

To produce the definitive  
book on the 1913

lynching of convicted

murderer Leo Frank,

the author devoted

17 years

of his life

AND THE

— and came to the

conclusion that Leo

Frank didn't kill

Mary Phagan

by Steve Oney (ABJ '79)



# RISE SHALL DEAD



JOE MCTYRE COLLECTION/PANTHEON BOOKS  
AND THE DEAD SHALL RISE

As I walked across the campus last October en route to the Chapel to give a talk on *And the Dead Shall Rise*, my new book on the Leo Frank murder case, I experienced one of those moments that lead people to remark that their lives have come full circle. During my student days in Athens 30 years ago, I often trod these same paths. Glimpses of my younger self—a rebellious yet bookish aspirant who challenged authority but was just as ready to listen to wisdom—flashed through my mind. So, too, did the thought that it was here that I absorbed not only the curriculum but some unarticulated understanding of what it is to be a Georgian. This is where my fascination with the state's history began, where I gained the mixture of devotion and curiosity that would sustain me during the 17 years it took to explore one of the most complex and incendiary episodes in Georgia's past and the nation's.

Not that the long road culminating in the publication of *And the Dead Shall Rise* (Pantheon, 2003) literally began in Athens. Rather, it started in a restaurant 2,000 miles to the west in a city that in its sun-dazzled fixation on surface-level immediacy is everything that my leafy old college town is not—Los Angeles. I had moved to





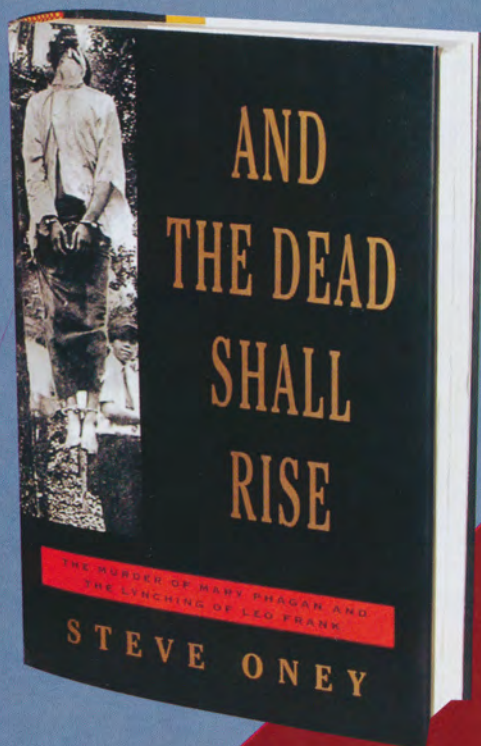
AP PHOTO/KEVORK DJANSEZIAN

California in the early 1980s to make my way as a magazine writer. For the remainder of the decade, I contributed frequently to *Playboy*, *GQ*, *Premiere*, and *Esquire*. Yet much as I enjoyed being paid to profile movie stars (Harrison Ford, Nick Nolte), network executives (Brandon Tartikoff) and famous directors (Martin Scorsese, Francis Ford Coppola), I often found myself thinking that this was not my life's work. Over lunch that day 20 years ago, I kept telling my dining companion that I wanted to write about subjects more substantive than Hollywood. When she asked me to be specific, however, I could do no more than say that the South continued to exert a pull on me. To my good fortune, the woman to whom I made these vague pronouncements was Kathy Robbins, who is not just my friend but my literary agent. One of those people who are as empathic as they are shrewd, she thought for a second and then asked: "What do you know about Leo Frank?"

