

A STUDY OF SOUTHERN BIGOTRY AND INJUSTICE:
THE LEO FRANK CASE

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by

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SEMINAR PAPER

Presented to the Faculty of the Graduate School of
The University of Texas at El Paso
in Partial Fulfillment
of the Requirements
for the Degree of
MASTER OF ARTS

THE UNIVERSITY OF TEXAS AT EL PASO

May, 1987

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The chain of events that led to the mob murder of Leo Frank commenced on April 26, 1913, with the brutal killing in Atlanta of fourteen-year-old Mary Phagan, an employee at a pencil factory managed by Frank and owned chiefly by his uncle. Frank was accused and arrested, incarcerated, found guilty in a court of law, and subsequently dragged from his prison cell and lynched. The obvious immediate culprits were the mobsters and murderers themselves. But culpability extended also to officers who betrayed their public trusts, to a flawed and primitive system of justice, to religious and civic leaders who failed to speak out, to yellow journalism, and to a society rife with demagoguery, xenophobia, racism and mayhem.¹

Notably, the episode transpired in the American South. It occurred at a time when the nation as a whole had been profoundly impacted by industrialization, urbanization, new intellectual currents, mass education, modern technology, rising standards of living, tidal waves of immigration from southern and eastern Europe and other propellants. But the South remained remarkably as it had been a half-century earlier--that is, distinctly agricultural, rural, impoverished, educationally backward, and even frontier-like in many localities. The major presence of blacks continued as an all-pervasive influence,

as did the resolve of old-stock Protestant whites to perpetuate their own supremacy. Racial, ethnic, religious, and anti-urban prejudices ran strong; by national standards, the Southern level of violence was high. Some manifestations that were virtually unthinkable elsewhere in America were not unthinkable in the South.²

When the girl's body was discovered in the basement of the factory a day after the crime, mass outrage was immediate. In life, Phagan had been anonymous; but, in death, she became a symbol of Southern womanhood and a rallying point for Georgians who felt victimized by the economic and social systems that prevailed in the nation generally. Whereas Mary Phagan represented "ravished innocence," Leo Frank, her employer, came to symbolize what many Southerners perceived to be fundamentally wrong in the nation, including "lust and perversion, greed and exploitation."³

Before officers arrested Frank, six others had been taken into custody, including Jim Conley, a Negro janitor toward whom substantial evidence pointed. Over the long run, the police ignored and depreciated the evidence which pointed to Conley. Of course, the legal conviction and/or lynching of Negroes was nothing unusual in the South of that era. But Leo Frank, too, provided an inviting target, he being a Northern Jew and a supposed exploiter of child labor.⁴

Scholars who have studied the case have gone to great lengths to explain why Frank, rather than Conley, was tried for the murder. Some have felt that the answer is well stated in a letter written by the Reverend Luther Bricker, Pastor of the First Christian Church of Bellwood, Georgia, of which Mary Phagan had been a member. Thirty years later, he wrote to a friend:

When the police arrested a Jew, and a Yankee at that, all of the inborn prejudice against the Jews rose up in a feeling of satisfaction, that there would be a victim worthy to pay for the crime. From that day on, the newspapers were filled with the most awful stories, affidavits and testimonies, which proved the guilt of Leo M. Frank beyond the shadow of a doubt.

The police got prostitutes and criminals, on whom they had something, to swear anything and everything they wanted them to swear to. And reading these stories in the paper day by day, there was no doubt left in the mind of the general public but that Frank was guilty We were all mad crazy and in a blood frenzy. Frank was brought to trial in mob spirit. One could feel the waves of madness which swept us all.⁵

Mary Phagan and her family were typical of poor, white tenant farmers of that era who moved to cities seeking economic betterment. As a child laborer who topped pencils with erasers by hand, and who was paid a mere twelve cents an hour, she was "the essence of Southern womanhood defiled." Southerners commonly blamed the plight of such workers on Northern capitalists, especially Northern Jewish capitalists.⁶

Public outcries were more intense than they might otherwise have been because guilty parties in several recent similar crimes in that area had not been identified or convicted. The sheriff needed a case with a sure conviction to restore his reputation. The prosecuting attorney, Hugh M. Dorsey, also needed a conviction. Having failed to attain convictions in two recent murder prosecutions, Dorsey must have sensed that another failure would doom his political career. On the other hand--as the Savannah Morning News conjectured--if Dorsey could successfully prosecute in this instance, his political prospects would be bright.⁷

Hence, the Mary Phagan case was a self-serving godsend for both the sheriff and the prosecutor, for it provided a Negro and a Jewish suspect, against either of whom a typical Georgia jury would be highly prejudiced. The conviction of a Northern Jew who had exploited child labor would generate more newspaper copy than the conviction of a lowly Negro.⁸

The case became the principal basis for a circulation war between Atlanta's two large daily newspapers, the Atlanta Constitution and the Atlanta Journal, and for a doubling of newspaper sales in the metropolitan area. Yellow-journalistic reporting of pre-trial and trial developments often featured imaginary, sensational elements that inflamed the public.⁹

During the thirty-day trial proceedings in Atlanta, the courtroom often became a veritable three-ring circus, with jeering, applauding, and laughing spectators. Outside, a mob literally howled within the hearing of jurors.¹⁰ On the opening day and afterward, Fiddlin' John Carson, a mountain minstrel, stood on the courthouse steps and rendered instrumental accompaniment for his own vocal renditions of "The Ballad of Mary Phagan":

Little Mary Phagan,
She went to town one day,
She went to the pencil factory
To get her weekly pay.
She left her home at eleven,
She kissed her mother goodbye,
Not one time did that poor girl think
She was going to die.

Leo Frank he met her
With a brutish heart and grin;
He says to little Mary,
"You'll never see home again."
She fell down on her knees
To Leo Frank and pled.
He picked up a plank . . .
And beat her o'er the head.

Her mother sits a-weeping,
She weeps and mourns all day;
And hopes to meet her darling
In a better world some day.
I have an idea in my mind,
When Frankie comes to die,
And stands examination
In the courthouse in the sky
He'll be so astonished
To what the angels say,
How he killed little Mary
Upon that holiday . . .¹¹

Fearing the crowd reaction if there was a verdict of innocence, the presiding judge, Leonard Strickland Roan, requested the defendant and his attorney not to be present

in the courtroom during the polling of the jury. Jurors had received many threats stating, in essence, "Hang the Jew or we will hang you."¹²

Although Prosecutor Dorsey denied that prejudice affected the outcome, his closing remarks verified his resort to anti-Semitism; after alluding to well-known criminals who were Jewish and to Frank's allegedly wealthy relatives in the North, he proclaimed that Jews "rise to heights sublime but also sink to the lowest depths of degradation."¹³

After the sentence was pronounced, newspapers across the nation, state legislatures and many renowned individuals took up the cause célèbre, often comparing it to the Dreyfus case in France. The Brooklyn Times believed Frank was convicted on the basis of religious prejudice. After pointing out that Atlanta was experiencing a crime wave at the time of Mary Phagan's murder, The Chicago Tribune reasoned that there was a perceived need for someone who would serve as a lesson to others; it believed that a Jew was more suitable for this purpose than a Negro. The Chicago paper surmised that, although gentile Southern whites did not respect Negroes and, even though they flagrantly violated the civil rights of Negroes, they did not actually hate them. White hatred of blacks would imply racial equality, which no true white Southerner would allow.¹⁴

But Jews were a different story. Whereas Negroes were not economic threats to typical Southerners, Jews were aggressive business competitors, enjoying a high standard of living, forcing Christian competitors to meet their prices, and creating resentments in some circles with their large contributions to charities, both Jewish and Christian. Thus, The Chicago Tribune believed, Jews were widely hated, both because of economic resentment and because of religious prejudice, "one intensifying the other." On the other hand, the editor of the Atlanta Constitution denied that anti-Semitism was rampant in the area. He noted appreciatively that there was never a time in Atlanta's history when Jews had not joined fraternally with Christians in matters of business development and in civic enterprises.¹⁵

