

THE MYSTERY OF THE PENCIL FACTORY

Sidney Sutherland

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AS an example of national hysteria, sectional fury, distortion of judicial processes, racial hatred, and bewildering uncertainty as to just exactly what was truth and justice, the case of Leo Frank stands unparalleled in American criminal history.

Looking back after the passage of sixteen years has helped to assuage the rancors and recriminations of that lurid two-year sensation in Atlanta and throughout the country, it is possible now to consider the atrocious murder of little Mary Phagan, the prosecution of Frank, the maze of contradictory testimony, the extraordinary battle to save his neck, and his eventual assassination by a Georgia mob, with impersonal calmness based on a mere recital of the facts as shown by the record.

Leo Frank was born in Cuero, Texas, on April 17, 1884. His father was Rudolph Frank, his mother's name was Rhea. The year of Frank's birth marked the departure of the family from Texas to Brooklyn. They lived at 152 Underhill Avenue. Mr. Frank died in 1922; his widow followed him in 1925; and they are buried in Brooklyn beside their son, whose body was given to Leo's widow by a judge who retrieved it from the lynchers.

Leo attended the public schools of Brooklyn, completed his preparatory studies at Pratt Institute, and then matriculated at Cornell University, where he was graduated with the class of 1906. Character references from his instructors were used by the defense at his trials.

Leo specialized in engineering at Cornell; and for several months he worked as a draftsman for the B.F. Sturtevant Company of Hyde Park, Massachusetts. He was then engineer and draftsman with the National Meter Company of Brooklyn.

In 1907 he came to terms with a delegation of Atlanta citizens to establish a pencil factory in that thriving Dixie city. He spent nine months in Europe studying that business, and in 1908 he opened the National Pencil Company factory on Forsythe Street; and in that same year he married Lucy Selig of Atlanta. She still lives with her family in Atlanta.

Leo was small, frail, bespectacled. His black eyes were bright and alert; his hands slender and thin; his weight probably never topped 120 pounds. He was president of the local B'nai B'rith, popular in his small Hebrew circle, and generally liked by his employees.

Most of these employees were young white women. Though several were to be quoted as reflecting on Leo's character, a far larger number were witnesses to his genial and inoffensive relations at the factory.

Among these working folk was Mary Phagan, a pretty little blonde girl, fourteen years old, who lived in Marietta, a suburb now engulfed by Atlanta. She lived with her mother, Mrs. J.W. Coleman, about half an hour's trolley ride from the plant. Her work was to operate a machine that fastened the metal clips which held the erasers to the pencils. It was a simple task and her wages were proportionately small.

Another worker at the factory was Jim Conley, who wielded a broom and mop after the others left. He was a lazy, unreliable Negro oaf, about three jumps out of the jungle, and his record bore seven arrests in eight years for drunkenness and disorderly conduct, for which he had been jailed and fined. Until he was spotlighted on the witness stand and uttered the words that condemned his employer, not a human in Atlanta would have believed him under oath.

Other employees were Newt Lee, the Negro night watchman; Arthur Mullinar, a white man; and J.M. Gantt, a former bookkeeper.

From October, 1912, until April, 1913, there had been fifteen murders in Atlanta, and Chief of Detectives Lanford and his men had solved none of them and nobody had been punished. Atlanta was in a terrific turmoil over these homicides and, given the racial identities of the principals in our drama, the soil was ripe for a frightful harvest of excitement and blind vengeance.

About the 20th of April, 1913, Mary Phagan was laid off work pending the arrival of the stock from which her

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metal bands were made. She had \$1.80 coming to her, and she was told to return to the factory on pay day, Saturday, April 26.

It so happened that this was Confederate Memorial Day, an occasion observed solemnly throughout the South.

Leo saw in this holiday a chance to clean up some accumulated work, and he went to the factory that morning about 10 o'clock. There was nobody in the building save two workmen two floors above.

In Marietta, Mary Phagan prepared to go to the plant to collect her \$1.80 and then go downtown to watch the Memorial parade. She left her home about 11:30 o'clock, and half an hour later walked into Leo's office. She was not again seen alive. Leo said that she asked for her money, that he gave it to her, and that she left the room, her footsteps echoing along the hall of the silent and empty building. Leo's further assertions will be related presently.

At 4 o'clock in the morning of Sunday, April 27, Lee, the watchman, reached the cellar of the factory on his rounds. He found the body of a white girl lying on a pile of cinders near the furnace. He backed away from it—a dangerous discovery for a Negro to make in Dixie—and at once notified the police.

