

WHY THE LEO FRANK PARDON IS IMPORTANT

By Richard Mamches

I have closely followed a new flurry of interest in the Leo Frank case since author Steve Oney published his definitive book on this tragic episode in 2003, AND THE DEAD SHALL RISE: THE MURDER OF MARY PHAGAN AND THE LYNCHING OF LEO FRANK.

With the arrival of the 2013-15 centenary of the Leo Frank case, I am surprised by the tendency of some people to downplay or ignore the merits and significance of the posthumous pardon granted to Leo Frank by the state of Georgia on March 11, 1986. The misconception is because Mr. Frank was not officially absolved of guilt in the 1913 murder of Mary Phagan, but was pardoned because the state failed to protect him from the lynch mob, this pardon has little or no real meaning.

I believe the posthumous pardon of Leo Frank is both a very beneficial act of restorative justice and a turning point that is one of Georgia's finest moments. If, in the words of Vicki Lawrence's #1 hit song from 1973, the lynching of Leo Frank on August 17, 1915 was "the night that the lights went out in Georgia,"¹ his pardon on March 11, 1986 was the day Georgia turned the lights back on, and fundamentally changed its attitude towards the Leo Frank case—so truth, reconciliation, justice and healing could finally overcome a tragic 70-year legacy of bigotry, denial and injustice, long shrouded in shameful silence. It is an inspiring success story that deserves to be remembered at a time when our nation and the world still struggle to overcome prejudice, hatred and intolerance in the 21st century.

Let us go back to March 7, 1982, when it all began. On that day, the Nashville Tennessean published a Special News Section story where Alonzo Mann, Leo Frank's former office boy in 1913, said he saw janitor Jim Conley carry Mary Phagan's body to the basement of the National Pencil Company in Atlanta, where Leo Frank was superintendent. Mann said Conley killed Mary and gave false testimony against Frank at his trial, and that Frank was innocent of the crime.²

This story finally motivated the Atlanta Jewish Federation, Anti-Defamation League (ADL), and the American Jewish Committee to apply for a posthumous pardon exonerating Leo Frank with the Georgia State Board of Pardon and Paroles.³ In support of their petition was a sworn videotaped affidavit given by Alonzo Mann, validated by a lie detector test.

1 THE NIGHT THE LIGHTS WENT OUT IN GEORGIA b/w DIME A DANCE, Bell 45 RPM single 45,303, side 1, and THE NIGHT THE LIGHTS WENT OUT IN GEORGIA, Bell 33 RPM LP 1120, side 1, track 1. Performed and recorded by Vicki Lawrence (c) 1973 Bell Records, a division of Columbia Pictures Industries, Inc. Written by Bobby Russell, words and music published (c) 1973 by PixRuss Music (ASCAP). Produced by Snuff Garrett for Garrett Music Enterprises. Highest chart position: #1 on Billboard Hot 100 for the weeks of April 7 and April 14, 1973. Available for purchase as online mp3 download at www.toucancoove.com and from www.amazon.com.

Although this song is *not* about the Leo Frank case, both its title and chorus are eerily evocative of Frank's fate:
"That's the night that the lights went out in Georgia/That's the night that they hung an innocent man/So don't trust your soul to no backwoods Southern lawyer/'Cause the judge and the town's got bloodstains on their hands."

2 See also Vida Goldgar, "Leo Frank: The Story Behind The Story." Southern Israelite, March 11, 1982.

3 Vida Goldgar, "Posthumous Pardon Sought for Leo Frank." Southern Israelite, April 29, 1983.

On April 2, 1986—three weeks after Frank was pardoned—former Georgia Gov. Ellis Arnall, in an oral history interview with Mel Steely and Ted Fitz-Simons of the University of West Georgia Libraries, would reveal he first proposed pardoning Leo Frank during his term as governor from 1943-1947. Calling the Frank case "a blot on the good name of Georgia," he said: "I considered at one time undertaking to have the pardon board pardon Leo Frank, and yet some of my Jewish friends told me that was a dead issue now and not to stir it up again...So I desisted from it." Arnall praised the parole board's decision to pardon Frank, saying: "...I think they did right." Quoted from Conversations with Ellis Arnall, April 2, 1986, accessed in 2008 from www.westga.edu/~library/departments/gph/coneagov.shtml.

Unfortunately, Georgia's parole board denied exoneration to Leo Frank on December 22, 1983. Apparently afraid of offending Mary Phagan's family, it ruled that Alonzo Mann's sworn testimony that he saw Jim Conley carrying her body to the basement *did not* conclusively prove Frank's innocence—*despite support for the proposed pardon from the Georgia Senate,⁴ then-Gov. Joe Frank Harris (D), and most surprisingly of all, from Atlanta resident Mary Richards Phagan—the murder victim's 83-year-old namesake sister-in-law, once quoted as saying she would "thank the Lord" if Frank was pardoned.⁵ Unknown to both the petitioners and parole board, she was the only Phagan family member who sincerely believed Leo Frank was innocent!*

Astonishingly, the Board dismissed as anecdotal and hearsay all other irrefutable evidence Frank was innocent—which has been painstakingly documented as historic fact and truth for decades, in countless pages published in books by many reputable and respected authors, historians and scholars such as Yale University professor C. Vann Woodward,⁶ Judge Arthur Powell,⁷ Charles and Louise Samuels,⁸ Allen Lumpkin Henson,⁹ Harry Golden,¹⁰ University of Arizona professor Leonard Dinnerstein,¹¹ Robert Frey and Nancy Thompson-Frey,¹² and journalist Steve Oney.¹³ It also asserted that Georgia Gov. John Slaton's June 21, 1915 decision commuting Leo Frank's death sentence to life imprisonment *still* did not prove his innocence, even though Slaton clearly expressed his doubts about Mr. Frank's guilt in his courageous commutation order.¹⁴

This hurtful, historically challenged decision shocked and outraged the Jewish community of Atlanta and many others,¹⁵ rubbing salt into painful wounds caused by Leo Frank's lynching. The Georgia parole board's initial

