

**"THE CASE OF MARY PHAGAN, 'A STORY ABOUT THE STORY OF A MURDER':
CONSTRUCTING A CRIME"**

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(ABSTRACT)

On April 27, 1913, the body of thirteen-year-old Mary Phagan was discovered in the basement of her workplace in Atlanta, Georgia. Over the course of the following two years, her employer, Leo Frank, would be tried and convicted for her murder. Another employee, Jim Conley, a black janitor originally implicated in the crime, provided the evidence used to convict Frank.

In my thesis, I explain the multiple identities created to describe the victim and her accused murderer(s). Press reports, trial records, and secondary historical accounts of the crime all reveal a fascination with the young female victim and a desire to solve the mystery of her death. By examining personal identity as a cultural construction, I re-evaluate the manner in which we define and describe crime.

Phagan's murder became a cautionary tale, a narrative of sexual danger within the model city of the New South. My thesis illustrates the importance of understanding murder as an event occurring within and shaped by a social context. The murder of Mary Phagan and the Frank case demonstrate how we ascribe meaning to tragic events and how variables such as race, class, gender, and age affect the outcome of criminal procedures.

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Introduction

"Murder prowls the confines of the law, on one side or the other, above or below it; it frequents power, sometimes against and sometimes with it. The narrative of murder settles into this dangerous area; it provides the communication between interdict and subjection, anonymity and heroism; through it infamy attains immortality."

- Michael Foucault¹

On Saturday morning, April 26, 1913, thirteen-year-old Mary Phagan boarded a trolley bound for downtown Atlanta. It was a state holiday (Confederate Memorial Day), and Phagan planned to pick up her weekly paycheck at the National Pencil Factory and then go downtown to watch the parade. The following morning her body was discovered in the basement of the pencil factory. Within two weeks, the police arrested a total of six suspects for the crime. Phagan's murder triggered a local media frenzy as Atlanta's residents attempted to understand and avenge the mysterious death of the young girl.

As the police investigation continued, public perceptions of the crime and the identity of the murderer shifted. Much of the case was played out in the press, as Mary Phagan came to represent the "lost innocence" of the South in general and white southern womanhood in particular. Phagan's murder became a cautionary tale, a narrative of sexual danger within the model city of the New South.² As the victim of the crime, Phagan remained a potent symbol throughout the police investigation and the ensuing murder trial.

Leo Frank, a prominent Jewish citizen and Phagan's employer would be indicted and tried for her murder. Frank's highly publicized trial lasted for four weeks and ultimately resulted in his conviction. The defendant, accused of the violent rape and murder of a young girl, was variously depicted in contemporary newspaper accounts as an outsider, a Northern industrialist, and a "perverted Jew."³ Hugh M. Dorsey, the chief prosecutor, had little physical evidence to

¹ Michael Foucault, ed., *I, Pierre Rivère, having slaughtered my mother, my sister, and my brother...: A Case of Parricide in the 19th Century* (New York: Pantheon Books, 1975), 206.

² For an exemplary study of cultural narratives of "sexual danger" see Judith Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1994). For a similar approach set in the United States see Amy Gilman Srebnick, *The Mysterious Death of Mary Rogers: Sex and Culture in Nineteenth-Century New York* (New York: Oxford University Press, 1995).

³ For an early analysis of the anti-Semitism surrounding the case, see Leonard Dinnerstein, *The Leo Frank Case* (Athens, Georgia: University of Georgia Press, 1966).

support the murder charges against Frank. Although the prosecution and the press alluded to a rape, the medical examiners could not reach a consensus on whether Phagan had been sexually assaulted. Perhaps the most surprising and interesting aspect of the trial concerns the pivotal testimony offered by Jim Conley, a black janitor at the pencil factory. Conley had a previous arrest record and was himself implicated in the crime after he confessed that he had helped Frank dispose of the body. Conley admitted to lying to the police and could be linked to key pieces of physical evidence found at the crime scene. However, in a startling departure from the southern status quo, the testimony of a working-class black man was used to convict a middle-class white man.

Frank's defense relied on negative characterizations of Jim Conley and Conley's testimony concerning the crime. The defense attempted to discredit Conley's testimony by trying to reinforce the stereotypical image of the black man in the South, referring to Conley as a "dirty, filthy, black, drunken, lying nigger."⁴ Clearly, Frank intended to use Conley's blackness as a foil to define his own whiteness. Although the defense could have requested a change of venue to avoid negative public sentiment in Atlanta, Frank's attorneys believed it would be in their client's best interest to face trial within his own community where his friends, family, and employees could testify to his good character. Instead, however, the wave of popular resentment directed against Frank undercut this defense strategy.

On August 25, 1913, Leo Frank was found guilty of murdering Mary Phagan; the following day, Judge Leonard Roan sentenced Frank to death. Though the citizens of Atlanta exulted, nationally the verdict was not well received. Frank's attorneys immediately filed a series of appeals on his behalf. During the appeals process, Frank's attorneys attempted to portray their client as a victim, claiming the rampant anti-Semitism and the threat of mob violence forced the terrorized jury to capitulate to a legal lynching. National newspapers further developed this rhetoric, shifting attention away from the murder of Mary Phagan to the martyrdom of Leo Frank. Papers such as *The New York Times* focused on the "crime" committed in the courtroom and called for a new trial where Frank could prove his innocence. Many Georgians reacted bitterly to this outside agitation. Tom Watson, the Populist leader and

prominent Georgian, attacked Frank viciously in his newspaper and journal *The Jeffersonian*. Watson stoutly supported Frank's conviction and advocated the use of lynch law to protect the sanctity of white womanhood in the South.⁵

On June 20, 1915, Georgia Governor John Slaton commuted Leo Frank's sentence to life imprisonment. Just two months later, a lynch mob composed of residents from nearby Marietta (Phagan's hometown) broke into the Milledgeville Prison Farm and kidnapped Frank. The kidnappers hauled Frank back to Marietta and hanged him from a tree on the morning of August 17, 1915.

Historiography

The murder of Mary Phagan and the trial of Leo Frank have long fascinated historians and popular writers alike. C.P. Connolly, the editor of *Collier's Weekly* and one of Frank's most vocal supporters, was among the first to write a popular account of the investigation and trial; which he published first in his magazine and then reprinted in book format.⁶ Both defense attorney Reuben Arnold and prosecutor Hugh Dorsey published copies of their closing arguments in the case.⁷

Books about the case continued to appear over the years. In 1956, Charles and Louise Samuels published a popular account of the trial, published by Dell Paperbacks.⁸ In the 1960s, Harry Golden published another well-received general account of the case entitled *A Little Girl is Dead*.⁹ In 1988, NBC televised a mini-series called "The Murder of Mary Phagan" which was

⁴ Quote from Luther Rosser's closing statement found in Mary Phagan, *The Murder of Little Mary Phagan* (Far Hills, New Jersey: New Horizon Press, 1987), 141.

⁵ For a brief account of the importance of Populism in the South and a thumb-nail sketch of Tom Watson see Edward Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992). For a more complete biography of Watson see C.Vann Woodward, *Tom Watson: Agrarian Rebel* (New York: Oxford University Press, 1966).

⁶ C.P. Connolly, *The Truth About the Frank Case* (New York: Vail-Ballou Co., 1915).

⁷ See Reuben Arnold, *The Trial of Leo Frank: Reuben R. Arnold's Address to the Court on His Behalf* (Baxley, Georgia: Classic Publishing Company, 1915) and Hugh Dorsey, *Argument of Hugh M. Dorsey at the Trial of Leo M. Frank*, (Macon, Georgia: N. Christophulos, 1914).

⁸ Charles and Louise Samuels, *Night Fell in Georgia* (New York: Dell Publishing, 1956).

⁹ Harry Golden, *A Little Girl is Dead* (Cleveland: World Publishing, 1965). For a more recent popular account of the case see Robert Seitz Frey and Nancy Thompson-Frey, *The Silent and the Damned: The Murder of Mary Phagan and the Lynching of Leo Frank* (New York: Madison Books, 1988).

largely based upon information mined from Golden's book. The following year, Mary Phagan's great niece (Mary Phagan Kean) published an account generated from oral histories conducted with members of her own family.¹⁰ Her book, clearly indicating the family's belief that Frank was indeed guilty, was written as a reaction to the NBC movie portrayal of Frank as an innocent victim. The sheer abundance of popular treatments of the case demonstrates a public fascination with murder mysteries and the "true crime" genre.

Several scholarly works also examine the importance of Frank's Jewish identity in determining the outcome of his trial. Historian Leonard Dinnerstein was the first scholar to re-examine the case as an example of anti-Semitism in the United States. His monograph, *The Leo Frank Trial*, remains the most detailed and informative account of the trial and appeals process.¹¹ Dinnerstein graphically demonstrates the highly prejudicial atmosphere of the courtroom and explains the importance of the Frank case in formulating a groundwork for the modern civil rights movement and the Anti-Defamation League of the B'nai B'rith. However, Dinnerstein's account does not give adequate attention to the people whom he calls "bewildered southerners" who attacked Frank as "a symbol of the new industrial culture which had reneged on its promise [of a better life]."¹² In his study of anti-Semitism in the United States, Dinnerstein offers still more generalizations on southern culture explaining, "Southerners, notoriously insecure and continually on the defensive, seized upon hatred for Jews as one outlet for the frustrations of their existence."¹³ Such overgeneralizations mask the impact of forces such as race, class, and gender in the Frank trial and contribute to a one-sided perspective of the event.

Numerous historians and social theorists have compared the Frank case to the notorious Dreyfus affair in France.¹⁴ Like Dinnerstein, historian Albert Lindemann claims that latent anti-

¹⁰ Mary Phagan (Kean), *The Murder of Little Mary Phagan* (Far Hills, New Jersey: New Horizon Press, 1987).

¹¹ Leonard Dinnerstein, *The Leo Frank Trial* (Athens: University of Georgia Press, 1966). See also Clement Charlton Moseley, "The Case of Leo M. Frank, 1913-1915," *Georgia Historical Quarterly* 51 (1967): 42-62.

¹² Dinnerstein, *The Leo Frank Case*, xiv-xv.

¹³ Leonard Dinnerstein, *Uneasy at Home: Anti-Semitism and the American Jewish Experience* (New York: Columbia University Press, 1987), 114.

¹⁴ Frank's own attorney's made this comparison in the closing arguments of the trial. Leonard Dinnerstein's monograph on the Frank case (cited above) also provides an early example of this argument. Also please note other works by Dinnerstein which place the Frank case within a larger history

Semitism always existed in American society. However, Lindemann argues that anti-Semitism was less virulent in the United States than in Europe. He takes issue with Dinnerstein's depiction of "Mary's People" as a thoughtless mob, and claims that the South was more philo-Semitic than the North.¹⁵ Lindemann argues that Frank's arrest and conviction stemmed from allegations of perversion leveled at Frank. He also highlights Frank's status as an industrial outsider newly relocated to Atlanta and placed in "a position of authority over female laborers."¹⁶ By comparing and contrasting the Frank "affair" to other anti-Semitic incidents, Lindemann avoids a monolithic interpretation of anti-Semitism throughout history. However, Lindemann also comes perilously close to blaming Frank for his own arrest and lynching, writing that "if Frank had seemed less a distant and superior outsider, if he had been a more familiar type - if not a 'good ol' boy,' at least a more typical southern Jew, easy and affable in manner, with more significant personal friendships among the Gentile establishment of the city - then matters might have developed differently."¹⁷ In concentrating on Frank's personal "idiosyncrasies", Lindemann ignores the many ways southerners' understanding of race, class, ethnicity, and gender affected the police investigation and murder trial.

Nancy MacLean's article, "The Leo Frank Case Reconsidered: Gender and Sexual Politics in the Making of Reactionary Populism," begins to examine these issues. She utilizes a feminist perspective to reveal the tensions surrounding Phagan's status as a female factory

of anti-Semitism in America. See Leonard Dinnerstein, *Anti-Semitism in America* (New York: Oxford University Press, 1994). For a regional history, see Leonard Dinnerstein and Mary Dale Patton, eds., *Jews in the South* (Baton Rouge: Louisiana State University Press, 1973). For a more complete overview of the history and culture of Jews in the United States see Arthur Hertzberg, *The Jews in America: Four Centuries of an Uneasy Encounter* (New York: Columbia University Press, 1988). For an account of the Jewish experience in Atlanta during the early twentieth century see Steven Hertzberg, *Strangers Within the Gate City: The Jews of Atlanta, 1845-1915* (Philadelphia: Jewish Publication Society, 1978).

¹⁵Like Harry Golden, Lindemann argues that Jews in the south tended to form useful allegiances with Gentiles in the community. Since fewer Jews moved to the south, they were unable to form isolated communities of their own, therefore, Jews in the south tended to be more prone to assimilation within the larger, Gentile community. Lindemann also concludes that southern Jews were automatically viewed as white citizens, another indication that they were socially accepted within the segregated south. See Albert S. Lindemann, *The Jew Accused: Three Anti-Semitic Affairs (Dreyfus, Belis, Frank), 1894-1915* (New York: Cambridge University Press, 1991): 207, 227, 233-34.

¹⁶ *Ibid.*, 239-242.

¹⁷ *Ibid.*, 236, 244

worker in the South.¹⁸ MacLean's work illustrates the centrality of gender conflict in this case. A similar study by Marouf Hasian, Jr., explores the role that race, class, and gender play in the legal rhetoric of the Frank trial.¹⁹ Hasian's study proves that, despite formalized rules of law and clearly established evidentiary procedure, a rhetorical construction of "characters" and "storytelling" took place within the courtroom and guided the outcome of the trial.²⁰ In his dissertation on Black-Jewish relations, Jeffery Paul Melnick argues against popular presumptions of a mutually beneficial interracial alliance among minorities, concluding that Leo Frank and Jim Conley were linked in a mutually destructive relationship created in the aftermath of the crime.²¹ All of these recent studies reflect a growing interest not just in the trial but in the language that circulated both in the newspapers and the courtroom.

Not surprisingly, many of these same cultural productions reappear in fictitious accounts of the trial. An early example of this popular imagery can be found in folk ballads (e.g., "The Ballad of Mary Phagan") and poems written during the course of the trial.²² In 1936, Ward Greene published a novel, *Death in the Deep South*, loosely based on the main figures in the Frank case. "They Won't Forget", a movie based upon Greene's novel, appeared two years later. In 1977, Richard Kluger published yet another fictional account of the case entitled *Members of the Tribe*. Twenty years later, noted playwright David Mamet wrote *The Old Religion*, a novel based upon Leo Frank's experiences in prison. Perhaps the strangest new outgrowth of the Phagan trial is Alfred Uhry's Tony-nominated musical, *Parade*, based upon Frank's trial and lynching. Although the musical enjoyed only a brief run on Broadway, its appearance has revived interest in the case. Currently a "comprehensive" study of the case by journalist Steve Oney is due to be published in March of 2000 by Farrar, Straus and Giroux.

¹⁸ Nancy MacLean, "The Leo Frank Case Reconsidered: Gender and Sexual Politics in the Making of Reactionary Populism," *The Journal of American History* 78 (December 1991): 917-948.

¹⁹ Marouf Hasian, Jr., "Judicial Rhetoric in a Fragmentary World: 'Character' and Storytelling in the Leo Frank Case," *Communication Monographs* 64 (September, 1997): 250-269.

²⁰ *Ibid.*, 251, 265-6.

²¹ Jeffery Paul Melnick, "Ancestors and Relatives: The Uncanny Relationship Between African Americans and Jews" (Ph.D. diss., Harvard University, 1994).

²² Fiddlin Joe Carson wrote one of the earliest folk ballads based on the case, see Olive Woolley Burt, ed., *American Murder Ballads and Their Stories* (New York: Oxford University Press, 1958). See also Gerald Snyder, ed., "Leo Frank and Mary Phagan." *Journal of American Folklore* 31 (1918): 264-66.

One of the most innovative studies of the Frank case can be found on-line. In 1999, the Georgia Institute of Technology, working in conjunction with Georgia Public Broadcasting, developed an on-line history unit which uses the Frank case as a component of its "Georgia History On-line" series. Designed for high school students, the module portrays the Frank case as a study " of what happens when the world is changing too fast for some people who, since they cannot alter their circumstances, vent their frustration and anger on people or things that symbolize the change they cannot control."²³ Although the unit is certainly a valuable teaching aid, it emphasizes Frank's religion while overlooking issues of race and gender.

Clearly the Phagan murder and the trial of Leo Frank continue to intrigue scholars and novelists alike. Nor does the passage of time lessen the rhetorical significance of the case; its historical figures remain potent symbols of race, class, and gender conflict today. Leo Frank has become a powerful figure in Judeo-American history, a controversial martyr who fell victim to anti-Semitism. In her family history of the Phagan trial, Mary Phagan Kean reports that the Ku Klux Klan asked her father if he would agree to a KKK supported "Remember Mary Phagan Day" as a rallying point for the white supremacist organization.²⁴ Phagan's gravesite in the Marietta City Cemetery still serves as a tourist attraction; a historical marker relating the story of the case stands next to her grave.

The previous studies of the Phagan case have all focused on its significance within the context of southern history or Judeo-American history. While the regional context of the crime is an important aspect in evaluating the cultural productions which surround an event, it is equally important to broaden our perspective to see crime as an event which has meaning beyond the boundaries of the crime scene. And while we cannot dismiss the impact of anti-Semitism in the prosecution of Leo Frank, it is also vital to understand how each of the elements of race, class, and gender shaped the course of the police investigation and the trial. This is particularly true in a case where so much emphasis was placed on personal character and reputation.

²³ Georgia Institute of Technology, *The Leo Frank Case* [on-line teaching unit]; available at http://www.peachstar.gatech.edu/ga_stories/topics/060t/homepg.htm; Internet; accessed 1 November 1999.

²⁴ Mary Phagan Kean, *The Murder of Little Mary Phagan*, 287. The Phagan family refused permission for such an event. Kean's book clearly illustrates the family's resentment of the publicity surrounding

Although medical experts and policemen testified as to the mechanics of the crime, the murder took place before the advent of modern forensics. Whereas our contemporary police departments would rely on laboratory analysis of physical evidence gathered from the crime scene, the Atlanta police department of 1913 relied instead upon character witnesses and handwriting analysis gathered from bank clerks and accountants. Testimony offered at the Frank trial reflected a growing willingness to approach crime scientifically, yet few methodological tools existed to facilitate this trend. This forced reliance on representations of character further highlights the centrality of personal identity in the case.

The Purpose of This Study

In my thesis, I examine the discourse surrounding the Frank case in order to evaluate the ways in which public perceptions of personal identity shape the historian's understanding of crime and violence. My research is based upon local newspaper coverage of the police investigation as well as remaining court records.²⁵ These resources also provide an excellent means of recovering the "voice" of historical actors as it appears in public narratives of the crime and in individual testimony offered at trial. By viewing the police investigation of the murder of Mary Phagan and the trial of Leo Frank as socially constructed events, I hope to avoid privileging any one aspect of personal identity over another.²⁶ Elements of race, class, gender, ethnicity, and age all combined to shape the direction of the police investigation and murder trial. It is impossible (and unproductive) to isolate each variable to assess relative worth; all of these elements acted in concert to produce both the personal identities of the individuals involved in

their relative's tragic death. Kean, writing on behalf of the family, asserts that the Phagan family did not take part in the lynching of Leo Frank but they do feel that "justice prevailed" in the case (27-8).

²⁵Unfortunately, complete trial transcripts from the Frank trial no longer exist. It is unclear whether the court records were actually lost or whether the stenographer failed to record a complete transcript. Instead we are left with a *Brief of Evidence* which contains a summary of the testimony offered by witnesses the trial. Both the prosecution and the defense certified the authenticity of the brief but it does not contain the questions posed by the attorney nor does it contain their closing arguments.