The police came at once. They found the body black from cinders and dirt. A piece of cloth had been torn from her skirt and tied about her face. One eye had been blackened by a blow. Over both eyes was a slight abrasion. The left side of the head bore a two-inch wound, and there was a cut below the left knee. Drawn tightly about her neck was a cord buried in the flesh. The girl had been beaten and strangled; and she had been raped.

Fifty feet from the body her hat and one of her shoes had been tossed back of a pile of clinkers. Beside the body were two notes. One of them was penciled on a faded yellow order blank; and with asterisks to indicate certain unprintable words, it read:

Mam, that negro fire down here did this***** he push me down that hole***** a long tall negro black that who it wase long sleam tall negro I write while*****

The second note, in the same semiliterate chirography and Southern darky dialect, was penciled on a scratch-pad sheet. It said that the accused (the above description being that of the factory's fireman) would pretend that the night watchman had committed the crime, but that the "long tall black negro did [it] by himself."

The police promptly arrested Lee, and took the body to the morgue. A little later, the corpse being made presentable, they went to Leo's home and asked him to come down and identify the girl. He went willingly enough, but said he did not know the child. During the morning a young woman, fellow worker of Mary's, identified her little friend.

Leo was questioned again, and Mullinar and Gantt were arrested, Leo having stated that Gantt had liked Mary Phagan. The next day, Monday the 28th, Leo was arrested after the police had questioned Conley, the Negro janitor. Conley also was placed in a cell.

Atlanta received the news of this sixteenth murder with frenzied demands, editorial and pedestrian, that this rape and assassination of the "flower of Dixie's womanhood" be avenged. It was only when the detectives and reporters began to delve into the background of the case that the customary and normal demands rose to a crescendo of racial hatred and bitterness.

Coroner Paul Donehoo's jury bound Leo over to the grand jury after it listened to Conley's story, and held Conley as an accessory. The other prisoners were released, their alibis sustaining a searching examination.

While waiting for the grand jury to act, Thomas E. Watson, Populist candidate for President, author and journalist, and rabid professional Southerner, proceeded in his newspapers to try, convict, and execute Leo Frank, Yankee Jew and employer of Dixie's white womanhood.

Yet even in the wake of Watson's scathing pogrom Atlanta kept its head, angry but confident that legal measures would take care of the atrocity. It was not until the Atlanta Constitution printed an interview—a scoop which it probably regrets today—with Mrs. Nina Formby that the tornado of Juden-Hetze got out of control and swept the city and state and the South.

Mrs. Formby was well acquainted with the detectives of Atlanta. She ran a brothel, and she later swore—from the safety of distant New York City—that the sleuths got her drunk and made her accuse Leo. The Constitution carried a story that on the evening of the murder Leo had telephoned her, frantically demanding a room in her house for himself and a young girl. "It's a matter of life and death," she said Leo told her. And though Leo proved by many witnesses that he was at that time entertaining friends in his home, the story got out that Frank was a pervert—and the town went mad.

Tom Watson seized avidly this added fagot for the pyre he was building about the young Hebrew, and tales of

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indescribable orgies in Leo's office were circulated and believed. Several girls were produced to tell of such affairs, but none of them went beyond assertions that Leo had tried to become familiar with them.

Newspaper extras were tossed into the streets on so trivial a story as the reported remark of Minola McKnight, Mrs. Frank's colored cook, that Mr. Frank was nervous that Saturday evening, and that Mrs. Frank told her mother the next morning that Leo had tried to kill himself during the night. Both Mrs. Frank and Minola denied this story a hundred times, but scant heed was paid the denials.

Before we proceed with a summation of the life and death of Leo Frank, let us study the testimony of Harry Scott, an important witness for the prosecution.

"We got Conley's affidavit after a lot of trouble," said Scott, a detective in Lanford's bureau. "At first he told a wandering story that didn't mean anything. We saw him again in Lanford's office on May 27. We talked to him and swore at him for six hours. Frank couldn't have written the two notes on Friday, as Conley insisted, because that showed premeditation, and wouldn't do. Conley wouldn't make another statement.

"On May 28 we grilled him six more hours, telling him his statement was far-fetched and wouldn't fit. He made another long statement. On May 29 we talked to him all day and told him some of his story was improbable and he would have to do better than that. So then he made his final statement and we didn't wish to make any further suggestions to him."

On May 24, 1913, the grand jury indicted Leo for the murder of Mary Phagan, largely on the testimony of Conley, and held the Negro as an accessory. There were five Hebrews on this grand jury.

