their knowledge or even their suspicion....

“[Marietta’s] mood is one of determination to protect the men who, in its eyes, executed the law after it had been trampled on. It is resolved that not a hair on their heads shall be harmed.”

Without naming names, another article in the *Times* reports the following about the Leo Frank lynch party:

“The word mob does not seem descriptive, for these men did not display the ordinary characteristics of a mob. Lynching mobs are usually composed of riff-raff, but this one consisted of leading citizens in the community, men prominent in business and social circles.”

Also this day, in an interview with reporters published in the *Times*, Newton Augustus Morris (now known to have been one of the lynchers, in fact the man who kicked the table out from under Leo Frank’s feet as Frank stood bound with the noose around his neck), is quoted as saying: “I believe in law and order. I would not help lynch anybody. But I believe Frank has had his just deserts.”

Aug. 20, 1915 Leo Frank is buried in a cemetery in the Cypress Hills section of the New York City borough of Queens. The burial service, conducted by a rabbi, is attended by Frank’s immediate family and 30 invited friends.

Also on this day *The New York Times* reports that Frank had been lynched by “leading citizens in the [Cobb County] community, men prominent in business and social circles, and even in church.” The newspaper also reports that in Cobb County the lynchers were regarded “as men who prevented a miscarriage of justice and saved the law from being set aside and mocked by the man who happened to fill the Governor’s chair.... They [the lynchers] are known to many of the citizens of Marietta, who would rather die than reveal their knowledge.”

Under the headline “Frank Lynching Due to Suspicion and Prejudice,” another *Times* article concludes that a primary reason for Frank’s lynching was “the belief that the Jews of the country ... had banded themselves together to save a criminal because he belonged to their race and religion and thus ranged themselves in opposition to men of other races and religions. Against this belief no argument was effective, no denial was listened to.”

Aug. 21, 1915 The Atlanta City Council enacts an ordinance making it unlawful to sell a photograph of a person who has been hanged illegally.

Aug. 24, 1915 After a hearing lasting just one day, the Cobb County coroner’s inquest into the death of Leo Frank results in a verdict by the coroner’s jury—reached after three minutes of deliberation—that Frank died “at the hands of unknown parties.” The inquest is conducted by two lynchers—John Tucker Dorsey and Gordon Baxter Gann—and one member of the coroner’s jury also is a lyncher, “Coon” Shaw.

The next day *The New York Evening Post* comments: “The Coroner’s inquest at Marietta deserves to rank with any Dogberry’s day for a sense of the bounds of human penetration: it is doubtful if the most shrewdly stupid Elizabethan villager could have seen less of what was unsafe than some of the witnesses called yesterday.”

Sept. 2, 1915 After two days of solemnly going through the motions of hearing evidence presented to them by prosecutor Eugene Herbert Clay and his specially appointed assistant, John Tucker Dorsey—both of whom were among the lynchers—the Cobb County grand jury fails to indict anybody for the lynching of Leo Frank, claiming that “[w]e have been unable to connect anybody with the perpetration of the offense or to identify anyone who was connected with it We ... regret to report to that we find it impossible to indict anyone.” According to Oney, seven of the grand jurors are members of the lynch party.

Oct. 1, 1915 On the front page of *The Augusta Chronicle*, Lucille Frank, Leo Frank’s widow, makes her only public statement on the lynching:

“I am a Georgia girl, born and reared in this State, and educated in her schools. I am a Jewess; some will throw that in my face, I know, but I have no apologies to make for my religion. I am also a Georgian, an American, and I do not apologize for that either....

“I only pray that those who destroyed Leo’s life will realize the truth before they meet their God—they perhaps are not entirely to blame, fed as they were on lies unspeakable, their passions aroused by designing persons. Some of them, I am sure, did not realize the horror of their act. But those who inspired these men to this awful act, what of them? Will not their consciences make for them a hell on earth, and will not their associates, in their hearts, despise them?”

Jan. 13, 1919 Shortly after midnight, while breaking into an Atlanta drug store, Jim Conley is shot in the chest by the store’s proprietor. After recovering, he will be tried and convicted of burglary and sentenced to 20 years imprisonment. He will serve 14 years and not be released until 1933.

Feb. 2, 1931 *The Atlanta Journal* reports that Monteen Stover (who as a prosecution witness had testified at Leo Frank’s trial that on the day of the Mary Phagan murder Frank was not in his office from 12:05 p.m. to 12:10 p.m.) has just been indicted for luring married men to a hotel room and then trying to blackmail them. “[T]he indictment of Monteen Stover for participating in a badger scam,” Oney writes, “offer[s] further evidence of how

disreputable many of the prosecution witnesses [against Leo Frank] had indeed been.”

Aug. 1, 1933 *The Atlanta Constitution* and *The Atlanta Journal* report that Gov. Eugene Talmadge has just granted a full pardon to William Creen, the psychotic murderer who slashed Leo Frank with a knife in prison.

Oct. 20, 1941 An article appears in *The Atlanta Constitution*, headlined “Star Witness in Frank Case Arrested Here,” which reveals that Jim Conley has just been charged with gambling and public drunkenness. This is believed by Oney to be the last recorded appearance of Conley in the press during his lifetime.

Mar. 4, 1982 In Tennessee, 83-year old Alonzo Mann, who at the age of 14 had been employed as an office boy at the National Pencil Company Building in 1913, who had been in the building at about the time Mary Phagan was murdered, and who had testified briefly as a defense witness at Leo Frank’s trial, signs a notarized affidavit in which he swears:

“I was called as a witness in the murder trial [of Leo Frank]. At that time I was put on the witness stand, but I did not tell all that I knew. I was not asked questions about what I knew. I did not volunteer. If I had revealed all I knew it would have cleared Leo Frank and would have saved his life.... Jim Conley, the chief witness against Leo Frank, lied under oath. I know that. I am certain that he lied. I am convinced that he, not Leo Frank, killed Mary Phagan. I know as a matter of certainty that Jim Conley—and he alone—disposed of her body.

“Jim Conley threatened to kill me if I told what I knew. I was young and frightened. I had no doubt Conley would have tried to kill me if I had told that I had seen him with Mary Phagan that day.

“I related to my mother what I had seen there at the pencil factory. She insisted that I not get involved. She told me to remain silent. My mother loved me. She knew Conley had threatened to kill me. She didn’t want our family’s name to be involved in controversy or for me to have to be subjected to any publicity. My father supported her in telling me to remain silent. My mother repeated to me over and over not to tell. She never thought Leo Frank would be convicted. Of course, she was wrong. Even after he was convicted my mother told me to keep secret what I had seen.

“I am sure in my own mind that if the lawyers had asked me specific questions about what I had seen the day of Mary Phagan’s death I would have told the

whole truth when I testified at Frank's trial. Of course they didn't suspect what I knew. They asked me practically nothing. I was nervous and afraid that day. There were crowds in the street who were angry and who were saying that Leo Frank should die. Some were yelling things like 'Kill the Jew!'

"I was very nervous. The courtroom was filled with people. Every seat was taken. I was interested mostly in getting out of there....

"I never fully realized until I was older that if I had told what I knew Leo Frank should have been acquitted and gone free. Instead he was imprisoned....

"I have spent many nights thinking about that. I have learned to live with it.

"I now swear to the events I witnessed that fatal day, Confederate Memorial Day, 1913, when Mary Phagan, who just about my age, fourteen, was killed.

"I came to work on time that morning, at about eight o'clock.... [W]hen I walked into the building Jim Conley, the janitor, who was also called a 'sweeper,' was sitting under the stairwell on the first floor of the building. Although it was early in the morning, Conley had obviously already consumed considerable beer. He drank a lot, even in the mornings.

"He spoke to me. He asked me for a dime to buy a beer. A dime could buy a good-sized beer in those days.

"I told Jim Conley I didn't have a dime. That was not the truth. I had some money in my pocket, but I had let Conley have a nickel or dime for beer before. He never paid me back.

"I didn't like to be around Jim Conley.

"After I told Conley I didn't have any money, I went up the stairs to the second floor where my desk was located in the office of Leo Frank....

"[S]ometimes on Saturday mornings people who had worked at the factory during the week would come to the pay window in the office and collect their salaries....