²⁶It is fruitless to try and distill which element (race, class, gender, ethnicity, age, religion) was of primary importance in the Phagan case. All of these factors influenced the outcome of the trial.

the case and the public personas created around these social actors within a larger cultural narrative.²⁷

Narratives circulate throughout society as newspaper accounts, as gossip heard on the street, as cautionary tales meant to convey warning, and as murder mysteries which develop transhistorical meaning. Perhaps no other crime captivates public attention as does murder. Homicide, the ultimate act of violence, forces us to confront the frailty of human existence and to reevaluate our understanding of how society works and where it fails.²⁸ As Michael Foucault points out, “Murder establishes the ambiguity of the lawful and the unlawful.”²⁹ Narratives of crime are simultaneously attractive and repulsive; they compel us to imagine the unimaginable yet permit us the latitude to do so at a safe distance from the crime itself. Murder narratives help us to ascribe meaning to crime and to understand it as an event. Because they are social constructions, murder narratives frequently mirror the debates occurring within the culture which created them.

An examination of the narratives surrounding Mary Phagan's death reveal the confluence of issues such as race, gender, sexuality, age, and class. In life, Mary Phagan was an anonymous young female factory worker; in death Phagan became public property, a sensational mystery to be solved. Outraged because of the victim's age, race, and gender, Atlantans demanded both a conviction and a solution to this murder mystery. As the victim of a violent death, Phagan's image dominated the police investigation and press coverage of the crime. However, once Leo Frank was indicted for her murder, he replaced Phagan as the central object of public scrutiny. Jim Conley also became a powerful social actor as he confronted and ultimately helped convict his employer. Each of these individuals appeared as a character within narratives created by the larger community. Since no one other than the murderer could explain the motive or events which led to Phagan's death, the public record of her murder in itself constitutes a murder

²⁷ The term "personal identities" refers to the manner in which the individual (e.g., Leo Frank or Jim Conley) characterizes himself. The term "public persona" indicates an identity created by someone other than the individual historical figure (i.e., Watson's characterizations of Frank as a "Libertine Jew" or newspaper depictions of Conley as a "neo-Sambo").

²⁸ Karen Haltunnen, *Murder Most Foul: The Killer in the American Gothic Imagination* (Cambridge: Harvard University Press, 1998), 1-2.

²⁹ Michael Foucault, ed., *I, Pierre Rivère, having slaughtered my mother, my sister, and my brother...: A Case of Parricide in the 19th Century* (New York: Pantheon Books, 1975), 206.

narrative.³⁰ Likewise, contemporary press accounts of the Phagan case reveal numerous, sometimes competing, stories of her slaying. From the moment Phagan's murder was made public to the eventual murder of Leo Frank, narratives of the Phagan case shaped the direction of police investigation and public reaction to the crime. The process of constructing the crime continues today in scholarly evaluations of the Frank trial as an example of the injustice of the time period.

The first section of this thesis offers a brief synopsis of the case and provides an overview of the police investigation, press coverage, inquest, trial and appeals process. Structurally the thesis is constructed around the three individuals who are the primary “characters” of the narrative. In Chapter One, I examine the symbolism of Mary Phagan as a murder victim and as an object of police enquiry. It is not surprising, given Phagan’s age, that we learn relatively little about her life from the narrative presented at the trial. However, the victim’s youth permitted the press greater rhetorical freedom to ascribe meaning to her body. Both the police and the press sexualized the death of Mary Phagan, making her a beautiful female murder victim and shaping the very definition of the crime. Early newspaper accounts of the crime focused on Phagan’s vulnerability as a female “alone” in the city; they offered several different scenarios to explain her demise. These early articles reveal competing narratives and demonstrate that Frank’s indictment and trial culminated a *process* of constructing the crime rather than a pre-destined occurrence.

In Chapter Two, I analyze Jim Conley's role in the case. Conley’s arrest was at first overlooked by newspaper reporters and policemen. However, he soon proved to be a useful tool for Atlanta policemen and further proved his worth in court as the primary witness against Leo Frank. Conley remains a paradoxical figure in subsequent accounts of the trial. Most historians allude to his probable guilt and name him as the most likely suspect for the death of Mary Phagan. Though Conley could be linked to physical evidence found at the crime scene, he turned the tables in court by naming Frank as the murderer. Thus, Conley became the chief narrator of the crime; his testimony relied on racist stereotypes of white supremacy and black criminality to

³⁰ For an explanation of the murder narrative as a fictive process see Haltunnen, *Murder Most Foul*, 2. My interpretation of the murder narrative differs from Foucault, who sees the killer, himself, as yet another interpreter of the murder. See Foucault, *I, Pierre Rivère*, 200-203.

exonerate his participation in the crime and to reinforce the popular perception of the murder as a sexual crime.

In Chapter Three, I study Leo Frank as both the agent and the object of public discourse. Neither Frank nor his attorneys thought the jury would believe Conley's allegations against his white employer. The defense failed to ask for a change of venue, assuming that Frank's status as a socially prominent, well-respected and educated member of the white middle class in Atlanta would help him win acquittal. However, both Frank and his attorneys misjudged their ability to shape the direction of the discourse surrounding the crime. By raising the issue of Frank's character, the defense inadvertently permitted the prosecution to attack Frank's assertions of white middle-class respectability. In addition to negative perceptions of Frank as a Jew, an industrialist, and a Yankee, the prosecution questioned Frank's sexual morality by portraying him as a pervert who preyed upon young female factory workers. Although Frank presumed that the jury and the public would find Conley a disreputable witness, Conley's testimony placed Frank on the defensive by forcing him to prove his whiteness. In this chapter I examine how elements of race, class, gender and ethnicity intersected to produce a guilty verdict in the Frank case.

Finally, in my conclusion I examine the importance of understanding murder as an event occurring within and shaped by a social context. The murder of Mary Phagan and the Frank case demonstrate how we ascribe meaning to tragic events and how variables such as race, class, gender and ethnicity affect the outcome of criminal procedures. Murder narratives are a rich source of information for historians seeking insight into issues of personal identity and criminality. By studying the popular reactions to murder and the theories which emerge to explain homicide, we can better understand the process involved in the social construction of crime.

I should state that this thesis does not attempt to "solve" the murder of Mary Phagan. That task will probably never be accomplished. Although almost all accounts focus on either Leo Frank or Jim Conley as the probable killer, it would be reckless and pointless at this late date to attempt to conclusively state the identity of the killer. While it is regrettable that the identity of Phagan's killer may never be known, nevertheless her case is invaluable in demonstrating the malleability of personal identity and the cultural (re)construction of crime.

Prologue: Synopsis of the Case

Early Sunday morning, April 27, 1913, Newt Lee, a black night watchman recently employed at the National Pencil Factory, found the body of a young girl in the basement of the factory. Lee immediately contacted the Atlanta Police station to report his discovery. Officers L.S. Dobbs, J.N. Starnes and John Black responded to the call, accompanied by Britt Craig, a reporter for the *Atlanta Constitution* who happened to be at the police station at the time of Lee's summons. When the entourage arrived at the factory ten minutes later, Lee led the men to the victim.

The body had evidently been dragged face down across the basement floor; her swollen face was covered in soot, ashes, and pencil shavings and she appeared to have suffered a blow to the left side of her head. A cord hung around the neck of the body, as did a piece of fabric ripped from the leg of her underclothing. The victim's nose was clogged with cinders and her tongue protruded slightly from her mouth. The officers stated that they could not, at first, distinguish the race of the girl due to the amount of dirt and debris covering the body, prompting Officer Dobbs to pull back her stocking to reveal the true color of her skin.¹ Blood and urine covered her lavender dress and she wore only one shoe. Several other objects belonging to the victim lay scattered about the basement.²

The police also found two handwritten notes on carbon paper embossed with the factory's letterhead next to the body. The first read: "Mam that negro down here did this i went to make water and he push me down that hole a long tall negro black that hoo it was sleam tall negro i wright while play with me." The second read: "He said he wood love me and land down play like night witch did it but that long tall black negro did buy his slef."³ The police assumed that the girl's murderer was the author of both notes.

There were three means of entering the basement: Lee and the police had used a ladder to descend through a trap door from the first floor; an elevator provided access to all floors of the

¹ *Brief of Evidence*, (Testimony of L.S. Dobbs), 7.

² The missing shoe, a hat, and a bloody handkerchief were found near the body. The victim's parasol was located in the elevator shaft. However, her purse and flowers from her hat were never located. See Dinnerstein, *The Leo Frank Case*, 3.

³ Photographs of the notes appear in the *Brief of Evidence*, 253.

factory; and a rear door provided access to the alleyway between the factory and the next building. Police noticed that the staple securing the door had been removed and a bloody thumbprint appeared on the door itself.⁴

The police quickly located a female employee of the factory to identify the body as that of Mary Phagan. Phagan's parents reported their daughter as missing on Saturday evening.⁵ The police also called Leo Frank, the superintendent of the factory, to inform him of the crime and dispatched two officers to bring him to the factory. When he arrived, Frank identified the girl as one of the female employees he had paid on Saturday, but he could not confirm her name until he checked his records.⁶

The police immediately detained Newt Lee for further questioning; he would not be released until after Frank's trial.

The Investigation

The Atlanta police department conducted its investigation of the Phagan murder within a public forum. Reporter Britt Craig's presence at the crime scene graphically demonstrates the sensational nature of the Phagan murder investigation. Within hours, Craig's newspaper, the *Atlanta Constitution*, published an extra breaking the story. The two other major Atlanta news dailies, the *Atlanta Journal* and the *Atlanta Georgian* quickly entered the fray insuring that the Phagan murder and the Frank trial would remain front-page news for the next two years. Two days after the murder, Leo Frank, acting on behalf of the National Pencil Factory, hired the Pinkerton Detective Agency to investigate the crime.⁷ Colonel Thomas Felder, professing to represent the "concerned citizens" of Bellwood (Phagan's neighborhood), hired an agent from

⁴ However, the police failed to further investigate this potential clue. No forensic evidence exists on this spot of blood.

⁵ Harry Golden, *A Little Girl is Dead* (Cleveland: World Publishing, 1965), 22.

⁶ Frank claimed he did not know all of his many female employees by name. While he recognized Phagan as the girl he had paid between noon and 12:30 Saturday, he could not provide her name until he checked her payroll number against his records. See *Brief of Evidence*, (Testimony of John Black), 17.

⁷ For a discussion of the Pinkertons involvement in the Frank case see Stephen J. Goldfarb, "Framed," *American Heritage*, October 1996, 108-113.

the William Burns Detective Agency to aid in investigating the crime.⁸ Although these private detectives were ostensibly independent investigators, they had to be licensed and approved by the Atlanta Police Department and thus were compelled to share their evidence with the police.

In addition to the arrest of Newt Lee, police also detained several other men on suspicion of the murder. Two white men, Arthur Mullinax and John Gantt, were arrested as suspects; both men were familiar with the victim. Mullinax was a streetcar driver who had frequently driven Phagan to work and Gantt was an ex-employee of the factory who had known Phagan in her hometown of Marietta. Both men provided alibis and were quickly released. Another black employee of the factory, elevator man Gordon “Snowball” Bailey, was arrested two days after the murder. Although he offered little useful evidence, it is unclear how long Bailey remained in police custody. Throughout the investigation and murder trial, Atlanta police maintained strict control over blacks who testified as material witnesses, often browbeating them and applying the “third degree” to elicit affidavits.⁹

Leo Frank cooperated with police detectives throughout the initial stages of the investigation. He consistently answered their questions and even met with Newt Lee at the police station to encourage him to confess all he knew of the crime. Frank retained counsel early in the investigation; attorneys Luther Rosser and Herbert Haas (lawyers for the pencil factory) met Frank at the police station when he was formally questioned on April 28th before Chief of Detectives Newport Lanford and Police Chief John Beavers.¹⁰ Police arrested Frank on April 29, 1913, based on the fact that he was the last person to see the victim alive. That same day Mary Phagan was buried in Citizen’s Cemetery in Marietta, Georgia.

⁸ Felder claimed that Phagan's friends and neighbors solicited his help in investigating the crime. He also claimed that Phagan's stepfather, J.W. Coleman, consented to this investigation. Coleman later publicly denied this in local newspapers.

⁹ Police used these methods in questioning Newt Lee, Jim Conley, and Minola McKnight (Frank's maid).

¹⁰ See Dinnerstein, *The Leo Frank Case*, 6-7. Frank’s lawyers had been sent by his employers to protect Frank and the factory in the investigation. However, Dinnerstein and Connolly agree that Frank’s early reliance on lawyers may have created a backlash against Frank as he was viewed as having a “guilty conscience”.

The Inquest

On April 30, 1913, the coroner's jury began an inquest into the death of Mary Phagan. Press reports had already announced the arrests; Lee and Frank remained the primary suspects in the case. Witnesses included fellow employees of the pencil factory and others who claimed to have seen the victim on the day of the murder. On May 1, 1913, police arrested Jim Conley, a black janitor employed by the pencil factory when they discovered him rinsing a dirty shirt in its basement. Although the shirt appeared to be stained with blood, it does not surface again in the investigation of the murder. Both Lee and Frank agreed to interviews with the *Atlanta Constitution*; both professed their innocence.

The inquest lasted for eight days. Phagan's body was exhumed twice so that medical authorities could examine the contents of her stomach and obtain hair samples. On May 8, 1913, the coroner's jury recommended that Lee and Frank remain in jail. Meanwhile Hugh Dorsey, the Solicitor-General for Fulton County, realizing the importance and public nature of the case, determined that he would lead the investigation and prosecute the case personally.

Although Dorsey ultimately led the case through court, he did not act as its lead investigator. Other agencies vied with Dorsey to claim credit for "solving" the case. The *Atlanta Constitution*, in particular, traced the development of a "tri-cornered" investigation: the police investigation led by Chief Detective Lanford, the solicitor's investigation led by Dorsey, and the private investigations conducted by two different detective agencies.

Press Coverage

Local newspapers offered extensive coverage of the Phagan case. The *Constitution* maintained its position as a conduit for the police department, often publishing affidavits verbatim and working in conjunction with the police to develop new angles in the case. Two days after the murder, the *Constitution* ran a conspicuous ad on the front page promising a \$1,000 reward for new information leading to an arrest in the case.¹¹ Of course, the paper also

¹¹ AC, April 28, 1913, 1., April, 29, 1813, 1

tacitly assumed the right to publish any such information.¹² Soon the total value of the reward money rose to \$2,200 as the City of Atlanta agreed to contribute \$1,000 and the state authorized a further \$200.¹³ The *Atlanta Georgian* also offered a \$1,500 reward for information leading to the arrest and conviction of Phagan's murderer.¹⁴ Both the *Constitution* and the *Journal* helped raise money to finance the Burns agency's investigation of the murder.¹⁵ The lure of a monetary reward motivated R.P. Barrett, one of Phagan's fellow workers, to help the police locate several blood spots in the factory.¹⁶

Newt Lee and Leo Frank continued to be central figures in newspaper coverage of the case throughout the first month of the investigation. Early reports focused on Lee as the author of the now infamous murder notes. The *Atlanta Journal* ran a front-page picture of the murder notes as well as writing samples reputedly taken from Lee and from Phagan.¹⁷ Eventually the *Journal* would also publish Conley's writing samples in the same manner.¹⁸ Initially the papers assumed that Lee was withholding information concerning his involvement in the crime and suggested that if he were not the killer, he might know who was. Lee resolutely maintained his innocence and the press began to shift its attention to Frank. The *Constitution*, acting on tips apparently gained from the paper's connection with the police department and former police officers throughout the area, published a series of stories which portrayed Frank as a sexual libertine.¹⁹ However, the paper also attempted to appear neutral, running an editorial warning

¹² *AC*, April 30, 1913, 1.

¹³ *AC*, April 30, 1913, 2.

¹⁴ *AG*, April 29, 1913, 1.

¹⁵ It is important to note that the papers and local community supported the early investigation by a representative of the Burns agency. The Burns agency, acting on behalf of "concerned citizens" investigated the case in the first several weeks after the murder. However, the agency ended its investigation abruptly in May 1913. Eventually William Burns, himself, would investigate the case on behalf of Leo Frank during the appeals process in 1914. The newspapers did not financially support these later investigations.

¹⁶ *Brief of Evidence* (Testimony of Henry Smith), 137; (Testimony of R.P. Barrett), 26. Although Barrett attempted to claim the reward money, his efforts to collect were unsuccessful.

¹⁷ *AJ*, April 28, 1913, 2.

¹⁸ *AJ*, June 1, 1913, 9.

¹⁹ *AC*, April 30, 1913, 1. The first story was based on information gathered from one of Phagan's friends who claimed that Phagan complained of Frank flirting with her at the factory. On May 11, 1913 the paper reported a story from an ex-policeman who claimed that he caught Frank and a "young girl" about to enter Druid Hills park "for immoral purposes". On May 23, 1913, the *Constitution* reported that the female

against "hasty and unwarranted conclusions" and admonishing the public to "keep an open mind."²⁰

The Hearst-owned *Atlanta Georgian* offered the most sensational coverage of the investigation and trial, replete with numerous extras, dramatic headlines, and pictorials of the major actors in the investigation.²¹ The *Atlanta Journal* also dutifully reported the daily developments in the Phagan investigation and the subsequent trial in much the same manner as its competitors. However, the *Journal* also published reports which detailed other possible scenarios which might have resulted in the murder of Mary Phagan, including theories of robbery and white slavery. Although all three papers refrained from editorial comment throughout the trial, the *Journal* would ultimately break new ground in advocating a new trial for Frank in March of 1914. Both the *Journal* and the *Georgian* eventually conceded that an atmosphere of mob violence permeated the trial proceedings.²²

On May 23, 1913, the grand jury indicted Leo M. Frank for the murder of Mary Phagan. Despite the press's allusions to rape, medical examiners were unable to prove Phagan had been sexually assaulted.²³ Though Phagan suffered a severe blow to the back of her head, the cause of death was listed as strangulation by means of a cord around the neck. Solicitor Dorsey did not request an indictment against Newt Lee. Within two days of the indictment, the police reported that Jim Conley admitted to writing the notes found at the crime scene. Over the next several days, Conley offered a series of affidavits describing his role in Phagan's death. Eventually Conley would blame Frank for the murder of Mary Phagan, conceding that he had helped Frank move the body to the basement in an attempt to conceal the crime. The grand jury seriously considered meeting to indict Conley; however, Solicitor Dorsey persuaded them against this, claiming that Conley acted as a dutiful employee by following his boss's orders.²⁴

owner of a rooming house claimed Frank called her the night of the murder seeking a room "for himself and a young girl".

²⁰ AC, May 5, 1913, 4.

²¹ The *Georgian* issued 20 extras offering breaking news in the Frank trial. Both the *Georgian* and the *Journal* were afternoon papers, while the *Constitution* was distributed as a morning paper. Newspaper extras extended coverage of the trial and intensified the rivalries for circulation.

²² Dinnertstein, *The Leo Frank Case*, 31.

²³ MacLean, 936.

²⁴ AC, July 19, 1913, 2; July 20, 1913, 1; July 21, 1913, 1.

The Trial

Frank's trial began on July 28, 1913, and lasted for a month. Judge Leonard Roan presided. The trial attracted crowds of numerous spectators, both within the courtroom and in the streets outside. In an effort to minimize the oppressive summer heat, courtroom windows remained open throughout the trial. Solicitor Dorsey set aside his caseload to personally handle the Frank case; he was assisted by Frank Hooper and A.E. Stephens. Attorneys Luther Rosser and Reuben Arnold represented Frank; both men were prominent and well-respected lawyers in Atlanta.²⁵ Rosser and Arnold refused to appeal for a change of venue, apparently believing that Frank's social standing in Atlanta could only work to their client's benefit. The defense team also introduced over one hundred witnesses to testify in praise of their client's character. Finally Frank's attorneys attempted to attack the testimony offered by both Newt Lee and Jim Conley in an effort to refute the credibility of black witnesses in the trial.

