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Reigniting A Cold Case

And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank; Steve Oney; Pantheon: 742 pp., \$35

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Thirteen-year-old Mary Phagan was found strangled in the dark basement of the National Pencil Co. in downtown Atlanta early Sunday morning, April 27, 1913. Two handwritten notes, ostensibly written by the dying girl but obviously authored by her killer in an effort to focus suspicion on the building's night watchman, were found near the body.

Phagan had worked 55 hours a week, at 10 cents an hour, putting erasers on pencils. Her employment reflected what working-class families who migrated to the big city from rural areas encountered. "The most beautiful sight that we see is the child at labor," exclaimed Coca-Cola Co. President Asa Candler, and "as early as he may get at labor the more beautiful, the more useful does his life get to be."

National Pencil employed dozens of young girls like Phagan. The day before her body was found, she had visited the second-floor office of the company's 29-year-old superintendent, Leo Frank, to collect her week's pay. Frank's uncle was part owner of the company, and soon after Frank's arrival in Atlanta five years earlier, the young Cornell University graduate had married Lucille Selig, the daughter of one of the city's leading Jewish families.

Atlanta's Hearst-owned newspaper, the Georgian, gave Phagan's killing banner-headline play, and the publicity deluge impelled the city's less-than-competent police detectives to make a quick arrest of a most unlikely suspect: Superintendent Frank, the last person to admit having seen Phagan alive. Frank's nervous manner and inconsistent comments about the night watchman had piqued detectives' interest, and when they discovered a bloody linen shirt at the watchman's home, they concluded that it had been planted by the actual, savvy killer. When one of Phagan's young male friends said she had talked about Frank flirting aggressively with her, the police decided they had outsmarted their suspect's efforts to shift the blame elsewhere.

Steve Oney's "And the Dead Shall Rise" tells this fascinating and complex true-crime story in impressively thorough detail. Oney worked on the book for an astounding 17 years, and while the facts of the case sometimes make for an inescapably dense account, Oney's definitive recounting is a major achievement.

Following Frank's arrest, the belief that he was a "sexual predator" who had forced his attentions upon the factory's young working-class girls rapidly spread. Frank's character became "the central issue," distracting attention both from the death-scene notes and from credible

testimony by visitors who had called on Frank soon after Phagan and found the superintendent hard at work at his desk.

Before Frank went to trial, however, another decisive figure entered the drama. Jim Conley, also 29, was a black factory sweeper with a serious drinking problem and a long arrest record who drew suspicion when he was caught washing out an apparently bloody shirt four days after the discovery of Phagan's body. But Conley appeared illiterate, and only when private detectives working for Frank's lawyers discovered written contracts that Conley had signed and compared his handwriting with the murder notes did police tardily realize that Conley was their all-but-certain author. Under intense police grilling, Conley conceded that he could read and write, and after a week in solitary confinement he further admitted that he had indeed penned the two notes. But, he insisted, the notes had been dictated to him the day before the murder by Frank. After more grilling, Conley revised his story yet again to assert that Frank had dictated the notes early Saturday afternoon, following Phagan's killing, and that he had helped Frank lower Phagan's body to the basement in the building elevator.

Conley's claims made him the star witness when local prosecutor Hugh Dorsey put Frank on trial for his life at the end of July. One Atlanta newspaper described Conley's testimony as having "a recitative air," but Frank's lead defense lawyer, Luther Rosser, "made little progress" in shaking Conley's story during cross-examination. Conley regaled the jury with detailed accounts of how he repeatedly had stood watch while Frank engaged in sexual misconduct with various women in his office. By the conclusion of Conley's testimony, Oney reports, "Atlanta's sympathies had turned overwhelmingly against Leo Frank" because of the prosecution's success in painting him as a "sexual deviant."

But most crucial to the trial's course was the unshakable belief of Southern whites in the stupidity and ignorance of African Americans. As one local reporter wrote, Conley "never could have framed up a story like the one he told unless there was some foundation in fact." Frank's attorneys labeled the prosecution "a fabrication, a frame-up pure and simple," but Oney rightly asks why the lawyers failed to expose the obvious falsehoods in Conley's testimony during their cross-examination. Whether Atlanta whites were so willing to believe Conley's account of the murder and his tales about Frank's sexual misbehavior only, or primarily, because Frank was Jewish was a question that remained unaddressed until the trial's end, when Frank's lawyers asserted for the first time that "if Frank hadn't been a Jew he never would have been prosecuted." Indeed, prosecutor Dorsey's summation laid heavy emphasis on Frank's Jewishness and family wealth, and the jury took less than two hours to return with a verdict of capital guilt.