On July 28 the trial began; and whether Frank killed the girl or didn't, surely it has been seldom in our jurisprudence that a trial was conducted under such one-sided circumstances. Judge L.S. Roan tried, but vainly, to preserve decorum, but the tide was now running too swiftly against all sanity and impartial procedure.

The courtroom was packed, and the spectators clapped their hands and cheered each sally of the prosecution, conducted by Solicitor General Hugh M. Dorsey; and hissed and booed each maneuver of the defense, headed by Reuben Arnold and Luther Z. Rosser, leaders of the Atlanta bar. Bailiffs gaveled fruitlessly for silence and order; and the yard outside was jammed with screaming men who pressed their faces against the window sills and shrieked: "Hang the Jew or we'll hang you!"

Conley was the ace of trumps for the People—an incongruous spectacle, a slant-headed Ethiopian ape drooling and mumbling his story on a stand high above the heads of a Caucasian throng whose loathing for him and his race was only equaled in this instance by their abhorrence for the prisoner.

Summarized, Conley's story was to the effect that he had often sat outside Leo's office as a sort of watchdog while Leo staged his perversions behind the locked door. When anybody would approach, Conley would whistle or cough to warn his employer. No female participants in these wanton parties were produced.

On the day of the murder, Conley went on, he came into the office and found Leo crouching over the unconscious girl. Leo told him that Mary had resisted his advances, and when he grabbed her had fallen and struck her head. When he had finished with her he decided to kill her. So he strangled her to death with the cord.

He then promised Conley \$200 to burn the body, and did, in fact, give him that sum, the Negro said. They carried her together to the elevator, found it would not work, and so passed her down through a trapdoor and on into the cellar. Then, fearing the smoke from the furnace would attract attention on the holiday, Leo dictated the notes which Conley wrote, and they left them beside the body. But, said Conley, Leo made him return the \$200 because he hadn't burnt the body. If Conley came down early the next day and burnt it Leo would then give him the money.

Conley was unshaken by a severe two-day cross-examination, deviating, as might be expected from his mentality, in minor points, but sticking firmly to his main account. He never varied from his statement that all this took place between 12:56 and 1:30 P.M.

Watchman Lee was a sinister witness, from Leo's viewpoint. He said, he came to work at 4 o'clock and that, contrary to custom, Leo told him to go away and return at 7 o'clock. Leo said he merely tried to give the Negro a little rest on the holiday.

The state also contended that certain scarlet stains on the floor of a room next to Leo's office were blood. But the prosecution refused to have these stains analyzed.

The state made the detective theory largely its own: that Mary tried to run after Leo made an improper proposal; that he caught her, struck her, and that she fell, breaking her neck against a lathe in a nearby room, that

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strands of her hair were found on the lathe, that Leo carried her back to his room and then to the wash-room in an effort to revive her there; that he feared she would talk when she became conscious; and that he then tied the cord about her neck, and got Conley to help him get rid of the body.

The state saw something significant in the fact that, in a letter which Leo said he wrote to his father that Saturday, he told him that "there was nothing startling" in Atlanta to report—thus preparing his alibi in advance of the discovery of the body.

Leo's case was hurt still further, if that were possible, when his mother leaped to her feet in court and cried out to Mr. Dorsey: "You Christian dog!" This was printed in the pamphlets which, in verse and prose, assailed Frank and all Jews, and which were hawked among the crowds outside the courtroom.

Leo was his own chief witness. His defense was simply an alibi. In a remarkable statement he accounted for every minute of his time on that celebrated Saturday. His story showed him to have been at home at luncheon at the time Conley said they were taking the body down. He did not deny that Mary came to his office, and that nobody else saw her enter or depart. His theory was that Conley met the girl on her way out, accosted her, struck her, raped her, and then slew her. The dialect of the notes, Leo maintained, was beyond his capacity to know or employ. The prosecution insisted that Leo's memory of his activities was too minutely positive to be genuine, since he was vague on incidents before and after that Saturday.

Mrs. J.B. Simmons, aged sixty-five, was a valuable witness for the defense. She said she had passed the factory at 2:30 o'clock that afternoon and heard screams. Dorsey tried to make her say it had been after 3 o'clock, when it was known that Frank had returned to his office from luncheon. But what was the difference—if Mary was dead at 12:56 o'clock?

Other witnesses told of seeing Leo on the streets at 1:20, the time he said he was going home for luncheon, the time Conley said they were in the basement with the body.

There were more than 300 witnesses in all, and the trial ended on August 25. Messrs. Rosser and Arnold spoke to the jury for two days, and Solicitor Dorsey was bitter in his denunciation of Rosser for mentioning racial hatred in his closing address.