Solicitor Dorsey had little evidence to support the murder charges against Frank. Aside from a protracted debate on bloodstains, the defense and the prosecution virtually ignored the physical evidence gathered at the crime scene. Instead, they focused on character. Dorsey's case hinged upon the testimony provided by his somewhat dubious chief witness Jim Conley. Conley had a previous arrest record and was, himself, implicated in the crime. He also openly admitted having lied to the police on several occasions. However, Frank's attorneys could not shake Conley's testimony in court. Having opened the issue of character, Arnold and Rosser found that they could not control the testimony offered by several female factory employees who took issue with Frank's performance as a superintendent. Georgia law prevented Frank from taking the stand in his own defense. Instead, Frank read aloud from a detailed prepared statement which outlined his movements on the day of the murder. Local papers published Frank's statement, permitting him a momentary victory which was quickly washed away amid the popular tumult surrounding Solicitor Dorsey's nine-hour summation of the case.²⁶

²⁵ Dinnerstein, *The Leo Frank Case*, 37.

²⁶ In a stunning example of fortuitous (or contrived?) timing, Dorsey managed to end his closing arguments as the courthouse clock struck noon. As Dorsey pointed at Frank and proclaimed the words "Guilty, guilty, guilty!" the clock chimed in tune.

Judge Roan refused to allow the case to go to the jury on a Saturday. Given the city's previous experience with the race riot of 1906, Roan feared that the city would erupt in violence if the jury returned an unfavorable verdict. In 1906, a white mob, stirred up by newspaper stories alleging black-on-white rapes of several local women, attacked black neighborhoods and businesses, indiscriminately killing blacks they encountered in the streets. The riot continued for two days but the memory of the event lasted much longer. Judge Roan feared mob violence would now be directed towards the Jewish community and towards Frank himself if the jury failed to convict him. The judge met with Atlanta's Chief of Police and the Colonel of the Fifth Georgia Regiment to discuss how they would handle the public's reaction to the verdict.²⁷ On Monday, August 25, 1913, after four hours of deliberation, the jury found Frank guilty of the murder of Mary Phagan. Frank was not present in the courtroom to hear the verdict; Judge Roan requested Frank be kept in the Fulton County Prison for safekeeping. A jubilant crowd carried Hugh Dorsey through the streets of Atlanta.²⁸

The following day Judge Roan sentenced Frank to death. Jim Conley would later be indicted and found guilty as an accessory to Phagan's murder. On February 14, 1914, he was sentenced to one year on the chain gang.

The Aftermath

Frank's attorneys immediately initiated a series of appeals on the local, state, and federal levels. Frank's execution date would be postponed three times during the next two years. The case garnered national attention during the appeals process; Arnold and Rosser argued that the trial took place in a prejudicial climate, claiming the public's catcalls of "Hang the Jew" could be heard through the open courthouse windows. Jewish organizations and individuals anxious to combat anti-Semitism provided Frank with financial support and legal advice. Newspapers throughout the nation chided local Georgia papers for their coverage of the murder investigation and trial. *The New York Times*, in particular, published a series of editorials and stories on the case, claiming that Georgia had fallen prey to a mob spirit.

²⁷ According to Leonard Dinnerstein, Roan held this meeting in front of the jurors before they were dismissed for deliberations. See Dinnerstein, *The Leo Frank Case*, 54.

²⁸ AC, August 26, 1913, 1.

A number of prosecution witnesses publicly repudiated their testimony after the trial. Unfortunately for Frank, several witnesses later recanted their repudiations. Frank's defense team issued a total of thirteen appeals to the state and federal supreme courts and introduced a list of one hundred errors they claimed had been committed at the trial. The Georgia State Supreme Court refused appeals for a new trial, declaring that no procedural errors had occurred during the course of the trial.²⁹ The U.S. Supreme Court also rejected Frank's appeals, although Justices Oliver Wendall Holmes and Charles Evans dissented because of their concern with the influence of "mob law." In his dissenting opinion, Justice Holmes asserted, "Mob law does not become due process of law by securing the assent of a terrorized jury. We are speaking not of mere disorder, or mere irregularities in procedure, but in case where the processes of justice are actually subverted."³⁰

On May 31, 1915, the Georgia Prison Commission denied Frank's final appeal for clemency. In June 1915, shortly before Frank's scheduled execution date, Governor John Slaton, the lame-duck governor and Luther Rosser's law partner, commuted Leo Frank's sentence from death to life imprisonment. Slaton based his decision on his own investigation of the trial records after he had heard verbal arguments from both the prosecution and the defense. He also considered a letter written by Judge Roan expressing doubt about the verdict and the testimony of Jim Conley's attorney who had since publicly proclaimed his client's guilt. Slaton's actions enraged local residents, and after he declared martial law for the few remaining days of his term, he left the state on an extended vacation.

If the Frank case effectively ended the political career of John Slaton, it breathed new life into the careers of Hugh Dorsey and Tom Watson. Tom Watson, a prominent lawyer in Georgia and the former leader of the Southern Populist movement, seized upon the Frank trial as new grist for his journalistic mill.³¹ Watson published a torrent of articles portraying Frank as a

²⁹ Georgia state law prevented retrials except in cases with clearly documented legal errors. The state prohibited retrials based on new testimony or evidence gathered in the case. For Frank's appeals in Georgia see *Frank v. State*, 80 S.E. 1016 (February 1914) and *Frank v. State*, 83 S.E. 645 (November, 1914).

³⁰ *Frank v. Magnum*, 237 U.S. 309 (1915).

³¹ Southern Populism declined markedly after the disastrous election of 1896. For an overview of the southern politics in the late nineteenth and early twentieth century see Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992).

lecherous Jew who preyed upon female Gentile employees. These lurid stories boosted the circulation of Watson's weekly paper, *The Jeffersonian*, from 25,000 copies to 87,000 in the spring of 1915.³² Like his contemporary, Ben Tillman of South Carolina, Watson openly advocated lynch law to protect the sanctity of white womanhood in the South.³³ Watson's rhetoric of white supremacy simultaneously appealed to white men's sense of honor while permitting them to challenge the "corrupt" powers of the state (Slaton's commutation of Frank's sentence). With Watson's political backing, Hugh Dorsey successfully ran for governor in 1916 and was re-elected in 1918.³⁴ Watson also re-emerged as a major political force; in 1920, he was elected to the U.S. Senate.

On June 21, 1915, fearing mob violence, prison authorities moved Frank from the Fulton County Prison to the Milledgeville State Prison. The following month a fellow prisoner, William Creen, attempted to kill Frank by slashing his throat. After spending several weeks in the infirmary, Frank returned to his cell in August 1915. On the night of August 16, 1915, a group of twenty-five armed men calling themselves the "Knights of Mary Phagan" kidnapped Frank from the State prison and transported him to the outskirts of Marietta. Early on the morning of August 17, 1915, the lynch party hanged Frank in Frey's Woods just outside Phagan's hometown. No one would ever be indicted for the murder of Leo Frank.

In 1982, Frank's case again achieved national prominence when Frank's former office boy, Alonzo Mann, came forward to claim that on the day of the murder he had seen Jim Conley dragging Mary Phagan's body to the basement through a trap door. Mann's testimony offered little insight into the events of April 26, 1913, but he did generate new interest in the case. The Anti-Defamation League (ADL) of the B'nai B'rith submitted an application for a posthumous pardon for Leo Frank to the Georgia Board of Pardons and Paroles. In 1983, the Board rejected

³²Clement Charlton Moseley, "The Case of Leo M. Frank, 1913-1915," *Georgia Historical Quarterly* 51 (1967): 50.

³³ Tillman won popular support for his 1892 political campaign for governor of South Carolina by appealing to a white supremacist view of masculinity in which he (as governor) pledged to serve as the state's protector and leader. See Stephen Kantrowitz, "White Supremacist Justice and the Rule of Law: Lynching, Honor, and the State in Ben Tillman's South Carolina," in *Men and Violence: Gender, Honor, and Rituals in Modern Europe and America*, ed. Pieter Spierenburg (Columbus: Ohio State University Press, 1998).

³⁴ Moseley, 58.

the application, claiming that Mann's testimony did not prove Frank's innocence. The ADL petitioned the Board again in 1986. On March 11, 1986, the Board issued Frank a posthumous pardon based on the state's failure to protect Frank or to prosecute his murderers.³⁵ The Board refused to comment on Frank's guilt or innocence.

³⁵ *Pardon for Leo Frank*, Leo Frank Manuscript Collection, Personality File, Atlanta History Center.

Chapter 1 Little Mary Phagan: Imaging the Victim

*She entered the building gaily,
Straight to the office she went;
She reached her hand to get her pay,
And so her life was spent.*

*While within the building,
And near the metal room,
She fought for that which was dearer than life,
And so she met her doom.*

- Excerpt from an anonymous poem
found among the Mary Phagan papers at the
Atlanta Historical Society.

The excerpt printed above summarizes the most poignant details of the dominant narrative surrounding the murder of Mary Phagan. On Confederate Memorial Day, a state holiday in Georgia, Mary Phagan stopped by her workplace to pick up her weekly paycheck. The poem alludes to this mundane task, yet paints a more sinister portrait as Phagan unwittingly enters into a sexual exchange which will ultimately cost her her life. However, this poem represents just one of the numerous images of Mary Phagan. The process of imaging Mary Phagan began early in the morning of April 27, 1913, and continues to the present day. Examining these images enables us to discover the gendered construction of crime which shaped the outcome of the Leo Frank trial.

Phagan's contemporaries viewed her as a stirring example of one of the most valuable and vulnerable resources of the South - white womanhood.¹ The victim's youth heightened the drama of the case; all three major dailies emphasized Phagan's girlishness and innocence,

¹ Several works examine the changing gender constructions of white womanhood in the South see Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jessie Daniel Ames and the Campaign Against Lynching* (New York: Columbia University Press, 1979); Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995); Drew Gilpin Faust, *Mothers of Invention: Women of the Slaveholding South in the American Civil War* (Chapel Hill: University of North Carolina Press, 1996); Laura Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Chicago: University of Illinois Press, 1997); and Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York: Oxford University Press, 1994).

rhetorically asking their readers, "What if Mary Phagan were your child?"² Parental concerns must have deepened when Atlanta papers postulated the theory that Phagan had been raped prior to her death. The victim's sexuality played a central role in the trial, as medical experts debated the possibility that Phagan had been sexually assaulted. Throughout the investigation and trial, the papers increasingly focused public attention on Phagan as the victim of a sexual psychopath.³ This formulation of the crime obviated several crucial aspects of the case and led to a sexualized vision of crime. Subsequent accounts of the Phagan murder and the Frank trial would expand this paradigm and contribute to a one-dimensional portrait of Phagan as an object of sexual exploitation.⁴ The images highlighting white women's sexual vulnerability in society circumvented a frank appraisal of female sexual agency and thus contributed to a static depiction of white women as victims in need of paternalistic protection.

In this chapter I examine how race, gender, age, and sexuality shaped representations of the murder of Mary Phagan. I begin by investigating the few facts known about Phagan's life and how the police and the papers constructed a vision of her death. As a young female worker, Phagan symbolized a problematic sexuality which her contemporaries could not easily define nor contain. Her murder permitted, indeed it necessitated, an enquiry into her personal sexuality, as medical authorities tried to determine whether or not she had been raped. Although the results of

² AC, May 20, 1913, 9.

³For an explanation of emergence of the sexual psychopath see Estelle Freeman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920-1960," *Journal of American History* (June 1987), 83-106, esp. 85-87. For a feminist interpretation of the political implications of sexualized murder see Jane Caputi, "The Sexual Politics of Murder," *Gender & Society* (December, 1989), 437-456. For an exemplary study of the social and cultural significance of women as murder victims see Amy Gilman Srebnick, *The Mysterious Death of Mary Rogers: Sex and Culture in Nineteenth-Century New York* (New York: Oxford University Press, 1995). For a discussion of the sensational which arises when adolescents are accused of crime or are victims of crime see Charles R. Aceland, *Youth, Murder, Spectacle: The Cultural Politics of "Youth in Crisis"* (Boulder: Westview Press, 1995). For a study of the aesthetics of femininity and death as represented in art and literature see Elizabeth Bronfen, *Over Her Dead Body: Death, Femininity and the Aesthetic* (New York: Routledge, 1992).

⁴Jacquelyn Dowd Hall touches upon many of these ideas in her essay on urban women in Atlanta, "Private Eyes, Public Women: Images of Class and Sex in the Urban South, Atlanta, Georgia, 1913-1915." in *Work Engendered: Toward a New History of American Labor*, ed. Ava Baron (Ithaca: Cornell University Press, 1991) esp. 264-5. Hall claims that Phagan represented the "modernization of sex" in the urban South. Her analysis contrasts with Nancy MacLean's account of the Phagan case as a symbol of the sexual conservatism of the region. See Nancy MacLean, "The Leo Frank Case Reconsidered: Gender and

this examination remained inconclusive, many commentators chose to believe that Phagan died while trying to defend herself from sexual assault. Thus, her death became a rallying cry for an odd assortment of social reformers, politicians, and vigilantes. These representations of Phagan as sexual victim and heroine demonstrate that, in cases of murder, the process of constructing the identity of the victim continues even after death.

A Brief Life...

"The trouble with Georgia is that she thinks too little of Mary Phagan alive and too much of Mary Phagan dead."

- excerpt from a letter to the editor of the *New York Sun*⁵

Mary Anne Phagan was born on June 1, 1899, in Florence, Alabama, the youngest child of William Joshua Phagan and Frances Benton.⁶ William Joshua and Frances ("Fannie") married in 1891 in Cobb County, Georgia and produced five children over the next eight years. The Phagans were landowning farmers in the small town of Marietta, Georgia, on the outskirts of Atlanta. From 1891 to 1895, William Joshua farmed the land given to him by his father, William Jackson Phagan. In 1895 the entire Phagan family moved to Alabama and William Joshua continued to work for his father. Mary would never know her real father who died in February 1899, three months before she was born. Fannie Benton Phagan returned her brood to Georgia shortly after Mary's birth. Over the next several years, Mary, along with her mother and siblings, relied on the financial support offered by Fannie's family and William Jackson Phagan.

In 1910, Fannie moved once more, this time to East Point in Atlanta where she took over a boardinghouse; her children found jobs in the local factories and shops. At least one of Mary's brothers joined the Navy, and her older sister, Ollie, worked as a clerk at Rich's Department store.⁷ It is unclear how old Mary was when she took her first wage-earning job. However, by

Sexual Politics in the Making of Reactionary Populism," *Journal of American History* 78 (December 1991): 917-948.

⁵ Letter written by Edwin Walker (September 10, 1915) quoted in Nancy MacLean, "The Leo Frank Case Reconsidered", 937 (footnote 46).

⁶Biographical information, unless otherwise specified, is taken from Mary Phagan (Kean), *The Murder of Little Mary Phagan*, 10-19.

⁷ *Ibid.*, 14.

1912 she was an employee of the National Pencil Factory on Forsyth Street where she worked in the metal room placing metal tips on pencils. That same year, on February 25, 1912, Fannie Benton Phagan married J.W. Coleman, a cabinetmaker who lived in Bellwood, a white working-class neighborhood within Atlanta. Fannie's marriage gave the family financial stability.

Although the Phagan children may have been forced to work prior to their mother's remarriage, it seems that they chose to keep working even after the family achieved financial security.⁸ The Phagan children's wages might have supplemented the overall income of the Coleman household, but the family was evidently not as poor as many of the subsistence-level families living in mill villages throughout the city. The Phagans' desire for economic independence is an important factor to consider, given subsequent accounts of their dire financial situation.⁹ Shortly after her murder, progressive reformers linked Mary's death to the "social evil" of child labor.¹⁰ They appropriated Phagan's image to illustrate the economic and social exploitation of the working classes in Georgia. However, their appropriation also distorts our understanding of Mary Phagan's agency, for she both chose *to* work and chose *where* to work. Though the pencil factory was far from a model workplace, it was not as disagreeable as some of the alternatives in Atlanta.¹¹ Phagan probably earned around twelve cents an hour.¹² Certainly Mary could not have supported herself on these wages, but she lived with her family and she

⁸ Mary Phagan (Kean), *The Murder of Little Mary Phagan*, 14.

⁹ See for example Charles and Louise Samuels, *Night Fell in Georgia* (New York: Dell Publishing Company, 1956), 9-11.

¹⁰ *AC*, April 30, 1913, 5.

¹¹ The textile mills of Atlanta were particularly unpleasant places to work; white textile workers received low wages compared to other white workers in the city. For an analysis of textile mills in Atlanta see Clifford Mathew Kuhn, "A Full History of the Strike as I Saw It: Atlanta's Fulton Bag and Cotton Mill Workers and Their Representations Through the 1914-1915 Strike" (Ph.D. diss, University of North Carolina, 1993). See also Gary Fink, *The Fulton Bag and Cotton Mills Strike of 1914-1915: Espionage, Labor Conflict, and New South Industrial Relations* (Ithaca: ICR Press, 1993).

¹² Many press reports highlighted the fact that the pay Phagan collected on the day of her murder amounted to only \$1.20, but the young worker had been temporarily laid off for much of the week due to a shortage of metal at the factory. For an account of Phagan's wages see Mary Phagan, *The Murder of Little Mary Phagan*, 18; Albert Lindeman, *The Jew Accused: Three Anti-Semitic Affairs (Dreyfus, Belis, Frank), 1894-1915* (New York: Cambridge University Press, 1991), 239.

may have used some, or all of her wages as "pin money" to purchase personal items and go to the movies.¹³

Mary seemed to have had a close relationship with her own nuclear family as well as with her extended family in Marietta whom she visited frequently. As the youngest child in her family, Mary clearly relished her status within the household, signing letters to her mother "Your baby" and often sitting in the laps of family members.¹⁴ By all accounts (from newspapers, coworkers, and family members), Mary Phagan was an attractive girl. She stood less than five feet tall, had long reddish-brown hair, and a well-developed figure. Fannie later testified that her daughter "was fair complected, heavy set, very pretty, and was extra large for her age."¹⁵

When she left her house on Saturday morning, April 26, Mary was dressed for the holiday. Her wardrobe exemplified her status as both a style-conscious working girl and a favored family member. Mary wore a lavender dress made for her by her paternal aunt; she also wore a blue hat trimmed with a new blue ribbon and a pink spray of artificial flowers. She carried a parasol and a German silver mesh purse.¹⁶ Phagan traveled into town on the trolley that she ordinarily took to work. In the days following her death, Phagan's path across town that day would become the object of public scrutiny as police investigators, newspaper reporters, and ordinary citizens attempted to envision Phagan's final hours.

¹³Although many young women and girls entered the industrial economy beginning in the early nineteenth century, this process occurred much later in the South due to the slow emergence of industrialization and urbanization in the predominately agrarian society. Women who lived in urban areas were more likely to work outside the home than women living in rural environments. During the early twentieth century, many young women worked in the labor force prior to marriage and motherhood (although over the course of the century married women and mothers increasingly entered the work force in larger numbers). For an account of the advent of the young urban working woman and the transformation of the female labor force see Lynn Weiner, *From Working Girl to Working Mother: The Female Labor Force in the United States, 1820-1980* (Chapel Hill: University of North Carolina Press, 1985).

¹⁴Ibid., 13, 16.

¹⁵*Brief of the Evidence*, (Testimony of Mrs. J.W. Coleman), 1.

¹⁶ Presumably Phagan used some portion of her wages to afford the accessories she wore into town that day. Yet she also relied on her aunt to sew many of her dresses and to take her shopping in Marietta. Mary Phagan (Kean), 17. *Brief of Evidence*, (Testimony of Mrs. J.W. Coleman), 1.

Constructing a Crime

"There's work for men to do, and there will be work for men to do until Mary Phagan's murderer is proved and punished. Else apprehension and shuddering fear will stalk grim and large in Atlanta among the working girls and women like an unseen specter, a veritable demon in the disguise of the lost confidence, in the astuteness and efficiency of Atlanta's authorities."
-*Journal of Labor*¹⁷

Reporter Britt Craig of the *Atlanta Constitution* broke the news of the Phagan murder in a Sunday extra. Craig's story quickly triggered a circulation war among all three major dailies. The murder of a thirteen-year-old girl in her workplace would ordinarily have been a newsworthy event; however, the timing of this particular murder was especially significant as the Southern Sociological Conference was meeting in Atlanta to discuss, among other things, the "awful curse" of child labor.¹⁸ The fact that the victim was white also placed greater pressure on the police to solve the case and demonstrated the racial politics of the Atlanta Police Department.¹⁹ The previous year eleven black women had been murdered in Atlanta and their murderer(s) had never been found. The specter of the Atlanta Race Riot of 1906 also loomed large in the public's memory; the tumult started after newspapers published a series of articles which detailed a series of alleged assaults made against white women in the city. Over twenty-five people died in the ensuing riot, as white men took to the streets in search of the "black beast rapists" they presumed had harmed their women.²⁰ Clearly the police and the press were not going to risk such an outcome in the Phagan case; the police, the papers, and the city council moved quickly to prove their dedication to solving Phagan's murder. Within a week of the murder, the papers and the city government offered a \$2,200 reward for information leading to the conviction of Phagan's killer. Several prominent Atlanta women launched a campaign to collect contributions for the "Mary Phagan Investigation Fund" in an effort to hire private

¹⁷ *Journal of Labor*, May 30, 1913, 4.