"I was supposed to meet my mother that day about noon and go to the Confederate Memorial Day parade. When I left the premises, just before noon, Mary Phagan had not come to the pencil factory. She apparently came to pick up her pay shortly after I left to go meet my mother....

“... When I left the building, down the stairs, and out the first floor front door, Jim Conley, the janitor, was sitting where I had seen him when I came to work: in the darkened area of the stairwell....

“... [I]t could not have been more than a half hour before I got back to the pencil factory....

“I walked into the building by the front door.

“Inside the door, I walked toward the stairwell. I looked to my right and I was confronted by a scene I will remember vividly until I die.

“Jim Conley was standing between the trapdoor that led to the basement and the elevator shaft. I have an impression that the trapdoor was partially open, but my eyes were fixed on Jim Conley.

“He had the body of Mary Phagan in his arms. I didn’t know it was Mary Phagan. I only knew it was a girl.

“At that moment I couldn’t tell if she was alive. She appeared to be unconscious, or perhaps dead. I saw no blood.

“He was holding her with both arms gripped her around the waist. I can’t remember the color of her clothes, but I have an impression that she had on pretty, clean clothes. She was extremely short and her head was sort of on his shoulder, or over it. Her hair was not in braids when I saw her. It was hanging loose. I saw no blood on the part of her neck that was exposed. I did not know if she was dead, but she was at least unconscious. She was limp and did not move. Her skirt had come up to about her knees.

“It was as I suddenly barged into the first floor, prepared to go up the stairs to the office that I encountered Conley with the body of Mary Phagan.

“Conley was close to the trapdoor that led down into the basement by way of a ladder. I believe that from the direction he was headed and the attitude of the body that he was preparing to dump Mary Phagan down the trapdoor. I have no clear memory of whether the elevator had stopped on the first floor, but if it was not on that floor, the shaft would have been open. Conley could have dumped her down the empty elevator shaft. I believe for some reason Jim Conley turned around toward me. He either heard my footsteps coming or he sensed I was behind him. He wheeled on me and in a voice that was low but threatening and frightening to me said:

“‘If you ever mention this I’ll kill you.’

“I turned and took a step or two—possibly three or four steps—up toward the second floor, but I must have worried about whether the office upstairs was closed. I did hear some movement upstairs, but I can’t be sure who was on the floors above. I was fearful that the office might be closed, and so I turned back toward Conley. I wanted to get out of there quick. He got to within eight feet of me. He reached out as if to put one arm or hand on me. I ran out the front door and raced away from the building.

“I went straight home. I rode the street car.

“Once at home I told my mother what I had just seen. I told her what Jim Conley had said to me about killing me. I didn’t know for sure that the girl in his arms was dead.

“My mother was very disturbed by what I told her.

“She told me that I was never, never to tell anybody else what I had seen that day at the factory....

“When the detectives later questioned me I told only the part of the story up to the time I left that day to go meet my mother....

“Jim Conley was the chief witness against Leo Frank.

“He testified that Frank called him to his office a little after noon that day and told him that Mary Phagan’s body was in the Metal Room on the second floor. He testified that Frank told him to get the body and take it on the elevator down to the basement. He swore that he tried to carry the body to the elevator but dropped Mary Phagan because she was too heavy for him to carry. According to Conley’s testimony, Frank picked up her legs, while Conley lifted the upper part of her body. Conley said that Frank had pulled the rope to start the elevator down and that they went with the body directly to the basement, past the first floor without stopping there.

“Conley claimed that Frank dragged the body from the elevator to a point in the rear of the building. Conley contended during the trial that after Frank dragged the body away from the elevator, Conley ascended in the elevator and Frank came back upstairs by way of the trapdoor to the first floor, and then came on up the stairway from the first to the second floor.

“I know that all of that testimony was false. It was Conley who had the body on the first floor. He was alone with the body. Frank was not there on the first floor. Conley did not tell the truth when he said the body was taken from the second floor to the basement. He had the body on the first floor....

“I am convinced that [Mary Phagan] had left the pay window and was coming down the stairs or had reached the first floor when she met Conley, who had been looking for money when I came in that morning. I am confident that I came in just seconds after Conley had taken the girl’s money and grabbed her. I do not think sex was his motive. I believe it was money....

“Leo Frank was convicted by lies heaped on lies. It wasn’t just Conley who lied. Others said that Leo Frank had women in the office for immoral purposes and that he had liquor there. There was a story that he took women down to the basement. That cellar was filthy. It was filled with coal dust. I was in the basement twice and remember the dirt and filth there. That was all false.

“Leo Frank was a good office manager. He was always proper with people who worked for him. There were witnesses who told lies and I remained silent....”

Mar. 7, 1982 A Nashville, Tennessee newspaper, *The Tennessean*, publishes a special supplement headlined “An Innocent Man Was Lynched.” It contains Alonzo Mann’s affidavit, an interview with Mann, and photographs and other information relating to the Leo Frank case.

Mar. 8, 1982 *The Athens Banner-Herald* publishes an article, “He Claims Wrong Man Was Lynched,” about Alonzo Mann’s statement affirming the innocence of Leo Frank.

Mar. 9, 1982 An article by Sam Hopkins, “Frank Kin: Report Confirms Innocence,” published in *The Atlanta Constitution*, explains that Alonzo Mann’s statement confirms what has long been known by some—that Leo Frank did not murder Mary Phagan.

Mar. 14, 1982 An article, “Leo Frank Case is Still a Whodunit,” by Ron Taylor, is published in *The Atlanta Constitution*.

Jan. 4, 1983 Three Jewish organizations—the American Jewish Committee, the Atlanta Jewish Federation, and the Anti-Defamation League of B’nai B’rith—file an application with the Georgia Board of Pardons and Paroles requesting a full pardon exonerating Leo Frank.

May 15, 1983 Randall Evans, a former judge on the Georgia Court of Appeals, publishes a statement on the Leo Frank case in *The Augusta Chronicle-Herald*, claiming that the evidence of Frank's guilt "was overwhelming," describing the commutation of Frank's sentence as "the rape of the judicial process by [Gov. John M.] Slaton," and deriding the proposed posthumous pardon of Frank as "completely ridiculous."

Dec. 18, 1983 In the expectation that Leo Frank will soon be posthumously pardoned, Esther M. Bauer's article "Ruling on Leo Frank Pardon May Put Case to Rest at Last," is published in *The Atlanta Constitution*. The article points out that Frank's "lynching has been cited as the worst single incident of anti-Semitic violence in American history."

Dec. 22, 1983 The Georgia Board of Pardons and Paroles denies the application for Leo Frank's posthumous pardon, on the ground the applicants had failed to produce conclusive evidence proving beyond any doubt that Frank was innocent. The Board announces its decision by sending an employee with a printed statement to the state capitol building where scores of news representatives from national television networks, the wire services, and newspapers and magazines have gathered to hear the Board's decision. Alonzo Mann is also present.

Dec. 19, 1984 In his final communication to the Georgia Board of Pardons and paroles, Alonzo Mann signs a letter which says: "Almost every day I think about Leo Frank and the fact that he was innocent. He did not kill Mary Phagan.... I hope and pray that I live to see the day the board clears his name.... I know Mr. Frank should be cleared and God knows it too. I urge you to please grant him a pardon before I go to meet my God."

Mar. 18, 1985 Alonzo Mann dies. A story about his death appears tomorrow in *The Tennessean* under the banner "Alonzo Mann, Eyewitness in Leo Frank Case, Dies."

Mar. 11, 1986 The Georgia Board of Pardons and Paroles grants an application for Leo Frank's posthumous pardon which had been filed earlier this year by Charles F. Wittenstein, counsel for the Anti-Defamation League of B'nai B'rith, and Dale Schwartz, an Atlanta attorney.

The Board's order states that the pardon is being granted "[w]ithout attempting to address the question of guilt or innocence, [but] in recognition of the state's failure to protect the person of Leo M. Frank and thereby preserve his opportunity for continued legal appeal of his conviction, and in recognition of

the state's failure to bring his killers to justice, and as an effort to heal old wounds....”

The granting of this pardon has been, Oney says, noisily resisted by Hugh Dorsey's son, by Tom Watson's great-grandson, by some descendants of the lynchers, and also by “Mary Phagan, [great] niece and namesake of the victim.”