The suggestion that I might want to delve into an affair that had occurred seven decades before was not quite as improbable as it might initially sound. In 1984, the strange and sorrowful story of Leo Frank was back in the headlines thanks to the late-

**Oney tried to approach the writing of *And the Dead Shall Rise* (Pantheon, 2003) with a completely open mind—as though he had awakened in Atlanta on that fateful day, April 26, 1913, when 13-year-old Mary Phagan (see opposite page/bottom) was killed. But hers wasn't the only murder mystery Oney hoped to unravel. There was also the lynching of convicted killer Leo Frank (see opposite page/top), a Northern Jew who was victimized by anti-semitism.**





After the lynching,

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in-life assertions of 85-year-old Alonzo Mann, who as a teenager had been Frank's office boy. Mann's claims had, in fact, resulted in a renewed legal battle.

During the late-1970s, when I'd worked as a writer for *The Atlanta Journal & Constitution Magazine*, I'd heard enough about the tale from the veteran *Constitution* columnist Celestine Sibley—who as a young reporter had known many of the participants—to realize that it contained the elements of both great mystery and unending tragedy.

In 1913, Frank, a Cornell-educated Northern Jew who'd moved to Atlanta to manage the National Pencil Factory, was convicted of the murder of Mary Phagan, a child laborer who'd toiled for pennies an hour at his plant. The state's star witness was a black factory janitor named Jim Conley. The defense, believing that Frank had been victimized by an anti-Semitic prosecution, appealed the case all the way to the

United States Supreme Court. In the process, the matter became a nationwide *cause celebre*. At the eleventh-hour, Georgia Gov. John Slaton commuted Frank's death sentence to life imprisonment, a decision that so outraged the leading citizens of the Phagan girl's hometown of Marietta that they abducted Frank from the state prison (which was then in Milledgeville), drove him back to Marietta, and lynched him. The lynching sparked the creation of the modern Ku Klux Klan and gave purpose to what was then a new organization—the Anti-Defamation League.

Small wonder, then, that several weeks after my agent broached the topic to me, I flew to Johnson City, Tenn., where Alonzo Mann was being treated for heart disease at a VA hospital. Mann told me what he'd seen on April 26, 1913, the day of the murder. He'd worked in Frank's second-floor office until noon that Saturday, then departed. No sooner had he walked a block or so away than he realized he had forgotten something and turned back. Upon entering the building's first-floor lobby, he saw Jim Conley carrying little Mary's body over his shoulder. When Conley realized he'd been spotted, Mann said Conley grabbed for him with his free hand, then growled: "If you tell anyone about this, I'll kill you, too." Frightened, Mann rushed home. During the days and months of hysteria that followed, he added, his parents instructed him to keep quiet. As a young adult, Mann told his story to a few people but no one believed him. He was finally speaking publicly because he didn't want to go to his death bed in possession of information that might posthumously exonerate Frank.

Alonzo Mann's contentions became the hook for a lengthy re-examination of the Frank case that I wrote for *Esquire*, which in turn became the germ of a proposal that in 1986 landed me a contract with a New York publisher. Yet by the time I signed my book deal, I realized that Mann's story was, in a sense, only a sidelight. (Both the prosecution and the defense agreed that Conley carried Mary Phagan's body, the difference being that the prosecution said he'd done so at Frank's behest while the defense maintained he'd acted on his own.) I was after something bigger—nothing less than the definitive work on the subject. While doing my preliminary research, I'd surveyed the existing literature and determined there was room for a sweeping and, equally important, balanced piece of social history. As I saw it, the proper tack would be to discard all preconceptions. To the extent that it was possible, I would approach the topic as if I'd awakened in Atlanta on the morning of April 26, 1913. I would work from only original sources. My goal was simple and daunting—to find out what actually happened and then tell the story.