The Syracuse Herald wrote that the trial exemplified how an outrageous display of mobocracy could determine the outcome of a sacred judicial proceeding. It warned that a precedent is established when any person's legal rights are denied in such a way, and that the rights of all were accordingly threatened.¹⁶

Frank's attorneys immediately appealed the verdict.¹⁷ The key question argued during appeal hearings was not the guilt or innocence of the defendant, but, rather, whether Frank received a fair trial. His attorneys emphasized that a defendant's guilt or innocence should be determined by hard evidence and an orderly process of

justice, and not by the passions of a mob. They noted especially that intense public hostility led the presiding judge to advise the defendant and his counsel not to be present when the jury returned its verdict. The defendant's involuntary absence at that time denied him a right guaranteed to all Americans under the Constitution, they argued.¹⁸

Ultimately, after many appeals for a new trial were denied, Frank's attorneys gained a hearing before the United States Supreme Court.¹⁹ Although the Supreme Court ruled adversely, holding that no violation of federal rights had been shown, its decision was not unanimous. In a seminal dissenting opinion concurred in by Justice Charles Evans Hughes, Justice Oliver Wendell Holmes declared that allegations relevant to federal citizenship rights had indeed been raised.²⁰

First, he said, the trial was conducted in a courtroom packed with a hostile audience, with a boisterous and bellicose mob congregated outside, within hearing of the jury. He noted, too, that the presiding judge requested the defendant and his counsel to absent themselves from the courtroom during the polling of the jury. He further noted that, as the polling commenced, with jurors voting for conviction, one by one, audience applause made it impossible for the judge to hear juror responses; order had to be restored before the canvass could continue.³⁴ Holmes

insisted emphatically that "mob law does not become due process of law by securing the assent of a terrorized jury. We are not speaking of mere disorder, or mere irregularities in procedure, but of a case where the processes of justice are actually subverted." He concluded that, even though the local court was competent and still had jurisdiction, the Supreme Court could still find that the defendant's federal rights under the Fourteenth Amendment were violated. Holmes was convinced that, had any juror concluded that Frank was innocent, he would have faced probable retaliation from the mob, both inside and outside the courtroom. The dissenting jurist proclaimed that "lynch law [was] as little valid when practiced by a regularly drawn jury as when administered by a mob intent on death."²¹

This was indeed a principle that needed affirmation in that era. So-called court proceedings in early twentieth century America were frequently little more than mob rule, especially in the South. The mob was after the accused man's neck by any method deemed necessary. Prior to the Supreme Court hearing, other tribunals to which Frank's attorneys appealed--including the State Supreme Court, a Federal District Court, and the Georgia Prison Commission--expressed doubt as to Frank's guilt, including the judge who presided over the original trial.²²

It would seem that the one person most responsible for the fate of Leo Frank was Edward Thomas (Tom) Watson.

An overpowering political figure in Georgia, he had largely controlled the Populist movement in the state twenty years earlier, and he now preached hatred of Jews, Catholics, and Negroes.²³ This demagogue had a many-faceted career-- Populist Party nominee for Vice President in 1896 and for President in 1904 and 1908; long-time political boss; attorney; historian; and publisher of the Weekly Jeffersonian. Watson saw an opportunity to exploit the Frank case so as to benefit himself politically and economically. When an editorial appeared in the Atlanta Journal demanding a new trial and averring that Frank's execution would be "judicial murder," Watson saw a chance to increase the circulation of his Jeffersonian by replying. He retorted that big money was being used to corrupt Georgia's courts, governments and newspapers "to save the life of a wealthy murderer." He contrasted Frank, the Jewish aristocrat, with the working daughter of an impoverished, working-class gentile. He alleged that wealthy Jewish men generally lusted after young gentile girls.²⁴

Watson stopped at nothing to engender mass hysteria. For example, he described how Mary Phagan's dress, which had been torn, was "spotted with virginal blood" (actually, there was no evidence that she had been raped). He appealed to Southern chivalry, sectional

hostility, deep-seated religious prejudices, class resentments, agrarian grievances, and state pride.²⁵

The results of Watson's campaign probably exceeded his expectations. The circulation of his Jeffersonian leaped from 10,000 to 50,000. Many who had not previously been followers of his began reading the paper, were apparently mesmerized by its appeals, and began to accept his tirades as gospel. Watson helped stir the public into a frenzy and caused many to conclude that the mild-mannered Frank was an inhuman monster. The following is an example of his coverage of the episode:

. . . the little factory girl who held to her innocence . . . a daughter of the people, of the common clay, of the blouse and the overall of those who eat bread in the sweat of the face, and who, in so many instances, are the chattel slaves of a sordid Commercialism that has no milk of human kindness in its heart of stone.²⁶

As Watson spewed forth his hatred and bigotry, Governor John Slaton and the Georgia Prison Commission were flooded with more than a hundred thousand letters from every state in the Union and also from foreign countries. A dozen or so United States Senators, plus scores of United States Representatives and State Governors, requested a commutation, as did six state legislatures (including those of Texas and Tennessee). According to the New York Times, the number of appeals by Governors and state legislatures was unprecedented in American history.²⁷

Thousands of petitions, with more than one million signatures, poured into Georgia; twenty thousand petitions bearing more than five hundred thousand names came from Chicago alone. Most major newspapers in the nation also appealed for Frank's commutation, including the major newspapers in Georgia. Over ten thousand Georgians petitioned the Governor for a commutation, including United States Senator Thomas W. Hardwick and a son and a son-in-law of the state's other United States Senator, Hoke Smith.

One letter which surely influenced the Governor was that of Leonard S. Roan, the presiding judge, who had presided over every one of Atlanta's murder trials for thirteen years previously. He was considered to be extremely fair and knowledgeable about criminal law and about trial procedure.²⁹

Although Roan had denied Frank's motion for a new trial, he confided to friends his belief that the defendant's innocence could be proven to a "mathematical certainty." He even privately acknowledged that he had wished to grant a new trial but had feared uncontrollable mob violence if he did so. His position was complicated by a consideration well described in Confessions of a Criminal Lawyer, published in 1959 by Allen Lumpkin Henson. Henson reveals that Roan told his closest friend, Judge Frederick C. Foster, that Conley's attorney, William Smith, sought him out after the trial to express belief that his client was

the murderer. In doing this--Roan felt--Smith had breached the privileged lawyer-client relationship. Few judges or courts would officially acknowledge evidence derived from such a flouting of ethics.³⁰

It is well to remember, however, that Smith knew that Frank's life was at stake. He knew also that Conley had already been convicted as an accessory to the crime and, therefore, could not be tried again for his involvement in that episode. Henson quotes this plea by Smith to Roan: "Judge, that verdict [against Frank] was only the echo of an angry mob! I can't reveal my client's secrets, yet I can't live with them!" Judge Roan died shortly after sending his plea to Governor Slaton.³¹

The tragic case left history with one major hero, Governor Slaton. On June 21, 1915, five days before his term of office expired, Slaton signed an order that saved Frank from legal execution and which assured the signer's own political demise. The order commuting Frank's sentence to life imprisonment was based primarily on inconsistencies in Jim Conley's testimony, plus other evidence which pointed to the janitor as the real murderer. This act of courage came two full years after Frank's trial and after thirteen unsuccessful appeals to various tribunals.³²

Slaton at once became a focus of the mass anti-Frank wrath which had prevailed during the trial and pre-trial period. Much as the outdoor mob had shouted "Hang the Jew"

during the trial, numerous Georgians now exclaimed: "Lynch Slaton, king of the Jews."³³

Immediately after the commutation was announced, a boisterous crowd congregated at the state capitol, armed with various firearms and clubs and shouting threats outside the Governor's office. When the situation worsened later that night, state police felt it necessary to erect a barbed-wire barrier around the Governor's mansion. A nearby crowd of five thousand hurled insults, rocks, and bottles.³⁴

