

The New York Times

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers, please [click here](#) or use the "Reprints" tool that appears next to any article. Visit www.nytimes.com for samples and additional information. [Order a reprint of this article now.](#) »

December 19, 2003

BOOKS OF THE TIMES

BOOKS OF THE TIMES; The Haunting Questions of a Murder and a Lynching

By THEODORE ROSENGARTEN

AND THE DEAD SHALL RISE

The Murder of Mary Phagan and the Lynching of Leo Frank

By Steve Oney

742 pages. Pantheon. \$35.

To some, the real story is the murder of Mary Phagan, a 13-year-old country girl who had recently been laid off from her job at the National Pencil Factory in Atlanta. To others, it is the trial and lynching of the factory manager, Leo Frank, a young Jew with a reputation for humorless efficiency, who had been born in Texas and educated in New York. "And the Dead Shall Rise" encompasses both unsolved killings in a single powerful narrative that pursues justice through good storytelling.

A former journalist, Steve Oney chooses his words carefully and selects shimmering excerpts from newspaper accounts of the trial that the passage of time has turned from coal to diamonds. His immense investigation is a work of sympathetic imagination that invites comparison to Norman Mailer's "Executioner's Song." The book packs a wallop at many levels, from the mythic Southern characters to the violent infrastructure of our cultural memory.

With evenhandedness and an ear for nuance, Mr. Oney sets down the facts. Mary Phagan went to the factory on Saturday, April 26, 1913, intending to pick up her paycheck, then join her friends to celebrate Confederate Memorial Day. At about noon Leo Frank gave Mary her wages of \$1.20, and, he told the police, she left. The next morning her soot- and dirt-covered body was found in the factory basement by the night watchman, Newt Lee. At first the police thought it was a black girl, but when one pulled back her stocking, they saw she was white.

The first suspects included two blacks -- the watchman, Lee, and the floor sweeper, Jim Conley -- and two whites -- a recently fired bookkeeper named Gantt and Frank himself, because he acted nervous when questioned. The prosecutor, Hugh Dorsey, built a case against Frank from circumstantial evidence supported by the fanciful testimony of Conley, who in Oney's view colluded with the state to save his own skin.

The best lawyers that money could buy could not break Conley's story, and Frank was convicted of

murder and sentenced to death. The conviction was upheld in state appeals courts three times and twice by the United States Supreme Court.

On his last day in office, the Georgia governor, John Slaton, commuted Frank's sentence to life imprisonment. To save Frank from mob law, he ordered him sent from the Fulton County jail to the state prison farm in Milledgeville.

A month after Frank got there, a convicted murderer who slept a few beds away jumped him and slit his throat. Quick action by the prison doctor saved his life. Another month passed, and on the night of Aug. 16, 1915, a caravan of eight automobiles carrying 25 men, calling themselves Knights of Mary Phagan, invaded the prison, overpowered the guards, seized Frank and drove off with him toward Marietta, where Mary was buried. Early in the morning of Aug. 17, Leo Frank was hanged from a tree at Frey's Gin.

In the aftermath of the lynching, Mary Phagan's knights metamorphized into the Ku Klux Klan, Frank's supporters in New York organized the Anti-Defamation League, and the Jewish residents of Atlanta kept their heads down. The city's 4,000 Jews, mainly of German origin, were thoroughly assimilated into American culture, or so they believed. Atlanta's Reform rabbi, David Marx, blamed an influx of strange-looking, Yiddish-speaking Eastern European immigrants for creating a climate of antagonism that was turning the Christian majority against all Jews. His solution: even deeper assimilation.

Frank has been immortalized in books and plays, and more recently in a musical and a television miniseries. Now there are Web sites like LeoFranklynchers.com, which purports to name the people in the lynch mob, including a judge, a prosecutor, a gaggle of lawyers and several shopkeepers, not one of whom was ever prosecuted.

Frank's lawyers made mistake after mistake. They brought up the subject of extramarital sex. They suggested that their client wasn't perfect, but he should not be judged on his moral failings, only on the question of whether he committed murder. They created the impression that child labor served lust as well as profits. They made Frank's character -- the character of a man who spent Confederate Memorial Day in his counting room tallying sales -- an issue. Overconfident, they neglected to seek a friendlier site for the trial. They made anti-Semitism central to Frank's defense. The prosecutor, Dorsey, tore them up.

Mr. Oney deftly recounts the press's unwitting collaboration in Frank's murder. The three Atlanta newspapers waged a circulation war, seeing who could milk the Phagan-Frank phalanx for the most subscriptions. While they took different stands initially, the Atlanta papers all called for a new trial after Frank was convicted, to the chagrin of the general public, who wanted Frank to die.

The efforts of Atlanta Jews to convince the publisher of The New York Times, Adolph S. Ochs, that Frank was a victim of prejudice bore fruit when Ochs, moved by the appearance of injustice, added the voice of his paper to the clamor for a new trial. After Frank's death, Ochs had the Times editorial denouncing the lynching sent to all of Georgia's daily newspapers. "For the sake of the Jews in Georgia," wrote back the editor of the anti-lynching Macon Telegraph, "would Mr. O. not stop this

offensive propaganda." Why stop? Because "it was the outside propaganda of the Jews, led by The Times," the editor claimed, "that had made it necessary to lynch Frank."

"The Jews were in fact responsible for what happened to him," he continued. A chastened Ochs dropped the issue. "So perishes a great enthusiasm," Ochs's assistant, Garet Garrett, wrote, "for the sake of The N.Y. Times."

Given how long Mr. Oney worked on the manuscript -- 17 years -- his panoramic intent, and his respect for newsprint, the absence of the black press from his discussion is surprising. The strategy that Frank's lawyers used to try to save their client was to pin the crime on Conley, the floor sweeper, and make him out to be the stereotypical black rapist.

"The black press," Jeffrey Melnick wrote in "Black-Jewish Relations on Trial: Leo Frank and Jim Conley in the New South" (University of Mississippi Press), which appeared in 2000, "recognized the counterattack against Conley as an assault against the reputation of all African-American males and responded with an impassioned defense."

Readers who wish to find a progressive Jewish social ethic at work in the Frank camp will be sorely disappointed. Frank's lawyers played the race card for all it was worth. "Why, Negroes rob and ravish every day in the most peculiar and shocking way," they offered. Then they looked the jurors in the eye. "If you, as white men, should believe Jim Conley, it will be a shame on this great city and on this great state and will be until the end of time."

Frank was buried at the Mount Carmel Cemetery in Cypress Hills, Queens. Among the mourners and the curious at the grave site was "an unidentified Negro intellectual who coolly told the press he'd come for no other reason than to see how whites endured a circumstance usually reserved for members of his race." Georgia got around to pardoning Frank in 1986, 71 years after his death. The state acknowledged its failure to protect him when he was in custody, but the question of his guilt or innocence was not taken up.

Neither does Mr. Oney come flat out and say who killed Mary. Instead he gives the last word to Conley's lawyer, William Smith, who came to believe in Frank's innocence and his own client's guilt. By shifting the spotlight to Smith, Mr. Oney risks reducing Frank to a curiosity. After each setback, Frank would ask, "Why is this happening to me?" His quest for meaning was cut short by his cruel death. Mr. Oney goes to the brink of providing answers but stops short, thus prolonging the mystery at the heart of the tale.

Photo: Steve Oney (Photo by Associated Press)