Judge Roan might have charged the jury and sent them out on Saturday morning, but the mayor and the governor and the Chamber of Commerce and the newspapers asked him to wait until Monday, fearing the half-holiday might end in a riot if by any chance Frank were acquitted.

Monday morning the Fifth Regiment, Georgia National Guard, was posted throughout the city, and Judge Roan gave the jurors their instructions. Both sides have admitted that the charge was impartial and fair. To avoid a riot, at Roan's suggestion neither Frank nor his lawyers were in court when the jury retired. It remained secluded for forty minutes. There were two ballots; one, as to Leo's guilt, which was unanimous; and the second, as to recommendation for mercy, which would mean a life sentence. The first vote here was 11 to 1 against leniency, and the solitary juror then joined the others.

The next morning, August 26, Judge Roan sentenced Leo to hang on October 10. A motion for a new trial failed, and the crowd in the courtyard carried Dorsey on its shoulders and hissed the defendant's attorneys.

But in the next few months Frank's counsel gained a series of delays. An appeal stayed the execution; the trial court was sustained; State Supreme Court Justice Hill sentenced Frank again, and a further delay ensued. Meanwhile Conley was convicted as an accessory and sentenced to a year in the chain gang.

On May 6 Justice Hill denied Frank's extraordinary motion for a new trial, refusing to consider the validity of new evidence which defense attorneys said would free their client. This evidence, mainly, was that one of the notes found by Mary's body bore a faint carbon tracing of the signature of H.F. Becker, a former master mechanic at the factory, who had used a pad of the sort in 1909. The defense contended that Leo would not have had access to such a pad, but that it unquestionably would have been among old papers in the basement, where Conley could have found it.

On October 3 W.M. Smith, Conley's lawyer, said he believed that Conley had killed the little girl. Eleven days later the Supreme Court of Georgia, all members sitting and concurring, affirmed Judge Hill's decision denying the extraordinary motion. Frank's lawyers then announced that they would appeal to the court on the ground that Leo's rights had been invaded, because neither he nor they had been in court when the trial jury had reported to Judge Roan.

On November 11 the court upheld the prosecution's demurrer to the defense motion to set aside the verdict of

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guilty. Nine days later Justice Lamar of the United States Supreme Court denied the written application of Leo's counsel for a writ of error for a review of the case. A week later, however, Chief Justice White of the highest tribunal accepted the papers.

On December 7 this august court denied the motion, and two days later Judge Hill sentenced Frank for the third time to hang, this time on January 22, 1915.

On December 17 a petition for a writ of habeas corpus was sought from United States District Judge W.T. Newman, who turned it down. Two days later Newman announced that he would allow an appeal to the United States Supreme Court, but declined to issue a certificate of "probable cause."

By this time, and during all this time, the Leo Frank case had upset the whole nation. Adolph Lewisohn, Samuel Untermyer, Louis Marshall, Rabbi Wise, and other leading Hebrews had interested themselves earnestly in the matter; and prominent Gentiles were active. There were mass meetings all over the country, and petitions containing hundreds of thousands of names were finding their way to Georgia urging clemency or a new trial or commutation. Senator Borah, Philander C. Knox, Myron T. Herrick, Senator James Reed, Mayor Rolph of San Francisco, governors of many states, editors, and business men joined in the flood of appeals deluging Georgia.

Georgia furiously resented this invasion of its sovereignty and the direct accusation or subtle implication that a pogrom and not a program of justice was animating the state's citizens.

On December 24 Louis Marshall, saying he had taken the case as a professional duty and without retainer, appealed to Supreme Court Justice Lamar, and four days afterward the Supreme Court promised to review the case. Nothing came of this, however, and the issue was once again in Georgia.

On May 10, 1915, Judge Hill sentenced Frank to hang on June 22. It was the fourth deathwatch set on the young Hebrew.

Every possible judicial recourse to save Leo's neck had been exhausted. On May 21 the Prison Commission accepted his plea for a commutation, and promised to examine it. While the full tide of national appeals was inundating the state, Conley was released from prison chain-gang servitude.

On June 9 the prison board voted 2 to 1 against commutation—and only Governor John M. Slaton, going out of office in a few days, stood between Leo and the hangman. On the 12th a tremendous mass meeting was held on the Capitol grounds and loud outcries directed to the governor against interfering with the laws of Georgia at the demand of Yankee Jews.