For the first time in the history of the United States, National Guard units were activated to protect a state's chief executive from reactions to one of his official acts. In numerous Georgia towns and cities, Slaton and Frank were jointly burned in effigy. On the second night after the commutation, the National Guard rounded up seventy-five men in a wooded area behind the Governor's mansion; the men were armed with dynamite and other weapons.³⁵

Urging public restraint, the Governor refused to press charges against such offenders. His wife, Sarah, assured him that "I'd rather be the widow of a brave and honorable man than the wife of a coward."³⁶

It is worth noting that the commutation decision had not been forced upon Slaton, for Frank's execution had been postponed until a date after Slaton's successor, Nathaniel Harris, would assume office. Not wishing to pass the

responsibility onto his successor, however, Slaton felt it was his own duty to examine all facts of the case and to make a determination. Not to do so, he said, would have been cowardly.³⁷

Even though Slaton had won election only two years earlier by a monumental landslide, he knew that the commutation was political suicide and would probably hurt his future legal practice. He had agreed to join a law firm that included Frank's attorney, and he knew this would bring charges of favoritism.³⁸

Had Slaton refused to act in the Frank case, he would have had bright political prospects, for he was being prominently mentioned as a logical candidate in the next Georgia United States Senatorial campaign.³⁹ When Tom Watson learned that a Frank commutation was being seriously considered, he sent word that, if Slaton would allow Frank to hang, he would guarantee him the United States Senatorial seat.⁴⁰

Slaton left office five days after the commutation, and he and his wife began a long-planned vacation in California. While there, he was urged by old friends to remain in the West, because there was talk of murdering him if and when he came home.⁴¹

Meanwhile, rabid anti-Semitism continued to spread. Jews boarded up their dwellings here and there, and some Jewish women and children were sent out of the state

for their safety. Handbills warned Jewish businessmen in Marietta to close their establishments or suffer the consequences. Throughout Georgia, cards were circulated urging boycotts of Jewish merchants. One read: "Before you spend your money to protect murderers and buy governors, stop and think . . . can't you buy your shoes and necessities from an American . . . ?"⁴²

When Governor Slaton returned from his extended vacation, he publicly declared that Jim Conley had lied under oath and that the janitor had, in fact, confessed at one point to the crime which he subsequently attributed to Frank. In explaining himself, Slaton declared:

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. Two thousand years ago another governor washed his hands in a case and turned over a Jew 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.⁴³

In 1928, thirteen years after Slaton commuted Frank's sentence, he was unanimously elected President of the Atlanta Bar Association, the only office he would ever hold after his retirement from the governorship. He told friends then and throughout the rest of his life that he was happy he tried to save Frank's life.⁴⁴

Meanwhile, when a mentally disturbed convict tried to slash Frank's throat in the penitentiary, Tom Watson

urged clemency for the attacker. In the August 12, 1915, issue of his paper, Watson proclaimed that any Jew who did what Frank had done should never reach trial, that he should have been hanged without trial like Negro rapists were.⁴⁵

Watson's savage wish was gratified around midnight on August 16, 1915. A mob of twenty-five invaded Frank's dormitory at the Georgia State Prison Farm at Milledgeville, having earlier broken into the residence of the farm superintendent and seized and handcuffed him at gunpoint, and having similarly seized the warden and the two guards on duty. The attackers then forced the superintendent to unlock the door to Frank's cell. Frank was placed in an automobile, driven across the state to Marietta, Mary Phagan's home town, and lynched. During a horrible scene that followed the lynching, his body was mutilated. The superintendent, the warden, and other prison officials said they had not recognized any of the offenders.⁴⁶

The abduction and lynching of Leo Frank followed numerous ominous rumors and express threats of violence against his life. In light of this and of the prior attempt on Frank's life, the question of how and why this outrage could happen is/was indeed a pressing issue. Why were there not sufficient guards to defend the prisoner?

At the end of an unsuccessful official investigation, Governor Harris received threats upon his life when he announced continuing efforts to apprehend the

lynchers. The mayor of Atlanta apparently articulated a common viewpoint when he apologetically explained that the public had been resentful because a court determination was overturned by one man and that the mobsters accordingly felt justified in taking the law into their own hands. However, with the exception of The Jeffersonian and The Marietta Journal, the Georgia press was apparently unanimous in demanding an investigation of the lynching and punishment for the offenders.⁴⁷

One Marietta citizen gave the following statement to an Atlanta Constitution reporter the day after the lynching:

The public will never know the identities of the twenty-five brave and loyal men who took into their own hands the execution of a law that had been stripped from them by Governor Slaton. I would not advise inquisitive authorities or persons to try to reveal them. They are as zealously banded together now, and as relentlessly, as the moment they invaded the state prison.⁴⁸

The informant seemed fully informed as to the lynchers' movements, their organization, and their plans. Though not admitting (or denying) that he was a participant, he did insist that the lynchers had not acted in a spirit of lawlessness or vindictiveness but--rather--that they had soberly fulfilled a perceived obligation to the state and to the memory of Mary Phagan. They would have acted a month earlier, he declared, if Governor Harris had not learned of their plans, alerted the militia, and ordered a special watch for suspicious cars from Marietta.⁴⁹

The informant claimed that plans for Frank's lynching began on the day of the commutation. The leader was a reputable, respected and honored man, he averred, as were the twenty-four others. The informant explained how, after minutely acquainting themselves with conditions and contingencies in Milledgeville, the lynchers made practice runs in cars to familiarize themselves with roads; subsequently, they prepared detailed maps of the route. When they arrived in the vicinity during the fateful night, they made thorough observations of the prison grounds, including the barbed-wire fencing, acquainted themselves with telephone and telegraph connections, and made extensive inspections of all routes into the town. The plans seemed flawless when the hour arrived. Two men were then dispatched to sever all communications lines, so that Milledgeville authorities could not notify others. Every mobster was armed--the informant revealed--and, if necessary, would have given his life to assure completion of the mission. So smoothly executed was the plan that the informant doubted that even families of the participants knew of their absence from their residences during the episode. Even their wives and children probably would have been unable to identify them as the perpetrators!⁵⁰

As one would expect, the lynching evoked a reaction like "a shot heard 'round the world." Though almost all newspapers and magazines deplored it in the strongest

language possible, Tom Watson continued articulating his well known views. He rejoiced that the vigilante committee did what Governor Slaton would have done were he not another Benedict Arnold.⁵¹

An Atlanta Constitution editorial, written several days after the lynching, strongly condemned the act, saying that Georgia law and justice, as well as Leo Frank, had been hanged. The editors concluded that the strangest part of the whole tragedy was the lethargy, bungling, and neglect on the part of public officers. Certainly, they insisted, state officials should have anticipated the attempt.⁵²

The Constitution was certain that, if friends of the prisoner had invaded the state farm instead of the lynchers, handcuffed prison officials, captured the inadequate guard, and rescued the prisoner without firing a shot or using any other harmful weapon, the populace would have demanded an immediate and extensive investigation. Though lynching was common in Georgia, seizing an inmate in the state penitentiary and murdering him was far more brazen than an ordinary lynching; The Constitution demanded to know "What surety can Georgia offer of the enforcement of Constitutional rights and the protection of the laws?"⁵³

The editor of the Augusta Chronicle likewise expressed shame and sorrow and singled out Tom Watson as the source of the agitation which led to the lynching; the Augustan regarded the crime against Frank as secondary to

the crime against the state, an assessment with which the Savannah Press concurred. Another Georgia newspaper, the Brunswick News, wrote that Georgia should hang her head in shame for vying with Mexico in administration of criminal justice, and for disgracing herself in the eyes of enlightened people around the world. He regretted that Georgia was ruled by weaklings and that "false doctrines" were being taught to Georgia's youth. One clergyman who instantly spoke out against the lynching at the place where it occurred was the Reverend Randolph R. Claibourne. He said that it would take a century to eradicate the stain on Georgia's honor and that responsibility for the lynching rested on the consciences of those who defied the state's courts.⁵⁴