Mar. 12, 1986 *The Atlanta Journal* carries a story on the pardon under the headline, “Leo Frank Pardon Decision a Victory for all Georgians,” while the headline in *The Atlanta Constitution* is, “State Pardons Frank After 70 Years.”

Mar. 13, 1986 Because of last week's pardon of Leo Frank, *The Atlanta Constitution* begins publishing six previously published, but now updated articles on Frank's case written by Celestine Sibley. The first, published today, is “Leo Frank Was the Last Suspect in Killing of Mary Phagan.”

Mar. 14, 1986 *The Atlanta Constitution* publishes the second and third of Celestine Sibley's articles, “Leo Frank's Trial: 29 Days of Summer Heat and Hatred,” and “Prejudice Overpowering During Leo Frank's Trial.”

Mar. 15, 1986 *The Atlanta Constitution* publishes the fourth of Celestine Sibley's articles, “New Evidence in Frank Case Pointed to Factory Sweeper.”

Mar. 16, 1986 *The Atlanta Constitution* publishes the fifth and sixth of Celestine Sibley's articles. The fifth, “The Lynching: ‘Mary is Vindicated; Her Foul Murder is Avenged,’” delves into the facts of Leo Frank's lynching and soberly reminds us: “For years, picture post cards of the lynched man's body swinging from a tree were a hot-selling souvenir item in Marietta stores.” The sixth article, “Frank Case Came at a Moment Marked by ‘Fear and Hatred,’” looks into the lives of the principals in the Leo Frank case, who are all now dead.

May 4, 1986 Bill Montgomery's article, “Accused's Lawyer Risked Safety After Taking Up Frank's Cause,” which recounts the saga of attorney William M. Smith's efforts to save the life of Leo Frank, is published in *The Atlanta Constitution*.

Jan. 26, 1988 *The Atlanta Constitution* publishes Katie Long's article, “Mary Phagan's Great-Niece Says Miniseries Isn't History,” which focuses on remarks made to the Metro Marietta Kiwanis Club by Mary Phagan, the great niece and a namesake of the little girl murdered on Apr. 26, 1913. In her remarks Phagan criticizes the historical accuracy of a recent TV miniseries

“The Murder of Mary Phagan,” starring actor Jack Lemmon as Gov. John M. Slaton. When asked by a member of the audience whether Leo Frank received a fair trial, Phagan responds: “For that time.” When asked about the lynching, she says: “They didn’t call it a lynching back then, but justice,” and admits that such feelings have persisted through several generations of the Phagan family. Phagan also complains that “the supporters of Frank will not let this [case] rest.”

Aug. 12, 1990 Steve Oney’s article, “The Search for Jim Conley,” is published in *The Atlanta Constitution*. It investigates the personal life of Conley, and the black working class section of Atlanta, Vine City, where he lived.

May 25, 1994 An article, “Owner May be Selling Historic State Prison,” is published in *The Athens Daily News*, reporting that the now abandoned building in Milledgeville from which Leo Frank was abducted in 1915 is up for sale by the textile manufacturing company that currently owns it. Referring to the 20 concrete steps that lead up to the building’s front entrance, the company’s manager says, “Some people say that his head hit every one of those steps [when he was dragged from the building by the lynch party].”

June 6, 1994 *The Atlanta Constitution* publishes an article by Don Plummer, “Store Site Rich in History,” reporting that on the previous day, June 5, 1994, The National Pencil Company Building, which in the 1950’s had been embedded within the Rich’s Store for Homes, had been demolished with explosives by a wrecking crew.

Oct. 12, 1997 Dan Hulbert publishes “Mamet on Leo Frank,” in *The Atlanta Constitution*, a book review of *The Old Religion*, David Mamet’s stream-of-consciousness novel about the Leo Frank case.

Nov. 11, 1998 An article, “Site of State’s First Electric Chair May be Razed,” is published in *The Athens Banner-Herald* reporting that the abandoned building in Milledgeville from which Leo Frank was abducted is slated for demolition. The article includes a photograph of the building. Erected in 1911, the building was the central structure of the Georgia state prison until the Milledgeville facility was closed and a new state prison opened in Reidsville in the late 1930’s.

Dec. 17, 1998 “Parade,” Alfred Uhry’s musical about the Leo Frank case, opens on Broadway.

Jan. 1, 2000 Stephen J. Goldfarb, an Atlanta librarian, creates a website, www.leofranklynchers.com, on which he posts a facsimile copy of a previously undisclosed handwritten document listing the names of 26 persons (nine identified by Goldfarb, 17 unidentified) involved in the planning or execution of Leo Frank's lynching. The website includes Goldfarb's footnoted commentary on the document and the names it contains. According to Goldfarb, the nine identified lynchers, all from Cobb County, are:

Newton Augustus Morris (1869-1941) Described on the document as a "leader" of the lynching, Morris was an 1893 graduate of the UGA law school. He held numerous public offices during his career, and was a superior court judge of the Blue Ridge Circuit (which included Cobb County) in 1909-1912 and 1917-1919.

Eugene Herbert Clay (1881-1923) The son of a U. S. Senator, Clay was Mayor of Marietta in 1910-1911 and district attorney of the Blue Ridge Circuit in 1913-1918. The document describes him as a "planner" of the lynching.

Moultrie McKinney Sessions (1863-1927) Sessions was a prominent lawyer and banker, and the son of a judge. The document describes him as a "planner."

John Tucker Dorsey (1876-1957) Dorsey, a lawyer, was a member of the lower house of the Georgia General Assembly in 1915-1917 and 1941-1945, and served as district attorney of the Blue Ridge Circuit in 1918-1920. The document describes him as a "planner."

Gordon Baxter Gann (1877-1949) Gann, a lawyer, was Mayor of Marietta in 1922-1925 and 1927-1929 and a member of the lower house of the Georgia General Assembly in 1919-1922.

John Augustus (Gus) Benson (1873-1960) Benson operated a mercantile store on Marietta Square.

William J. Frey (1867-1925) Frey, Cobb County Sheriff in 1903-1909, owned Frey's Gin, the place of Leo Frank's lynching. The document says of him: "doubled as hangman."

Cicero Holton Dobbs (1880-1954) Dobbs operated a grocery store in Marietta for 25 years.

Ralph Molden Manning (1877-1940) Manning is described by Stephen J. Goldfarb as “a contractor and road builder.”

Mar. 1, 2000 *Flagpole* publishes Donald E. Wilkes, Jr.’s “Politics, Prejudice, and Perjury,” a book review of Leonard Dinnerstein’s recently reprinted *The Leo Frank Case*.

June 11, 2000 An article, “A Murder, A Lynching, a Mystery,” by Jim Auchmutey, is published in *The Atlanta Constitution*, reexamining the Leo Frank case in light of the list of lynchers recently posted on Stephen J. Goldfarb’s website.

June 12, 2000 Carrick Mollenkamp’s article, “An Internet Posting Raises the Ghosts of a Notorious Crime,” appears in *The Wall Street Journal*. It discusses attitudes in Cobb County about Stephen J. Goldfarb’s website, and notes that “[a] few people still adamantly maintain that Mr. Frank was guilty and that his lynching was justice served.”

June 13, 2000 Alfred Uhry’s musical, “Parade,” about the Leo Frank case, opens in Atlanta.

Also on this day law professor Jonathan Turley’s article, “Statute at State Capitol is a Memorial to Hatred,” is published in *The Atlanta Constitution*. The article notes that Tom Watson, whose 12-foot statute stands on the grounds of the state capitol building in Atlanta, “was a fervent anti-Semite who described [Leo] Frank as that ‘satyr-faced New York Jew’ and a ‘lustful beast.’” Watson also, the article continues, claimed inflammatorily that Mary Phagan “died a horrible death defending her virtue against a rich depraved Sodomite Jew.” Finally, the article reminds us that Watson encouraged and later defended Frank’s lynching, “assuring his readers that ‘lynch law is better than no law at all.’” Whether Watson’s statute ought to be removed, perhaps to be replaced by a statue of Dr. Martin Luther King, Jr., “must,” the article says, “remain with the people of Georgia.”