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- 4 See Georgia Senate Resolution 423, unanimously adopted on March 26, 1982, urging the State Board of Pardons and Paroles to consider pardoning Leo Frank, published in Jewish Currents, February 1983, p. 11 and Mary Phagan Kean, The Murder of Little Mary Phagan (Far Hills, NJ: New Horizon Press, 1987), pp. 276-278.
- 5 In an interview with the Associated Press, Mary Richards Phagan, who read newspaper coverage of Frank's trial as a young girl in 1913, and thus came to believe in Frank's innocence, broke her long silence and courageously denounced the injustice done to Leo Frank, saying: "*I'll thank the Lord if they clear Leo Frank's name. We have all suffered enough...I have never believed that Frank done that [murder]. It just never made sense.*" She also condemned Frank's lynching, adding that "*two wrongs have never made a right.*" (Emphasis supplied) Associated Press, "Posthumous pardon is asked in lynching." Wisconsin State Journal, December 17, 1983. Accessed from www.newspaperarchive.com. See also Bill Carbine, "Mary Phagan: Frank Was Innocent," Marietta Daily Journal, December 23, 1983. Accessed from www.mdjonline.com and www.nl.newsbank.com.
- 6 C. Vann Woodward, Tom Watson: Agrarian Rebel (New York: Oxford University Press, 1969). See Chapter 23, pp. 431-450, which describes Watson's campaign of hate against Leo Frank and its tragic consequences.
- 7 Arthur Powell, I Can Go Home Again (Chapel Hill: University of North Carolina Press, 1943). See also Associated Press, "Jurist's Book Calls Leo Frank Innocent: Georgian Says He Knows Who Killed Girl In Lynch Case." Washington Post, November 21, 1943. Accessed from ProQuest Historical Newspaper Archive.
- 8 Charles and Louise Samuels, Night Fell on Georgia (New York: Dell Publishing, 1956).
- 9 Allen Lumpkin Henson, Confessions of a Criminal Lawyer (New York: Vantage Press, 1959).
- 10 Harry Golden, A Little Girl Is Dead (Cleveland: World Publishing Company, 1965).
- 11 Leonard Dinnerstein, The Leo Frank Case (New York: Columbia University Press, 1968).
- 12 Robert Frey and Nancy Thompson-Frey, The Silent and the Damned (Lanham, MD: Madison Books, 1988).
- 13 Steve Oney, And The Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank (New York: Vintage Books, 2004).
- 14 Slaton wrote: "This case has been marked by doubt. The trial judge doubted. Two judges of the [Supreme] Court of Georgia doubted. Two judges of the supreme court of the United States doubted. One of the three prison commissioners doubted." Decision by Georgia Governor John M. Slaton to grant Executive Clemency to Leo Frank, June 21, 1915, pp. 28-29. Georgia's Virtual Vault, Leo Frank Clemency File, Georgia Archives, Morrow, GA. Accessed from <http://www.georgiaarchives.org>.
Thirty years later, Slaton expressed his belief in Leo Frank's innocence in a letter he wrote to his cousin on March 15, 1945: "In my judgment, Frank was as innocent as I, and it was a question whether through political ambition I should shirk my duty as Governor and allow the State [of Georgia] to commit a murder." Quoted from Mary Phagan Kean, The Murder of Little Mary Phagan, *supra*, pp. 210-211. See also Stephen Goldfarb, "The Slaton Memorandum: A Governor Looks Back At His Decision to Commute the Death Sentence of Leo Frank." American Jewish History, September 1, 2000. Accessed from www.thefreelibrary.com in 2010.
- 15 "Jewish Organizations Shocked over Refusal of Georgia Pardons and Parole Board to Exonerate Leo Frank." Jewish Telegraphic Agency, December 27, 1983, and Vida Goldgar, "Pardon Denied: Parole Board Drops a Bombshell." Southern Israelite, December 30, 1983.

refusal to pardon Mr. Frank was sharply criticized nationwide in a flood of letters sent to the Board (including one from this author) and blasted by stinging editorials in the Miami News,¹⁶ the Atlanta Constitution¹⁷ and the Atlanta Journal, which called it a “terrible perpetuation of a terrible wrong.”¹⁸ The Journal also published a scathing Gene Basset editorial cartoon depicting the Georgia parole board members as blind men led by blind seeing-eye dogs, captioned: “LEO FRANK'S INNOCENCE? HECK, WE SEARCHED AND SEARCHED... JUST COULDNT FIND IT.”¹⁹

Shortly before Alonzo Mann's death in March 1985, former Atlanta Journal and Atlanta Constitution journalist Steve Oney—in a prequel to AND THE DEAD SHALL RISE—interviewed both Mr. Mann and Georgia parole board then-chairman Michael Wing for an article about Leo Frank he was writing for Esquire magazine. Mann told Oney of his deep disappointment and frustration that Frank was not pardoned in 1983, as Chairman Wing tried to excuse his panel's controversial, unbelievably insensitive, tone deaf, shameful, insulting and egregiously unjust denial of historical reality by disingenuously insisting there was no conclusive *legal* evidence that Mr. Frank was innocent, while ignoring the overwhelming *historical* proof of his injustice!²⁰ (A decade later, Big Tobacco would make another similarly outrageous denial of scientifically proven medical facts when all its chief executives testified under oath before a congressional committee that nicotine was “not addictive,” and claimed there was *still* no conclusive proof that smoking causes lung cancer, heart disease, emphysema, over 400,000 preventable, tobacco-related deaths every year in the United States, and many more such deaths worldwide---notwithstanding the Surgeon General's warnings printed on all cigarette packs since 1966.)

While impressive legal arguments and moral suasion had thus far failed to win Leo Frank a pardon in 1984-85, there was a far greater incentive which ultimately convinced Georgia to show contrition and right this wrong: *to protect its future access to world-class business and investment opportunities for jobs and economic growth that it could not afford to lose.* In a 2011 interview, Dale Schwartz, lead attorney for the petitioners, outlined the stark reality that the state of Georgia's refusal to pardon Frank not only was unjust, it was bad for business: *“A large number of American companies that were planning to open plants or move their corporate offices to Georgia sent letters to the governor declaring they were staying away from Georgia due to the disgraceful [pardon] denial.”*²¹ (Emphasis supplied)

See also Associated Press, “Pardon Denied in Leo Frank Case,” Galveston Daily News, December 23, 1983, where even Mary Richards Phagan denounced the Georgia parole board's decision, saying: “I am surprised. What's the matter with those people? There must be a lot of those people still living that are so cruel. All we can do is still pray that God will turn it around and show [them] that [Frank] was not guilty.” (Emphasis supplied). Accessed in 2011 from www.newspaperarchive.com.