But another clergyman, the Reverend Alvan F. Sherrill, Dean of the Atlanta Theological Seminary, defended the mob in a letter to The Outlook. He argued that the men who lynched Frank were not a mob in the true sense. They were, he averred, citizens who were "sober, intelligent, of good name and character--good American citizens." They believed that the situation demanded and justified the act.⁵⁵

In reply, The Outlook expressed doubt that the lynching was approved by men of real character and standing in any community. The editors quoted from one of the first of Abraham Lincoln's prophetic addresses, delivered in 1837:

Let every American, every lover of liberty . . . swear by the blood of the Revolution never to violate in the least particular the laws of the country and never to tolerate their violence by others So to the support of the Constitution and laws let every American pledge his life, his property and his sacred honor--let every man remember that to violate the law is to trample on the blood of his father and to tear the charter of his own and his children's liberty. Let reverence for the laws . . . become the political religion of the nation.⁵⁶

The Christian Index, a Southern Baptist newspaper published in Atlanta, condemned Frank's lynching but offered a semi-apology for the lynchers. It pointed out that Frank was found guilty by a peer jury of twelve men, that the verdict was upheld by the state's higher courts and by the United States Supreme Court, and that Governor Slaton took it upon himself to become the judge and jury when he set aside the death sentence. Moreover, the Index believed, about 90 percent of the people of Georgia thought Frank was guilty and that the cause of justice had actually been served, though they deplored the means by which this was done. Disregard of court decrees by Slaton or anyone else stimulated mob violence, the Index opined. Thus, the Baptist journal mostly blamed Slaton, although it acknowledged that the lynchers became criminals when they took the law into their own hands.⁵⁷

Another Christian Index also commented about Frank's lynching--this one an official organ of the Colored Methodist Episcopal Church, published in Jackson, Tennessee. The Negro journal regretted that the mob spirit

had grown in the South. It believed that silent, acquiescent approval of mob rule by upstanding members of communities contributed to the popular feeling that such actions were indispensable to the sure apprehension and punishment of criminals. The paper noted that mobs had tasted Negro blood for years with support from some of the "best" people of the community, many of whom actually witnessed lynchings. These very same "best" people subsequently attended church and listened to ministers condemn other forms of sin, vice and crime, without mentioning lynchings and burnings of Negroes. Such sermonizing helped explain why mobsters did not believe that lynchings were morally wrong, the paper declared.⁵⁸

The black paper went on to argue that the mob spirit, which had flourished for many years with blacks as victims, was at last losing its sense of discrimination. The mobsters and their apologists had forgotten that Leo Frank was white; they had failed to heed the color of the victim. But the "best" people, the pulpit, and the mainstream press remained much aware of the traditional color line; hence, they abhorred the shame and humiliation this particular lynching had brought to Georgia. And now they professed a determination to destroy the mob spirit which had been a prime concern of Negroes for generations.⁵⁹

Many Northerners concluded that Georgia had demonstrated an incapability to manage its affairs. This

put the state in a class with Haiti (as well as Mexico); that is, it had become a jurisdiction which needed to be protected by more "civilized" powers and whose populace was judged to be backward and ignorant. In the eyes of many irate Northerners, the Leo Frank lynching and Georgia became synonymous.⁶⁰ Yet, many of Georgia's "best" argued that the state's true will was expressed by Governor Slaton when he commuted the sentence.⁶¹ Of course, this argument had serious and obvious flaws.

An especially significant analysis appeared in an article written by a New York Times staff correspondent who interviewed Governor Harris. In the interview, Harris argued that Frank was not lynched because he was a Jew, and he denied the significant existence of anti-Semitism in his state.⁶²

He felt that hostility toward Frank partly derived from the protective attitude Southern men had always had toward females, an attitude he expected to continue until woman suffrage was attained. Another prime factor in the case--he believed--was resentment of out-of-state pressures, expressed in petitions, resolutions of protest, and general attacks against Georgia. He believed that the lower classes, who were largely illiterate, learned of these attacks from people who did read and who told them about articles that appeared in Watson's Jeffersonian.⁶³

The Governor elaborated at length upon his statement on anti-Semitism, declaring that Jewish and gentile Georgians had always been friends. Jews who lived in the state were mostly of the highest classes, he explained; and being a Jew was an asset in terms of one's business image. The present anti-Jewish feeling arose because gentile Georgians felt that Jews sided with Frank only because of his religion. Men of high character were also offended, Harris explained, because Slaton commuted Frank's sentence to life imprisonment, rather than granting him a pardon. A pardon, signifying the Governor's belief in Frank's innocence, would have been less offensive, he believed.⁶⁴

Finally, Harris conjectured that many Georgians erroneously believed that Governor Slaton was one of Frank's lawyers, and that there was a conflict of interest when Slaton commuted his supposed client's sentence after every court upheld the conviction. The uneducated masses thought that Slaton was bribed or that he received part of the fee paid his law firm--Rosser, Slaton and Phillips.⁶⁵

Governor Harris was flooded by letters from inside and outside the state. Those from outside mostly denounced him for not assuring that Frank was properly guarded at the penitentiary, and some charged that he was privy to the lynching. Many from within the state counseled him to "go slow" after he announced that he would do whatever was necessary to apprehend the lynchers. Some contained threats

that, if he pressed the search, he would meet the same fate that Frank had met. It turned out that no one was arrested for the lynching; nor did a grand jury which investigated the crime return a single indictment.⁶⁶

It is worth noting that rampant anti-Semitism was notoriously manifested again in a Southern court proceeding some twenty years later, during the sensational trial of nine Negro males at Scottsboro, Alabama. The defendants were accused of rape, and their chief attorney was Samuel Liebowitz, a Jew from New York. At one point, a prosecuting attorney exclaimed: "Show them [Northerners] that Alabama justice cannot be bought and sold with Jew money from New York." Liebowitz retorted that "a conviction in this case won't be worth a pinch of snuff . . ."⁶⁷ It is surely true that the anti-Semitism manifested during the Frank episode was not a one-time deviation.

The ramifications of the Frank case were numerous. There was perhaps an unprecedented impact on Georgia politics, which destroyed the political careers of some, such as Governor Slaton, while boosting the careers of others, particularly that of Tom Watson. Watson's election to the United States Senate in 1920 would have been unlikely had it not been for the Frank episode. Another major beneficiary of the episode was Hugh M. Dorsey, the prosecutor, who was elected Governor in 1916, in one of the greatest state-wide electoral victories in Georgia's history.⁶⁸

The worst probable legacy of the case was the rebirth of the Ku Klux Klan. The reborn Klan drew many of its early members from the ranks of the Knights of Mary Phagan, whose declared purpose was the avenging of Mary Phagan's death. In contrast to the Klan which functioned in the immediate post-Civil War era, the new Klan directed its wrath toward Catholics and Jews as well as Negroes. Its slogan was, and remains, "Native, White Supremacy" (meaning "native, white Protestant supremacy").⁶⁹

Another major result transpired among American Jews. Frightened by the specter and feeling a need for greater protection, Jews organized the Anti-Defamation League of B'nai B'rith in Chicago one month after Frank's conviction. There was indeed a critical need for the new organization, for anti-Semitism reached such heights after Frank's commutation that Georgia Jews were openly ostracized (as has been noted), and some were almost literally driven out of small towns. Ultimately, fifteen hundred Jews, one-half of Georgia's Jewish population, left the state.⁷⁰

The main purpose of the newly formed Anti-Defamation League was, and is, "to work for the equality of opportunity for all Americans," in addition to combating anti-Semitism. The League aided the National Association for the Advancement of Colored People in its opposition to lynchings. At present, its main purpose is to distribute

information about bigotry and to correct inaccuracies about Judaism.⁷¹

Another major, positive change that the case helped advance was in courtroom standards. For the first time before the United States Supreme Court, Frank's attorneys raised the question of whether it was possible for a criminal defendant to receive a fair, impartial trial if spectators inside the courtroom and mobs outside intimidated jurors. They argued that such a condition violated rights bestowed on all Americans by the Fourteenth Amendment.⁷²