June 20, 2000 Kathy Sawyer’s article “A Lynching, a List and Reopened Wounds,” is published in *The Washington Post*. It discusses the list of Leo Frank lynchers posted on Stephen J. Goldfarb’s website. Of the lynching, the article says: “The lynching that August dawn was not a mob action, driven by inflamed passions. It was by all accounts, coldly calculated, planned well in advance with military attention to detail, with help from people in high places, and carried out over prolonged time and distance by at least two dozen and

perhaps as many as 40 men, absolutely confident of their cause and their fellow conspirators. And, unlike most lynchings, this one was not fueled by liquor.”

July 5, 2000 Stephen J. Goldfarb posts an addendum to his website in which he (1) reveals that the handwritten document listing the lynchers was written by Mary Phagan, author of *The Murder of Little Mary Phagan* (1987), a descendant and namesake of the little girl murdered on Apr. 26, 1913, and (2) identifies three more of the 26 listed names on the document, bringing the total of identified lynchers to 12.

The three newly identified lynchers, all from Cobb County, are:

George Exie Daniel (1881-1970) Daniel owned and operated a jewelry store on Marietta Square for 40 years and was a charter member of the Marietta Country Club.

Joseph M. Brown (1851-1932) Brown, the son of Georgia’s Civil War governor, was himself Governor of Georgia in 1909-1911 and 1912-1913. As governor, he was the immediate predecessor of John M. Slaton.

Bolan Glover Brumby (1876-1948) Brumby owned a furniture manufacturing company, the Marietta Chair Company.

Aug. 7, 2000 Law professor Jonathan Turley publishes an article, “Lawyers and the Lynching,” in *The National Law Journal*. The article discusses the list of lynchers posted on Stephen J. Goldfarb’s website and notes that the list “contains some of the most prominent lawyers in Georgia of that era.” The six lawyers listed all played “a leadership role” in the lynching, Turley says. The lawyers are: Newton Augustus Morris, a judge; Eugene Herbert Clay, a district attorney; John Tucker Dorsey, a legislator; Gordon Baxter Gann, a Mayor of Marietta; Joseph M. Brown, a former Georgia Governor; and Moultrie McKinney Sessions, the son of a judge.

Sept. 3, 2000 Steve Oney’s article, “Tom Watson’s Nobler Side,” appears in *The Atlanta Constitution*. In this article Oney criticizes law professor Jonathan Turley’s article, “Statue at State Capitol is a Memorial to Hatred,” published in the same newspaper on the previous June 13. Acknowledging that “Tom Watson’s role in fomenting the anti-Semitic climate that led to the 1915 lynching of Leo Frank outside Marietta cannot be overstated,” Oney

rejects Turley's proposal that we "topple" Tom Watson's statue at the state capitol, a proposal Oney characterizes as little more than an "Orwellian attempt to obliterate a part of the past that many would like to forget." In the late 19th century, prior to the Leo Frank case, Oney reminds us, "Watson's heart" was "for a brief moment, in the right place," and Watson was "a great populist who championed the rights of Georgia's poor farmers regardless of race or creed." "The statue that stands sentinel at the Georgia Capitol," Oney asserts, "commemorates a man who in his time spoke to the best and the worst in Georgians."

Sept. 24, 2000 Robert Myers' play, "The Lynching of Leo Frank," opens at the Theater in the Square in Marietta.

Sept. 25, 2003 Jim Auchmutey's article, "The Lynching of Leo Frank," appears in *The Atlanta Constitution*, based on a prepublication copy of Oney's book. The article focuses on the new information in the book about the involvement of named Marietta citizens, including prominent ones, in the lynching.

Oct. 7, 2003 Steve Oney's book, *And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank*, the definitive work on the Leo Frank case, is published. The book names 26 of Leo Frank's lynchers. The lynchers include a former governor, a district attorney, a judge, a state legislator, a mayor, a sheriff, a former sheriff, and various prominent lawyers and businessmen.

Oct. 10, 2003 Steve Oney lectures on his new book to a packed house in the UGA Chapel.

Nov. 1, 2004 *The Athens Banner-Herald* publishes "Finding the Lynchpin," Wayne Ford's book review of Steve Oney's *And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank*.

January 18, 2005 The University of Georgia School of Law's Institute for Continuing Judicial Education conducts a seminar on the Leo Frank case at the Georgia Superior Court Judges Seminar held at the Georgia Center for Continuing Education in Athens, Georgia. The seminar is presided over by

Steve Oney and Donald E. Wilkes, Jr., Professor of Law, University of Georgia School of Law.

CAST OF CHARACTERS IN THE LEO FRANK CASE

Jim Conley (1884-1962) This man, the actual murderer of Mary Phagan, was the principal prosecution witness when Leo Frank was tried and convicted for the murder. “Conley’s testimony against Frank was a fantastic accumulation of contradictions,” history professor Clement Charlton Moseley has written. The essentially misleading story Conley told on the stand, which inculpated Frank in Mary Phagan’s murder and exculpated himself, was a vast superstructure of lies cleverly erected on a foundation of various undeniable facts and seemingly credible minute details. In February 1914 Conley was tried and convicted of being an accessory after the fact to the murder of Mary Phagan and sentenced to one year on the chain gang. He was released after serving 10 months of his sentence. In 1919 he was shot while burglarizing an Atlanta drug store and after recovering sentenced to 20 years in prison. His final appearance in the newspapers seems to have been in 1941 when it was reported that he had been arrested on gambling and public drunkenness charges in Atlanta. There is no obituary or death certificate for Jim Conley, who is believed to have died in 1962.

Hugh M. Dorsey (1871-1948) Hugh M. Dorsey was District Attorney (an office then called Solicitor General) for Fulton County, 1910-1916, and Governor of Georgia, 1917-1921. He prosecuted Leo Frank, procured a conviction, successfully labored in opposition to Frank’s endeavors to obtain a new trial, and relentlessly battled Frank’s efforts to have the death sentence commuted. Less than two years after Frank’s lynching, Dorsey was elected governor; his campaign platform emphasized that he was the man who prosecuted Leo Frank. In his campaign he also played an anti-Semitic card, regularly giving a stump speech in which he would say: “The attitude of the Hebrews in the Frank case has demonstrated the fact that the successful prosecution of a Hebrew is regarded as a persecution.” In prosecuting Frank, Dorsey (who may or may not have actually believed Frank was guilty) displayed great cunning and ruthlessness in adhering to the principle that the end justifies the means. He suppressed evidence that tended to exculpate Frank. For example, he refused to tell the defense attorneys that hair found in the metal room (where Dorsey maintained Frank had killed Mary Phagan) was, according to the physician who autopsied Phagan, not Phagan’s. He blatantly appealed to juror prejudices against Northerners, Jews, factory owners,

capitalists, and homosexuals. During his cross-examination of Leo Frank's mother, he asked her what business her husband was in, and after her reply, snidely retorted: "Ah, he's a capitalist then?" While cross-examining four male defense witnesses, Dorsey with diabolical slyness asked questions insinuating that Frank was a homosexual. And during his closing arguments, Dorsey "both denounced Frank's character and emphasized his Jewishness and wealth," Oney reminds us. As historian Leonard Dinnerstein puts it: "In 1913, when Hugh Dorsey prosecuted Leo Frank, he convinced many people that his primary concern was with his political reputation and not with obtaining justice." In the words of an editor of *The Atlanta Constitution*, in the Frank case Dorsey "deliberately set about to stir up the hate-pack in a cynical bid for political notoriety and power." Oney calls Dorsey "cool and mockingly predatory," "[a]droit, brazen, poker-faced," and full of "native cunning." In 1920 Dorsey ran for the U. S. Senate, but was defeated by Tom Watson. From 1935 to 1948 Hugh Dorsey was a judge of the Superior Court of Fulton County.

Nathaniel E. Harris (1846-1929) Governor of Georgia, 1915-1917. Harris was inaugurated five days after his predecessor, Gov. John M. Slaton, had commuted Leo Frank's death sentence. On July 24, 1915, a week after Frank's prison stabbing, Gov. Harris visited Frank in prison, a visit which Harris later recounted in his autobiography. Talking briefly with Frank, he thought that Frank had "a queer sort of laugh" indicative of "a hard, careless heart," and concluded that Frank "was undoubtedly a hardened criminal or a reckless prisoner." As a result of this interview Harris' concern that Frank might be innocent "was lessened greatly." Immediately after finding out about the Frank lynching Harris publicly expressed shock and grief at the deed and promised a full investigation of the matter and severe punishment of the lynchers. In the end, however, he never followed through on his pledge.