16 “Georgia Stands Convicted.” Miami News, December 23, 1983.

17 “Frank Case: A Lost Opportunity.” Atlanta Constitution, December 23, 1983, and Bill Shipp, “Frank Case Should Be Reopened.” Atlanta Constitution, December 28, 1983.

18 “We Must Wait Still Longer for Justice for Leo Frank.” Atlanta Journal, December 23, 1983.

19 Gene Basset, “Leo Frank's Innocence?” Atlanta Journal, December 28, 1983. See also the Atlanta Constitution, January 2, 1984, which published another cartoon depicting three Georgia parole board members with a locked crate tagged 'Leo Frank Case,' captioned: “WELL, THAT'S DONE...NOW, WHERE CAN WE STASH IT?”

20 Steve Oney, “The Lynching of Leo Frank.” Esquire, September 1985, p. 104. Georgia parole board chairman Mike Wing explained the panel's 1983 decision to Oney: “The testimony of [Alonzo] Mann sounded good. It matched up with the shit in the shaft to suggest that Jim Conley was the killer [of Mary Phagan]. But does his testimony alone provide sufficient reason to overturn the findings of the court? I wouldn't convict someone seventy years after the fact solely on the testimony of an eighty-year-old man, so how can I pardon someone on that testimony? To get that pardon, they needed to prove that Frank was innocent beyond a shadow of a doubt, and Mann's testimony just didn't do that,” to which Alonzo Mann replied: “I didn't dream this. I can see Jim Conley as plain as day with that girl, and my age doesn't have a thing to do with it. The only thing I've ever dreamed about this case is of Mr. Frank hanging from a tree. That dream has haunted me.”

Another explanation for the Georgia parole board's 1983 decision was given by the petitioners' lead attorney, Dale Schwartz. He stated that Mobley Howell, who was the parole board chairman at the time, was adamantly opposed to pardoning Leo Frank, because “...he was afraid this would pave the way for the friends and family of thousands of other executed criminals to demand a posthumous pardon for them.” Shimon Rosenberg, Chaim Rivkin and Rachel March.

“A Jew's Lynching: The Leo Frank Saga.” ZMAN magazine, October 2011, p. 186.

21 Rosenberg, Rivkin and March. “A Jew's Lynching: The Leo Frank Saga.” ZMAN, October 2011, p. 187.

And so, after Esquire published THE LYNCHING OF LEO FRANK by Steve Oney in September 1985, a second application for a posthumous pardon was submitted to the Georgia parole board, which this time agreed to seriously consider another way to give Leo Frank justice.²²

Instead of asserting Mr. Frank's innocence, Atlanta attorneys Dale Schwartz and Charles Wittenstein, the ADL's southern regional counsel, assisted by David Meltz and Clark Freshman, argued the state of Georgia's failure to protect Leo Frank during his imprisonment at the Milledgeville state prison farm and its subsequent failure to bring his killers to justice, amounted to the state's *de facto* culpability in his demise. Therefore, Frank's lynching *per se* was so egregiously unjust, it overshadowed the issue of his innocence or guilt in the murder of Mary Phagan. They also insisted it was Georgia's responsibility to atone and repent for its past sins in this case, and suggested pardoning Leo Frank without addressing guilt or innocence would be in Georgia's best interest--by showing that the state no longer condoned anti-Semitism and mob violence, and that it sincerely wanted to heal these old wounds by renouncing bigotry, acknowledging injustice and righting this tragic wrong.²³

On Tuesday, March 11, 1986 Leo Frank was finally granted his long-overdue pardon by the very same Georgia parole board members who rejected it over two years earlier. In a dramatic, face-saving change of heart, they reversed themselves and unanimously agreed that the injustice of Mr. Frank's lynching was so compelling, it trumped the problematic question of his guilt or innocence.²⁴

According to the parole board's decision:

The lynching aborted the legal process, thus foreclosing further efforts to prove Frank's innocence. It resulted from the State of Georgia's failure to protect Frank. Compounding the injustice, the State then failed to prosecute any of the lynchers.

In 1983 the State Board of Pardons and Paroles considered a request for a Pardon implying innocence, but did not find "conclusive evidence proving beyond any doubt that Frank was innocent." Such a standard of proof, especially for a 70-year-old case, is almost impossible to satisfy.²⁵

After signing the pardon, Georgia parole board chairman Wayne Snow, Jr. explained the historic decision to the Atlanta Journal and Atlanta Constitution, acknowledging at last that:

*....Leo Frank had been done an injustice, [because] the state failed to protect him or to guarantee him [his further opportunity for] an appeal, and he certainly deserved a pardon...Hopefully, this will put the Leo Frank case behind us and redress what was a very poor episode in the state's history.*²⁶ (Emphasis supplied)

22 Mary Phagan Kean, The Murder of Little Mary Phagan, p. 311, describes the Georgia parole board's belated soul searching, for a way to save face and rectify its grievous error, by quoting these statements from some of its members: "'I don't know,' Board member James Morris had said in 1985, 'I wish we could do something to right this wrong. I know we want to do something, but [for us] to say with one hundred percent certainty that Leo Frank is an innocent man is a very difficult thing to do.' (Emphasis supplied)
"That year Wayne Snow, Jr., who had been appointed chairman..., said, 'The [Frank] case is so repulsive because of the lynching—because it terminated all the rights of an individual.' Another Board member had been disturbed by the 'State's inability to protect one of its citizens' since Frank was in state custody during the lynching." (Emphasis supplied)

23 Frey, The Silent and the Damned, pp. 154-156. See also Clark J. Freshman, "Beyond Pontius Pilate and Judge Lynch: The Pardoning Power in Theory and Practice in the Leo Frank Case." Undergraduate thesis, Harvard University, March 1986. Archived at Emory University, Woodruff Library, Leo Frank Collection, 1915-1986, Box 1, Folder 16.