¹⁸ *AC*, April 28, 1913, 1-2.

¹⁹ In May the *Constitution* published an article recounting many of the "unsolved crimes" of Atlanta. Fourteen homicides dating from 1856-1913 were briefly discussed. All of the victims were white. Shortly before the conclusion the article mentions "other murder mysteries, mostly Negroes" charged to a "Jack the Ripper". See *AC*, May 11, 1913.

²⁰ Joel Williamson, *A Rage for Order: Black-White Relations in the American South Since Emancipation* (New York: Oxford University Press, 1986), 147-151.

investigators to solve the case.²¹ Police began their investigation with a series of arrests immediately after the body was discovered.²²

Newspaper stories of the early stages of the police investigation reveal the process involved in constructing a crime. Although later accounts would focus on the police's treatment of Leo Frank and Jim Conley, it is striking how many competing narratives circulated in the early stages of the investigation. Numerous witnesses volunteered their stories to the police and the newspapers during the preliminary stages of the investigation. At first, witnesses claimed to have seen Mary on Saturday afternoon, apparently after she had retrieved her paycheck from the pencil factory. The scenarios envisioned by newspaper reporters, policemen, and everyday citizens reflected a preoccupation with the figure of a young girl alone in the city. Whereas Phagan herself may have felt comfortable traveling downtown on her own, middle-class commentators were decidedly uneasy with the potential pitfalls of such an action. An article appearing in the *Atlanta Journal* confronted this issue head-on by asking readers "Where was Mary Phagan on Saturday afternoon?"²³ The paper's rhetorical questions, (i.e. "Does it seem possible that a girl as well known as Mary could be on the streets in such a mass of humanity and not be seen by at least one acquaintance?") highlighted Mary's vulnerability.

Phagan's body, which had been taken to the Bloomfield mortuary to await the coroner's examination, became a morbid attraction for the people of Atlanta. Over the next two days between 6,000 and 10,000 people visited Phagan's corpse prior to her funeral. One female visitor viewed the body as a warning to the women and girls of Atlanta and claimed, "Every woman in Atlanta, every working girl, every school girl ought to see that little girl in there ... They ought to see what perils and dangers they have to face."²⁴ The middle-aged woman further expanded her gendered construction of the crime, explaining, "There are plenty of men in Atlanta and in every other city who are degenerate enough to commit just such murders as

²¹ See Mrs. James F. Carr's letter to the *Atlanta Constitution* published on May 20, 1913, 1,9.

²² Newt Lee and Gordon Bailey, both black employees of the Pencil Factory, were arrested on April 27 and the following day the police arrested two white men who knew Mary Phagan, Arthur Mullinax and John Gantt.

²³ *AJ*, April 29, 1913, 4.

²⁴ *AC*, April 29, 1913, 3.

that.”²⁵ On April 29, 1913, Mary Phagan was buried in the city cemetery in Marietta. Reverend T.G. Linkous delivered the eulogy in which he commented "I believe in the law of forgiveness. Yet I do not see how it can be applied in this case. I pray that this wretch, this devil, be caught and punished according to the man-made, God-sanctioned laws of Georgia."²⁶ Linkous's speech added further impetus to the criminal investigation.

Early press reports revealed multiple theories of Phagan's murder; however, all of these explanations assumed a sexual motive for her death. Papers first focused on the possibility that Mary was killed as the result of a botched attempt to abduct her into a white slavery ring. Several different witnesses approached the police claiming to have seen Mary in the company of a trio of men or with two men and a woman. Statements varied as to Mary's appearance; some described Mary as "feeble," "sick," or "weak"; others claimed she was "reeling" and "weeping."²⁷ These accounts caused police to question whether Mary had been drugged which led to the exhumation of her body to search her stomach for signs of narcotics.²⁸ Such concerns over the specter of white slavery were commonplace during the early twentieth century; social reformers published white slave tracts explicitly warning readers of the danger awaiting naïve rural girls who moved to the city in search of work.²⁹ If the tales told in fictional tracts were persuasive, a "real-life" example of such a case was even more compelling.

Several other possibilities competed with the white slavery theory. These theories revolved around the idea that the victim knew her attacker(s). Some accounts focused on the two white men who had been arrested by the police.³⁰ Both Arthur Mullinax and John Gantt knew the victim. Mullinax was a streetcar driver who had frequently driven Phagan to work and Gantt was an ex-employee of the factory who had known Phagan in her hometown of Marietta. John

²⁵ Ibid.

²⁶ AC, April 30, 1913, 2.

²⁷ AC, April 28 & 29, May 3, 1913.

²⁸ AC, May 5, 1913. No evidence of narcotics was found.

²⁹ John D' Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America*, 2nd ed. Chicago (Chicago: University of Chicago Press, 1997), 208-210. See also Mark Thomas Connelly, *The Response to Prostitution in the Progressive Era* (Chapel Hill: University of North Carolina Press, 1980) and Ruth Rosen, *The Lost Sisterhood: Prostitution in America, 1900-1918* (Baltimore: Johns Hopkins University Press, 1982).

³⁰ For a more complete discussion of the police investigation see the "Synopsis of the Case" in section one.

Gantt, in particular, was characterized as having “[an] apparent fascination with the dead girl”, although the papers did not explain what factors contributed to this characterization.³¹ By May 1, 1913, both Mullinax and Gantt had been released as suspects. Six days later a witness reported having seen a girl matching Phagan’s description at the railroad depot the day of the murder. She was tearfully pleading with a young man and accusing him of leaving her.³² Reporters and police looked to George (Georgie) Epps to clarify Mary’s love life; Epps, a young newspaper boy, proclaimed himself to be Phagan’s boyfriend and confidant. He told the police that Leo Frank had flirted with Mary at the factory and had made unwanted advances leading Mary to seek Epps’ protection. Mary’s mother scoffed at Epps’ assertions and stated that Epps “wasn’t no special friend of hers [Mary’s].”³³

The papers also addressed the possibility that Newt Lee, the black night watchman, was the murderer. Press reports attempted to link Lee to the murder notes found near the corpse; both notes alluded to a sexual encounter between the victim and her murderer.³⁴ The *Journal* printed copies of Lee’s handwriting alongside photographs of the murder notes found at the crime scene and also provided “expert” testimony to “conclusively” prove that Lee “either himself mistreated and murdered pretty Mary Phagan or that he knows who committed the crime and is assisting the perpetrator to conceal his identity.”³⁵ The *Journal* also reported that Mary’s stepfather, J.W. Coleman, believed Lee to be guilty.³⁶ However, there seemed little evidence to corroborate this theory; Lee had, after all, reported the crime to the police instead of trying to conceal the whereabouts of the body. The police subjected Lee to intensive questioning but were unable to gather any new information.

³¹ *AC*, April 29, 1913.

³² *AC*, May 7, 1913.

³³ Testimony of Mrs. J.W. Coleman, *Brief of Evidence*, 1.

³⁴ The first note contained the words "i wright while play with me" and the second note stated "he said he wood love me". For the complete transcript of the notes see the Synopsis of the Case.

³⁵ *AJ*, April 29, 1913.

³⁶ *Ibid.*, 5.

While police fielded eyewitness reports of Mary's whereabouts, employees of the factory combed the interior for physical evidence of the crime.³⁷ The discovery of a small bloodstain and several strands of hair on the second floor led to a second exhumation of the corpse so the police could gather hair and fingerprint samples from the victim. Phagan's parents protested this intrusion and firmly stated that further exhumations were prohibited. Focusing on the factory as the scene of the crime enabled the police (and the reporters observing the police) to ignore conflicting eyewitness accounts of Mary's whereabouts on Saturday afternoon. Soon the papers were reporting that the last person to have seen Mary Phagan alive was Leo Frank. As the focus narrowed to the workplace, police centered their attention solely upon Frank's role as superintendent and his power over his employees within the pencil factory.

³⁷ R.P. Barrett, a mechanic employed by the pencil factory, found several items the police later considered as physical evidence at trial. Barrett's interest in the investigation seems to have stemmed from his desire for the monetary reward offered by the city government and the papers.

Problematic Sexuality

*Lonely girl, little lonely girl!
Below you gleam the city lights -
Could your throbbing feet whirl on in dance
Dare you toss your head and take your chance
With the beasts that prowl o'nights?*

- Excerpt from a poem appearing in the
Atlanta Georgian (June 5, 1914)³⁸

From the time of the discovery of her body, newspapers depicted Mary Phagan as a “beautiful female murder victim,” thus emphasizing her romantic appeal and reinforcing the gendered narrative of the crime. In his study of this cultural motif, the historian Daniel Cohen outlines several of the major attributes of the female murder victim; she is usually young and unmarried and presented in the press as an innocent, virtuous figure. The victim’s death generally results from a (presumed) sexual fall or sexual encounter, and her corpse is described in graphic detail by the press.³⁹ Accounts of the Phagan case meet all of these characteristics. All three major newspapers published pictures or drawings of Phagan alongside stories of her murder, and most accounts referred to Phagan as “pretty” or “beautiful”. The *Constitution* reported “she was a model girl, bright, eager and cheerful.”⁴⁰ Invariably, written narratives of the crime referred to the victim as “little Mary Phagan.” The adjective “little” served a dual purpose; it positioned Phagan as both a youthful adolescent and a diminutive figure. The *Constitution* heightened the victim’s tragic appeal by assuring readers that, “all of the evidence too, proved the good character of the victim.”⁴¹ The *Constitution's* reward offer created a hierarchy of crime stating, “Homicide is bad enough. Criminal assault upon women is worse. When a mere child, a little girl in knee dresses, is the victim of both there are added elements of

³⁸ Poem quoted in Jacquelyn Dowd Hall, “Private Eyes, Public Women”, 265.

³⁹ Cohen’s study traces the rise of the motif in early nineteenth-century America and links U.S. accounts to antecedents in seventeenth-century Great Britain. See Daniel A. Cohen, “The Beautiful Female Murder Victim: Literary Genres and Courtship Practices in the Origins of a Cultural Motif,” *Journal of Social History* (Winter 1997): 278-9.

⁴⁰ *AC*, April 28, 1913, 3.

⁴¹ *AC*, April 29, 1913, 2.

horror and degeneracy that defy the written word."⁴² Many of these same themes reappeared in an *Atlanta Georgian* article which proclaimed the Phagan case "of peculiar and enthralling interest" because the "innocent, wistful, appealing face of the little factory girl" tugged at the public's "heartstrings".⁴³

The *Atlanta Journal* and the *Atlanta Georgian* offered pictures based loosely on a family photograph of Phagan; however, both papers altered the picture to emphasize her as a fresh-faced young girl in a modest white blouse.⁴⁴ The *Constitution* published an even more sedate picture of Phagan in which she appeared in a sailor dress carrying a parasol.⁴⁵ Family photographs showed Phagan clad in a white blouse with an embroidered v-neck inset and rouged lips.⁴⁶ An article appearing in the *Atlanta Georgian* in August, 1913, traced Phagan's movements during her final hours; the accompanying illustrations depict Mary stylishly dressed as a Gibson girl.⁴⁷ These differing images exemplify the problematic sexuality inherent in the identity of a young working-class woman in the early twentieth century.

In an attempt to privilege the voice and identity of Phagan, the historian Nancy MacLean describes Phagan and her contemporaries as "working women."⁴⁸ However, MacLean's language subsumes Phagan within yet another artificial category while obscuring Phagan's dependence on her family and her relationship with her parents. Phagan's age (thirteen) places her at the boundary between girlhood and womanhood. As a working "woman," Phagan may have enjoyed greater autonomy than a schoolgirl, but she still participated in activities associated with girl culture.⁴⁹ Phagan's parents may have attempted to regulate or supervise their daughter's activities; however, her absence from the household curtailed their ability to do so. The Colemans were unaware of Mary's plans for the holiday. When she failed to arrive home that

⁴² AC, April 29, 1913, 4.

⁴³ AG, July 28, 1913, 3.

⁴⁴ AJ and AG, April 28, 1913.

⁴⁵ AC, April 28, 1913.

⁴⁶ Nancy MacLean, "The Leo Frank Case Reconsidered: Gender and Sexual Politics in the Making of Reactionary Populism," *Journal of American History* 78 (December 1991), p 925.

⁴⁷ AG, August, 9, 1913, 3.

⁴⁸ Nancy MacLean, "The Leo Frank Case Reconsidered," p 919 (Footnote 4).

⁴⁹ Mary Phagan Kean reports that her great-aunt enjoyed visits to Marietta where she played with her female cousins, see *The Murder of Little Mary Phagan*, 12-13. In the month preceding her death, Mary appeared as "Sleeping Beauty" in a pageant at the First Christian Church.

evening, her mother presumed her daughter had gone to the Bijou to see a show, to a friend's house, or to see her relatives in Marietta.⁵⁰ The *Constitution* reported Phagan's parents "never allowed her to have sweethearts or to receive callers. She was not in love so far as her parents know."⁵¹ While Mary's freedom does not necessarily mean that she was a wayward daughter or delinquent, it does symbolize her place within the new subculture of single young "working girls" in the city.⁵²

The industrial growth and urbanization of Atlanta vividly demonstrated the transformation taking place across the south as the region tried to integrate industry into a predominantly agrarian society. During the early twentieth century, white female workers entered the southern workforce in growing numbers.⁵³ MacLean argues that the Frank case symbolized the sexual conservatism of the region and that popular agitation against Frank stemmed from "reactionary populism".⁵⁴ As an industrial employer and a Jew, Frank aroused the ire of native-born, working-class white males who resented Frank's position as an employer of their wives and daughters. Reactionary populists, upset by the growing numbers of wage-earning women in the workforce, wished to preserve the patriarchal household. Frightened by the specter of female autonomy, they used the rhetoric of lynching as a means of highlighting their role as male protectors of female virtue.

⁵⁰ Mrs. Coleman sent her husband to look for Mary at the theater. She also suspected that her daughter may have gone to Marietta to visit relatives. AG, July 23, 1913. p3. See also Mary Phagan (Kean), *The Murder of Little Mary Phagan*, 18.

⁵¹ AC, April 28, 1913, 2.

⁵² There are few studies relating specifically to white-waging women or female adolescents in the South. For exemplary studies of working-women/girls' culture see Kathy Peiss, "Charity Girls and City Pleasures: Historical Notes on Working Class Sexuality, 1880-1920," in *Powers of Desire: The Politics of Sexuality*, ed. Ann Snitow, Christine Stansell, and Sharon Thompson, 74-87 (New York: Monthly Review Press, 1983); Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York*, (Philadelphia: Temple University Press, 1986); Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (Chicago: University of Illinois Press, 1987); Susan Cahn, "Spirited Youth or Fiends Incarnate: The Samarcand Arson Case and Female Adolescence in the American South," *Journal of Women's History* 9 (Winter, 1998): 152-180; see also Lynn Weiner, *From Working Girl to Working Mother: The Female Labor Force in the United States, 1820-1980* (Chapel Hill: University of North Carolina, 1985).

⁵³ Jacquelyn Dowd Hall, "Private Eyes, Public Women: Images of Class and Sex in the Urban South, Atlanta, Georgia, 1913-1915," in *Work Engendered: Toward a New History of American Labor*, ed. Ava Baron (Ithaca: Cornell University Press, 1991), 261.

Although MacLean's arguments concerning reactionary populism are persuasive, she tends to focus on the Frank case as an example of sexual conservatism and repression on the part of white male southerners who decried the social changes wrought by the industrialization of the region. In focusing rather narrowly on white males' reaction to the murder, MacLean overlooks how the case affected young women in the city and how female workers viewed their space within the emerging industrial society.

In a commencement address to the graduating class of Miss Woodbury's school in Atlanta, Reverend W.W. Memminger decried the lack of morality of the times. The Episcopal pastor warned his white middle-class female audience that "thousands of people in Atlanta are living the lives today that the murderer of Mary Phagan lived, and which culminated in the atrocious crime."⁵⁵ He advised the graduates against the imagery associated with the "New Woman" of the early twentieth century, claiming "Women are wrong to adopt any suggestive manner or dress or to use paint and powder which for hundreds of years has [sic] been the mark and symbol of a certain type of women."⁵⁶ Memminger attempted to extrapolate a wider social meaning from the murder by using Mary to reinforce a narrative of sexual danger targeted specifically at young women.

At least one young woman resisted this narrative. In a letter addressed to the *Atlanta Constitution*, a "girl of the National Pencil factory" voiced her resentment of the public's treatment of the factory workers. The anonymous writer supported Frank, claiming "we try not to think of the grewsome [sic] tragedy any more than possible, and we have the interest of the company too much at heart to desert them in times of trouble."⁵⁷ While reassuring readers that she thought highly of Mary Phagan, the writer protested, "Nothing was ever said about the girls of the National Pencil factory until after the terrible murder, but since, there has been one continual talk as though we were to blame for the deed."⁵⁸ Obviously Reverend Memminger had at least one critic.

⁵⁴ Nancy MacLean, "The Leo Frank Case Reconsidered,". See also Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York: Oxford University Press, 1994).

⁵⁵ *AC*, May 26, 1913, 3, 7.

⁵⁶ *Ibid.*, 3.

⁵⁷ *AC*, May 27, 1913, 2.

⁵⁸ *Ibid.*

Testimony presented at Frank's trial provides insight into the working experience of factory girls in the early twentieth century. The National Pencil Factory served as a site of both industry and sociability for young working men and women. Mary Phagan worked in the metal room with her best friend, Helen Ferguson, and several other workers, both male and female. Phagan also knew and spoke to John Gantt, a fellow employee and former neighbor from Phagan's hometown of Marietta.⁵⁹

Female employees of the factory improvised new uses for factory spaces. Girls working in the metal room frequently used the gas jet to curl their hair.⁶⁰ Oftentimes the girls used the ladies' dressing room as private space for socialization, rest, and flirtation. Mrs. Mattie Thompson, a married employee of the factory, testified that several girls leaned out the window of the fourth floor women's dressing room to flirt with men passing on the street. She declared, "The girls were not fast, but they would flirt."⁶¹ Thompson's complaints to management drew unwanted attention to the girls in the dressing room. Another employee of the factory, Irene Jackson, testified that Leo Frank began to monitor the girls in the dressing room.⁶² Reports of Frank's forays into the women's dressing room enraged the public and contributed to the popular antipathy toward Frank.⁶³

The Body on Trial

"The beautiful young body, once full of life, was cold and inanimate and mutilated."
- *Atlanta Georgian*, July 22, 1913

The central premise of all the theories concerning the murder of Mary Phagan was the idea that Phagan was attacked and killed by a sexually degenerate man. Expectations of a sexual or highly personal relationship between the victim and her murderer shaped the direction of the investigation. Although newspapers trumpeted Mary's "pure and attractive young girlhood," in

⁵⁹ *Brief of Evidence*, (Testimony of J.M. Gantt)20,23.

⁶⁰ *Ibid.*, 27.

⁶¹ *Brief of Evidence*, (Testimony of Mrs. Mattie Thompson), 173-174.

⁶² *Ibid.*, 172.