Justice Holmes' dissenting opinion became the basis for broadening the power of the federal judiciary in reviewing cases tried in state courts. Death penalty appeals are often based on writs of habeas corpus, which literally require officers who hold a prisoner to bring him before a judge and prove a valid reason for the detention. The right to have such a writ, which allows a judge to determine whether there is a legitimate cause for incarceration, is guaranteed by the United States Constitution. Although these writs had been used during Reconstruction, they went largely unnoticed on the federal statute books for many years. But, in the early 1900s, a wave of judicial aberrations in the South directed the Supreme Court's attention once more to state trials, which in some instances had become little more than "formalized lynchings."⁷³

Justice Holmes' opinion was articulated again, in 1923, in the landmark case of Moore v. Dempsey, at which time it became the majority Supreme Court opinion. Thereafter, a defendant's right to a "fair" trial, that is, a trial in the true sense--free from public pressures, moods and hysteria--was a right which the federal courts sought to safeguard.⁷⁴

Another weakness in the American judicial system was also exposed. During the Frank episode and previously, it was common for police and other law enforcement officers to discuss their feelings about upcoming cases; on the basis of such conversations, reporters often erroneously recounted basic facts. In other words, sensational cases were being unfairly tried in the newspapers long before they reached juries; and juries were blatantly impacted by community sentiment.⁷⁵ It seems clear that the bizarre Frank case served to diminish such abuses.

Interest in the case has remained strong over the years. In 1923, a foreign journalist employed by The Atlanta Constitution, Pierre Van Paassen, began a fresh investigation. Early in his effort, he discovered that X-rays showing human teeth indentations in Mary Phagan's left shoulder did not match X-rays of Frank's teeth. Having established this, he wanted to proceed with a comprehensive re-examination. But an anonymous correspondent warned him to "lay off the Frank case if you want to keep healthy," and

his editor would not authorize him to pursue the story further. Nor were Atlanta Jews anxious for a reopening of the case. As late as 1942, an Atlanta rabbi rejected the request of a Jewish graduate student to investigate his files on the case; he was apprehensive about stirring up trouble.⁷⁶

But major truths rarely remain suppressed forever. Certainly they did not in this instance. Sixty-nine years after the commencement of the Frank episode, in 1982, reporters Jerry Thompson and Robert Sherbourne, of the Nashville Tennessean, received tips about an aged white man in Bristol, Virginia, whose father had been an immigrant from Germany. The tips indicated that the man had witnessed a murder in his youth for which an innocent man had been found guilty. Accustomed as they were to worthless "hot" tips, the reporters at first reacted without enthusiasm. They had no inkling that the informant, Alonzo Mann, had a story to tell that would generate world-wide interest; they were, indeed, unaware of the Leo Frank case. They had not read any of the fifty or so books about the episode.⁷⁷

Conversations with Mann led them into an intensive two-month study, and they became part of a larger Tennessean team that scrutinized Mann's every word and that comprehensively investigated rumors and facts which had been otherwise developing about the case. They spent many hours in libraries and other historic repositories, studying

newspaper articles, correspondence, and legal documents. Eventually, after the reporters revisited and cross-examined Mann, their publisher insisted that he submit to a lie detector test and a voice stress test. These substantiated Mann's truthfulness in responding to questions.⁷⁸

At last, after sixty-nine years, what is ordinarily the most important factor in clearing or convicting a murder suspect, a credible material witness, had come forth. On March 7, 1982, Mann's story appeared in the Tennessean. It recounted how, as a fourteen-year-old office boy, he was present in the factory building on the Saturday (a nonworkday) when Frank allegedly murdered the girl, and that he saw Jim Conley carrying Mary Phagan's limp (though probably not lifeless) body in his arms at approximately the time the killing occurred. He did not cry out because Conley warned him that "If you ever mention this I'll kill you." When the terrorized boy told his mother what he had seen, she admonished him to remain silent and not get involved.⁷⁹

But Mann had not kept completely silent during the long interim. He told the secret to his wife, some other relatives, and a few close friends. When he tried to tell it to an Atlanta newspaper reporter in the 1950s, the journalist told him he did not wish "to rekindle the fires of anti-Semitism that had swept Atlanta" during and after the trial. Furthermore, the reporter expressed

consideration for Frank's widow, who was alive at the time.⁸⁰

Mann's urge to publicize his secret was renewed during the following decade when he suffered a heart attack. Having recently read Harry Golden's best-selling book about the Frank case, A Little Girl Is Dead, he was disposed to correct "all the lies." But still he hesitated.⁸¹

At last, in 1982, he overcame his reluctance and told the whole gruesome truth, which was in complete conflict with Jim Conley's court testimony that Frank ordered Conley to dispose of Mary Phagan's body by burning it in the basement furnace. Conley had testified that, after Frank committed the murder, the two of them conveyed the body by elevator directly from the second floor to the basement; he explicitly denied being on the first floor with the girl's body at any time.⁸²

Contradicting Conley, Mann now insisted that he saw Conley on the first floor with the unconscious girl in his arms, standing near the trap door which led to the basement. It had been obvious to Governor Slaton, after reviewing all available evidence, that Conley had lied. Police had testified that they found human excrement at the bottom of the elevator shaft on the Sunday when they began their investigation, one day after the murder. Slaton pointed out that the officers spoke of the feces being in

their "natural" state, that is, unmashed, and that Conley had admitted to detectives that he had had a bowel movement at the bottom of the elevator shaft Saturday morning. When the detectives ran the elevator from the second floor to the basement on Sunday afternoon (after earlier seeing the undisturbed droppings), they observed that the elevator stopped in the basement only when it came to rest on the floor of the shaft and only after it squashed the excrement. Therefore, Slaton concluded, the elevator had not been to the basement between Saturday morning, at which time Conley relieved himself there, and Sunday afternoon when the detectives rode it. Assuming that Conley's story about the Saturday morning bowel movement was true, the Governor concluded that the janitor and Frank could not have taken the girl's body to the basement by elevator Saturday afternoon, and thus that Conley had lied.⁸³

Mann characterized Conley's trial testimony as "a lie from beginning to end." He deeply regretted his silence, but he had assumed during the trial and pre-trial investigation that justice would prevail and that Frank would ultimately be freed. When Frank was found guilty and imprisoned, Mann's parents assured their son that nothing could be done to change the verdict. And so, he remained silent. After the lynching, the young man was conscience-stricken by the knowledge that his silence cost Leo Frank his life. Now, in 1982, he rejoiced that "... at last I

am able to get this off my heart." He believed his revelation would help people understand that courts and juries can make grievous mistakes.⁸⁴

In fact, many people who had researched and examined the case during the sixty-nine-year interval had suspected that Jim Conley, not Leo Frank, committed the murder, and some of them had written books and articles which tried to explain how the murder actually occurred. But supportive eye-witness testimony was lacking. Mann's revelations, at long last, provided that missing element.⁸⁵

When Mann had been called as a defense witness during the trial, he had truthfully testified that he left the factory shortly before noon on the day of the crime. But when his questioners failed to inquire whether he had returned to the premises later that day, he did not volunteer that crucial information.⁸⁶

Though he realized in 1982 that some would be angry with him for his long silence, Mann was prepared to live with this realization. His final statement to Tennessean reporters was: ". . . I know that I haven't a long time to live. All that I have said is the truth. When my time comes, I hope that God understands me better for having told it. That is what matters most."⁸⁷

As one might guess, reporters Thompson and Sherbourne came upon several new, important pieces of Frank-case information beyond the Mann story. On October 29,