I started by reading the three daily newspapers published in Atlanta in 1913—the *Journal*, the *Constitution*, and the *Georgian*, a sensationalistic sheet owned by William Randolph Hearst. From the day Mary's body was discovered to Frank's conviction and on through the appeals, these organs ran thousands of pieces, and I read and cross-referenced them all. (I'm not exaggerating when I say that I spent a solid two years with my face pressed against the screen of a microfilm machine.) I also immersed myself in a never-before-consulted source—the files of the Pinkerton Detective Agency, which had been hired by Frank's employers to probe the crime. Because

address via city directories through 1969, when she disappeared from public records. I even called each of the nearly 100 Conleys in the phone book. Eventually, I located one man well acquainted with Conley. I also learned from an overlooked piece of trial testimony that Conley's schooling was far better than that of most blacks of his era. He had been a student of two of Atlanta's most influential black teachers—one a Spelman graduate, the other an Atlanta University alumna. In short, he was well educated enough to have concocted a scheme to pin Mary Phagan's murder on his white boss.

I was equally determined to learn who Leo Frank was. At Brandeis University outside of Boston, I pored over Frank's love letters to his future wife, Lucille Selig. At the Atlanta History Center, I pondered the notebook in which Frank, shortly after arriving in Georgia, jotted down chess gambits in order to teach himself the game. And I was transfixed by a handmade Valentine card Lucille had given to Leo in 1909 shortly before he proposed marriage to her.

As I was learning about Mary Phagan's murder, I was also pursuing the tale's other mystery. Leo Frank's lynching has long been one of America's great unsolved crimes. At the time it happened, Frank was the nation's most famous convict. He was held in a state institution surrounded by gun towers that provided clear shots at anyone coming or going. The men who abducted Frank not only failed to draw any fire, they were given the run of the place. And once the abduction was completed, they faced no interference as they raced north through multiple jurisdictions back to Marietta. (This was, for its day, remarkable—a 300-mile round trip in Model-Ts over dirt roads in the dead of night.) Afterward, no one

involved was even inconvenienced, much less arrested.

To learn how this worked, I requisitioned tag records for all cars registered in Marietta from 1913-15. Out of this group of several hundred vehicles were most of those used in the raid on Milledgeville. I also went to school on Marietta society. In the early 20th century, the *Journal* and the *Constitution* regularly ran items on dinner parties and social engagements in Marietta—with guest lists that revealed the connections among Marietta's elites. I matched the names of car owners and power brokers with the names of citizens who'd made remarks opposing Gov. Slaton's commutation of Frank's death sentence. Not surprisingly, the same names kept cropping up.



CORBIS/PANTHEON BOOKS AND THE DEAD SHALL RISE

**At the town square in Marietta, where Mary Phagan lived, people gathered to celebrate the lynching of Leo Frank.**

Pinkerton agents worked hand-in-hand with Atlanta's police, these dossiers (housed at the American Jewish Archives in Cincinnati) provided a previously unavailable look at the activities of the detectives who compiled the key evidence.

I also went as deeply as I could into the lives of the case's principals. The truth about Jim Conley became an obsession for me. I sat in church fellowship halls in Vine City, Conley's raffish, old Atlanta neighborhood, interviewing elderly men and women who might have known him. I traced his wife's



The guilty verdict turned

on the word of a black man

(who may have been the

real killer) against a

Northern Jew.

On his death bed, William Smith—who was initially part of the legal team that prosecuted Frank—wrote a note saying he had come to believe Frank was innocent.