Leo M. Frank (1884-1915) Born in Paris, Texas on Apr. 17, 1884, Leo Frank, the defendant convicted in 1913 of murdering Mary Phagan and lynched two years later, grew up in Brooklyn, New York, and graduated with a mechanical engineering degree from Cornell University in 1906. During the summer of 1906 he celebrated his graduation by touring Europe, and in August of that year he climbed 7,000 foot Mount Pilatus in the Swiss Alps. In 1907 he spent time in Germany studying the technology of pencil manufacturing. In 1908 he moved to Atlanta to become factory superintendent for the National Pencil Company, and in 1910 he married Lucille Selig, daughter of a wealthy, established Atlanta Jewish family. A Jew, Frank was elected president of the local B'nai B'rith in 1912. It is a certainty that Frank was denied a fair trial and

that he was innocent of the murder of Mary Phagan. He lies buried in Mount Carmel Cemetery in Queens, New York under a tombstone reading:

LEO MAX FRANK
BELOVED HUSBAND
APRIL 17, 1884
AUG. 17, 1915
“SEMPER IDEM”

(The Latin phrase *semper idem*, “always the same,” presumably refers to the anti-Semitism contributing to the lynching.)

The site of Frank’s lynching, once in the midst of a grove of trees, is now a modern brown-brick office building surrounded by discount stores and fast food franchises off Cobb Parkway, at Roswell and Freys Gin roads, and just east of The Big Chicken which is on Roswell Road at I-75. (A journalist, Jane Gross, describes The Big Chicken as “a looming metal rooster outside a fast-food restaurant that is the most distinctive landmark in Cobb County.”) Affixed to the wall of the building is a metal plaque, placed there by Rabbi Steven Lebow of Temple Kol Emeth in 1995 on the 80th anniversary of the lynching, which reads:

Leo Frank (1884-1915)
Wrongly accused
Falsely convicted
Wantonly murdered
Pardoned, 1986

Lucille S. Frank (1888-1957) The wife of Leo Frank, Lucille Frank never remarried, proudly signing her name “Mrs. Leo Frank” until her death from heart disease in Atlanta on Apr. 23, 1957, nearly 42 years after her husband’s murder. Her cremated ashes are buried in an unmarked grave near the graves of her parents in Atlanta’s Oakland Cemetery. Interestingly, Lucille Frank was no stranger to Athens, Georgia. Her uncles, the twin Michael brothers, Simon and Bud, lived in magnificent adjoining mansions (now demolished) on Prince Avenue in Athens, and she stayed with her uncles in the spring of 1909 and again in early July 1915. She and Leo Frank were married on Nov. 30, 1910.

Mary Phagan (1899-1913) Born in Florence, Alabama on June 1, 1899, Mary Phagan, the victim whose horrific murder initiated what became the Leo Frank case, lived with her family in Marietta from 1900 until 1907, in East Point from 1907 until 1912, and in Atlanta from 1912 until her death the following

year. Mary Phagan is buried in Marietta City Cemetery, with a stone memorial erected by the local chapter of the United Confederate Veterans at the head of the grave and a long marble slab with a two-paragraph inscription written by Tom Watson over the grave itself.

Leonard S. Roan (1849-1915) A Georgia superior court judge from 1900 to 1913, Roan was the judge who presided over the Leo Frank trial in July and August of 1913. On Oct. 31, 1913, before denying Frank's new trial motion, he amazingly announced from the bench that "I am not certain of this man's guilt," and "I am not thoroughly convinced that Frank is guilty or innocent." After resigning his superior court judgeship later that same day, he became an appellate judge on the Georgia Court of Appeals, serving from Nov. 1, 1913 until Nov. 14, 1914, when he resigned due to ill health. In November 1914 he dictated a letter recommending that Leo Frank's death sentence be commuted. Roan died of cancer in a New York City hospital on Feb. 23, 1915, six months before Frank was lynched.

John M. Slaton (1866-1955) Governor of Georgia, 1913-1915. Prior to commuting Leo Frank's sentence, Gov. Slaton received over 100,000 letters requesting commutation from all over the nation, including 10,000 from Georgia. An 1886 graduate of the UGA law school, Gov. Slaton's promising political career was ruined by his courageous commutation of Leo Frank's sentence, and he was never again elected to a public office. All around Georgia, in the weeks after the commutation, Gov. Slaton was hanged, shot, and burned in effigy; typically, the effigy would bear a sign, "John M. Slaton, The King of the Jews." (There is a photograph, taken in late June 1915, of such an effigy, hanging by the neck from a telephone pole, and bearing such a sign, in Oney's book.) In 1917-1918 Slaton worked for the Red Cross and lived in Rumania. He practiced law in Atlanta for the rest of his life, and in 1928 was unanimously elected president of the Georgia Bar Association. In an obituary published in *The Atlanta Constitution* the day after Slaton's death, Ralph McGill wrote: "A giant of his day, it was one of destiny's mocking ironies that his great integrity should have cost him his public life." In 1957 the Georgia legislature authorized the erection a memorial to Slaton, to be placed in the state capitol building. 1957 Ga. Laws 34. At the elaborate ceremony at which Slaton's bust was officially unveiled, Virlyn B. Moore, a distinguished superior court judge, delivered a memorial address eulogizing Slaton as "The Incomparable Georgian."

William M. Smith (1880-1949) A 1901 graduate of the UGA law school, Smith was a white Atlanta lawyer who devoted his life to, in the words of Oney, "[a] great cause—social and legal equality for American Negroes."

(While a student at the UGA, Smith was a member of the Demosthenian Society, and as its senior orator he delivered an elaborate speech in the UGA Chapel to the faculty and student body on Feb. 19, 1901.) Smith was retained by a newspaper to represent Jim Conley after Conley's arrest and helped prepare Conley to testify at Leo Frank's trial. At first he believed Conley's story that Leo Frank had murdered Mary Phagan, and he continued to believe it through February 1914 when Conley, represented by Smith, was convicted of being an accessory to the Phagan murder. Once Conley had been sentenced for that crime, Smith ceased being his lawyer. When Frank's attorneys filed an extraordinary motion for a new trial in April 1914, Smith submitted an affidavit, admitted into evidence in support of the motion, in which he revealed that before Frank's trial he had witnessed a conversation between Hugh M. Dorsey and Dr. Henry F. Harris in which Harris informed Dorsey that the hair he had taken from Mary Phagan's scalp did not match the hair sample found in the metal room. Thereafter, from June through September 1914, Smith carried out his own investigation of the murder, which included visits to the building where the crime occurred and an exhaustive examination of the contents of the murder notes. He discovered: (1) It was highly unlikely that the murder notes would have been written in Frank's office, because it was such a publicly visible site, with 43 windows in opposite buildings with a clear line of sight into the office; (2) contrary to Jim Conley's testimony, a person screaming from inside the second floor metal room could not be heard by a person on the first floor; and (3) the language used in the murder notes was perfectly consistent with the language Conley used while testifying and in the Annie Maude Carter correspondence. (Oney informs us that Smith's 100-page study of the murder notes, "My Views as to the Death Notes," is kept at the Georgia Department of Archives.) Based on his investigation, Smith concluded that Conley was the killer and Frank was innocent. In October 1914, Smith publicly stated his belief that Conley, not Frank, had murdered Mary Phagan. As a result of this and other statements in favor of Leo Frank, Smith received death threats, saw his law practice ruined, and was forced to leave Atlanta with his family. On his deathbed in his seventieth year, partially paralyzed and in agonizing pain, aware that his demise was only minutes away, Smith managed to write and sign a short statement reaffirming that "I believe in the innocence and good character of Leo M. Frank." (There is a photograph of the statement in Oney's book.)