24 Hal Straus and Brian O'Shea, "Jewish Leaders Hail Pardon as Vindication of Leo Frank." Atlanta Journal, March 12, 1986.

25 Georgia State Board of Pardons and Paroles. PARDON [in the name of Leo M. Frank]. March 11, 1986. Accessed from www.gpb.org/files/georgiastories/nsouthfrank176.jpg in 2010. A signed, original copy of the pardon certificate is on permanent display at the William Breman Jewish Heritage and Holocaust Museum in Atlanta.

26 Hal Straus and Brian O'Shea. "70 Years Later, Leo Frank Pardoned." Atlanta Constitution, March 12, 1986.

Recognizing the insensitivity shown by the Board's rejection of a pardon for Leo Frank in 1983, Georgia parole board member James "Tommy" Morris admitted:

Our earlier decision was depicted as evidence it was still Tobacco Road down here and that we weren't interested in doing the right thing. *It's almost like the parole board became the state of Georgia insofar as its attitude to [Atlanta's Jewish community and the Jewish people]...* Personally, I believe in my gut that [Frank] was innocent, but there is no *[sic]* way that I could prove it. So, we just went with the pardon and decided to let people read into it what they will.²⁷ (Emphasis supplied)

The pardon was welcomed by representatives of the Anti-Defamation League, the Atlanta Jewish Federation, American Jewish Committee and the American Jewish Congress.²⁸ It was also praised editorially by the Atlanta Journal,²⁹ Atlanta Constitution,³⁰ Christian Science Monitor,³¹ Marietta Daily Journal,³² South Florida Sun-Sentinel³³ and the Miami Herald.³⁴ Cogently and succinctly, the Herald declared: "*A salve for one of the South's most hateful, festering memories was finally applied.*"³⁵ (Emphasis added twice)

Some have criticized the Leo Frank pardon as insufficient as it did not formally declare him innocent,³⁶ while others have derided it as "political correctness" because they still believe Frank is guilty of murdering Mary Phagan, and perceive his pardon as an insult to her memory.³⁷

Nevertheless, what has long been overlooked is the most important reason of all given by Georgia's parole board for pardoning Leo Frank: "...as an effort to heal old wounds."³⁸

Let us look at the solid record of progress and accomplishment since Mr. Frank was pardoned and see just how far we have come:

27 Ibid.

28 "Leo Frank is Posthumously Pardon by Georgia Board." Jewish Telegraphic Agency, March 12, 1986, Vida Goldgar, "Historic Day in Georgia: Parole Board Grants Pardon to Leo Frank." Southern Israelite, March 14, 1986, and Michele Cohen, "Atlanta Jews See Victim's Pardon as a Symbol of Justice." South Florida Sun-Sentinel, March 13, 1986. Before he passed away in 2013, Charles Wittenstein, co-counsel with Dale Schwartz, proudly recalled the day Leo Frank was pardoned: "I was delighted. I remember how Dale and I were on cloud nine. We were thrilled with the results." Rosenberg, Rivkin and March. "A Jew's Lynching: The Leo Frank Saga." ZMAN, October 2011, p. 188.

29 "Leo Frank Pardon Decision A Victory for All Georgians." Atlanta Journal, March 12, 1986.

30 "Pardon Lifts A Burden Of Shame," Atlanta Constitution, March 13, 1986, and Carole Ashkinaze, "Pardon Symbolizes the New South." Atlanta Constitution, March 14, 1986.

31 "70-Year Delay." Christian Science Monitor, March 13, 1986.

32 "Leo Frank: Pardon A Gesture of Compassion." Marietta Daily Journal, March 13, 1986. Accessed from www.mdjonline.com and www.nl.newsbank.com.

33 "Belated Pardon Serves Justice." South Florida Sun-Sentinel, March 15, 1986.

34 "R.I.P., Leo Frank." Miami Herald, March 13, 1986.

35 Fred Grimm, "Lynch Mob Victim Is Pardoned." Miami Herald, March 12, 1986.

36 Arlene Peck, "Leo Frank: Too Little, Too Late." National Jewish Post and Opinion, March 29, 1986. She wrote: "I am not impressed by the recent pardon of Leo Frank. I feel that he deserves complete exoneration and nothing less... [I]t is still a travesty of justice to not own up to the reality of Leo Frank's innocence." See also "Georgia Pardoned Georgia," Jewish Floridian, March 21, 1986, an editorial that disses Frank's pardon as "a hoarse *mea culpa*."

37 Steve Oney, And the Dead Shall Rise, *supra*, p. 643: "Joining in vociferous opposition to a pardon were Harvard-educated lawyer Tom Watson Brown, the populist's great-grandson, Hugh Dorsey, Jr. [son of Frank's prosecutor], Jasper Dorsey, son of lynching planner John Tucker Dorsey, and Mary Phagan Kean [great-] niece and namesake of the victim." (Mary Phagan Kean is the grand-daughter of Mary Richards Phagan--Author)

Hugh Dorsey, Jr. scorned the pardon of Leo Frank as "public flagellation," unrepentant in his belief that Frank had a fair trial, quoting Frank v. Mangum, 237 U.S. 309 (1915), a long-discredited U.S. Supreme Court decision upholding Frank's conviction—which the Court later overruled as wrongly decided in Moore v. Dempsey, 261 U.S. 86 (1923). Dorsey also insisted his late father "never doubted" that Frank was guilty of murdering Mary Phagan. Letter to the editor, Atlanta Journal and Constitution, March 22, 1986; see ADL rebuttal, *idem*, March 29, 1986.