⁶³ When cross-examined Irene Jackson testified that Frank never entered the room completely, rather he stuck his head around the door. *Ibid.*, 173.

court her body was a physical conundrum.⁶⁴ Twelve medical experts testified at Frank's trial, and their testimony exemplifies the growing power of medical authority in the courtroom.⁶⁵ Though the experts agreed that Phagan's death resulted from strangulation, they debated the time of death and the evidence of sexual assault. Both men and women crowded the courtroom to hear the physicians' opinions; the dailies also reported the proceedings.⁶⁶ Medical experts examined Phagan's body as a piece of evidence. Focusing on Phagan's corporeal identity permitted an intimate inquiry into the final moments of the victim's life and her sexual history.

One of the most lively and entertaining debates among the experts concerned the time of death. Dr. H.F. Harris, the state chemist, produced a jar filled with the stomach contents he had removed from the corpse. He verified Mrs. Coleman's testimony that her daughter had eaten a quick meal of bread and cabbage shortly before leaving the house on the day of her murder. Based on his evaluation of the partially digested meal, Dr. Harris claimed that Phagan died thirty to forty-five minutes after eating her last meal.⁶⁷ Britt Craig, reporting for the *Atlanta Constitution*, praised Dr. Harris's medical testimony, asserting it was "undoubtedly the most effective adaptation of science to any trial in the history of Georgia."⁶⁸ Other medical experts disputed Harris's findings, arguing that he could not precisely fix the time of death according to stomach contents.⁶⁹

Another major debate centered on the "innocence" of Mary Phagan. The prosecution operated on the assumption that Frank murdered Phagan after he bungled an attempt to rape her.

⁶⁴ *AG*, July 22, 1913, 3.

⁶⁵ The coroner's jury made initial medical inquiries into the murder. A number of "medical" authorities offered their opinions as to the condition of the corpse and the cause of death. The undertakers and morticians at the Bloomfield funeral parlor also offered their observations to the local press. The field of forensic science is a relatively new practice, and in early twentieth century America, coroner's physicians were generally medical doctors rather than pathologists. For a discussion of the professionalization of forensic pathology see Julie Johnson-McGrath, "Speaking for the Dead: Forensic Pathologists and Criminal Justice in the United States," *Science, Technology & Human Values* 20 (Autumn 1995): 438-459.

⁶⁶ The judge permitted both sexes to hear the testimony offered by medical experts concerning the pelvic examination of the corpse, however, women were banned from the courtroom during Jim Conley's testimony concerning Leo Frank's sexual perversions.

⁶⁷ *Brief of Evidence*, (Testimony of Dr. H.F. Harris), 49.

⁶⁸ *AC*, August 3, 1913, 3.

⁶⁹ Dr. Hurt in particular contested Harris's findings, arguing each individual varies in mastication and digestion. See *Brief of Evidence*, (Testimony of Dr. J.W. Hurt), 46.

W.H. Gheesling, an embalmer at Bloomfield's mortuary, testified that Phagan's undergarments contained urine and traces of blood.⁷⁰ Dr. J.W. Hurt testified that Phagan's scalp wound occurred prior to death and probably rendered the victim unconscious.⁷¹ He also stated that a pelvic examination revealed that her hymen was not intact; however, there was "no violence to the parts" and he could not tell when her hymen had been ruptured.⁷² Neither could he verify whether the blood found on the vagina and undergarments was menstrual or "fresh blood." Hurt characterized Phagan's uterus as a "normal virgin uterus" and confirmed that Phagan was not pregnant. In conclusion, Hurt asserted that he "found no outward signs of rape."⁷³ Not surprisingly Dr. H. F. Harris contested Dr. Hurt's findings.⁷⁴ Harris admitted he had found "no spermatozoa;" he also claimed that the "walls of the vagina" showed signs of "injury" prior to death.⁷⁵ Harris concluded that Phagan was not a virgin at the time of her death since "there was evidence of violence in the neighborhood of the hymen."⁷⁶ By using terms such as "injury" and "evidence of violence" Harris lent credence to the prosecution's theory that Phagan's murder was sexually motivated and that she had died while trying to defend herself from a rapist.⁷⁷

Although medical experts could not conclusively prove that Phagan was raped, public descriptions of Mary still revolved around the notion that she had lost her life defending herself from a sexual psychopath. In her recent analysis of the case, historian Nancy MacLean hypothesizes that southerners, unwilling to accept the possibility that Phagan was sexually active, redoubled their attention on punishing Frank.⁷⁸ Both the police and the prosecution seemingly overlooked the fact that Phagan's silver mesh purse and weekly wages were never

⁷⁰ *Brief of Evidence*, (Testimony of W. H. Gheesling), 44-45.

⁷¹ *Ibid.*, 46.

⁷² *Ibid.*, 46-47.

⁷³ *Ibid.*, 47.

⁷⁴ The ongoing battles between Dr. Harris and Dr. Hurt seem to indicate at least a professional rivalry. Dr. Harris identified himself as a "practicing physician" (*Brief of Evidence*, 48) while Dr. Hurt identified himself as "County Physician" (*Ibid.*,46).

⁷⁵ *Brief of Evidence*, (Testimony of Dr. H.F. Harris), 49. Medical experts debated the nature of these "injuries" at trial. Physicians appearing for the defense proposed the theory that Phagan's injuries resulted from post-mortem digital examination by the medical examiner during the autopsy. Dr. Harris claimed that the injuries were sustained prior to death.

⁷⁶ *Ibid.*

⁷⁷ I would like to thank Dr. Beverly Bunch-Lyons for pointing out the importance of Harris's use of language in this testimony.

found.⁷⁹ Thus, Phagan's murder could have been a bungled attempt at robbery, not rape. Phagan's co-workers, at least, considered robbery a possible motive for her murder.⁸⁰ However, police never pursued these allegations, presumably believing they had their man.

The Girl on the Pedestal

"This beautiful little girl was a helpless victim to some cruel and brutal man and her brief life ended in a horrible [sic] way. It will be a slight comfort to her heart-broken mother and relatives to see a white marble shaft upraised in memory of her nobility and typical of her purity."

*- Marietta Daily Journal*⁸¹

While medical experts concentrated on matters corporeal, public sentiment elevated Mary Phagan's spirit to new heights. In life, she was a non-entity; in death Phagan rose to the status of a martyr. Newspapers continued to publish homilies bemoaning her death. In downtown Atlanta, Fiddlin' John Carson serenaded passersby with his newest folksong, "The Ballad of Mary Phagan," which applauded Mary's attempts to protect herself from attack.⁸² Citizens throughout the state voiced their desire to erect a memorial to Phagan in Atlanta. Social reformers used her murder as a cautionary tale to demonstrate the need for child labor laws in the city. Dr. A. J. McKelway, President Pro Temp of the Southern Sociological Congress, asserted "if social conditions in Atlanta were of the best – if conditions in factories were of the best; and lastly, if children of such tender years were not forced to work, little Mary Phagan would probably never

⁷⁸ MacLean, "The Leo Frank Case Reconsidered," 937-938.

⁷⁹ Several newspaper reports heralded private investigators reports that Phagan's purse and pay envelope had been found in the factory. However, these rumors seem groundless. Phagan's purse was never introduced as evidence at trial. Although a pay envelope is listed among the exhibits, police could not conclusively prove who the envelope belonged to or how old it was.

⁸⁰ *AJ*, May 29, 1913, 1.

⁸¹ *Marietta Daily Journal*, September 5, 1913, 2.

⁸² "Fiddlin'" John Carson worked for the Fulton Bag and Cotton Mills, a Jewish-owned business in Atlanta. Shortly after Frank's trial workers at the mill staged a strike against their employers. For an account of the strike see Gary Fink, *The Fulton Bag and Cotton Mills Strike*, esp. 87. For a more biographical account of Carson's life see Gene Wiggins, *Fiddlin' Georgia Crazy: Fiddlin' John Carson, His Real World, and the World of His Songs* (Urbana: University of Illinois Press, 1987). There are several different versions of the "Ballad of Mary Phagan". See Gerald Snyder, ed., "Leo Frank and Mary

have been murdered.”⁸³ Clearly, McKelway was attempting to marshal support for child labor legislation by appealing to the public's furor over Phagan's murder. Like many states, Georgia had few effective child labor regulations in the early twentieth century.⁸⁴ Nonetheless, McKelway's statements were also disingenuous, in linking Phagan to the plight of child labor, he ignored the fact that she was not economically forced to work for a living, nor was she the "typical" mill worker poster child for the child labor reform movement.⁸⁵

The Atlanta Federation of Labor also used Phagan as a rhetorical device, a symbol of the plight of working classes in the city. The organization published the *Journal of Labor* as a clearinghouse for labor groups and unions throughout the state. In an editorial entitled “Our Responsibility to the Girls,” the paper characterized Phagan as “a martyr” claiming:

Mary Phagan dead is an object lesson to the community which hundreds of Mary Phagans alive, and pallid, and underpaid, and overworked, and listless products of the factories and the shops could never have been.

Take the Mary Phagans from the factories by statute law, and such tragedies will cease. But not until this is done will the moral conscience of the community be freed of its share of heartache in such tragedies.⁸⁶

The paper also engaged in a dialogue concerning a public memorial to Phagan. Initially the paper printed a request from Reverend J.C. Parrott calling for a “fitting statue of the martyred child reclining in the agonies of death” to be erected on the grounds of the State Capitol.⁸⁷ The next issue contained yet another request for a memorial, this one from the local order of the

Phagan.” *Journal of American Folklore* 31 (1918): 264-66; Olive Wooley Burt, *American Murder Ballads and Their Stories* (New York: Oxford University Press, 1958), 60-64.

⁸³ *AC*, April 30, 1913, 5.

⁸⁴ Although child labor was a national problem, southern states were especially lax in drafting and passing child labor legislation. This may be because industrialization took place much later in the South than it did in the North and child labor was considered a necessity in rural (agricultural) economies. Georgia passed its first child labor law in 1906. At the time of Phagan's murder, it was still legal to employ children as young as ten years of age. For a thorough examination of child labor reform in Georgia see Alton DuMar Jones, "The Child Labor Reform Movement in Georgia" *Georgia Historical Quarterly* 49 (December 1965); 396-417.

⁸⁵ For an example of the pictorial images used to lobby for child labor reform see Gary Fink, *The Fulton Bag and Cotton Mill Strike*, 53-57.

⁸⁶ *Journal of Labor*, May 2, 1913, 4.

⁸⁷ *Ibid.*, September 5, 1913, 4.

Brotherhood of Railway Trainmen. Apparently *Journal* editors thought better of Rev. Parrott's macabre design, suggesting instead "the endowment of a bed or ward in some hospital in the city."⁸⁸ Though the *Journal* used Phagan as a stirring example of a corrupt industrial order, the paper stopped short of demanding a living wage for female workers. Instead the *Journal* intensified its campaign for a living wage for male workers; labor leaders rationalized that if fathers were financially secure they would not permit their children to work in factories.⁸⁹

Tom Watson, the former Populist leader for the state, also endorsed a patriarchal vision of southern society. Watson remained silent during the Frank trial, yet he emerged in 1914 as a stridently vocal opponent to Frank's appeals process.⁹⁰ His hostility probably originated in reaction to the *Atlanta Journal's* editorial favoring a new trial for Frank.⁹¹ However, Watson quickly realized his stories about Phagan and Frank boosted the circulation of his publications. For the next two years, he published a series of articles condemning the rape of Mary Phagan which he likened to the rape of the entire state.⁹² Just as Phagan presumably fought off the unwanted advances made by her Yankee (industrial) employer, so the state must fight for its honor when confronted with a national backlash against the jury's verdict.

Watson repeatedly referred to Phagan as an innocent young heroine who died trying to defend her "purity" from the lecherous hands of Leo Frank. Yet Watson's own accounts luridly described the crime as if Watson, himself, were an observer. In one example Watson depicted Phagan as a "possession" cruelly treated by her (Jewish) industrial employer "in his house" (i.e., the factory).⁹³ In another issue of the magazine, Watson enumerated Phagan's charms:

She is in the flush of youthful bloom. She is nearly fourteen years old, buxom, and rather large for her age. She has rosy cheeks, bright blue eyes, and golden hair. She is well-made, in perfect health, as tempting a morsel as ever heated depraved appetite. Did

⁸⁸ Ibid., September 12, 4.

⁸⁹ Ibid., May 2, 1913, 4. See also Nancy MacLean, "The Leo Frank Case Reconsidered", 934-936.

⁹⁰ Watson's vicious attacks on Leo Frank are discussed in greater detail in chapter three.

⁹¹ Hoke Smith, Watson's political rival, used the *Atlanta Journal* as his soap box. For an excellent analysis of Tom Watson's career and personality see C. Vann Woodward, *Tom Watson: Agrarian Rebel* (New York: Oxford University Press, 1938), especially 431-450. For an explanation of the origins of southern populism in Georgia see Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890* (New York: Oxford University Press, 1983).

⁹² *Jeffersonian*, June 24, 1915.

⁹³ *Watson's Magazine* 21 (September 1915), 284.

Leo Frank desire to possess the girl? Was he the kind of married man who runs after fresh little girls?⁹⁴

Watson's shocking descriptions created a "folk pornography" surrounding the Frank case.⁹⁵ By embellishing Phagan's physical attributes and fostering a sense of sexual tension, he presented the crime as a sexual murder and involved his audience in the resulting drama.

⁹⁴ *Watson's Magazine* 20 (March 1915), 256.

⁹⁵ For an explanation of "folk pornography" see Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jessie Daniel Ames and the Women's Campaign Against Lynching* (New York: Columbia University Press, 1979), esp. 148-153.

Watson's lurid imagery is still present, most notably on the monument erected by the Marietta chapter of the United Confederate Veterans to mark Phagan's grave:

IN THIS DAY OF FADING IDEALS
AND DISAPPEARING LAND MARKS
LITTLE MARY PHAGAN'S HEROISM
IS AN HEIRLOOM THAN [sic] WHICH
THERE IS NOTHING MORE PRECIOUS
AMONG THE OLD RED HILLS OF
GEORGIA.
SLEEP, LITTLE GIRL; SLEEP
IN YOUR HUMBLE GRAVE BUT IF THE
ANGELS ARE GOOD TO YOU IN
THE REALMS BEYOND THE TROU
BEL [sic] SUNSET AND THE CLOUDED
STARS, THEY WILL LET YOU
KNOW THAT MANY AN ACHING HEART IN
GEORGIA BEATS FOR YOU, AND
MANY A TEAR FROM EYES UNUSED
TO WEEP, HAS PAID TRIBUTE
TOO SACRED FOR WORDS.

Again Watson used Phagan's death as a rhetorical foil to validate his vision of the region's decline. His references to the disappearing landmarks referred to the rapidly emerging influence of capitalist industrial expansion in the state.⁹⁶ By portraying Phagan as a true heroine, he underscored her role as a virtuous and beautiful female murder victim.

In June, 1915 a group of Marietta citizens calling themselves the "Knights of Mary Phagan" met near Phagan's grave to organize a plan to avenge her death.⁹⁷ On August 15, the vigilante group put their plan into action, kidnapping Leo Frank from prison and lynching him on the outskirts of the town. Although Frank's lynchers were never publicly identified or punished

⁹⁶ It is important to note that Watson, like many prominent politicians, was a man of property and power within the state. Although his language reflects a populist desire for the rights of common laborers, Watson also invested himself in a capitalist economy. See Nancy MacLean, "The Leo Frank Case Reconsidered", esp. 940-943.

⁹⁷ Dinnerstein, *The Leo Frank Case*, 136.

for their crime, their vigilante actions helped promote the re-birth of the Ku Klux Klan later that year.⁹⁸

Phagan's gravesite remains a contested site. On September 3, 1983, two hundred members of the Ku Klux Klan met in Marietta to oppose the efforts to posthumously pardon Leo Frank for her murder. The group convened in the town square, then marched to Phagan's grave where they laid a wreath.⁹⁹ In 1995, members of the Phagan family protested the city council's decision to erect a historical marker which mentioned Frank's pardon at Mary's gravesite.¹⁰⁰ These examples demonstrate that Phagan still exists as an object of sentiment and controversy in the popular memory of the New South.

Mary Clay: A Southern Lolita

Given the drama of the case, it is not surprising that the historical characters involved in the Phagan case should reappear as characters in novels based upon the murder. In 1936, Ward Greene wrote a fictional account of the Phagan case entitled Death in the Deep South. Although Greene altered several details of the story, the plot of his novel mirrored the developments of 1913.¹⁰¹ In Death in the Deep South, thirteen-year-old Mary Phagan appears as fifteen-year-old Mary Clay, a student at Buxton's Business College and Institute of Shorthand located in a southern city. Tump Redwine, a black janitor at the college, discovers Mary's body in the basement of the building the morning after Confederate Memorial Day. While police initially suspect Redwine, they ultimately try and convict Ryan's teacher, Professor Robert Hale. Andy Griffin, the district attorney and would-be political candidate, relentlessly pursues Hale's conviction and in so doing assures his place in the Governor's mansion. Throughout the novel, Greene inserts fictional press releases (local and national) and editorial comments from a wide variety of citizens.

⁹⁸ See Nancy MacLean, "The Leo Frank Case Reconsidered", 920 and MacLean, *Behind the Mask of Chivalry*, 11-13.

⁹⁹ *Atlanta Journal and Constitution*, September 4, 1983, 3-B.

¹⁰⁰ *Marietta Daily Journal*, December 12, 1995, 4.

Although freed from the constraints inherent in a non-fiction account, Greene simultaneously exaggerated the characteristics of the Phagan case and refused to divulge the identity of Clay's killer. The reader is meant to feel little sympathy for the main characters, and the protagonist of the drama is difficult to pinpoint. Greene portrays Clay (Phagan) as a southern Lolita, caught on the cusp of adulthood and beguiling to men of all descriptions. If Phagan's contemporaries were uncomfortable contemplating her sexuality, Clay's neighbors were equally ambiguous. Greene offers a paradoxical view of Clay as "the little one with the black eyes, the lipstick on her young mouth and the flowered hat that was like an actress's on a precocious child".¹⁰² Like Phagan, Clay draws public attention:

Those who noticed Mary Clay that afternoon – and many did, for she was exceptionally pretty –remembered her for a little while. They remembered the wide eyes and the sweet oval of her face. They remembered, if they turned, the architecture of her legs. And if they turned because the skirt was a whit too short, the cheeks too palpably scarlet, they still must have smiled tolerantly as when a charming baby is naughty. Afterward, contemplating her picture, (that old one all the newspapers used, taken when she was eleven in her first "party" dress and a bow in her hair), they would stir to a dim feeling of recognition, baffling and a little poignant.¹⁰³

Clay enjoys the diversions of the city yet her vision of herself in the city encompasses only "the orbit of her home, her neighborhood, her school, the movie she regularly attended, the street car she always took. She was ... a provincial in the city as any girl on the farm."¹⁰⁴ Mary's parents presumed their daughter "could look after herself;" although she lived at home, her activities were largely unregulated.¹⁰⁵

¹⁰¹ In addition to altering the names of the characters, Greene changes the setting to an unnamed city in Virginia (thus belying his emphasis on the "Deep South"). He also places the murder and trial in the mid-1930s to highlight the importance of other famous trials of the period (Hauptmann, Scottsboro, etc).

¹⁰² Ward Greene, *Death in the Deep South*, (New York: Stackpole Sons, 1936), 13.

¹⁰³ Greene, 16-17.

¹⁰⁴ Greene, 16.

¹⁰⁵ Greene, 17-18.