Thomas E. (Tom) Watson (1856-1922) Tom Watson, of Thomson, Georgia, was many things—a scholar, an historian, a poet, a journalist, a lawyer, a politician, even a U. S. Senator. In 1896 he had been the vice presidential candidate on the Democratic ticket with presidential candidate William

Jennings Bryan. However, by the time of the Leo Frank case Tom Watson, once a progressive political figure and staunch defender of the rights of workingmen and the rural poor, including black Southerners, had degenerated into, in the words of law professor Jonathan Turley, “one of the nation’s most rabid anti-Semitic, anti-Catholic, and racist leaders.” History professor Eugene Levy calls Watson a “Populist-turned-arch-anti-Semite.” As journalist Ward Greene notes, “Tom Watson fell on the Frank case with the lust of a starved tiger and the cunning of a political opportunist, .. feeding his ‘woolhats’ a diet of ‘Wall Street plot,’ ‘Jewish gold’ and ‘Yankee Meddlers’ in language careless of the truth or decency and always inflammatory.” “Watson,” writes historian Leonard Dinnerstein, “cannily played upon the hatreds, fears, and prejudices of his readers.”

There is an excellent biography of Tom Watson by C. Vann Woodward: *Tom Watson: Agrarian Rebel* (1938; 2nd ed. 1973). Chapter 22, “The Lecherous Jew,” recounts Watson’s baleful role in the Leo Frank case. Summarizing Watson’s ferocious and despicable attacks on Frank appearing in Watson’s newspaper *The Jeffersonian* from March 1914 to September 1915, Woodward writes: “Rumors, half-truths, special pleading, merciless slander, every device known ... he employed. He pulled all the stops: Southern chivalry, sectional animus, race prejudice, class consciousness, agrarian resentment, state pride.... One feels back of many of his wild utterances on the Frank case the same pathological state of mind that prevailed in parts of his anti-Catholic crusade.”

In his writings Watson called Frank such things as “that foul degenerate,” “this filthy and murderous Sodomite,” “a satyr-faced New York Jew,” a “lustful beast,” and “a rich depraved Sodomite Jew.”

Five days after Leo Frank was stabbed in prison, Watson cruelly wrote: “Note: The butcher knife used had been in operation during the day killing hogs.... Kosher!”

After the commutation of Leo Frank’s sentence by Gov. John M. Slaton, Watson’s polemics became maniacal:

“Our grand old Empire State HAS BEEN RAPED! We have been violated, AND WE ARE ASHAMED! We have been betrayed! The breath of some leprous monster has passed over us, and we feel like crying out, in horror and despair: Unclean! UNCLEAN! The next Leo Frank case in Georgia will never reach the Courthouse. THE NEXT JEW WHO DOES WHAT FRANK DID IS GOING TO GET EXACTLY THE SAME THING THAT WE GIVE TO NEGRO RAPISTS! Jew money has debased us, bought us, and sold us—

and laughs at us.... [T]hey have established the precedent in Georgia that no Jew shall suffer capital punishment for a crime committed on a Gentile.”

Watson simultaneously expressed the view that a lynching of Leo Frank would be a laudable act:

“Hereafter, let no man reproach the South with lynch law: let him remember the unendurable provocation; and let him say whether lynch law is not better than no law at all....

“[W]hen mobs are no longer possible liberty will be dead.”

These and other of Watson’s delirious denunciations of the commutation, “caused,” in the words of Slaton’s successor, Gov. Nathaniel E. Harris, “the gathering of mobs in almost every part of the [state] and brought about such state of affairs that no persuasion or remonstrance could control the situation.”

After the lynching of Leo Frank, Watson wrote approvingly: “A Vigilance Committee, instead of the Sheriff, carried out a sentence which remained in effect. In the eyes of the law, the commutation did not exist.... [W]hen ... the Vigilantes ... decided to execute the sentence ... Frank virtually confessed [and] ceased to claim innocence.... He was guilty; and his conduct at the last corroborated the official record.... In putting the Sodomite murderer to death, the Vigilance Committee has done what the Sheriff would have done, if Slaton had not been of the same mould as Benedict Arnold. Let Jew libertines take notice. Georgia is not for sale to rich criminals.... [A]ll over this broad land there are millions of good people, not doped by Jew money, and lies, that enthusiastically greet the triumph of laws in Georgia. Womanhood is made safer, everywhere.....”

Here are a few additional examples of the repulsive rhetoric Watson used during his 18 month campaign to see Leo Frank dead:

“What is the purpose of this continued and systematic crusade in behalf of one convicted Jew whose connections command unlimited wealth?”

“Frank belonged the Jewish aristocracy, and it was determined by the rich Jews that no aristocrat of their race should die for the death of a working-class Gentile.”

“Here we have the typical young libertine Jew who is dreaded and detested by the city authorities of the North for the very reason that Jews of this type have

an utter contempt for law, and a ravenous appetite for the forbidden fruit—a lustful eagerness enhanced by the racial novelty of the girl of the uncircumcized.”

“[Leo Frank is] a lascivious pervert, guilty of the crime that caused the Almighty to blast the Cities of the plain.... [Frank has] those bulging, satyr eyes ... the protruding fearfully sensual lips; and also the animal jaw.”

In 1920, Tom Watson was elected to a U. S. Senate seat, defeating Hugh M. Dorsey. Watson died two years later, in 1922.

Unbelievably, a 12-foot statute of Watson, bearing the legends “A Champion of Right Who Never Faltered in the Cause,” and “Honor’s Path He Trod,” now stands on the grounds of the state capitol building in Atlanta!

STEVE ONEY’S LIST OF THE LEO FRANK LYNCHERS

In 2000, Stephen J. Goldfarb’s website, www.leofranklynchers.com, identified 12 of the Leo Frank lynchers. As a result of Steve Oney’s book, which identifies 17 more lynchers, the number of known lynchers of Leo Frank has more than doubled, from 12 to 29. There is no reason to doubt the reliability of the lynching lists compiled by Goldfarb and Oney. As a matter of historical fact, the total number of lynchers may have reached 40, and both Goldfarb and Oney acknowledge that their lists are incomplete.

Oney furnishes the names of 26 of Leo Frank’s lynchers, nine of whom had previously been identified as lynchers by Goldfarb. According to Oney, the 26 lynchers, who all were from or associated with Cobb County, fell into three categories. First, there were the leaders and the planners, who conceived, plotted, and organized the lynching. Second, there were the field commanders, who were part of and traveled with the lynch party, and were in charge of the footsoldiers who comprised the rest of the lynch party. Third, there were the footsoldiers, who either were part of the lynch party that abducted Frank or materially supported or made helpful arrangements for the lynch party. Oney gives the names of six planners, three field commanders, and 17 footsoldiers (11 of whom were on the lynch party), for a total of 26 lynchers.

Both Goldfarb and Oney agree on the identity of nine lynchers. Goldfarb lists three lynchers (John Augustus (Gus) Benson, Ralph Molden Manning, and Moultrie McKinney Sessions) who are not on Oney's list, and Oney names 17 lynchers not named by Goldfarb.

The Leaders and Planners

Joseph M. Brown (1851-1932) Governor of Georgia, 1909-1911 and 1912-1913, and a political ally of Tom Watson. On Dec. 27, 1914 he published in *The Augusta Chronicle* an article hostile to Leo Frank in which he asked rhetorically: "Are we to understand that anybody except a Jew can be punished for a crime?" On Aug. 8, 1915, only days before Leo Frank's lynching, he published a position paper in *The Macon Telegraph* in which with regard to the Frank case he asserted that the time had come for "the people to form mobs." As Governor of Georgia, Joseph M. Brown was the immediate predecessor of Gov. John M. Slaton.

Newton Augustus Morris (1869-1941) An 1893 graduate of the UGA law school, he held numerous public offices during his career, and was a superior court judge of the Blue Ridge Circuit (which included Cobb County) in 1909-1912 and 1917-1919. He was also a property developer and contractor. Oney calls him "a sharp operator" and "a devious and brassy character" A person who knew Newton Augustus Morris said of him, "He was a fourteen-karat son of a bitch with spare parts." In 1891 Morris had been charged with attempted murder and cattle rustling in California.