38 Georgia State Board of Pardons and Paroles, PARDON, *supra*.

- 1) Georgia's dark and sinister shroud of secrecy, silence and impunity surrounding the lynching of Leo Frank has been ripped away forever!³⁹
- 2) Greater Atlanta's Jewish community no longer cowers in fear when Leo Frank's name is mentioned. Today, some 120,000 Jewish Atlantans now live and work comfortably with their neighbors in a more tolerant, diverse and much more welcoming community—proud of themselves and their heritage, enjoying the respect, security, self-confidence and peace of mind denied to Frank, his family and the far smaller number of Jews who lived in a very different Atlanta during those tragic times long ago.⁴⁰
- 3) When Frank was pardoned, the once-taboo subject of the Leo Frank case was finally opened to free, robust and honest discussion and debate in Georgia and nationwide. Thus its vital lessons and truths—and their relevance to current events—are more widely and fully understood than ever before, thanks in part to author Steve Oney's critically acclaimed book *AND THE DEAD SHALL RISE*. The University of Georgia Press acquired publishing rights to *THE LEO FRANK CASE* by Leonard Dinnerstein, reissuing it in 1987, and has published another new book: *SCREENING A LYNCHING: THE LEO FRANK CASE ON FILM AND TELEVISION*, by Emory University professor Matthew Bernstein. Steve Oney's book is available in some public libraries, and all these books are currently in print and available from their publishers, at the William Breman Jewish Heritage and Holocaust Museum, Atlanta History Center, Marietta Museum of History, and also online.
- 4) A five-hour, award-winning NBC miniseries, *THE MURDER OF MARY PHAGAN*, starring Jack Lemmon as Governor John Slaton and Peter Gallagher as Leo Frank, brought this tragic story of injustice to millions of American TV viewers in prime time when first broadcast in January 1988. It was later reissued on VHS videocassette in 1992 and on DVD in 2011.⁴¹ More recently, *THE PEOPLE V. LEO FRANK*, a documentary produced by Ben Loeterman, was televised on PBS November 2, 2009, six months after its World Premiere in Marietta at the Cobb Energy Center, and is available for purchase online at www.leofrankfilm.com.⁴²
- 5) The William Breman Jewish Heritage and Holocaust Museum in Atlanta opened its traveling exhibition *SEEKING JUSTICE: THE LEO FRANK CASE REVISITED*, in 2008 through the spring of 2009—the first museum exhibit exclusively dedicated to an in-depth discussion of one of the most controversial and regrettable chapters in American judicial history.⁴³
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- 39 On New Year's Day 2000, Stephen Goldfarb, a reference librarian for the Atlanta-Fulton County Public Library, publicly disclosed for the first time a list that identified those who allegedly participated in the lynching of Leo Frank, online at www.leofranklynchers.com. Kathy Sawyer, "A Lynching, A List and Reopened Wounds." *Washington Post*, June 20, 2000.
- 40 Roni Robbins. "Letters from Atlanta: Big Draw, Fading Drawl." *Hadassah* magazine, November 2008, pp. 46-48. This article documented the massive influx of new Jewish residents to Atlanta and its suburbs since the 1980's through the first decade of the 21st century, and their positive impact on Atlanta's Jewish community—and on metropolitan Atlanta.
- 41 *THE MURDER OF MARY PHAGAN*. Produced by George Stevens, Jr. (c) 1987 Century Towers Productions and Orion Television. Originally broadcast January 24, 1988 (Part 1) and January 26, 1988 (Part 2) on the NBC-TV network. Matthew Bernstein, *Screening A Lynching: The Leo Frank Case on Film and Television* (Athens: University of Georgia Press, 2009), Chapter 4, pp. 171-250, Filmography, p. 267. In May 2011 MGM and 20th Century Fox Home Entertainment LLC reissued *THE MURDER OF MARY PHAGAN* as a Limited Edition Collection 2-DVD set, and this Emmy award-winning miniseries can also be streamed online at www.hulu.com/watch/218839.
- 42 Alison Gaudet Yarrow. "The People Revisit Leo Frank." *Jewish Daily Forward*, May 22, 2009. Accessed in 2010 from www.forward.com. Immediately after the November 2, 2009 telecast, a half-hour special produced by Georgia Public Broadcasting, *THE PEOPLE V. LEO FRANK: A GEORGIA ROUNDTABLE* was broadcast on most Georgia public television stations and streamed online at www.gpb.org. It featured a panel discussion of the Leo Frank case, moderated by Stan Deaton, Ph.D, senior historian of the Georgia Historical Society, with former Georgia Gov. Roy Barnes (D), author Steve Oney and Emory University professor Matt Bernstein.
- 43 Jane Leavey *et al.* *Seeking Justice: The Leo Frank Case Revisited Exhibition Catalogue* (Atlanta: The William Breman Jewish Heritage and Holocaust Museum, 2008). See also Michael Jacobs. "Doing Justice to History." *Atlanta Jewish Times*, February 8, 2008. Accessed from www.jtonline.us in 2008. Three years after opening in Atlanta, *Seeking Justice* was also exhibited at the Jewish Museum of Florida in Miami Beach from January through August 2011. "Leo Frank's

6) Thanks largely to Steve Oney's interviews with the descendants of those involved in the 1915 lynching of Leo Frank along with Mr. Frank's closest surviving relatives, truth and reconciliation have finally come to Marietta, Georgia, where it took place. For example, Chuck Clay, the great-nephew of Eugene Herbert Clay, Sr.—identified and acknowledged as the chief planner and leader of Leo Frank's lynching—has outspokenly condemned this act and all forms of prejudice, including racism and anti-Semitism.⁴⁴ He has also been joined by former Georgia Gov. Roy Barnes (D), whose grandfather-in-law, Cicero Dobbs, also participated in the crime. Not only has Barnes condemned Leo Frank's lynching, he also publicly voiced his strong support for Gov. John Slaton's courageous decision of June 21, 1915 commuting Mr. Frank's unjust death sentence to life imprisonment, and has acknowledged that the Frank case was a "miscarriage of justice."⁴⁵ Both Mr. Clay, former Georgia Republican Party chairman, Cobb County commissioner, attorney and state senator, and former Gov. Barnes were interviewed for and appeared on the PBS Leo Frank television documentary, and have supported and participated in efforts to inform and educate their fellow Georgians and all Americans about the Leo Frank case, its tragic pre-pardon legacy and the positive legacy of old wounds healed by Frank's 1986 pardon.