The most obvious sign of Mary's "freedom" involves her relationship with her sweetheart, Joe Turner.¹⁰⁶ When Turner finds himself jailed as a suspect in the murder of his girlfriend, he is more concerned that the police will discover that he and Mary were lovers than that he had possibly murdered her. Consumed by this fear, Turner admits to the district attorney that he "had" Mary.¹⁰⁷ Thus Mary Clay's virginity, although presumed by the public, is privately discounted by the reader. Greene also circumvents a public debate over the rape of the murdered girl by unequivocally stating that the victim was raped. Medical experts may contest the contents of Ryan's stomach and the time of death, but they all agree that she was raped. As the fictional newspapers trumpet the details of the crime, all eyes turn to Clay's brothers to determine how they will seek revenge for the death of their sister.¹⁰⁸ Greene describes the Clay brothers as strapping, somewhat oafish young men; these "serfs of their time" are easily manipulated by Griffin.¹⁰⁹ When the brothers dutifully show up at the jail to lynch Tump Redwine, Griffin skillfully deflects their attention from Redwine, convincing them that Hale is the murderer. The brothers are willing to believe Griffin, agreeing among themselves "better the white brute than the black".¹¹⁰

The relationship between Mary Clay and Professor Hale remains an issue of speculation throughout the novel. Mary Clay is sexually alluring, aware of her charms, yet coyly resistant to comments made by admiring men. Clay confides her attraction to Hale to her best friend; however, her comments could easily be construed as a girlish crush. While Hale acknowledges Clay in class, his actions may be construed as either innocuous or covetous. The teacher/student relationship between Hale and Clay is similar to the employer/employee relationship between Frank and Phagan. Greene may have changed the occupations of his protagonists to make the characters resonate with contemporary readers. In 1913, most southern white female wage-earners worked in textile mills and factories. By the 1930s growing numbers of white women in

¹⁰⁶ The character of Joe Turner, age nineteen, acts as a composite of the numerous men (John Gantt, Georgie Eppes, Arthur Mullinax, etc.) connected to Phagan and mentioned during the course of the police investigation and trial.

¹⁰⁷ Greene, 75.

¹⁰⁸ Ryan's father remains a peripheral character throughout the story. See Greene, 18.

¹⁰⁹ Greene, 40-41.

¹¹⁰ Greene, 130.

Atlanta held white-collar jobs as teachers, clerks, secretaries, and nurses.¹¹¹ Just as Phagan's contemporaries debated the parameters of the employer/employee relationship, Ryan's audience concerned themselves with sexual exploitation in the classroom. Although at one point an exasperated newspaper reporter proclaims, "Anybody might have killed Mary Clay!," the police investigation, gently guided by the unseen hand of Griffin, focuses on Hale as the culprit.¹¹²

Death in the Deep South exemplifies yet another cultural reworking of the murder of Mary Phagan. Like Watson, Greene emphasizes Clay's (Phagan's) sexual allure to draw an audience and to shape the meaning of the crime as a sexual murder. However, unlike Watson, Greene allows the reader to form his or her own opinion of Professor Hale's guilt or innocence. In so doing, he forces his audience to assign meaning to the circumstantial evidence presented at trial. In 1937, Warner Brothers produced *They Don't Forget*, a movie based on Greene's novel, in which Lana Turner made her film debut starring as Mary Clay.

Symbolically Phagan's image resonates across time; her image is as compelling to modern audiences as it was to her own contemporaries. Mary's parents mourned the loss of a beloved daughter. Phagan's co-workers recognized her as a working girl whose life was cut short by a "growsome [sic] tragedy". Medical experts saw Phagan as a physical object subject to scientific scrutiny. Social reformers used her as a symbol of the evils of child labor. Tom Watson painted Phagan as a virtuous (yet sexy) symbol of southern womanhood. The "Knights of Mary Phagan" envisioned Phagan as a martyr whose death they needed to avenge to maintain their vision of white male supremacy; their successors (members of the KKK) continued to use Phagan's death as an impetus for their racist agenda.

In both life and death, Mary Phagan represented a problematic sexuality that influenced subsequent narratives of her murder. To her contemporaries, Phagan's age and status as a female worker further emphasized her vulnerability and contributed to a gendered construction of her murder. In a period of changing social roles and expectations for girls and women, Mary Phagan

¹¹¹ See Jacquelyn Dowd Hall, "Private Eyes, Public Women", p 260-261. See also Julia Kirk Blackwelder, "Mop and Typewriter: Women's Work in Early Twentieth-Century Atlanta," *Atlanta Historical Journal* 27 (Fall, 1983), 22, 24.

¹¹² Greene, 59.

symbolized the “beautiful female murder victim,” a powerful image constructed after death which sexualized her murder and shaped the meaning of the crime. Such representations sidestepped issues of female sexual agency and autonomy and directed public attention towards the need to avenge Phagan's "lost innocence." By imaging Phagan as a victim of sexual exploitation within the workplace, newspapers and social commentators emphasized white women's sexual vulnerability and their need for paternalistic protection.

Chapter 2 Jim Conley: The Obvious Suspect

*"It's a question of Jim Conley or Leo Frank with Jim Conley's testimony as the scales."
- Britt Craig, Atlanta Constitution¹*

James "Jim" Conley remains an enigmatic and controversial character in the Phagan case. Conley, a black janitor frequently characterized as an inveterate liar, provided testimony which led directly to the conviction of his white employer. Throughout the Frank trial, both the defense and the prosecution consistently relied on stereotypical images of blacks to prove their interpretation of the case. While Frank's attorneys assumed that the all-white jury would refuse to believe Conley over Frank, Solicitor General Dorsey trusted the jury to realize who wielded the power in the relationship between Conley and Frank. Placed in the unenviable position of being a material witness in the murder trial of a white girl in the South, Conley relied on prevailing stereotypes of blackness to reverse the firmly entrenched racial hierarchies of the South.

Conley seemed the obvious suspect, given the racial climate of the region and the fact that he eventually admitted having written the murder notes found near Phagan's body. Historians have portrayed Conley as a puppet of prosecutor Hugh Dorsey. This view limits our ability to trace the emerging narrative of Phagan's murder and ignores the fact that Conley emerged unscathed after a three-day cross examination by Frank's attorneys. Clearly, Conley was more than a tool of the police and the prosecutor.

Ironically the cultural stereotypes whites created to understand and order race relations in the South led the jury to believe Conley's testimony over Frank's. The prosecution and the press used racialized rhetoric to describe Conley and his involvement in the murder. This rhetoric would ultimately shape the public's understanding of the crime. Racial stereotypes also complicated issues such as motive and identity. Even though several of Phagan's fellow workers argued that robbery was a much more likely scenario, Conley confirmed the public's

¹ AC, August 3, 1913, 2.

fears that Phagan was the victim of a sexually motivated murder.² Eventually the public would choose to blame Frank for his failure to regulate his own behavior and his failure to exert the proper influence over his workers.

So who was Jim Conley? Like Mary Phagan, Jim Conley left few clues to his own life. The public debated Conley's credibility throughout the course of the trial. Yet in large part, Conley became the central narrator of the murder of Mary Phagan. His version of events allowed the public to glimpse the inner workings of the pencil factory; his allusions cast doubt upon the masculinity and morality of his white boss. Conley's performance on the witness stand reinforced the public's assumption that Phagan's murder was sexually motivated.

In this chapter I examine Conley's emergence as the chief narrator of the murder of Mary Phagan. Although he actively shaped the narrative of the crime, Conley's agency was limited by his status as a black man in the south. Therefore, I begin by briefly explaining the racial politics of segregation in the late nineteenth and early twentieth-century South and by investigating Conley's position within this historical context. I then explore Conley's ability to negotiate the racial stereotypes which existed in the region, evaluating issues such as criminality and credibility which were raised by the defense, yet neutralized by the prosecution. By offering his version of the crime Jim Conley linked himself inextricably to the fate of Leo Frank; in this chapter I examine how Frank came to displace Conley as the chief suspect in the case. In the final sections of the chapter I investigate how authors portray Conley in both fictional and historical accounts of the Frank trial. Ultimately history would judge Conley much more harshly than did his own contemporaries. As Frank's defenders grew more numerous and more vocal, Conley became the killer by default.

² Several employees of the National Pencil Factory suggested that Conley was the murderer and that he attacked Phagan in an attempt to rob her. The employees who suggested this theory (Herbert Schiff, E. F. Holloway, and N.V. Darley) were all white men who worked closely with Frank as managers and foremen in the factory. In blaming Conley for the crime they demonstrated their support of Frank and their belief that "no intelligent white man" would divulge so much information to a black man. See *AC*, May 29, 1913, 24. Numerous other employees offered testimony castigating Conley's character; however, these comments do not necessarily translate into support for Leo Frank.

Defining Race Within a Historical Context

In order to understand how Conley represented cultural stereotypes of blackness, it is first necessary to position his identity within a historical context of southern race relations. In the antebellum south, many plantation owners attempted to rationalize ownership of slaves by proclaiming them an inferior race. Such a perspective necessarily entailed formulating a social hierarchy based on a pseudoscientific construction of racial characteristics.³ Claims of Anglo-Saxon racial superiority permitted slave owners to dominate another group of people while still espousing the republican principles associated with a democratic government. Southern whites controlled blacks both on individual plantations and farms and throughout the region by enacting slave codes and overseeing the black community.⁴ During the final few decades of slavery, whites constructed a popular image of blacks as child-like, potentially dangerous, and in need of the guidance which could only be provided by white paternalism. The personification of this cultural stereotype, the "Sambo," continued to circulate in white descriptions of blacks well into the postbellum period.⁵

In the post-emancipation south, whites faced new racial conundrums. Freedmen, by their very existence, challenged white supremacy. Moreover, black southerners no longer lived within the shadow of the plantation. While most blacks remained in the region, many moved to small

³ George Frederickson, *The Black Image in the White Mind* (New York: Harper & Row, 1971): xi. See Chapter Three (71-96) for an explanation of the "science" underlying white supremacy.

⁴ This is not to say that blacks did not have a viable culture or agency within the slave community. See John Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford University Press, 1972) and Herbert Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York: Pantheon Books, 1976).

⁵ The "Sambo" thesis represents an old historiographical debate within southern history. In his controversial study of slavery, historian Stanley Elkins argued that the "Sambo" image actually represented a reality within the slave community. John Blassingame and Herbert Gutman reject Elkins' theory, claiming that the "Sambo" image was a mask blacks used to humor (if not antagonize) slave owners. My use of the "Sambo" thesis echoes Joel Williamson's analysis in which he explains that whites created the "Sambo" construct in an attempt to rationalize their paternalistic treatment of blacks. Blacks may or may not have used this "mask" as a strategy to negotiate white supremacy, but the image nevertheless existed in the white mind. See Joel Williamson, *A Rage for Order: Black-White Relations in the American South Since Emancipation* (New York: Oxford University Press 1986): 15-17.

tenant farms where they could live (somewhat) free of white supervision.⁶ Others moved to southern cities in search of work.⁷ In an effort to retain control over their own households, many blacks adopted a Victorian conception of sex roles in which black women worked within the home and males worked outside the home as providers.⁸ Southern blacks attempted to maintain the integrity of their individual households and the larger black community. Thus both white and black southerners pursued a policy of segregation rather than assimilation in the New South.

Patterns of white paternalism continued to influence race relations in the new industrializing south. Southern Populists, led by radical leaders such as Tom Watson, even courted black voters in an attempt to break the Bourbon political hegemony which dominated the region.⁹ Ultimately black voters quickly aroused more popular resentment than did the entrenched political parties; this resentment led directly to the collapse of southern populism and caused Tom Watson to reverse his support of the black voter.¹⁰ Once again whites united to advance a policy of white supremacy, this time designed to disfranchise the black voter completely.

The use of race as a means of ordering society was, in itself, not a new phenomenon. However, as historian Grace Elizabeth Hale points out, technological change made dissemination of this racial ordering cheap, widespread, and economically profitable in the late nineteenth and early twentieth centuries.¹¹ Newspapers, magazines, minstrel shows, and motion pictures all

⁶ For an analysis of the sharecropping system see Edward Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992), especially Chapter Eight (p 187-213).

⁷ For an examination of race relations in the urban South see Howard Rabinowitz, *Race Relations in the Urban South, 1865-1890* (New York: Oxford University Press, 1978) and David Goldfield, *Regions, Race and Cities: Interpreting the Urban South* (Baton Rouge: Louisiana State University Press, 1997).

⁸ This conception of Victorian sex roles did have limitations. The central goal of such roles was to remove black women from the purview of white employers. However, this was not always economically possible, especially in urban areas where black males found it difficult to find employment. Black females, however, were generally able to work as domestic servants in the city. See Jaqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family From Slavery to Freedom* (New York: Random House, 1995). See also Herbert Gutman, *The Black Family in Slavery and Freedom* (cited above). See also Joel Williamson, *A Rage for Order*, 83-4.

⁹ John Hope Franklin and Alfred A. Moss, Jr., *From Slavery to Freedom: A History of Negro Americans*, 6th ed., (New York: Alfred Knopf, 1988), 233-34.

¹⁰ *Ibid.*, 235.

¹¹ Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940*, (New York: Random House, 1998), 7.

conveyed the rhetoric of white supremacy to a receptive audience. Hale defines a "culture of segregation" within the south which integrated a mythical view of the antebellum south with a new vision of the postbellum future. By reminiscing about the "good old days" on the plantation, whites were also reinterpreting their common history with blacks. White southerners celebrated stereotypical images they themselves created, most notably the "Black Mammy" and the "loyal Old Negro" (a.k.a. "Sambo").¹² This idealized vision of the past also contributed to a dour vision of the current state of race relations in the south.

During the late nineteenth and early twentieth centuries, southern whites reformulated their understanding of the "Negro Problem" in the south. Southern sociologists, historians, and politicians promulgated a theory of black racial degeneracy commonly called "retrogressive theory."¹³ According to this school of thought, blacks in the new south, freed from the "civilizing" influence of slavery, were rapidly "retrogressing" into bestiality.¹⁴ Works like Philip Bruce's *The Plantation Negro as Freedman* (1889), Paul Barringer's *The American Negro: His Past and Future* (1900), and William Smith's *The Color Line* (1905) depicted blacks as racially inferior creatures given to immoral and socially unacceptable behavior. Fictional accounts such as Thomas Dixon's *The Leopard's Spots* (1902) and *The Clansman* (1905) further reinforced these ideas.¹⁵ Like pro-slavery rhetoric these accounts stressed the childlike behavior of blacks; however, retrogression literature warned of dire results if the decline continued. The most vivid incarnation of this fear involved the creation of the "black beast rapist" who lusted after white women because women of his own race were devalued "prey."¹⁶ This racial rhetoric

¹² Ibid., 98, 61, 73.

¹³ For the earliest scholarly evaluation of retrogression theory see Herbert Gutman, *The Black Family in Slavery and Freedom*, 531-544.

¹⁴ Joel Williamson, *A Rage for Order*, 78.

¹⁵ While whites were busily trying to argue the case for black degeneracy, many middle-class blacks actively promoted the concept of racial uplift as a means of combating racism. See Glenda Elizabeth Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1996).

¹⁶ Dorothy Roberts, *Killing the Black Body: Race, Reproduction and the Meaning of Liberty* (New York: Random House, 1997), 10-12.

had the added advantage of keeping white women in line by linking white racial purity to the preservation of southern white womanhood.¹⁷

By presenting black males as beast-like brutes guided by libido rather than reason, radical whites could defend segregation and call for black disfranchisement.¹⁸ Rumors of black men raping white women led to widespread lynching throughout the south.¹⁹ The Atlanta Race Riot of 1906 stemmed, in part, from local press coverage of several alleged rapes of white women by black men in the city.²⁰ Still, the "New Negro," born after slavery had been abolished, was also a vital component of the developing economy; therefore, white accommodationists urged racial cooperation with blacks to advance the agenda of a New South. Black laborers generally worked as manual or unskilled laborers.²¹ Although many blacks had the skill and training to work better jobs, they were denied access to these jobs based on their race.²² Racism also permitted whites to define themselves in opposition to blacks. In denying blacks equal rights, an identity rooted in rational behavior, and access to good jobs, whites maintained social, political,

¹⁷Although many white southerners placed great value in female modesty and purity during the antebellum period, this value existed within a context of familial honor. See Bertram Wyatt Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982). During the postbellum period the racialized image of the "black beast rapist" emerged as the most obvious threat to white womanhood. See Diane Miller Sommerville, "The Rape Myth in the Old South Reconsidered," *Journal of Southern History* (August, 1995): 481-518 and Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jessie Daniel Ames and the Campaign Against Lynching* (New York: Columbia University Press, 1979).

¹⁸George Frederickson, *The Black Image in the White Mind*, 275-276.

¹⁹Between 1889 and 1946 almost 4,000 blacks (mostly men) were lynched in the United States. Most of these lynchings occurred in the former Confederacy. Although rape was frequently cited as the spark which led to extralegal violence, black reformers such as Ida Wells and Frederick Douglass questioned the veracity of these allegations. For further information on lynching in the South see Ida Wells, *Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells*, ed. Jacqueline Jones Royster (Boston: Bedford Books, 1997); W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930*, (Urbana, University of Illinois Press, 1993) and W. Fitzhugh Brundage, ed., *Under Sentence of Death: Lynching in the South* (Chapel Hill: University of North Carolina Press, 1997).

²⁰Williamson, *A Rage for Order*, 141-151. For an examination of the "black-beast rapist" and lynching in the New South see Ida B. Wells, *Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells, 1892-1900*, ed. Jacqueline Jones Royster (Boston: Bedford Books, 1997); Paula Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* (New York: William Morrow, 1984).

²¹George Tindall, *The Emergence of the New South, 1913-1945*, (Baton Rouge: Louisiana State University Press, 1967), 161-2.

²²Edward Ayers, *The Promise of the New South*, 71-2.

and economic hegemony in the south. It is within this historical context that Jim Conley took the stand to confront Leo Frank and to describe his role in Phagan's murder.

A Troubled Life...

Historians have few resources from which to reconstruct the biography of Jim Conley.²³ Like Mary Phagan, Conley served as an object of public scrutiny during the police investigation and trial. However, most press accounts concentrated on Conley's criminal record and offered few insights into other aspects of his personal life.

Jim Conley was born in 1884 or 1886 to Quincy and Maggie Conley.²⁴ It is unclear how long the Conleys lived in Atlanta or if Jim had any siblings. Both of his parents worked at the Capital City Laundry and lived at 92 Tatnall Street in Vine City, one of several black neighborhoods in Atlanta.²⁵ Although police at first presumed that Conley was illiterate, Leo Frank quickly volunteered information that Conley could read and write.²⁶ At Frank's trial, Conley claimed he had never progressed beyond a first-grade education.²⁷ It is unclear whether his parents taught him at home or if he attended a school for blacks in Atlanta. An 1884 summary of public schools lists three black schools in Atlanta, one each on Martin, Houston, and Mitchell Streets.²⁸ The black population expanded rapidly during the late nineteenth and early twentieth centuries; by 1920 there were nearly 63,000 blacks living in Atlanta.²⁹ By 1915, there were eleven black schools in the city.³⁰

Jim Conley's testimony at the Frank trial provides a brief account of his work history. He began working at age sixteen for Mr. S.M. Truitt.³¹ Over the next eleven years Conley worked a

²³ Ironically, much of the biographical information on Jim Conley is actually autobiographical since it originates in his testimony as documented in the *Brief of Evidence*. Much of this information later resurfaces in Steve Oney's article, "The Search for Jim Conley" *Atlanta Journal-Constitution* (August 12, 1990), M1-2.

²⁴ Conley claimed to be 27 years old at the Frank trial in 1913. Steve Oney asserts Conley was born in 1884.

²⁵ Vine City lies between present-day Atlanta University and the State Capitol. The Conleys also lived quite close to the black business district on Decatur Street.

²⁶ Dinnerstein, *The Leo Frank Case*, 22.

²⁷ *Brief of Evidence*, (Testimony of Jim Conley), 59.

²⁸ For a complete listing of schools, along with principal's salaries, see Franklin Garrett's *Atlanta and Environs*, Volume II, (Athens: University of Georgia Press, 1954), 72-3.

²⁹ John Dittmer, *Black Georgia in the Progressive Era, 1900-1920* (Urbana: University of Illinois Press, 1977), 12-3.

³⁰ *Ibid.*, 659-60.

³¹ Conley's exact occupation is unclear. See *Brief of Evidence*, (Testimony of Jim Conley), 59.

total of seven different jobs before becoming an employee at the National Pencil Factory in 1911.³² Black labor was an integral part of the urban economy, yet white laborers and employers maintained a strict color line in the workplace.³³ Like most urban blacks, Conley worked a variety of low-paying, unskilled jobs. At various times Conley was a drayman, a carriage driver, and a lumberyard employee.³⁴ Conley worked as a janitor at the National Pencil Factory. He was one of eight black employees at the factory.³⁵ He was also one of the lowest paid black employees at the factory, making \$6.05 per week.³⁶

Most physical descriptions of Jim Conley portray him as a "short, stocky, ginger-colored" man.³⁷ At the time of his arrest, Conley was living with his common-law wife, Lorena Jones, at 72 Rhodes Street. Unlike Phagan, who traveled to work on the streetcar, Jim Conley lived within walking distance of the factory on Forsyth Street. Black employees oftentimes lived closer to their workplace, their houses perched precariously on some of the most undesirable land in the city.³⁸

³² Ibid.