"For blocks in every direction, the streets pulsated with cheering souls" when word of the conviction spread. Out-of-town newspapers, unlike the Atlanta press, acknowledged the "anti-Semitic spirit" that the trial had set loose, yet Frank remained confident that his conviction would be overturned and that a new trial would exonerate him, even after a split Georgia Supreme Court affirmed the guilty verdict. His optimism was based on burgeoning press complaints that the trial had been utterly unfair and a growing number of sworn retractions that defense investigators were garnering from former prosecution witnesses. But the outpouring of national criticism, led by the New York Times, plus the local perception that the retractions were being bought by Frank's well-funded supporters, nourished increasing hostility in Georgia.

Yet the jury's verdict looked more and more indefensible. Conley's girlfriend swore that he had confessed to killing Phagan and that he had hoped to pin the crime on the night watchman.

Overdue attention to the two murder notes led even Conley's lawyer, William Smith, to acknowledge publicly his belief that Conley had written them and committed the crime. And the trial judge, Leonard Roan, formally admitted that "[i]t is possible that I showed undue deference to the opinion of the jury in this case when I allowed their verdict to stand."

But while informed opinion was turning in Frank's favor, populist rabble-rouser Tom Watson, the publisher of an inflammatory weekly newspaper widely read throughout Georgia, inveighed with rising fury against the "rich Jews" who were trying to override the state's criminal justice system. When lame-duck Georgia Gov. John Slaton, after a painstaking review of the evidence, commuted Frank's death sentence to life imprisonment and announced that "Conley was the real author of the murder notes," a violent mob of white Georgians was prevented from sacking the governor's Atlanta home only by deployment of armed state militia.

Among the mob that attacked Slaton's residence were many men from Marietta, a town north of Atlanta that had been Mary Phagan's home before her move to the city. Frank was now in state custody at a rural prison farm, and the wrathful Mariettans quietly resolved to see the original sentence carried out. One of their number, newly elected state Rep. John Tucker Dorsey, was named chairman of the Penitentiary Committee by the House speaker, thus acquiring direct authority over the prison commissioners and Frank's warden. Even Oney's painstakingly thorough account is unable to unearth all the details of what transpired, but his assertion that Dorsey forced official acquiescence to the Mariettans' plan to seize Frank from the prison farm is fully persuasive. A 25-man raiding party arrived at the prison one night after severing all nearby phone lines, obtained entry and seized Frank without a single shot being fired. Then, traveling on rural back roads, they spirited their prisoner to the outskirts of Marietta, where, just after dawn, Leo Frank was hanged from a tree facing Phagan's family home.

Oney's careful re-creation of the lynching makes it clear that the men behind it were Marietta's leading citizens -- including a county judge and a former Georgia governor -- and not an anonymous backwoods rabble. He speculates that "their minds had been twisted" by Watson's poisonous rantings and that "the prospect of outraging the whole of Jewry and Yankeedom" was a powerful allure. Yet while their actions were widely denounced -- by, among others, former Gov. Slaton, who declared that "[e]very man who engaged in the lynching should be hanged" -- the local investigation into Frank's murder failed to identify a single participant. That was unsurprising, given who the Mariettans were, and also because, as one conspirator's law partner told Oney, "seven members of the lynch party were on the Grand Jury" that investigated the lynching.

Some who persecuted Frank benefited from the miscarriage of justice. Prosecutor Dorsey was elected governor two years later, and the anti-Semitic Watson, whose statue still sits outside the Georgia Capitol, won election to the U.S. Senate in 1920. Oney's two heroes, attorney Smith and Gov. Slaton, were both treated as outcasts for their courage. Jim Conley, Phagan's actual killer (according to Oney's book), disappeared without a trace sometime in the early 1940s. The last of the lynchers died in 1973.

"And the Dead Shall Rise" portrays Frank himself as a nerdy but courageously stoic victim of a historic injustice. "That my vindication will eventually come I feel certain. Whether I will live to see it, I cannot tell," Frank said from jail. "With this knowledge, death itself has little terror for me." No one who reads Oney's fine narrative will doubt Frank's innocence or Conley's guilt. But in the epilogue, instead of voicing the conclusions that spring so definitively from his

comprehensive account, Oney paradoxically declares that "over time" the "murkiness of the evidence" in the case has "grown even more impenetrable." This observation utterly contradicts the entire thrust of his book. Oney cites "the enduring enigma of Frank's vexing conduct in the wake of Mary Phagan's murder and at his trial," as if that were somehow sufficient evidence to counterbalance all that incriminates Conley and exculpates Frank. Such a suggestion is, in a word, bizarre. Oney has written a fine work of history, but readers should disregard entirely his self-abnegating contention that "there will never be a resolution to the Frank case." "And the Dead Shall Rise" decisively and persuasively supplies one.

PHOTO: VICTIM: Mary Phagan was 13 when she was killed. PHOTOGRAPHER: Pantheon Books PHOTO: LYNCHED: Leo Frank, hanged for Mary Phagan's murder, was superintendent of the National Pencil Co. PHOTOGRAPHER: Pantheon Books