7) For the first time the Cobb County, Georgia Board of Commissioners officially commemorated the 90th anniversary of Leo Frank's lynching on August 17, 2005. Under the leadership of its first-ever Jewish member and chairman Sam Olens,⁴⁶ it adopted a resolution condemning the heinous act and pledged that "no such injustice will ever happen again" to anyone in Cobb County. That same day, a memorial service for Mr. Frank was held at the lynching site—the VPI office building at 1200 Roswell Road in Marietta, and a plaque in his honor and of all lynching victims with the phrase "Am I My Brother's Keeper?" was dedicated and affixed to the building by Rabbi Steven Lebow of Marietta's Temple Kol Emeth.⁴⁷

Landmark Trial and Lynching Told in Exhibit *Seeking Justice: The Leo Frank Case Revisited*, " p. 1, pp. 4-5, and "Lead Counsel for Leo Frank's Posthumous Pardon Keynotes Annual Judges & Lawyers Event Jan. 24," p. 13. TILES: Newsletter for Members of the Jewish Museum of Florida. Vol. XXIII, Number 3, December 2010. Accessed in 2011 from www.jewishmuseum.com.

44 Jane Gross. "Georgia Town Is Still Divided Over the 1915 Lynching of a Jew." New York Times, August 26, 2000. "We have a tragedy that's unique here," said Chuck Clay....who acknowledges that his great-uncle was involved in the lynching. "Should we draw our own unique lessons? I hope so. This story always bears repeating. We should never let our guard down and think we've vanquished prejudice." See also Yolanda Rodriguez, "Ceremony remembers lynching, sows reconciliation." Atlanta Journal-Constitution, August 18, 2005. Accessed from www.ajc.com.

45 Carrick Mollenkamp, "An Internet Posting Raises the Ghosts of a Notorious Crime." Wall Street Journal, June 9, 2000. "Georgia's [then] current governor, Roy Barnes [D], whose family moved to Cobb County in 1919, calls the Frank lynching 'one of the lowest points in Georgia's history...The Leo Frank case showed a side of the South—bigotry towards Jews and Roman Catholics—that I hope and pray we've grown out of. With a miscarriage of justice like that, I think people tend to be quietly ashamed that it could have happened rather than want to talk about it.'" Unfortunately, the late Tom Watson Brown (1933-2007)--unlike Barnes, Chuck Clay and the late Mary Richards Phagan, who have all denounced the injustice done to Leo Frank—vehemently argued throughout his life and until his death that Frank was guilty as charged and duly convicted of murdering Mary Phagan! The controversial Marietta attorney also tried to excuse Frank's lynching by alleging the Jews "bribed" Georgia Gov. John Slaton to commute Frank's death sentence—repeating a false anti-Semitic charge made by his great-grandfather Tom Watson, which has been debunked by Steve Oney and many others who have extensively studied and written about the Leo Frank case and lynching. See Steve Visser, "NFL Censure Sought on Falcons Investor: Cobb Rabbi Says Remarks on Leo Frank Lynching by Watson Descendant Opens 85-Year Wound." Atlanta Journal-Constitution, September 8, 2000, and Kristina Torres, "Tom Watson statue removed from Georgia's Capitol steps." Atlanta Journal-Constitution, November 29, 2013. Accessed from www.ajc.com and www.nl.newsbank.com.

46 After serving as chairman of the Cobb County and Atlanta regional commissions, Olens, a Jewish Republican, was elected by Georgia voters as the state's Attorney General in the November 2010 midterm elections. Jim Galloway, "Sam Olens Breaks Through an Ancient Georgia Barrier." Atlanta Journal-Constitution, November 6, 2010. Accessed from www.ajc.com.

47 Candice Cunningham. "Honoring his memory: Group Holds Peaceful Gathering on Anniversary of Frank's Death." Marietta Daily Journal, August 18, 2005. Accessed from www.mdjonline.com and www.nl.newsbank.com. Ten years earlier, Rabbi Lebow held another memorial service at the same location, attaching and dedicating another plaque to the same building with its owner's permission. It reads: "Leo Frank (1884-1915). Wrongly accused, Falsely Convicted, Wantonly Murdered. Pardoned, 1986. Remembered on the 80th yahrzeith, 1995/5755. By the Jewish Community of Cobb County." (Emphasis supplied) Tom Brooks, "Service recalls dark moment of Leo Frank's lynching." Marietta Daily Journal, August 14, 1995. Accessed from www.mdjonline.com and www.nl.newsbank.com.

8) Marietta, Georgia has had two elected Jewish city councilmen: Philip Goldstein (first elected in 1980 *before* Frank was pardoned), and Van Pearlberg, who served from 2006 to 2012. Pearlberg has served with distinction as Cobb County's Deputy Chief Assistant District Attorney and as Assistant Attorney General of Georgia.⁴⁸

9) Playwright Alfred Uhry, author of DRIVING MISS DAISY—whose great-uncle was Sigmund Montag, owner of Atlanta's National Pencil Company, where Leo Frank was superintendent—has written PARADE, his Tony award-winning musical about the Leo Frank case. After its critically acclaimed brief run on Broadway in 1999, it was revived in 2000 with off-Broadway performances in Atlanta, Denver and elsewhere (this author watched an excellent performance of PARADE at the Stage Door Theatre in Coral Springs, FL in 2003).⁴⁹

10) The Georgia Historical Society, Temple Kol Emeth and the Jewish American Society for Historical Preservation cosponsored and dedicated a Georgia state historical marker at the Leo Frank lynching site in Marietta on March 7, 2008.⁵⁰ The event was also recognized by Georgia Senate Resolution 1066,⁵¹ which commended and congratulated all the parties involved in placing the Leo Frank historical marker at 1200 Roswell Road. Seven years later, another historical marker honoring Georgia Governor John M. Slaton, who commuted Frank's death sentence, was dedicated on June 17, 2015 at the Atlanta History Center.⁵²