³³ White workers at the Fulton Bag Company and the Atlanta Machine Works protested the hiring of black laborers when their employment threatened white jobs. Employers acquiesced to their white workers' wishes. See Don Doyle, *New Men, New Cities, New South: Atlanta, Nashville, Charleston, Mobile, 1860-1910*, (Chapel Hill: University of North Carolina Press, 1990), 263-266.

³⁴ Oney, M2.

³⁵ *Brief of Evidence*, (Testimony of Jim Conley), 65.

³⁶ Based on Conley's testimony concerning his knowledge of fellow employees' wages.

Brief of Evidence, (Testimony of Jim Conley), 60.

³⁷ Dinnerstein, *The Leo Frank Case*, 21.

³⁸ Atlanta remained a very segregated city during this period. Black neighborhoods were generally located in the least desirable areas of the city (near cemeteries, mills, slaughterhouses, and factories). For more information on black settlement in urban areas see Howard Rabinowitz, *Race Relations in the Urban South, 1865-1890*, (New York: Oxford University Press, 1978), especially Chapter Five (97-124). More recent historical studies look beyond factors such as race and discrimination to examine how African Americans established their own communities within urban areas, see Kenneth Kusmer, "Black Urban History in the U.S.: Retrospect and Prospect" *Trends in History* 3 (1982): 57-69. Urban historian Earl Lewis posits a theory of blacks as "multipositional actors" whose individual identity is affected by constructions of race and class but also by their ability to create a viable and empowering culture of their own. See Earl Lewis, "To Turn as on a Pivot: Writing African Americans into a History of Overlapping Diasporas" *American Historical Review* 100 (June 1995): 765-787 and "Connecting Memory, Self, and the Power of Place in African American Urban History" *Journal of Urban History* 21 (March 1995): 247-371. For a helpful essay on the historiography of black urban history see Joe W. Trotter, "African Americans in the City: The Industrial Era, 1900-1950" *Journal of Urban History* 21 (May 1995): 438-457.

Atlanta police arrested Jim Conley as a material witness in the Phagan case on May 1, 1913; he remained in police custody, largely forgotten, until May 18, 1913 when police forced him to submit a writing sample. Throughout this period, police focused on Newt Lee and Leo Frank as the primary suspects. During the weeks following, police elicited a series of affidavits from Conley, each more detailed and damning.³⁹ Once Conley proved his worth as a witness, Police Chief Newport Lanford moved him from the Fulton County Prison (also known as "the Tower") to the city jail. This tactic ensured the police easy access to their chief witness.⁴⁰ It also helped to establish a striking duality between Conley, the voluble witness "helping" police solve the crime, and Leo Frank, the "Silent Man in the Tower."

Setting the Scene

*You killed little Mary Phagan,
It was on one holiday;
Called for old Jim Conley
To carry her body away.*

*He taken her to the basement,
She was bound both hand and feet;
Down in the basement
Little Mary she did sleep.*

- Excerpt from "The Ballad of Mary Phagan"⁴¹

Conley endured a series of police interviews during the weeks preceding the trial. His narrative of the crime emerged over the course of these interrogations, culminating in his appearance at trial. Though he would eventually retain a lawyer, during the formative stages of the investigation Conley was left to the mercy of police detectives and the district attorney.⁴² The police openly admitted subjecting both Newt Lee and Jim Conley to the "third degree," which was described as a "method of science" used to extract information from reluctant

³⁹Conley made at least three formal affidavits to the police between May 19, 1913 and the start of the trial.

⁴⁰*AJ* and *AC*, June 1, 1913, 1.

⁴¹Gerald Snyder, ed., "Leo Frank and Mary Phagan," *The Journal of American Folklore* 31 (1918) p 265.

⁴²William Smith, Conley's attorney appears for the first time on June 3, 1913 (*AC*). Smith later stated that Conley was unable to pay him for his services.

witnesses.⁴³ Police Chief Newport Lanford explained this process in which detectives, working in teams of two, alternately browbeat and cajoled black prisoners in an attempt to elicit a confession. Lanford claimed this technique was useful only with black prisoners since white prisoners "are prejudiced against detectives and are keen to divine the false attitude of sympathy which wins so easily over the negro."⁴⁴ By assuring the public that "even the best of rehearsed stories are often broken down under the strain of constant examination," Lanford reinforced the validity of Conley's story.⁴⁵

An analysis of Conley's handwriting revealed him to be the writer, if not the author, of the infamous murder notes.⁴⁶ Conley later told reporters that he confessed his part in the crime when it became apparent that Leo Frank was not coming forward. Worried that he would be hanged for a crime he did not commit, Conley claimed he "came out with it" after which he reassured the public, "I knew that I had told the truth, and I felt like a clean nigger."⁴⁷ It is more likely that Conley, realizing his handwriting sample incriminated him, prudently offered the police an explanation of his involvement in the crime.⁴⁸

Conley's narrative of the crime fit neatly with the testimony offered by other witnesses who entered the factory that day. His version of the crime helped to establish a timeframe for Phagan's murder, which he claimed, occurred shortly after she arrived at the factory at noon. Although he admitted helping Frank dispose of the body and writing the notes, Conley repeatedly stated that he was drunk and "not in his right mind" on the day of the murder.⁴⁹ He

⁴³ Newt Lee testified that he was not permitted any sleep for the first two days and nights following his arrest. See *AC*, July 30, 1913, 2. For Lanford's comments see *AC*, June 15, 1913, 4.

⁴⁴ *AC*, June 15, 1913, 4.

⁴⁵ *Ibid.*

⁴⁶ Police never seriously suspected that Phagan authored the notes. Police obtained writing samples from Leo Frank, Jim Conley, and Newt Lee. Early press accounts targeted Lee as the author (*AJ*, April 29, 1913) but the police quickly altered their opinion after obtaining Conley's writing sample. The "experts" who testified were generally professional bookkeepers and accountants who had previous experience handling a variety of written records. Photos of the murder note placed beside Conley's sample do reveal a startling similarity.

⁴⁷ *AC*, May 31, 1913, 2.

⁴⁸ As mentioned previously Conley formulated a series of affidavits. Each successive affidavit revealed greater detail. To examine each version would be beyond the scope of this paper. For my purposes here I concentrate on the final version Conley offered in court. I also rely on press coverage of the trial to supplement the Brief of Evidence, since the lawyers' questions are absent from the brief.

⁴⁹ *AJ*, May 31, 1913, 7

explained to the police that he left his home on the morning of the murder and stopped to drink at the Butt-In Saloon on the way to work.⁵⁰ By the time he arrived at the factory, Conley had consumed several glasses of beer. He testified that he saw Mary enter the factory door and go upstairs; next he heard Mary's footsteps as she walked to the office and he then heard a lady scream. Leo Frank, whom Conley described as "shivering and trembling and rubbing his hands" which held "a long wide piece of cord," soon emerged to seek his help.⁵¹ Together the two used the factory elevator to move Phagan's body to the basement.

In an effort to further illustrate his story Conley staged a bizarre pantomime for the police as he led them through the pencil factory, describing and acting out his part in the drama. Ever helpful, at times Conley even got down on the floor to play the part of Phagan's corpse.⁵² According to Conley, apparently Frank was not very adroit in transferring the body to the basement; when Frank remarked to Conley "Gee that was a tiresome job," Conley responded by pointing out that he himself had carried the bulk of the weight.⁵³ Conley also complained that Frank offered him \$200 in cash, and then took the money back before Conley left the office.⁵⁴

As the prosecution's chief witness, Jim Conley commanded a great deal of public attention. Newspaper reporters conducted interviews with him in jail and the papers printed his affidavits verbatim in extras distributed throughout the city. When asked why he remained silent for so long, Conley said that he did not want to betray his employer and that he believed Frank would pay him to insure his silence.⁵⁵ He explained that Frank dictated the murder notes to him under the guise of obtaining a writing sample to send to Frank's mother in New York. Mrs. Rae Frank apparently wanted to "give a good job to a bright and honest negro boy."⁵⁶

While Conley offered explanations for his cooperation with Leo Frank, Conley's white attorney, William Smith, publicly highlighted his client's efforts to help the police solve the

⁵⁰ It is unclear at what time Conley left his home that morning. In each affidavit he changed his story somewhat. He also claimed to have visited three different saloons on the day of the murder. *Brief of Evidence*, (Testimony of Jim Conley), 66-68.

⁵¹ *Ibid.*, 55.

⁵² *AC*, May 31, 1913, 2.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *AJ*, May 26, 1913, 1

murder mystery. Smith issued a statement to the local press in which he stressed the distinction between his client's attitude toward the police investigation and Frank's stoic silence:

Jim Conley has been dealing fairly with the state of Georgia. His story has been an open book to the sworn, trusted prosecuting officers of this state. He is not skulking coward-like behind the protection of iron bars, nor have his lips been sealed with tomb-like silence, until he can spring suddenly in a court, a well-prepared statement, which the state has no opportunity to investigate and disprove. Conley allows himself to be grilled, cross-examined, and unceasingly questioned by the representatives of the state. He is talking and talking now. Conley says to the state of Georgia, here is my story, investigate it, sift it, and prove it a lie, if you can.⁵⁷

Once again, Conley appeared as a helpful servant, however, this time his allegiance was to the state rather than to his employer.

Newspaper accounts included diagrams outlining various theories of the killing based on information gathered from the prosecution and the defense. Since Frank refused to volunteer much information, Conley's testimony provided the impetus for these visual recreations of the crime scene. As an active participant in the "crime," Conley could describe the chain of events which led to Phagan's death. In court, he would refer to a scale model of the factory to demonstrate his movements on the day of the murder. Conley truly had a unique and privileged perspective on the crime. At one point he even claimed that Frank helped him hide in a wardrobe so fellow employees would not see him as they entered the office for their pay.⁵⁸

Conley carefully distanced himself from many of the areas of the factory specifically connected with the murder. As the janitor, he would presumably have had to clean much of it. Yet Conley testified that he had never been near the machines in the metal department, that he never entered the plating room, and that he cleaned the ladies' and men's restrooms while standing in the doorway.⁵⁹ Although obviously embroiled in the drama, Conley also attempted to distance himself from the actual crime. He pointedly denied having witnessed the actual

⁵⁷ William Smith's statement to the press is reprinted in the *Atlanta Constitution* (July 19, 1913), 2.

⁵⁸ *AC*, May 29, 1913, 1.

⁵⁹ *Brief of Evidence*, (Testimony of Jim Conley), 65.

murder, declaring Frank summoned him after the fact to help dispose of the body. At the trial Conley established further distance from the murdered girl by refusing to acknowledge that he knew her name. He claimed he knew the victim to be Mary *Perkins*.⁶⁰ Although he offered explicit detail about the apparel worn by other female visitors to the factory, Conley divulged little information about the victim's ensemble. While blandly acknowledging his propensity to lie about other details of the day, Conley steadfastly avoided placing himself in dangerous proximity to the areas specifically associated with the murder of Mary Phagan.

White newspaper reporters treated Conley as a heavily racialized "other," describing his mannerisms and speech as if he were an object for anthropological study.⁶¹ Testimony offered by Newt Lee and Jim Conley always appeared in dialect in local papers. *Atlanta Constitution* reporter Britt Craig characterized Conley as a "present-day type of city darkey," explaining "although there is still within him the vein of bucolic manners and ignorance, he has contracted quite a bit of city airs and city ways that are to his detriment."⁶² Craig goes on to describe Conley as "a bit vain" and a ladies man whose desire to make himself look "p'sentable" led him to wash his bloody blue shirt prior to the coroner's inquest.⁶³ Such descriptions permitted readers to view Conley as a laughable character, an easily identifiable stereotype motivated by vanity rather than murderous intent.

By belittling Conley's intelligence, newspaper reporters inadvertently helped distance him from the role of murderer. Once again, reporters relied on racialized descriptions of Conley to explain his worth as a witness. Reporter Britt Craig claimed that both Newt Lee and Jim Conley proved themselves to be the "sturdiest witnesses presented by the state;" both men appeared as if they had "no nerves" while on the stand.⁶⁴ Whereas an "average white man" might chafe under the intense scrutiny of cross-examination, Conley responded to Rosser's volleys coolly and methodically:

⁶⁰ *Brief of Evidence*, (Testimony of Jim Conley), 55.

⁶¹ Reporters treated Newt Lee in the same manner. See L.F. Woodruff, "Lee's Quaint Answers Rob Leo Frank's Trial of All Signs of Rancor," *AC* (July 29, 1913), 3.

⁶² *AC*, August 3, 1913, 2. A similar story, written by L.F. Woodruff, appeared in the *Atlanta Georgian* on August 5, 1913, 4.

⁶³ *Ibid.* As mentioned earlier in the synopsis of the case, police arrested Conley after finding him washing a bloody shirt at the factory.

⁶⁴ *AC*, August 3, 1913, 4. *AC*, August 6, 1913, 3.

Jim doesn't strive to meet every question with an effective answer. He makes the first reply which enters his mind, it would appear. He doesn't look forward to what's going to happen next. ... Consequently what little intellect he possesses isn't affected by worry...

Which shows, in the minds of many, the value of ignorance against intellect - the brute against the finer nature, the savage against the civilized. In the realms of business and society, civilization relegates ignorance to the dim ages, but on the witness stand it is sometimes different.⁶⁵

Presumably Conley was incapable of staging an event like the murder of Mary Phagan; his "type" could only act as a somewhat ineffectual sidekick for the true murderer. And even if he did commit the crime, Conley's ignorance would circumvent his ability to lie while on the stand. Thus, the *Atlanta Journal* clarified Conley's involvement by stating, "The police do not regard Conley in the light of an accomplice, but simply as an unwitting tool."⁶⁶

Race and Sexuality

"The New Sambo was built up not only day by day in face to face encounters, but also by an intricate network of persisting beliefs and institutions that tied all tightly together. In a large measure, the image was maintained by the very distance that separated the races and the invisibility of black people to white."

- Joel Williamson, *A Rage for Order*⁶⁷

As discussed in the first chapter, most newspaper accounts envisioned Phagan's murder as a sexually motivated crime. At first glance it seems strange that the heightened public interest in the trial did not immediately foment mob violence in a region consumed with a fear of the "black beast rapist."⁶⁸ Yet the mysterious circumstances of the victim's death distinguished the

⁶⁵ AC, August 6, 1913, 3.

⁶⁶ AJ, May 28, 1913, p1, AC, August 3, 1913, 2.

⁶⁷ Joel Williamson, *A Rage For Order: Black-White Relations in the American South Since Emancipation*, (New York: Oxford University Press, 1986), 251.

⁶⁸ For a fascinating example of the new scholarship in the study of black-on-white rape see Lisa Lindquist Dorr, "Messin' White Women: The Rhetoric of Black-on-White Rape in Twentieth Century Virginia," paper presented at the annual meeting of the Southern Historical Association, Birmingham, Alabama, November 11-14, 1998. Using evidence gathered from court cases in Virginia, Dorr argues the

Phagan case from other criminal cases in the south. Since no one could account for Phagan's exact movements on the day of her murder, early narratives of her murder offered competing theories of Phagan's death.⁶⁹ The fact that the police arrested several male suspects of both races in the initial stages of the investigation indicates that the racial identity of the murder was a matter of debate.⁷⁰ Although the papers presumed that Phagan had been sexually assaulted, medical evidence of rape was so disputable that it was not even mentioned in the bill of indictment. Obviously the victim could not name her assailant, nor could anyone in the factory describe the assault. Ultimately the only person who could "solve" the mystery of the victim's death was Jim Conley.

The crux of Conley's "amazing testimony" reveals a complete racial role reversal between Jim Conley and Leo Frank. Conley's narrative of the crime placed Frank on the defensive by calling into question his masculinity and his presumed status as masterful employer. According to Conley, Frank *confessed* his crime to Conley, stating, "I wanted to be with the little girl and she refused me, and I struck her and I guess I struck her too hard and she got hurt. Of course you know I ain't built like other men."⁷¹ Conley's testimony effectively turned the tables by portraying Frank as a sexual degenerate. He also adroitly sidestepped the issue of rape. Conley claimed Frank only admitted to striking Phagan, he did not address the possibility of rape or sexual penetration.

Conley offered further damning testimony which questioned Frank's sexual normality. He stated that he acted as a lookout for Frank on several occasions when Frank would "chat" with young ladies up in his office.⁷² Conley also claimed to have seen Frank "in a position I

primacy of class and gender allegiances over racial distinctions in the early twentieth century south. Her discussion of "front stage and back stage" politics demonstrates the "gap between rhetoric and reality" in cases of interracial rape. For other recent studies on interracial relationships see Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth Century South* (New Haven: Yale University Press, 1998).

⁶⁹ It is important to note that all of these theories revolved around the notion that Phagan's death was sexually motivated. For a more complete examination of these theories see Chapter One.

⁷⁰ See the synopsis of the case (Section One).

⁷¹ *Brief of Evidence*, (Testimony of Jim Conley), 55.

⁷² Conley also described several women who visited Frank in his office during these trysts. There is no evidence that these women were romantically involved with Frank.

haven't seen any other man that has got children."⁷³ By portraying Frank as a sexual libertine who periodically engaged in Saturday afternoon trysts while at work, Conley shifted public attention away from the janitor's role in the crime and subtly reinforced the idea of the factory as a scene of sexual debauchery. Given popular fears about young female wage earners and factory work, discussed in Chapter One, Conley's testimony had the ring of truth.

Throughout the police investigation and Frank's trial, Conley presented himself as a docile, accommodating black male, subservient to the police, the prosecuting attorney, and by implication, to Frank. While he acknowledged writing the murder notes, he said he did so at Frank's behest. Moreover Conley described the crime as taking place within Frank's domain, specifically near Frank's office on the second floor of the factory. He claimed Frank enlisted his help to move the body to the basement of the factory, an area frequented by the black employees of the factory.⁷⁴

When Hugh Dorsey asked Conley why he helped Frank, Conley replied, "He was a white man and my superintendent[,] and I thought I ought to help him out of his trouble."⁷⁵ He also confessed a desire for the money Frank promised if he kept quiet about the whole affair. Still, Conley remained well within the culturally proscribed limits of black behavior. In presenting himself as a black servant and an ally to his employer, Conley undercut the image of the black man as rapist, opting instead for another, more socially sanctioned role of neo-Sambo. While newspaper reporters pontificated on the merits of "the brute against the finer nature," Conley clearly indicated the true "brute" was his employer.⁷⁶ Thus, Leo Frank would ultimately displace Jim Conley as the target for white rage and retribution.

⁷³ Conley offers a description of this position, indicating that Frank engaged in oral sex. See *Brief of Evidence*, 55.

⁷⁴ The basement was a large room which contained the furnace, a trash heap, a dirty pallet for sleeping, and the toilet designated for use by black employees. Jim Conley also claimed he used the basement exit to the alleyway to avoid running into people to whom he owed money.

⁷⁵ AC, August 5, 1913, 2.

⁷⁶ AC, August 6, 1913, 3.

Criminality

"First time I was arrested was for throwing rocks. I was a small boy then. I was arrested another time for fighting black boys, then I was arrested about drinking and disorderly, and the last time I was arrested was about fighting again. I never have fought with a white man or white woman."