1914, one year after his conviction, Frank had written from his prison cell to John Gould, a Cornell University classmate. In the letter, which the journalists obtained from Gould's niece, Henrietta Tchannen, of Quincy, Illinois, Frank expressed confidence that the courts would ultimately clear him. He also wrote of the rabid anti-Semitism which was rampant in Georgia at the time, and about new evidence which he felt would prove his innocence. He stated in the letter:

. . . Still the public, so easily aroused here in the South, conceived a vicious animosity and vindictive hatred toward me, aided and abetted by racial prejudice and [by a desire for] getting the man higher up. Discretion and intelligence was [sic] thrown to the winds and unreasoning mob rule took its [their] place. A dwarfed and cowardly judiciary, in spite of the truth and the facts, lent its ear to the popular outcry; hence my present predicament. In spite of all, however, I am still fighting and must win in the end . . . "88

One reason for Frank's optimism was that Conley's attorney, William Smith, had issued a public statement on October 2, 1914, saying he knew Conley had lied under oath about several facts. In Frank's letter to Gould, he related that "Smith's declaration aroused a storm of disapproval and lynching threats. However, Smith appears to have backbone and is not to be scared off."89

Unfortunately, Frank erred, as did many ordinary Georgians, and many respected newspapermen, in concluding that Smith had identified Conley as the murderer. In truth, Smith stopped well short of such an accusation. He merely

said that he knew Conley had lied and that he believed Frank was innocent. It had been previously reported that Conley confessed his guilt to Smith but that Smith was ethically bound not to reveal this. However, on October 5, 1914, the Atlanta Constitution had reported that Smith took great pains to state emphatically to the press that Conley had made no damaging admissions to him. Smith's belief in Frank's innocence had been arrived at otherwise--through an exhaustive study of the entire case.⁹⁰

In addition to his letter to John Gould in 1914, Frank wrote a series of seven pamphlet manuscripts which identified many inaccuracies in the evidence. In the first of the unpublished pamphlets, all of which were obtained by the Tennessean in 1982, Frank enumerated various discrepancies and lies which his attorneys had failed to recognize during the trial, the majority of which were advanced by the prosecution and established by them to the satisfaction of the court.⁹¹

The first of these was that Mary Phagan was murdered on the second floor by strangulation. When officers had found the body in the basement, it was so covered with soot and sawdust, that they could not tell at first whether the victim was white or black. Inasmuch as there was neither soot nor sawdust on the first or second floors of the factory, inasmuch as dirt, cinders, and sawdust were found in the girl's nostrils and mouth, inasmuch as dirt and

sawdust were discovered under her fingernails, and inasmuch as soot, cinders, and sawdust were present in abundance in the basement, Phagan was no doubt alive when she reached the basement, and she no doubt struggled before she expired. The basement had to be the place where she was last alive and where her final struggle and murder took place. Yet Conley had testified that Frank killed the girl on the second floor.⁹²

Moreover, two large spots of blood were found on the left shoulder of the girl's dress, and a major wound on her head had almost certainly bled profusely. Yet no fresh blood was found on either the first or second floor of the factory. All the aforementioned was uncontested by either the prosecuting or defense attorneys.⁹³

Last, Frank wrote of a large staple which had been removed from the inside of a basement rear door leading to the alley, and of several bloody fingerprints that were found on that door (and which the police made no effort to identify). Police removed the bloody boards and testified that they misplaced them.⁹⁴ One wonders whether this merely showed incredible negligence or stupidity, or whether evidence was deliberately suppressed.

In the decade following the lynching, new allegations from others had pointed to Conley as the murderer. For example, one of his girlfriends, Annie Carter, declared in a sworn affidavit that he had admitted

his guilt to her. Moreover (as has been said), William Smith, Conley's attorney, acknowledged his belief that Conley's testimony was untrue and that Frank was innocent. Still later, several of Smith's colleagues said that Conley had confessed the murder to Smith. In 1923, a prison inmate declared that he was in the pencil factory on the day of the murder and that he saw the girl struggling with Conley.⁹⁵

After a hiatus of sixty-nine years, Mann's reconstruction of the murder scene meshed completely, even down to the smallest detail, with the discrepancies Frank had uncovered in 1914 from his prison cell and with these other post-trial revelations and allegations.⁹⁶ Mann recalled that, although it was only 8:00 a.m. when he first saw Conley on the day of the murder, the janitor was obviously under the influence of alcohol. Conley had asked Mann for a dime to purchase beer. Mann falsely told him he had no money, because the janitor had never repaid money previously borrowed from the boy.⁹⁷

Mann surmised that Conley abducted Mary Phagan just minutes after Frank paid her her weekly wages of \$1.20 on the second floor--as she came down the stairs. Having seen her go upstairs, Conley waited for her under the stairway on the first floor, where he had been all morning. Mann theorized that Conley knocked her unconscious, lifted her in his arms, and was carrying her to the trap door which led to the basement when Mann saw them.⁹⁸

When Mann observed Conley holding the unconscious girl in his arms, he saw no cord around her neck nor any sign of blood. Thus, he came to believe that Mary Phagan was alive at that specific moment. The conclusion which seems inescapable is that Conley dropped her limp body down the trap door into the basement, went downstairs, and killed her there.⁹⁹

The revelations in the Tennessean evoked numerous commentaries around the world. Georgia State Supreme Court Justice Thomas Moran, who was interviewed by Thompson and Sherbourne, hoped that the public would generally realize in 1982 that the conviction and subsequent lynching of Frank had been a "grievous wrong" and that people would dedicate themselves to preventing such miscarriages of justice in the future.¹⁰⁰

Moran recalled that, when he took the bar examination in 1948, ex-Governor Slaton was Chairman of the Georgia Bar Examiners. Through conversations with Slaton and Jim Doggen (an elderly friend of Moran's who was an attorney during the era of Frank's trial), Moran learned that both men believed Frank to have been innocent. According to Doggen, when William Smith told him of his plans to state publicly his belief that Leo Frank was innocent, Doggen urged him not to do so. He further advised Smith that, if he was determined to carry through with his intention, to "get his family out of Atlanta first."¹⁰¹

Hence, Moran well understood Alonzo Mann's fear of publicizing what he had seen. Had Mann spoken up at the time, Moran declared, he would have jeopardized his own life. Furthermore, "if the jury had returned a verdict of acquittal, we would have had twelve lynchings."¹⁰²

Franklin Garrett, an Atlanta author and city historian, also reacted to the Tennessean articles; he conjectured that, even had Mann come forward with his recent testimony during the trial, the jury's verdict would have been the same. There was at the time a "blood lust to avenge Mary Phagan's murder," he declared. So high was the level of emotion that thousands marched on the Governor's mansion (as has been noted) with guns, dynamite, and a hanging rope. Garrett recalled that similar reaction erupted after William Smith acknowledged his belief in Frank's innocence. Smith escaped on a train after a mob with bullwhips chased him to the railroad station.¹⁰³

A similar commentary came also in the 1980s from Clarence Feibelman, who had witnessed the mob scene outside the courtroom. When walking past the "seething crowd" en route to high school, he had seen "a bunch of rednecks and rabble-rousers out there. You could feel the passion and the prejudice. The jury couldn't bring in any verdict but guilty."¹⁰⁴

Among the other commentaries was that of Haynes Johnson, grandson of the defense attorney who brought

Frank's appeal before the Supreme Court. Johnson noted that the evidence against Frank was all circumstantial, except for the testimony of Jim Conley, a "convicted felon, a notorious criminal and a self-confessed liar who had repeatedly served sentences in jail."¹⁰⁵ It would have been highly unlikely that a jury in Georgia in 1913 would have convicted a white, gentile Protestant for murder on the testimony of a Negro, particularly one with the character and background of Jim Conley. But a white Jew was different.