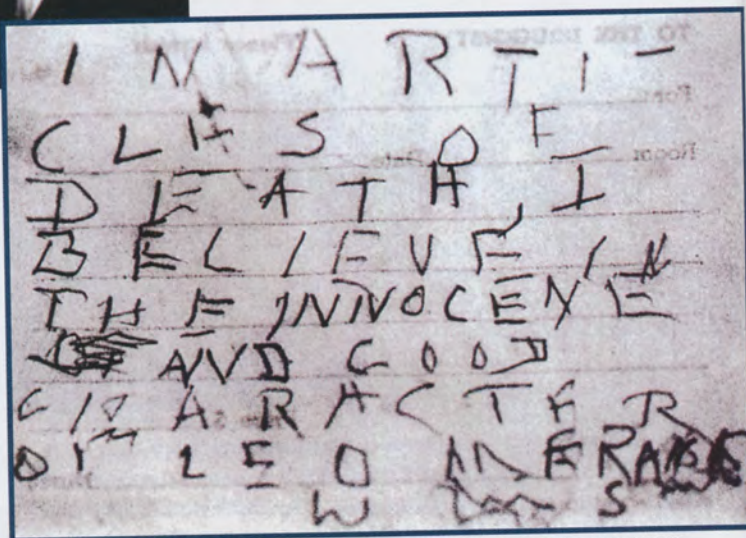
COURTESY WALTER SMITH/PANTHEON BOOKS AND THE DEAD SHALL RISE

wanted her ashes scattered in a public park, but an Atlanta ordinance forbade it. For the next six years, the ashes sat in a box at Patterson's Funeral Home. One day, Alan received what for him was an upsetting call. The ashes needed to be disposed of. Alan didn't know what to do. In the years since Lucille passed away, the Temple, the city's reform synagogue, had been bombed. This event had set Atlanta's Jews on edge. It was no wonder that Alan didn't want to

Library research fascinated me—and much of it ended up in the book. Still, at this point early in my efforts, I felt like someone with his face pressed to the window. I needed a point of entrée into the long-ago world of the two crimes. That entrée came through men and women who constituted what I termed “the linking generation.”

When I walked into the Sarasota, Fla., law office of 75-year-old Eugene Clay, he knew why I'd come. We'd been corresponding for months regarding his father. Herbert Clay was the scion of a famous Georgia family. At the time of the Frank case, he was the chief prosecutor for much of north Georgia. No sooner had his son shown me to a chair than he broke into tears. “Yes,” he said, “my father was one of the men who orchestrated the lynching of Leo Frank.” This was a painful moment, but out of it grew an unlikely friendship. Due to the fact that Gene's mother, after an early divorce, had raised him in the North, he had never really known the man whose name he bore. He wanted to find out what sort of person Herbert Clay was, and I wanted to learn more about the role he had played in the lynching. Several months later, Gene and I spent a long weekend together in Marietta looking up people who could help us in our separate but related quests.

On the same day I met Gene Clay in Sarasota, I spent several hours up the road in St. Petersburg with Alan and Fanny Marcus, two Atlantans who'd retired to Florida. Alan was Lucille Frank's nephew. He'd grown up at her knee and borne witness to the devastation that the lynching had wrought in her life and in the life of Atlanta's Jewish community. Following Lucille's death in 1957, her body was cremated. She



COURTESY CHARLEY SMITH/PANTHEON BOOKS AND THE DEAD SHALL RISE

attract scrutiny by conducting a public burial. For months, he carried Lucille's remains around Atlanta in the trunk of his red Corvair. Early one morning in 1964, he and his brother drove downtown to Oakland Cemetery. There, under the cover of the gray dawn light, the two men buried this martyred figure in an unmarked plot between the headstones of her parents.

Most treatments of the Frank case can be broken down into the phrase “Good Jews versus bad Yahoos.” To me, this seemed a simplistic and polarizing formulation. But how could I get around it? As I struggled with that question, I made what I consider to be the biggest breakthrough in my research—I learned about a brave but little known Atlanta lawyer who'd represented Jim Conley.

William Manning Smith, a UGA law school graduate, was a man far ahead of his time. As early as the turn of the last century, he was championing equal rights for blacks. That's why



he took on Conley as a client. Not only did he believe Conley was telling the truth, he wanted to make sure that Frank's high powered lawyers didn't run over the black man in court. All of this, however, I would discover later. What I discovered first about William Smith involved something that occurred nearly 40 years after Frank was lynched, and I heard about it from Smith's son, Walter, who was there when it happened.

