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## Book Review: And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank (2003)

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## **Wrongly Accused, Falsely Convicted, Wantonly Murdered**

A Review And Analysis Of The Definitive Book On The Leo Frank Case

By Donald E. Wilkes, Jr.

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* (Pantheon Books, 2003, 742 pp., hardcover, \$35), 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 was 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 20th 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**

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<sup>1</sup> 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 cover-up 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 April 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 as 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 the on-line version of this book review the following informational material: (1) A full 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?

### **The Murder**

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."

### **Who Did It**

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 post-trial 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, 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 post-trial 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 was 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.

## New Evidence

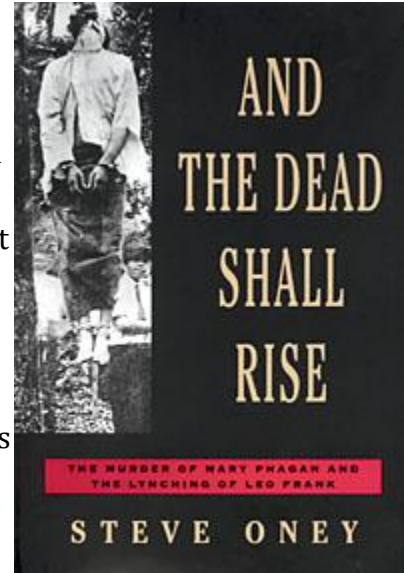
I now turn to the newly discovered evidence which did not surface until after Leo Frank's murder. This includes: (1) the bite evidence discovered by Pierre Van Paassen in 1922, and (2) the 1982 affidavit of Alonzo Mann.

Van Paassen was a Dutch journalist who in the 1920s, 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 the 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 one 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 loathsome 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 80th 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.*