At midnight of June 20 Leo with a heavy guard of armed deputies was secretly spirited out of the Atlanta prison, taken in automobiles to a Central of Georgia railway car, and rushed to Milledgeville, where the state penitentiary is located. The next two days were hectic ones in Atlanta. Not knowing of the prisoner's departure, but fearing Slaton was planning to commute his sentence, mobs swirled and eddied throughout the streets.

Before noon of June 22, Governor Slaton announced the commutation from hanging to life imprisonment for Leo Frank—and hell broke loose in Atlanta.

The militia was called out and thrown around the governor's mansion, seven miles from the heart of the city, and martial law was declared. Hundreds of automobile loads of armed men raced through the streets to the executive home, where the mob trampled the grounds, screamed at the curtained windows, and hurled itself vainly against the militia's bayonets.

Leo Frank now was a side issue, though his secret smuggling out of town had become known.

The issue was now "Georgia's traitor governor who sold out to sheeny gold." Slaton was hanged in effigy; and the rumor that he and Mrs. Slaton were leaving at once for New York caused the throng to scream imprecations.

Sheriff Mangum was hauled bodily into the Senate chamber at the Capitol and made to swear that the governor had not actually pardoned Leo, but that he was at that moment in a Milledgeville cell as Convict No. 965.

But vocal fireworks constituted the sole total of the mob spirit. The commander of the troops tired of the display presently, and he waved his arms for silence. When he got it he pulled out his watch and announced grimly to the mob that in five minutes he was going to give the order to charge. There was a tense three minutes and the mob went back to Atlanta, cursing and yelling.

Slaton went to New York and there retaliated in an interview against Georgia's threats. "I know it means political oblivion for me," he said. "But I did what I thought was right. Conley had the same opportunity and much more disposition to assault and murder Mary Phagan. As to the mob—well, every city has its riffraff and

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Atlanta's mob was composed of men whose wives support them by running boarding houses, whose children are in factories instead of schools, and who loaf on corners talking of the inequalities of opportunity and law in America."

The pale, slender, little Hebrew was now but a number in a penitentiary dormitory. Pending his restoration to full health, he was made a prison clerk. On July 18, 1915, William Creen, doing life for murder, attacked Leo from behind and slashed his throat with a dull butcher knife. Creen said the command to do so came from on high in a dream.

At midnight of August 16, while Frank was recovering from his wound, a mob of twenty-five armed men raided the prison; overpowered Warden J.T. Smith after cutting all wires leading to the prison, which is three miles out of town; handcuffed Captain J.M. Burke, prison superintendent; forced a trusty to unlock the gates; and seized Leo where he lay sleeping on his cot.

With a man at each arm and leg and one grasping a handful of his hair, he was carried swiftly down the steps and placed in the caravan of automobiles which had brought the raiders. It was all done silently, swiftly, efficiently, and it was all over in five minutes.

The next morning, a farmer driving his team and wagon of produce into Marietta, 170 miles away, saw a man dangling from a tree near the roadway. He alighted and examined the figure twirling gently around in the breeze from the end of a rope. He recognized Leo Frank, hanging in his silk nightgown, a hangman's noose beside his tilted jaw. He had been dead for several hours.

The farmer whipped up his horses and a little later a mob of 6,000 men and boys was crowding the highway for a look at the famous prisoner.

Somebody of course suggested that they cut the body down and burn it, but Judge N.A. Morris, an old man, stood beside the motionless form and announced that he was going to take the body into Atlanta and turn it over to the widow.

There was some argument, but the veteran had his way, and he left the throng to fight over the souvenir rope, while he put the stiff corpse in his flivver and ran into the city.

Everybody in Marietta knew who comprised the lynching party, but nothing came of it.

On August 24 a coroner's jury answered the country-wide protest of horror by paraphrasing the original trial jury's verdict, "that Leo Frank came to his death by being hanged by the neck till dead by parties unknown to this jury."

Two further quotations, a bit of reporting, and the story is done. Just before Judge Roan died in New York City on March 23, 1915, he stated:

"I gave that case more consideration than any other I ever sat on. Though I heard evidence and arguments for thirty days, I don't know this morning whether Leo Frank is innocent or guilty. But I was not the one to be convinced. The jury was convinced and I must approve the verdict. Therefore, I overruled the motion for a new trial."

The Macon Telegraph replied editorially to America's condemnation of the pre-dawn lynching: "The men who lynched Leo Frank went ahead with clear consciences. It would never have happened had the rest of the nation left this state to mind its own business."

Not long ago the Negro Conley was shot while staging a burglary. When he recovered he was sentenced to twenty years in prison.