However, not all reactions generated by Mann's 1982 testimony were favorable toward Frank or unfavorable toward the lynchers. People such as Bernie Dukehart, an ex-Klansman, continue to maintain that Frank got what he deserved. Dukehart takes pride in his ability to recite, even now, The Ballad of Mary Phagan and in surmising that his father and brother may have been part of the mob.¹⁰⁶

A Ku Klux Klan publicist, Edward Fields, head of a new order of the Klan and also head of the National States' Rights Party, says that the lynchers were merely carrying out the will of the jury. He feels that Mann's testimony did nothing to exonerate Frank. He believes that recent efforts to clear Frank are part of a broader Jewish effort to rewrite history. (He complains that the Anti-Defamation League wants Georgia's history textbooks "to say that bigoted Georgia whites hanged an innocent New York Jew.")

Fields also assailed Georgia's black leaders for not reacting adversely to Mann, since Mann (a white) has tarnished the name of a deceased black man. In actuality, the Cobb County chapter of the National Association for the Advancement of Colored People joined with the Anti-Defamation League in calling "for equal justice for all men, regardless of race, religion, or national origin."¹⁰⁷

History repeated itself in the 1980s when the Klan ignited a cross near Stone Mountain, as it had done sixty-eight years earlier, after Leo Frank's lynching. The same hatred which marked an unparalleled earlier wave of anti-Semitism was once again evident. Robed members of the Klan from several states marched somberly to Mary Phagan's grave, where they placed a wreath of flowers and listened to Arkansas Klan leader Tom Robb tell how the Klan defended the "rights of our people." Some carried signs of protest against Atlanta's "Jew controlled" newspapers. Others called for the abolition of the Anti-Defamation League.¹⁰⁸ Tom Watson's legacy lives on; it is alive and well in the Ku Klux Klan.

However, in sharp contrast to reactions at the time of Frank's lynching, about eleven hundred people, including Mayor Bob Fluornoy, gathered in a Marietta church in 1983 to denounce the Klan for exploiting the Frank case and to advise the organization that it was no longer welcome there. Dale Schwartz, one of the attorneys who worked on a

petition for Frank's posthumous pardon, declared that klansmen had to continue insisting that Frank was guilty, because they did not want to acknowledge that they lynched an innocent man.¹⁰⁹

Ten months after Mann's statement appeared in the Tennessean, the Georgia State Board of Pardons and Paroles received a joint application from the Anti-Defamation League, the American Jewish Committee, and the Atlanta Jewish Federation requesting that a full pardon be granted to Leo Frank. After considering the petition, the Board announced that there could be no full pardon unless new evidence proved Frank's innocence beyond any doubt. The application before the Board, Mann's affidavit of March 4, 1982, and numerous other documents did not provide such evidence, the panel declared.¹¹⁰

After reviewing the new materials, including Mann's video-taped statement, which was recorded by a court reporter, the Board had concluded that, even if accurate, the information proved only that the elevator was not used to transport Mary Phagan's body to the basement. Governor Slaton had also drawn this conclusion. The Board declared Mann's affidavit did not vindicate Frank.¹¹¹

But the Board conceded that Frank's lynching and the failure to apprehend or indict any of the lynchers were stains upon the state which even a posthumous pardon could not remove. Unfortunately, seventy years had lapsed since

the crime, and that time span made it virtually impossible to reconstruct the tragic events. Even though trial records were intact, the Board declared, no principals or witnesses were alive other than Mann. The case has been tainted by the lynching, and many questions were now unanswerable; for example, if Frank had not been murdered, would he eventually have won a new trial, and/or would he ultimately have been paroled?¹¹²

In sum, the Board concluded that it lacked proof that would enable it to decide the guilt or innocence of Leo Frank. It reasoned that, without authority to grant the kind of pardon requested except when innocence was conclusively proven, it had no alternative other than a denial of the application.¹¹³

The ruling drew wide criticism in both Southern and non-Southern newspapers. The Atlanta Journal, for instance, made light of the Board's conclusion that Frank's innocence could not be "conclusively proven" and complained that the panel proceeded from a fallacious judicial principle. Few living individuals who are accused can "conclusively prove" that they are not guilty, the Journal declared. But, under the American judicial system, accused persons are not required to prove innocence, much less prove it conclusively; on the contrary, the state must prove their guilt. In regard to the Frank case, it was clearly evident that, had anti-Semitism not consumed reason and justice, the

evidence and testimony would not have sufficed to bring the accused man to trial. The Journal concluded that the Pardons and Peroles Board had completely overlooked the goal of the American legal system: Justice.¹¹⁴

But, Mann did not give up. Several weeks before his death, he again dispatched a communication to the Board, wherein he said:

. . . I know I don't have much longer to live
 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. God Bless You

Regretfully, he did not live to see that day. The old man died on March 18, 1985.¹¹⁵

But it turned out that the Board had not spoken its last word on the matter. Board member Wayne Morris let it be known that the specific wording or miswording of the application was a big problem. And Silas Moore, Executive Director of the Board, explained that the panel customarily granted only two types of pardon. One was a "pardon of forgiveness," granted to criminals who admit guilt but who have led exemplary lives for at least five years after release from prison, and who want their civil rights restored; the other was a much rarer pardon of innocence, which was granted only when there was irrefutable proof of innocence. Those who petitioned for Frank's pardon in 1983 specifically asked that he not be granted a pardon of forgiveness, which would imply guilt.¹¹⁶

The impasse was finally broken when Jewish leaders outlined a new possibility to the Board; that is, a third type of pardon which would not judge Frank's guilt or innocence. Rather, the Board could base its action on the failure of the Georgia prison system to protect Frank and of the state to bring his killers to justice.¹¹⁷

At long last, on March 11, 1986, the Georgia Paroles and Pardons Board granted Leo Frank this type of posthumous pardon, based on its recognition of the state's failure to protect him, a failure that prevented him from continuing legal appeals. Especially since the state had failed to bring Frank's killers to justice, the Board explained, the pardon would serve to some extent as a state effort to atone for its own malfeasance.¹¹⁸

The ruling was generally acclaimed. Gerald Cohen, President of the Atlanta Jewish Federation, rejoiced that "a tragic stigma [had been removed] from the great state of Georgia; indeed, from the collective conscience of our nation." The Anti-Defamation League, founded in 1913 as a reaction to the Frank travesty (as has been noted), was finally able to close the files on its original case. The American Jewish Committee commented that "The soul of Leo Frank can finally rest in peace and [that] the entire Jewish community no longer must fear the terrible memories and the outrageous blood libel which this nightmarish trial and

lynching produced." That group was chagrined, however, that Frank was not absolved of guilt.¹¹⁹

In retrospect, one can see that the makings of the tragedy were present in the larger society in which Frank and Phagan lived. The embers of anti-Semitism were fanned up by Tom Watson into a blazing fire, which engulfed much of the state. Looking back from a vantage point of 1987, it seems reasonable to conjecture that, even if Mann's full and truthful testimony had been given to the jury in 1913, and even if other subsequent revelations about the Phagan murder had been given at that time, the verdict (notwithstanding) would probably have been the same. Blame by no means rests upon Watson alone--indeed, no more than blame for Nazi Germany rests upon Hitler alone.

In both cases, mobs--and an inflamed public--accepted what they read or were told because what they read or were told reinforced what they already believed and what they wanted to hear. This commentary generally applies to societies that allow mob rule to subvert truth and justice. Without these elements--truth and justice--no nation can rightfully call itself civilized or rightfully assume a role as world leader.