11) Georgia's historic and groundbreaking pardon of Leo Frank has also served as an example for at least three other states to right their own past wrongs by taking restorative justice to a whole new level. On December 24, 2003, Gov. George Pataki (R-New York) issued his state's first-ever posthumous pardon to the late, controversial stand-up comedian Lenny Bruce, who was convicted in 1964 on questionable obscenity charges. Pataki called the pardon "a declaration of New York's commitment to upholding the First Amendment [and] as a reminder of the precious freedoms we are trying to preserve as we wage the war on terror."⁵³ And on March 1, 2010, Gov. Rick Perry (R-Texas) granted a posthumous pardon *for innocence* to Tim Cole, who died in 1999 while serving a 25-year sentence for aggravated sexual assault due to his having been misidentified by the victim as the perpetrator of the crime. Cole was cleared by another man's confession and DNA evidence discovered after his death. Said Perry, "I have been looking forward to the day I could tell Tim Cole's mother that her son's name has been cleared for a crime he did not commit. The State of Texas cannot give back the time he spent in prison away from his loved ones, but today I was finally able to tell her we have cleared his name, and hope this brings

48 See www.philipgoldstein.com, and Pearlberg's website www.oldwarhorse.com, both accessed in 2013.

See also the *Marietta Daily Journal*, *supra*, note 47, where Candice Cunningham also wrote: "Cobb Senior District Attorney Van Pearlberg...has been fascinated by the Frank case from a professional perspective...As an attorney, Pearlberg said the Frank case was filled with mistakes. It included prosecutorial misconduct, uncontrolled courtroom antics, pre-trial media publicity and witnesses who lacked credibility."

49 Dan Hulbert, "'Parade:' A Second Chance." *Atlanta Journal-Constitution*, June 11, 2000. See also the liner notes from *PARADE: The Original Broadway Cast Recording*, RCA Victor Compact Disc 09026-63378-2 (c) 1999 BMG Entertainment.

50 City of Marietta, Georgia. "Leo Frank lynching site recognized with historic marker," March 7, 2008, accessed in 2008 from www.mariettaga.gov/news/readarticle.aspx?id=558. The marker reads: "*Near this location on August 17, 1915, Leo M. Frank, the Jewish superintendent of the National Pencil Company in Atlanta, was lynched for the murder of thirteen-year-old Mary Phagan, a factory employee. A highly controversial trial fueled by societal tensions and anti-Semitism resulted in a guilty verdict in 1913. After Governor John M. Slaton commuted the death sentence to life in prison, Frank was kidnapped from the state prison in Milledgeville and taken to Phagan's home town of Marietta, where he was hanged in front of a local crowd. Without addressing guilt or innocence, and in recognition of the state's failure to either protect Frank or bring his killers to justice, he was granted a posthumous pardon in 1986. Erected by the Georgia Historical Society, Jewish American Society for Historic Preservation and Temple Kol Emeth.*" (Emphasis supplied) Marker text courtesy of Jerry Klinger, accessed from www.jashp.org/leofrank.html in 2011.

51 Georgia Senate Resolution 1066. "Commemorating March 7, 2008 as the date of the placement of a Georgia historical marker at the site of the Leo Frank lynching and commanding the organizations participating in the dedication of the historical marker, and for other purposes." Accessed from www.legis.state.ga.us/legis/2007_08/fulltext/sr1066.htm.

52 Katheryn Hayes Tucker, "A Lesson For Judges in Memory of the Governor Who Granted Clemency to Leo Frank." *Daily Report*, June 18, 2015. Accessed from <http://www.dailyreportonline.com/ID=1202729836658/A-Lesson-For-Judges-In-Memory-Of-The-Governor-Who-Granted-Clemency-To-Leo-Frank?slreturn=20150520074058>.

53 Jonathan Wald, "Lenny Bruce granted posthumous pardon." *CNN*, December 24, 2003. Accessed in 2010 from www.cnn.com/2003/SHOWBIZ/12/24/bruce.pardon.

a measure of peace to his family.”⁵⁴ Finally, on April 16, 2013 the Alabama legislature formally exonerated the Scottsboro Boys—nine black men who were falsely accused of rape and sentenced to death in the 1930's, and declared them “the victims of a gross injustice.” Later that same year, Alabama's parole board posthumously pardoned the three Scottsboro defendants who still remained convicted.⁵⁵ (The last surviving defendant, Clarence Norris, who died in 1989, was pardoned in 1976 by Alabama's then-Governor George Wallace.)

There can now be no doubt that today's 21st century Georgia is a far different and much better place than the state which a century ago unjustly prosecuted, convicted and lynched Leo Frank. Since March 11, 1986, the state of Georgia, greater Atlanta, Marietta, and Cobb County have transformed and redeemed themselves by granting Frank his posthumous pardon, and moved forward in a meaningful and very positive way by building a better society that is on the right side of history—by correcting injustice, repudiating bigotry and hate, and by embracing tolerance, diversity and a better future for all.⁵⁶

Therefore, I believe those who worked so long and hard to get Leo Frank justice deserve more than our respect: they should also be remembered and honored for their courage and determination to succeed in righting this wrong. This pardon was a just and conciliatory decision whose proven, long-term benefits have far outweighed its shortcomings; although Frank was not formally absolved of the crime of killing Mary Phagan, the state of Georgia delegitimized his unjust murder conviction and gave him the full benefit of over 70 years of amply documented doubts about his guilt, while finally admitting that Frank was indeed the tragic victim of a grievous injustice—a lynching author Steve Oney called an unpunished, “state-sponsored” anti-Semitic hate crime.⁵⁷

Nevertheless, history's judgment in the Leo Frank case is unambiguous and unmistakably clear: Mr. Frank was innocent, he was indicted under false pretenses for the 1913 murder of Mary Phagan without sufficient evidence, he was wrongly convicted and the guilty verdict rendered and death sentence imposed upon him were a terrible miscarriage of justice that is irrevocably null and void. *This judgment can never be overturned or erased, as it has stood the test of time for a century.*⁵⁸

54 “Gov. Perry Grants Posthumous Pardon for Innocence to Tim Cole.” March 1, 2010. Office of the Governor, Austin, Texas. Accessed in 2010 from www.governor.state.tx.us/news/press-release/14312. Two years later, the Texas Historical Commission and Tim Cole's family also dedicated an official state marker commemorating Cole's exoneration and pardon at his Fort Worth burial site. Logan G. Carver, “Family of Tim Cole to unveil graveside historical marker.” *Lubbock Avalanche-Journal*, February 4, 2012. Accessed from www.lubbockonline.com/local-news/2012-02-04/family-tim-cole-unveil-graveside-historical-marker in 2012.