Walter Smith was also an Atlanta lawyer. On a winter day in 1949 as his father lay dying at Crawford Long Hospital, he witnessed an extraordinary scene. William Smith was suffering from Lou Gehrig's disease, and he'd lost his power of speech. But until the end, he remained mentally sharp, passing hand-written notes to Walter through a crease in a clear plastic oxygen tent. Most of the notes involved family matters. But William Smith also addressed a more significant subject. One particular note could not have been more profound:

"In articles of death, I believe in the innocence and good character of Leo M. Frank. W. M. Smith."

As Walter described this moment to me, I felt two things. On a human level, I wanted to cry. But as a writer, I couldn't wait to get the details down on paper. Instantly, I knew my book would revolve around William Smith. By telling the story of his transformation from a man who had helped prepare Conley to give the testimony that convicted Frank to someone who in his dying words declared Frank's innocence, I could avoid the tired clichés.

Walter gave me scores of his father's personal documents that threw light on the subject. Meantime, I spent weeks at the Georgia Department of Archives poring over William Smith's 100-page study of two enigmatic notes found by Mary Phagan's body. At the trial, Conley convinced the jury that Frank had dictated these notes to him in an attempt to implicate another man in the crime. But by comparing the notes to dozens of samples of Conley's writing, Smith proved that they were Conley's original compositions. Frank had nothing to do with them. Ergo, Conley murdered Mary Phagan.

In the end, the information that Gene Clay, Alan and Fanny Marcus, and Walter Smith provided me about their in-laws amounted to a large and exceedingly valuable bequest. So much so that I began to feel less like a writer than like the administrator of a sacred trust. I felt a fiduciary responsibility to do justice to these stories. This, I told myself, is the material of a lifetime. What a great book it will make.

That was in 1993.

To say that the research and writing of *And the Dead Shall Rise* was a battle in its own right—one that exhausted my youth and my wallet while testing my inner being—is an understatement.

The difficulties were numerous. First, the research was overwhelming. My office was stacked floor to ceiling with thousands of letters, legal documents, and newspaper clippings that had to be annotated before I could write a word. Worse, after seven years of research, the advance money from my publisher ran out. This would have been difficult anywhere, but in Los Angeles—where many of my friends have grown wealthy creating TV shows and writing screenplays—it was doubly so. All I can say is that I did not quit. Luckily, my wife believed in me and in the book, and she supported me through a long time of uncertainty.

In ways I could not have initially predicted, the lengthy process of writing *And the Dead Shall Rise* ended up working to the book's advantage. It was only two summers ago that Leo Frank's letters to a journalist who covered the case for *Collier's Weekly* were donated to the American Jewish Archives. Thus, in my book you hear for the first time what Frank was thinking and feeling as he went through his ordeal. Similarly, I benefited from the recent bequest of the transcript of Gov. Slaton's clemency hearing to the Emory University Library. This document, thick as a New York telephone book, contains much new evidence suggesting Frank's innocence.

The book's depiction of the lynching also benefited from my having spent so long in the trenches. I ultimately interviewed at length the children of six participants. The daughter of one gave me access to a list of everyone involved that her father had kept in the family Bible. I got to know three people who were at the lynch site and saw Frank's body hanging there. One of these people, Narvel Lassiter, is pictured in my book, peering out from behind the oak tree. He was only 9 years old. Most interesting of all, I ferreted out how the masterminds of the lynching in effect took over the state prison system. The lynching was conceived in Marietta, but it was run through the legislature. One of the crime's architects was chairman of the prison subcommittee.

During my October talk at the Chapel, I declared my belief in Frank's innocence and in the state's culpability in his lynching. Finally, though, I emphasized that I had not written *And the Dead Shall Rise* in the spirit of a frustrated prosecutor going back into a cold case to arraign the dead. I wrote the book in a spirit of understanding. The participants in the Frank affair—whether Atlanta's Jews or Marietta's vigilantes—are the grandparents of Georgia's present generation. They have long been trying to tell their story. In the pages of my book, I believe they do. **GM**

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