Happily, the belated pardon partially rectified the tragedy. Even though there are still organizations in the United States like the Ku Klux Klan and the Neo-Nazi Party, hopefully the notorious Leo Frank case can serve as a

reminder of what can happen when prejudice and hatred triumph in our judicial system. One can only hope that Frank's prophetic words to the judge who pronounced his death sentence will somehow help avert another such tragedy:

. . . Under the guise of the law your honor is about to pronounce the words that will condemn to death an innocent man Where a good name and stainless honor count for naught against the word of a vile criminal; where a mob crying for blood invaded the courtroom and became the dominant factor in what should have been a solemn judicial trial As there is a God in heaven, my vindication will come some day.¹²⁰

Notes

¹The Frank case has received treatment in innumerable articles and in approximately fifty books. The most authoritative of these is Leonard Dinnerstein's The Leo Frank Case (New York, 1968) which developed out of his doctoral dissertation at Columbia University. Of course, the Frank-case story has been drastically altered in the present decade by belated testimony from a primary witness, Alonzo Mann, by new revelations from other parties, and unknown documents. The Georgia State Board of Pardons and Paroles formally considered appeals for a posthumous pardon in 1983 and 1986; a pardon was granted after the last appeal. Nancy MacLean, a graduate student at the University of Wisconsin-Madison, reported a doctoral dissertation in progress in December, 1984, entitled "The Leo Frank Case: The Role of Family and Gender Ideology in the Development of Political Reaction, Georgia, 1890-1920." She explained her intent in this manner: "Through analysis of both the family and gender themes prominent in the trial and lynching of Leo Frank and the social histories of the constituencies involved, the dissertation tests the hypothesis that social changes threatened the family system of poor whites, creating anxieties that give reactionary politics a popular appeal." American Historical Association, Doctoral Dissertations in History, July 1984-December 1984 (Washington, 1985), IX, no. 2, pp. 30-31.

A canvass of the standard indexes to doctoral dissertations produced in the United States and also of those now in progress reveals no studies of the Leo Frank case other than the MacLean project and Dinnerstein's 1967 dissertation at Columbia University.

²The history of the American South receives comprehensive scholarly treatment in a majestic series of books whose original editors were Wendell Holmes Stephenson and E. Merton Coulter, under the general title A History of the American South (Baton Rouge, 10 vols. projected, 9 vols. published, 1948-). The best source for scholarly articles, book reviews, and bibliographic guidance in the field of Southern history is the quarterly Journal of Southern History (1935-). The best study of the South's special propensity for violence is Shelton Hackney's "Southern Violence," in American Historical Review, LXXIV (February, 1969), 906-925. See also Bertram Wyatt-Brown, Honor and Violence in the Old South (New York, 1983). For a comprehensive historical study of violence throughout the

United States, see Hugh Davis Graham and Ted Robert Gurr (eds.), Violence in America, Historical and Comparative Perspectives: A Report to the National Commission on the Causes and Prevention of Violence, June 1969 (New York, 1969). In his The Leo Frank Case, Leonard Dinnerstein argues that anti-Semitism has been more rampant in the South than generally elsewhere in the United States, a conclusion with which this author concurs. However, some well-regarded scholars draw different conclusions. When recounting an incident of violence in 1889 against the property of merchants in a Louisiana town who were apparently Jews, C. Vann Woodward surmises that the episode was "not indicative of any widespread antisemitism, for there seems to have been very little [in the South]." C. Vann Woodward, Origins of the New South (Baton Rouge, 1951), 188, n. Moreover, long before a Jew served in a United States Presidential cabinet, Judah P. Benjamin, a Jew, served in the Confederate Presidential cabinet of Jefferson Davis. Possibly it is true that the prejudices of Southern gentiles against Southern-born Jews have not been extreme compared to anti-Semitism among gentiles in the North. And it is almost surely true that some of the anti-Semitism that was manifested against Jewish bankers, capitalists, and wealthy merchants reflected widespread populist resentments against people of wealth in general, and against a Northern-controlled economic system that prevailed in the nation at large. As we all know, the Shylock stereotype was not peculiar to the American South, nor did it originate in the nineteenth or twentieth centuries. An authoritative and standard treatment of Jews in the South is Leonard Dinnerstein and Mary Dale Palsson (eds.), Jews in the South (Baton Rouge, 1973).

³Frank Ritter, Jerry Thompson, and Robert Sherbourne, "An Innocent Man Was Lynched," Nashville Tennessean, March 7, 1982, Special News Section, 2.

⁴Ibid.

⁵Ibid.

⁶Art Harris, "Frank Case Still Painful for Atlanta's Jews," Washington Post, March 27, 1982, A12.

⁷Lynn Ianiello, "Trial by Prejudice," Anti-Defamation League Bulletin, March 1963, p. 6; Dinnerstein, The Leo Frank Case, 19.

⁸Ianiello, "Trial by Prejudice," 6-7.

⁹A Public Man of Georgia, "Why Was Frank Lynched: Was it Race Hatred, Dirty Politics, Yellow Journalism?" The Forum, December 1916, pp. 685-686.

¹⁰C. Vann Woodward, Tom Watson: Agrarian Rebel (London: Oxford University Press, 1978), 436. Chapter 23 in this volume, entitled "The Lecherous Jew," provides an able summary of the Frank episode.

¹¹Robert Sherbourne, "She Kissed Her Mother Goodbye," Nashville Tennessean, March 7, 1982, Special News Section, 4.

¹²Woodward, 436.

¹³Lynne Ianiello, "A Witness Reveals Leo Frank Was Innocent," Anti-Defamation League Bulletin, May 1982, p. 13.

¹⁴"Anti-Semitism and the Frank Case," The Literary Digest, January 16, 1915, p. 85.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Woodward, Tom Watson, 436.

¹⁸"The Appeal in the Frank Case," The Outlook, January 6, 1915, p. 6.

¹⁹Woodward, Tom Watson, 436.

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²¹Frank v. Mangum, 987.

²²Woodward, Tom Watson, 436.

²³Ritter, Thompson, and Sherbourne, "An Innocent Man," 2.

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²⁶A Public Man of Georgia, "Why Was Frank Lynched?" 685-686; Dinnerstein, The Leo Frank Case, 98.

²⁷Dinnerstein, The Leo Frank Case, 118.

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³²Ibid.; John Seigenthaler, "Solitary Hero Emerged From Tragedy," Nashville Tennessean, March 7, 1982, 10; Dinnerstein, The Leo Frank Case, 126-127.

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⁷⁵Dinnerstein, 150.

⁷⁶Ibid., 158; Robert Sherbourne, "Evidence Paints Janitor as Real Killer," Nashville Tennessean, March 7, 1982, Special News Section, 7.

⁷⁷Jerry Thompson and Robert Sherbourne, "Georgia Governor Supports Pardon of Leo Frank," Nashville Tennessean, December 22, 1983, pp. 1a, 6.

⁷⁸Ibid., p. 6.

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⁸²Ritter, Thompson, and Sherbourne, "An Innocent Man Was Lynched," 1.

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⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷Ibid.

⁸⁸Jerry Thompson and Robert Sherbourne, "Leo Frank was Certain Freedom would be His," Nashville Tennessean, March 21, 1982, p. 1A.

⁸⁹Ibid.

⁹⁰Atlanta Constitution, October 5, 1914, quoted in the Nashville Tennessean in an article by Jerry Thompson and Robert Sherbourne, "Leo Frank Was Certain Freedom Would Be His," March 21, 1982, p. 1A. Dinnerstein quotes from the Jeffersonian, October 3, 1914, apparently erroneously, that Conley had actually confessed his guilt to Smith. It was not unethical for Smith to issue the statement because Conley was already serving a jail sentence for his admitted role in the crime and could not be retried for the same crime.

⁹¹Jerry Thompson and Robert Sherbourne, "Leo Frank Found Lies in His Case," Nashville Tennessean, March 28, 1982, p. 1A.

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⁹⁷Frank Ritter, "Terrified Boy Feared for His Life," Nashville Tennessean, March 7, 1982, Special News Section, 3.

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¹⁰⁰Jerry Thompson and Robert Sherbourne, "Judge Hopes Frank Case Teaches Lesson," Nashville Tennessean, March 10, 1982, p. 1.

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- ¹¹⁹Jerry Thompson, "Anti-Defamation League Closes Its Oldest Case," Nashville Tennessean, March 12, 1986, p. 2A.
- ¹²⁰"Frank's Statement," Chattanooga News, December 11, 1914, p. 4.

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