55 See Brian Lyman, “Alabama Grants Posthumous Pardons to Scottsboro Boys.” *Montgomery Advertiser*, November 21, 2013. Accessed from www.usatoday.com/story/news/nations/2013/11/21/scottsboro-boys-pardoned/3662205, and “Governor Bentley Signs Scottsboro Boys Legislation.” Office of the Governor, Montgomery, Alabama, April 19, 2013. Accessed from www.governor.alabama.gov/newsroom/2013/04/governor-bentley-signs-scottsboro-boys-legislation. Like the Leo Frank case, the Scottsboro affair was the subject of JUDGE HORTON & THE SCOTTSBORO BOYS, a 1976 NBC made-for-TV feature film starring Arthur Hill in the title role, with Vera Miles, Ellen Barber, Suzanne Lederer and Ken Kercheval, and SCOTTSBORO: AN AMERICAN TRAGEDY, a 2001 PBS AMERICAN EXPERIENCE public television documentary.

56 In his opening remarks at the Leo Frank historical marker dedication ceremony on March 7, 2008, Cobb County and Atlanta regional commission then-chairman Sam Olens declared: “It is important to understand the changes...in Cobb County since 1915. We're now a community with a thriving Jewish family life...that embraces diversity...where the descendants of those involved in the crime [the lynching] have now denounced the grave injustice given to Leo Frank.” Transcribed from online webcast, www.marietta.granicus.com/MediaPlayer.php?publish.id.45 in 2009.

57 Jim Auchmutey. “A new book names the leading local citizens believed to have had a hand in an infamous crime.” *Atlanta Journal-Constitution*, September 25, 2003. Accessed from www.ajc.com. See Oney, *And the Dead Shall Rise*, *supra*, pp. 512-572, chapters 19-22, where he shows how and why the state of Georgia “failed” to protect Frank, and convincingly makes his case that Leo Frank's lynching was a “state-sponsored” crime.

58 Although SCOTUS upheld Leo Frank's murder conviction in *Frank v. Mangum*, 237 U.S. 309 (1915), it repudiated this wrongly decided travesty of justice and due process in *Moore v. Dempsey*, 261 U.S. 86 (1923). Justice Oliver Wendell Holmes, who dissented in the earlier case because, as he had stated, in *Frank v. Magnum*, *supra*, 237 U.S. 309, at 347, “Mob law does not become due process of law by securing the assent of a terrorized jury,” wrote the 6-2 majority opinion ruling that five African-American men convicted of murder in mob-dominated trials in Phillips County, Arkansas (following the notorious 1919 Elaine race riot, where rural black sharecroppers protesting their Jim Crow-era

I close with these still-relevant 1986 editorial comments from the Atlanta Journal and Atlanta Constitution, which eloquently explain what the posthumous pardon of Leo Frank also means to all of us—then and now:

The important meaning of this decision is not that [Leo Frank] is now officially relieved of an indictment against him. The meaning that makes it worth having...is that the state of Georgia is on record as saying that mob rage and anti-Semitic terror are not acceptable tools of “justice” here. They are not tolerated today, and their exercise in the past will not be excused just because times and men were different then.⁵⁹

And that brings us to a strange irony of the Frank pardon. As it acknowledges the profound failures which allowed Frank to be lynched, Georgia has sought to erase the terrible blot on its record. It has owned up to the past. While the pardon is in the name of Leo M. Frank, it is the state of Georgia that is looking for relief—from its sentence of interminable shame.⁶⁰

That “sentence of interminable shame” has been commuted.

ABOUT THE AUTHOR

Richard Mitchens is a resident of Plantation, Florida. He first learned about the Leo Frank case in his American history class while studying at Miami-Dade College in 1972, earning his Associate of Arts degree that year. Richard went on to graduate from Florida International University in 1974 with a Bachelor of Arts degree in Political Science. He has read AND THE DEAD SHALL RISE by Steve Oney, THE LEO FRANK CASE by Leonard Dinnerstein, A LITTLE GIRL IS DEAD by Harry Golden, THE SILENT AND THE DAMNED by Robert Frey and Nancy Thompson-Frey and SCREENING A LYNCHING: THE LEO FRANK CASE ON FILM AND TELEVISION by Matt Bernstein. He has also watched the PBS documentary THE PEOPLE V. LEO FRANK, the NBC miniseries THE MURDER OF MARY PHAGAN, and PROFILES IN COURAGE: GOVERNOR JOHN M. SLATON on television and home video. Richard has also visited the William Breman Jewish Heritage and Holocaust Museum in Atlanta and its exhibition SEEKING JUSTICE: THE LEO FRANK CASE REVISITED in 2008.

This essay is dedicated to the memory of Alonzo Mann (1898-1985), Mary Richards Phagan (1899-1992), James T. “Tommy” Morris (1940-2002), Wayne Snow, Jr. (1936-2004) and Charles Wittenstein (1928-2013)--and to everyone else who has zealously sought justice for Leo Frank, and to honor his memory.

exploitation were brutally repressed by mob violence and mass arrests) were denied due process of law under the Fourteenth Amendment—the very same claim the Court had erroneously rejected in the Leo Frank case. Perhaps if Frank had not been lynched in 1913 and thus lived to once again appeal his conviction after SCOTUS decided Moore v. Dempsey in 1923, his conviction would have been reversed in light of this and other future changes in federal constitutional jurisprudence. *Therefore, Leo Frank's unjust 1913 murder conviction should be considered legally null and void.*

Indeed, as former Georgia Gov. John Slaton later observed in 1954, “If the Supreme Court of the United States had been constituted at the time it decided the Frank case as it was when it decided the five cases from Arkansas [Moore v. Dempsey], the decision in the Frank case would have been reversed.” Stephen Goldfarb, “The Slaton Memorandum,” American Jewish History, September 1, 2000. Accessed from www.thefreelibrary.com.

59 “Leo Frank Pardon Decision A Victory For All Georgians.” Atlanta Journal, March 12, 1986.

60 “Pardon Lifts A Burden Of Shame.” Atlanta Constitution, March 13, 1986.