Eugene Herbert Clay (1881-1923) The son of a U. S. Senator, Clay was Mayor of Marietta in 1910-1911, district attorney of the Blue Ridge Circuit in 1913-1918, and a Georgia state senator in 1921-1923. Oney tells us that Clay's personal life "was a thoroughgoing scandal and had been since boyhood." In 1901, while a UGA student, he wandered the streets of Athens one night, firing pistol shots into the air, and as a result was expelled from the university. He was found dead at the age of 41 in an Atlanta hotel room on June 22, 1923. There are several different accounts of how he died. According to a longtime Cobb County Superior Court judge, Luther Hames, "Clay was killed when a whore hit him over the head with a liquor bottle."

John Tucker Dorsey (1876-1957) One of Marietta's premier trial lawyers, John Tucker Dorsey was a member of the lower house of the Georgia General Assembly in 1915-1917 and 1941-1945, and served as district attorney of the

Blue Ridge Circuit in 1918-1920. Years before the lynching he had been twice convicted of manslaughter and had served an imprisonment sentence on the chain gang. John Tucker Dorsey was a distant cousin of prosecutor Hugh M. Dorsey.

Fred Morris (1876-?) A prominent lawyer, Fred Morris was serving his first term in the Georgia General Assembly at the time of lynching. “[W]hen the Boy Scout movement began,” Oney says, “he organized the Marietta troop.”

Bolan Glover Brumby (1876-1948) Brumby owned a furniture manufacturing company, the Marietta Chair Company. In 1910 *The Atlanta Constitution* described him as “one of North Georgia’s most successful businessmen.” Oney says that Brumby “was the very image of arrogant Southern aristocracy” and that “nothing angered him more than Northerners.”

The Field Commanders

George Exie Daniell (1882-1970) The proprietor of a jewelry shop on Marietta Square for 40 years, he was a member of the Rotary Club and (like fellow lynchers Newton Augustus Morris and Eugene Herbert Clay) a charter member of the Marietta Country Club.

Gordon Baxter Gann (1877-1949) An attorney and protege of Newton Augustus Morris, Gann was Mayor of Marietta in 1922-1925 and 1927-1929, and a member of the lower house of the Georgia General Assembly in 1919-1922. At the time of the lynching Gann was the judge of the probate court in Cobb County.

Newton Mayes Morris (“Black Newt”) (1878-?) A first cousin of Newton Augustus Morris, he ran the Cobb County chain gang and was so proficient in using his bullwhip on prisoners that he was sometimes known as “Whipping Newt.” In 1891 he had been arrested in California for attempting to murder someone by shooting him with two blasts from a shotgun.

The Footsoldiers

The footsoldiers who assisted the lynch party in a supporting role included:

William J. Frey (1867-1925) The Sheriff of Cobb County in 1903-1909, he prepared the noose used to hang Frank, and may have actually looped it around Frank’s neck. Frey’s Gin, the location of the lynching, was his property.

E. P. Dobbs The Mayor of Marietta when the lynching occurred, he lent his car to the lynch party.

L. B. Robeson A railroad freight agent, he lent his car to the lynch party.

Jim Brumby Bolan Glover Brumby's brother, he owned a garage and serviced the automobiles used in the lynching.

Robert A. Hill A banker, he helped fund the lynching.

The footsoldiers on the lynch party included:

George Swanson, who was serving as Sheriff of Cobb County in 1915, and two of his deputies, **William McKinney** and **George Hicks**.

Cicero Holton Dobbs (1880-1954), a taxi driver. (According to Stephen J. Goldfarb, Cicero Dobbs "operated a grocery store in Marietta for 25 years, and later the Dobbs Barber Shop.")

D. R. Benton, a farmer, and an uncle of Mary Phagan.

Horace Hamby, a farmer.

"Coon" Shaw, a mule trader.

Dr. C. D. Elder

Emmet and Luther Burton, two brothers, who are believed to have sat on either side of Leo Frank in the automobile that took him from prison to death. Emmet is said to have been a police officer, and Luther a coal yard operator.

"Yellow Jacket" Brown, an electrician, who rode his motorcycle to Milledgeville ahead of the lynch party and cut the city's telephone lines just before the lynch party entered the prison.

Lawrence Haney, a farmer.

BIBLIOGRAPHY OF BOOKS AND SCHOLARLY ARTICLES

ON THE LEO FRANK CASE

Books

Argument of Hugh M. Dorsey at the Trial of Leo M. Frank (1914) This 146-page book, based on the trial transcript, contains the text of some, but not all, of the nine hours of closing arguments prosecutor Dorsey made on Aug. 22, 23, and 25, 1913.

Berry Benson, *Five Arguments in the Leo Frank Case* (1915) This short study, written by a Confederate Civil War veteran living in Augusta who specialized in deciphering codes, is the result of Benson's scientific study of photographic enlargements of the murder notes. Benson concludes that the note written on the carbon copy order sheet was written first, and hurriedly. Benson also believes that some interval of time passed between the writing of the two notes, which conflicts with Conley's testimony that the notes were written almost simultaneously. Finally, Benson concludes that the notes were composed by Jim Conley, not Leo Frank, which means that it was Conley who murdered Mary Phagan: "If Frank did not dictate the notes, then Conley was the murderer."

Ward Greene, *Death in the Deep South* (1936) The first novel about the Leo Frank case.

Charles and Louise Samuels, *Night Fell on Georgia* (1956) In this careful study, the best nonfiction book-length account of the Leo Frank case published before 1965, the authors describe the case as a "classic example of injustice in our twentieth century courts." The authors conclude that "Leo Frank was the victim of the one of the most shocking frame-ups ever perpetrated by American law-and-order officials," and that Frank's case is "one of the most celebrated modern criminal cases in which frame-ups were obviously perpetrated." The authors also remind us that the case of Leo Frank "is the only celebrated American murder case of the twentieth century in which religious prejudice played a predominant role."

Harry Golden, *A Little Girl Is Dead* (1965) This excellent account of the Leo Frank case by a North Carolina newspaper editor is one of only a handful of books containing the complete text of Gov. Slaton's June 21, 1915 order commuting Frank's sentence.

Richard Kluger, *Members of the Tribe* (1977) A novel based on the Leo Frank case.

Leonard Dinnerstein, *The Leo Frank Case* (1968; reprinted 1987, 1999) A modified version of the author's Ph.D. dissertation, this superb book was and remains the best scholarly account of the Leo Frank case. The author is a history professor at the University of Arizona. The author summarizes the Leo Frank case as "one of the causes celebres of the [twentieth] century," "one of the most infamous outbursts of anti-Semitic feeling in the United States," "one of the most talked-about injustices of the Progressive Era," and "one of the most lurid displays of intolerance in the Progressive Era."

Julie Ellis, *The Hampton Women* (1980) A novel based on the Leo Frank case.

Mary Phagan, *The Murder of Little Mary Phagan* (1987) This intriguing book is invaluable because it quotes extensively from many important documents relevant to the Leo Frank case. For example, it includes the full text of Gov. Slaton's commutation order and Alonzo Mann's Mar. 4, 1982 affidavit, and it furnishes lengthy excerpts from Jim Conley's direct examination testimony and Leo Frank's unsworn statement at the trial. The author is the great niece and a namesake of the little girl whose murder triggered the Leo Frank case. The author seems to doubt that Frank received an unfair trial and appears to almost sympathize with his lynchers, but does acknowledge having some doubt about whether Frank was the murderer. Astonishingly, the author reveals that in 1934 members of the family of the murdered girl—convinced of Frank's guilt and reposing infinite faith in prosecutor Hugh Dorsey—invited Jim Conley into their home and received him as an honored guest, and even gave him money!

Robert Seitz Frey and Nancy Thompson-Frey, *The Silent and the Damned: The Murder of Mary Phagan and the Lynching of Leo Frank* (1988) This admirable account of the Leo Frank case features nearly 40 helpful illustrations. Leo Frank's trial, the authors assert, took place "in an atmosphere of hostility and violence," and his conviction was a "hideous stain on our legal system."

David Mamet, *The Old Religion* (1997) A novel based on the Leo Frank case. The author is a Pulitzer Prize-winning playwright.

Jeffrey Melnick, *Black-Jewish Relations on Trial: Leo Frank and Jim Conley in the New South* (2000) This book, by a history professor, examines the stereotypes about both Jews and African Americans which underlay public perceptions of the Leo Frank case as it unfolded, and which continue to permeate modern historical writings about the case. The attorneys for both the

prosecution and the defense, Melnick emphasizes, relied on racist assumptions, particularly in dealing with Jim Conley's testimony.

Steve Oney, *And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank* (2003) This book, the result of 17 years of research and investigation, is the definitive work on the Leo Frank case.

Book Chapters

C. Vann Woodward: *Tom Watson: Agrarian Rebel* (1938; 2nd ed. 1973). Chapter 22, "The Lecherous Jew," explores Watson's loathsome journalistic crusade against Leo Frank.

Arthur G. Powell, *I Can Go Home Again* (1943; reprinted 1984). In Chapter 36, entitled "Up Against the Mob," Powell, a distinguished Georgia jurist and attorney, writes: "I am one of the few people who know that Leo Frank was innocent of the crime for which he was convicted and lynched. Subsequent to the trial, and after his conviction had been affirmed by the [Georgia] Supreme Court, I learned who killed Mary Phagan, but the information came to me in such a way that, though I wish to do so, I can never reveal it so long as certain persons are alive.... Without having discussed with Governor Slaton the facts which were revealed to me, I have reason to believe, from a thing contained in the statement he made in connection with the grant of the commutation, that, in some way, these facts came to him and influenced his action." It is now known, based on Allen Lumpkin Henson's book (discussed below), that Powell knew of Frank's innocence because he had been told by Judge Roan, Frank's trial judge, of a visit to Roan by Jim Conley's lawyer, William M. Smith, who told Roan that Conley had murdered Mary Phagan. Powell's belief that before the commutation Slaton had been apprised of Smith's knowledge of Conley's guilt has since been confirmed by other sources.

Francis X. Busch, *Guilty or Not Guilty?* (1952) Chapter 1, "The Trial of Leo Frank for the Murder of Mary Phagan (1913)," is 63 pages long. The author concludes: "[F]rank may have been guilty, and he may have been innocent. One simply cannot, with evidence supporting reason, declare unequivocally that he was guilty or that he was not guilty. There is evidence and reasonable probability to support either conclusion.... Nevertheless, from the present perspective a conscientious reader of the record puts it down with the uncertain and troubled feeling that Frank's guilt was not proved beyond a reasonable

doubt and that he may have been the victim of one of the most flagrant miscarriages of justice recorded in American criminal annals.”

Allen Lumpkin Henson, *Confessions of a Criminal Lawyer* (1959). In Chapter 7, entitled “The Leo M. Frank Case,” Henson, a distinguished Atlanta attorney who had served as an assistant state attorney general during Gov. John M. Slaton’s term of office, explains how Arthur G. Powell knew that Frank was innocent. According to Henson, soon after Frank’s conviction Judge Roan received a visit from William M. Smith, Jim Conley’s lawyer, who told Roan that Conley had admitted having murdered Mary Phagan to Smith. (It is now known that Conley never actually admitted killing Phagan to Smith; Smith’s knowledge of Conley’s guilt was based on Smith’s own investigation. Henson was therefore wrong in asserting that Conley had confessed to Smith and that Smith had spoken of such a confession, although undoubtedly Smith did tell Roan of his belief that Conley was the murderer.) Henson also reveals that Judge Roan passed on Smith’s disclosures about Conley’s guilt to two other distinguished Georgia jurists, Arthur Powell (who served on the Georgia Court of Appeals from 1907 to 1912) and Frederick C. Foster (a superior court judge in Morgan County for many years).

Pierre Van Paassen, *To Number Our Days* (1964). This book is an autobiography written by a noted Dutch journalist. In Chapter 6, “Short Stand in Dixieland,” Van Paassen reveals that in 1922, while briefly serving as a reporter for *The Atlanta Constitution*, he conducted his own investigation of the Leo Frank case, reading the documents and evidence at the courthouse. He found that Mary Phagan “had been bitten on the left shoulder and neck before being strangled,” and that “photos of the teeth marks on her body did not correspond with Leo Frank’s set of teeth of which several photos were included.” He was, however, denied permission to write any articles about the Frank case.

Frederic Cople Jaher (ed.), *The Age of Industrialism in America* (1968). Chapter 12, entitled “Atlanta in the Progressive Era: A Dreyfus Affair in Georgia,” is authored by Leonard Dinnerstein and examines the Leo Frank case in light of early twentieth century industrial development in the American South.

Steven Hertzberg, *Strangers Within the Gate City: The Jews of Atlanta, 1845-1915* (1978). Chapter 9, “The Leo Frank Case,” examines the Frank case (which the author notes “was far more than a judicial proceeding”) in depth and describes the case as “perhaps the most lurid manifestation of anti-Semitism in American history.”

Albert S. Lindemann, *The Jew Accused: Three Anti-Semitic Affairs (Dreyfus, Beilis, Frank) 1894-1915* (1991). Chapter 9, “The Leo Frank Affair,” provides a reasonably accurate overview of the Leo Frank case. Although he acknowledges that Jim Conley was probably Mary Phagan’s murderer, the author is notably unsympathetic to Frank and seems to downplay the importance of anti-Semitism and yellow journalism as factors contributing to the conviction and lynching of Frank.

Articles

Clement Charlton Moseley, “The Case of Leo M. Frank,” 51 Ga. Hist. Q. 42 (1967) Although dated and marred a few factual errors, this article by a distinguished history professor remains the best single short account of the Frank case ever published in a scholarly journal. “The lynching of Leo Frank,” Moseley concludes, “was the consummation of a vast modern tragedy. The most tragic figure was not the murdered Jew but the figure of justice and the shame of a State.... The entire inglorious episode of the crime against the Jew ... may be summed up in three words—politics, prejudice, and perjury.”

Eugene Levy, “‘Is the Jew a White Man?’ Press Reaction to the Leo Frank Case, 1913-1915,” 35 Phylon 212 (1974) This article by a history professor examines editorials about the Leo Frank case which appeared in the Jewish press or in African-American newspapers. According to Levy, many Jewish newspapers looked at the case as simply another chapter in this history of anti-Semitism, with some depicting Jim Conley as a “black brute” or “depraved Negro.” On the other hand, many African-American editors, Levy asserts, tended to sympathize with Jim Conley, warning that “whites were again looking for a black scapegoat.”

Steve Oney, “The Lynching of Leo Frank,” 104 Esquire 90 (Sept. 1985) An earlier account of Frank’s murder, written by the author of *And the Dead Shall Rise*.

Nancy MacLean, “The Leo Frank Case Reconsidered: Gender and Sexual Politics in the Making of Reactionary Populism,” 78 J. Am. Hist. 917 (1991) This scholarly article by a history professor examines the Leo Frank case insofar as it was “a spectacular instance of a pattern of political mobilization best described as reactionary populism”—the anti-elitism that is characteristic of populism and that sometimes “garners mass support for a political agenda that enforces the subordination of whole groups of people.”

Leonard Dinnerstein, "The Fate of Leo Frank," 47 *American Heritage* 99 (Oct. 1996) This article by Prof. Dinnerstein is the finest short article on the Leo Frank case ever published.

Stephen J. Goldfarb, "Framed," 47 *American Heritage* 109 (Oct. 1996) This article, by an Atlanta librarian, shows that there was a secret conspiracy between prosecutor Hugh Dorsey and Pinkerton's detective Harry Scott (second in command of Pinkerton's Atlanta branch office) to convict Leo Frank, even though the Pinkerton detective agency had been hired by Frank's employer to assist Frank in his defense and was supposed to be on Frank's side. The article also proves "the malign role played by the prosecutor, Hugh Dorsey," by adducing evidence which "strongly suggests that Dorsey urged witnesses to embellish their testimony, even lie under oath, to build a case against Frank."

Steve Oney, "And the Dead Shall Rise," 83 *Georgia Magazine* 38 (Mar. 2004) In this little article Oney discusses aspects of his 17-year project researching and writing about the murder of Mary Phagan, the criminal proceedings against Leo Frank, and Frank's infamous lynching. The Leo Frank case is, he says, "one of the most complex and incendiary episodes in Georgia's past and the nation's." He also "declare[s] [his] belief in Frank's innocence and the state's culpability in his lynching."