-Jim Conley⁷⁷

This excerpt from Conley's testimony at trial provides a glimpse into yet another aspect of the janitor's identity. Conley clearly wished to frame his criminal history as a segregated phenomenon; his "victims" had all been black. This has an important distinction to make in the early twentieth century when southern society was conditioned to believe blacks inherently prone to criminal activity and lax morality. Contemporary observers asserted blacks to be more likely to commit crimes than whites.⁷⁸ In his treatise on the "plantation Negro as a freeman" Philip Bruce warned:

The blacks are now at liberty to act just as they prefer to act, wholly unhampered by authority or uncurbed by public sentiment; the unrestricted indulgence of their instincts in consequence, however injurious to themselves or destructive to society, has served only to fix these instincts more deeply in their natures. Then, too, emancipation enlarged the scope of these instincts, by increasing the opportunities for their gratification.⁷⁹

These same themes reappear in popular fiction of the period. The most infamous example, Thomas Dixon's *The Clansman*, portrays blacks as "half child, half animal" with a propensity to commit "unspeakable" crimes against whites.⁸⁰ In 1915 Dixon's novel reached an even wider audience when it was filmed as *The Birth Of a Nation*.⁸¹

Given the predominant white view that blacks harbored an intrinsic bent towards social deviance, it should come as no surprise that whites unfairly targeted them for criminal

⁷⁷ Brief of Evidence, (Testimony of Jim Conley), 73.

⁷⁸ George Frederickson, *The Black Image in the White Mind*, 281.

⁷⁹ Philip Bruce, *The Plantation Negro as a Freeman*, Originally published in 1889. (Williamstown, Mass: Corner House Publishers, 1970, Reprint): 129.

⁸⁰ *Ibid.*, 280-281.

⁸¹ The citizens of Atlanta previewed Dixon's work even earlier. In 1905 Thomas Dixon himself brought a stage-version of *The Clansman* to the city. See Joel Williamson, *A Rage for Order*, 146.

prosecution. In 1908, 2,219 of the 2,566 felony convicts in Georgia were black.⁸² In addition to convictions for property and violent crimes, blacks also faced an increased likelihood of arrest for misdemeanors such as vagrancy, drunken and disorderly conduct, and debt peonage. Once arrested, blacks frequently found release from prison more difficult to achieve than did their white counterparts.⁸³ Black convicts, mostly male, provided a valuable source of labor in the South. Like most southern states in the nineteenth century, Georgia relied on a convict lease system in which convicts were contracted as workers to private entrepreneurs. However, in the early twentieth century, progressive reformers began to investigate the often-abusive relationship between the leaser and the lessee. These investigations prompted Georgia to abolish the convict lease system in 1908, replacing it with a state-sponsored chain-gang system which used convicts to build and repair public works.⁸⁴ Though subject to the same potential abuses as the convict lease system, the chain-gang system proved an acceptable alternative to housing convicts (at considerable expense) in the state prison. Felons sentenced to less than five years (generally felons convicted for property crimes and misdemeanors) worked on the roads within the same county where they had been convicted. Thus the county, rather than the state, bore the cost of housing the convict, yet they also benefited from the labor that convict could provide.⁸⁵ Georgia utilized the chain-gang system until 1944.

Jim Conley experienced the intricacies of the Georgia state prison system firsthand. Although arrested for disorderly conduct six times between 1904 and 1907, Conley may not have served time as a convict laborer since each of these convictions resulted in a fine.⁸⁶ In 1912, Conley received a thirty-day sentence for disorderly conduct and he may well have served on a chain gang in Atlanta as punishment for this crime. Herbert Schiff, the assistant superintendent of the pencil factory, testified that Conley served in the chain-gang "two or three times;" at least one of those times Schiff himself recognized Conley as he worked on a gang outside the factory

⁸² John Dittmer, *Black Georgia in the Progressive Era, 1900-1920* (Urbana: University of Illinois Press, 1977): 83.

⁸³ Martha Myers, *Race, Labor & Punishment in the New South* (Columbus: Ohio State University Press, 1998): 2.

⁸⁴ Dittmer, 86.

⁸⁵ Myers, 24-25.

⁸⁶ See partial list of Conley's criminal record in the *Brief of Evidence*, p252.

on Forsyth Street.⁸⁷ However, Schiff's response to Conley's criminal record is equally revealing. While he acknowledged having the authority to fire Conley, Schiff refused to do so, "because in a factory like that it is hard to get a negro who knows something about it."⁸⁸ Though Conley's criminality bore little effect on his employment, it did resurface in discussions of concerning his credibility.

⁸⁷ *Brief of Evidence*, (Testimony of Herbert Schiff), 97.

⁸⁸ *Ibid.*, 97.

Credibility

"There is no evidence against him [Frank] in this case except such as comes from Jim Conley, that prince of liars. You could no more impeach Conley by showing he had lied that you could saturate a duck by pouring water down its back. He is impervious to a charge of lying. He will admit to it any day of the week."

- Reuben Arnold, Frank's defense attorney⁸⁹

The veracity of Jim Conley's testimony was a matter of debate both within the courtroom and throughout the entire city. Newspapers pondered the unusual circumstances which caused a white man's life to pivot on the testimony of his black employee.⁹⁰ The defense portrayed Conley as a "very ordinary, ignorant, and brutal negro, not unacquainted with the stockade."⁹¹ On several occasions Frank's attorneys pointed out inaccuracies among Conley's sworn statements and forced him to admit he had lied.⁹² Conley took these attacks in stride, quickly adapting his narrative of the crime to accommodate his errors. He rationalized his actions by patiently explaining,

If you tell a story you know you've got to change it. A lie won't work, and you know you've got to tell the whole truth. Yes, I knew it was bound to come when I told it the first time. I didn't tell the whole truth then, because I didn't want to give the whole thing away then.⁹³

While he made several concessions to the defense, Conley steadfastly maintained Frank committed the murder. Faced with this intransigence, the defense called upon Conley's fellow employees to testify concerning his character.

Not one of Conley's fellow employees was willing to support his statements. Indeed a number of employees testified that Conley was a liar.⁹⁴ Joe Stelker asserted he "never trusted Conley after he put water in my beer."⁹⁵ During his cross-examination Conley testified that he

⁸⁹ Reuben Arnold, *Reuben Arnold's Address to the in his Behalf* (Baxley, Ga.: Classic Publishing Company, 1915), 19.

⁹⁰ *AJ*, June 1, 1913, 1; *AG*, July 6, 1913, 4A; *AC*, August 3, 1913, 2; *AG*, August 5, 1913, 4; *AG*, August 21, 1913, 1.

⁹¹ *AJ*, June 10, 1913, 7.

⁹² Dinnerstein, *The Leo Frank Case*, 45.

⁹³ *Brief of Evidence*, (Testimony of Jim Conley), 67.

⁹⁴ See *Brief of Evidence*, 121, 134, 138, 171, 178.

⁹⁵ *Brief of Evidence*, (Testimony of Joe Stelker), 139.

frequently let a friend and fellow black employee, Gordon "Snowball" Bailey, collect his pay. However, Bailey too, testified that Conley had offered false testimony.⁹⁶ Conley borrowed money from several black factory workers and dodged re-payment by leaving the factory on payday and having Bailey pick up his wages.⁹⁷ At times Conley would actually duck out through the basement door to avoid confrontations with his inquisitive co-workers.⁹⁸ Arthur Pride, to whom Conley owed money, claimed that he "never associated with him." In response to cross-examination, Pride also asserted, "No, I ain't a high-class nigger, but I am a different grade from him."⁹⁹

Although Conley may have earned enemies because of his own foibles, several witnesses asserted that he was inherently untrustworthy because of his race. This exemplified yet another racial stereotype of blacks in the South. Miss Iora Small, a white female employee of the factory, specifically attacked Conley's "reputation for truth" but went on to say, "I don't know of any nigger on earth that I would believe on oath."¹⁰⁰ Several employees considered Conley to be the most likely culprit for the murder of their co-worker. Herbert Schiff, E.F. Holloway, and N.V. Darley hypothesized that Conley accidentally killed Mary Phagan as he was robbing her, then he tried to pin the crime on his employer.¹⁰¹ The men based their theory on their assumption that "no intelligent white man" would ever knowingly leave physical evidence (i.e., the murder notes) at the crime scene.¹⁰² Still, few Atlantans accepted this interpretation of the murder, choosing instead to continue to focus on the crime as a sexual murder.

Conley also earned enemies within the black middle class who wished to establish a distance between themselves and the criminal behavior associated with a member of their race. An editorial appearing in the *Atlanta Independent*, one of the most prominent African-American newspapers in the state, satirically remarked, "We expect Jim Conley would be frightened out of his boots if it was intimated to him that he had such a thing as moral character."¹⁰³ The paper

⁹⁶ *Brief of Evidence*, (Testimony of Gordon Bailey), 137.

⁹⁷ *Brief of Evidence*, (Testimony of Jim Conley), 59-60.

⁹⁸ *Ibid.*

⁹⁹ *Brief of Evidence*, (Testimony of Arthur Pride), 134.

¹⁰⁰ *Brief of Evidence*, (Testimony of Iora Small), 120.

¹⁰¹ *AJ*, May 29, 1913, 24.

¹⁰² *Ibid.*

¹⁰³ *Atlanta Independent*, April 4, 1914, 12.

later called for a new trial for Frank, stating that he was unfairly convicted upon the testimony offered by “a discreditable Negro like Jim Conley.”¹⁰⁴ Black newspapers throughout the United States echoed many of these same sentiments in their coverage of the trial.¹⁰⁵

Such editorials need to be read as an effort to offset white press accounts of black racial solidarity in favor of Jim Conley. White newspaper reporters, ignoring class distinctions within the black community, dubbed Jim Conley “the Ebony Chevalier of Crime” and proclaimed him “the hero of darktown.”¹⁰⁶ White presumptions of intraracial support for Conley were in keeping with Philip Bruce’s description of the fundamental immorality of blacks in America. “When a plantation negro is guilty of a crime, ” Bruce wrote, “he is not made to feel the indignation and scorn of his race; he is received, on the contrary, as cordially as if he had not committed an offense that should properly fix an ineffaceable stigma on his reputation.”¹⁰⁷ This same criminality could then be extrapolated to the entire race for, according to Bruce, “all negroes, with very few exceptions in proportion to the great mass, will act in the same way in the same situation, and will display the same qualities.”¹⁰⁸ Reducing all blacks to a single entity helped whites reaffirm the theory of black retrogression. If Jim Conley symbolized the entire race (or was, at least, celebrated by the entire race) then the entire black community could be construed as potentially untrustworthy and socially deviant, thus reaffirming the need to maintain strict social segregation and surveillance of all blacks in southern society.

Ultimately, Jim Conley's dubious credibility and his presumed social deviance from the white "norm" meshed with most early twentieth-century white southerners expectations of blackness. The janitor's allegations concerning his industrial employer were infinitely more problematic, as they challenged conventional notions of whiteness and white supremacy.

¹⁰⁴ Ibid., March 21, 1914, 4.

¹⁰⁵ Though the black press did not lionize Jim Conley, many papers did rejoice in the fact that the police and the public focused on Frank as the guilty party, as opposed to blaming a black man for the crime. See *The Crisis*, (September 1913), 221. For a more detailed description of national black newspaper coverage of the Frank case see Eugene Levy, “ ‘Is the Jew a White Man?’: Press Reaction to the Leo Frank Case, 1913-1915,” *Phylon* (June 1974); 212-222.

¹⁰⁶ James Nevin, “Jim Conley, The Ebony Chevalier of Crime, is Darktown’s Own Hero,” *Atlanta Georgian* (August 7, 1913), 3.

¹⁰⁷ Bruce, *The Plantation Negro as a Freeman*, 137.

Ibid., 137.

¹⁰⁸ Ibid., 128.

Jim Conley and Leo Frank: Is the Jew a Black Man?

While Hugh Dorsey focused on Jim Conley as the keystone in his case against Frank, Frank and his attorneys saw Conley as a disreputable witness whose testimony would undermine the prosecution's case. Both Frank and his attorneys frequently characterized the murder of Mary Phagan as a crime which could only have been committed by a black man.¹⁰⁹ Luther Rosser established the importance of race at the onset of the trial. He directed his opening salvos at Newt Lee, questioning Lee's connection to the murder notes. When Dorsey complained about Rosser's harsh cross-examination of Newt Lee, Rosser responded by stating, "We've got to commence somewhere and at some time to show the negro is a criminal and we might as well begin here as anywhere else."¹¹⁰ Throughout the trial, the defense maintained that the author of the murder notes was indeed the true murderer of Mary Phagan.

Even after his conviction Leo Frank continued to assert his innocence by raising the issue of the notes. In discussing the author of the notes, Frank revealed his own assumptions about the murderer's mentality and motivation. He also attempted to emphasize his own whiteness and intelligence through his ability to recognize the faulty logic underlying the [black] murderer's plan to cover up his crime:

The very idea of writing notes and putting them by the dead body to divert suspicion is even more characteristic of a drunken, ignorant negro than the language itself. Emphatically no. The whole dictation theory is silly. In the first place no intelligent white man would do such a thing, whether by writing himself or having another write for him. He knows that handwriting is a sure clue.¹¹¹

Until his death, Leo Frank seemed sincerely mystified that the jury would believe a black man's testimony over his own.

¹⁰⁹ *AJ*, June 22, 1913, 1.

¹¹⁰ *AJ*, July 29, 1913, 4.

¹¹¹ *AC*, March 4, 1914, 10.

It is ironic that Frank and his attorneys believed so strongly in the primacy of race that they overlooked the possibility that Frank would himself be characterized as a non-white man, a surrogate “black beast rapist.”¹¹² Although initially cooperative in providing the police with information, Frank quickly assumed a mask of silence once Conley named him as the murderer. Hugh Dorsey would later use this to his advantage at trial, claiming that Frank’s silence set him apart from “normal” white males:

I tell you, gentlemen of the jury, measuring my words as I utter them, and if you have got sense enough to get out of a shower of rain you know it's true, that never in the history of the Anglo-Saxon race, never in the history of the African race in America, never in the history of any other race, did an ignorant, filthy negro, accuse a white man of a crime and that man decline to face him.¹¹³

Thus race became a double-edged sword, as potentially harmful to Frank as it was to Conley.

Meanwhile Conley characterized his relationship with Frank as jovial and economically rewarding. Whenever needed he earned extra income by acting as a lookout for Frank on Saturday afternoons. Conley also repeated a foreboding comment Frank made in jest as Conley dallied in the elevator, “Come on I am going to make a graveyard down there in the basement if you don’t hurry and bring that elevator back up here.”¹¹⁴ Although the comment was meant as a joke, it must have seemed weirdly incongruous in the packed courtroom.¹¹⁵

Throughout the trial Conley portrayed himself as a neo-Sambo, afraid to oppose his white employer. Although Conley's testimony probably angered the all-white jury, they undoubtedly also wanted to believe Conley's claims that he was afraid not to help his white boss. Nor could the jury consider Conley a partner to Frank; to do so would presume a rough equality impossible in southern society.

¹¹² Williamson, *A Rage for Order*, 244.

¹¹³ Hugh Dorsey, *Argument of Hugh M. Dorsey at the Trial of Leo M. Frank*. (Macon, Georgia: N. Christophulos, 1914), 99-100.

¹¹⁴ *Brief of Evidence*, (Testimony of Jim Conley), 64.

¹¹⁵ Other factory employees contested Conley’s characterizations of his relationship with Leo Frank. N.F. Darley, in particular, claimed he never knew Frank to laugh and joke with Jim Conley. See his testimony in the *Brief of Evidence*, 75.

Assigning Blame

Judge he passed the sentence
He reared back in his chair;
He will hang Leo Frank,
And give the negro a year.

Next time he passed the sentence,
You bet, he passed it well;
Well, Solicitor H.M. [Dorsey]
Sent Leo Frank to hell.

- Excerpt from "The Ballad of Mary Phagan"¹¹⁶

Conley received a one-year sentence as an accessory to murder in the Phagan case, an amazingly light punishment for a black man involved in the murder of a white woman in the South. Conley served his sentence at the Bellwood Prison Camp in Atlanta. Following his release, Conley returned again to the courtroom in 1916 when he and a girlfriend (named Mary) appeared in court as the result of a domestic dispute. Conley made novel use of the occasion, apparently requesting the judge to perform a wedding ceremony for his girlfriend and himself.¹¹⁷ In 1919 Conley was convicted for his role in an armed robbery at a downtown pawnshop; he served fourteen years of a twenty-year sentence.¹¹⁸ Although he reappeared briefly in 1941 (in court for a gambling charge) and in 1947 (in court for drunkenness) Jim Conley eventually disappeared from the public record.¹¹⁹

In 1914, William Smith, Conley's attorney during the Frank trial, publicly stated his belief that his former client was indeed the murderer of Mary Phagan.¹²⁰ By this point Conley was already serving his sentence at the Bellwood prison and could not be legally retried. As the case achieved national notoriety during the appeals process, press reports focused on Conley's

¹¹⁶ Olive Wooley Burt, *American Murder Ballads and Their Stories* (New York: Oxford University Press, 1958), 63.

¹¹⁷ Oney., M2.

¹¹⁸ Ibid.

¹¹⁹ Oney, M2. See also Leonard Dinnerstein, *The Leo Frank Case*, 158-9.

¹²⁰ Dinnerstein, *The Leo Frank Case*, 114. Smith's credibility is also dubious. After making his statement he quickly left the city to become an employee of the William Burns Detective agency, a firm hired by Frank's defense to investigate the murder and prove their client's innocence.

testimony as the foundation for the prosecution's case. Frank, apparently having learned a lesson from his silence before the trial, publicly denounced Conley as a liar and a murderer.

Tump Redwine

"I am going to ask you to consider for a moment, sanely and calmly, and try to forget that Tump Redwine is a negro and think of him only as a man, albeit a pretty sorry one!"
- Excerpt from *Death in the Deep South*¹²¹

Just as Mary Phagan resurfaced in fictional accounts of the murder, Jim Conley's character is reborn in Ward Greene's *Death in the Deep South*. Greene's novel contains no figure representing Newt Lee. Instead, Greene conflates Lee and Conley into one character – Tump Redwine. Redwine appears as a shadowy figure furtively sneaking a drink while lurking in the basement of the business college. Police immediately consider Redwine a suspect in the murder of Mary Clay and they take him to police headquarters to administer “the third degree.” Greene's description of this process leaves little to the reader's imagination; five officers surround Redwine [the sixth man]:

The sixth man was small, black, and except for the handcuffs, naked. He writhed on his spine, pinioned there by four of the men while the fifth beat him over the belly with a rubber hose. At each stroke the sixth man screamed. When the hose hit him below the belly, he threshed convulsively. ...The detective stepped in front of him and slapped him across the face with his palm.

“Talk, Tump! Come clean...”

He waited. Then out of the shuddering and slobbering, came words – “Fore God, white folks, for God, gen'lemens...”¹²²

Shortly after this exchange, Tump's unlikely savior appears. Andy Griffin, the district attorney, berates the ignorant policemen and their chief for beating Redwine so severely. Griffin alone

¹²¹ Ward Greene, *Death in the Deep South* (New York: Stackpole Sons, 1936), 236

¹²² *Ibid.*, 33-34.

realizes the witness's potential and the necessity for keeping him healthy, at least through the trial.¹²³

The action which follows closely resembles the course of events in the Frank trial, with one clear distinction. Like Conley's testimony, Redwine's narrative leads directly to Professor Hale's conviction. However, whereas Conley testified he helped Frank move the body in an attempt to cover up the crime, Redwine swears that he had no knowledge the crime had ever taken place. He describes having heard footsteps and noises on the upper floors of the school; when he goes to investigate he finds a nervous Hale hiding his hands behind his back. Hale orders Redwine to investigate the third floor, presumably Hale uses this brief interlude to dispose of the body by throwing it down the elevator shaft. Redwine will eventually find Clay's body in the basement and report his discovery to the police.

Throughout the novel, Griffin appears as the primary investigator and truth-seeker. Though Tump Redwine provides the actual testimony used to convict Hale, it is Griffin who molds Redwine's testimony into a story he thinks the jury will believe. If Tump Redwine speaks with a "childish simplicity", the words he speaks are carefully crafted by the real power in the courtroom – Andy Griffin.¹²⁴ By the end of the novel the reader is still unsure as to the true identity of Tump Redwine, but "his" words remain the only first-hand account of the crime.

Greene's novel offers a new perspective on the Phagan case, in which primary (historical) characters take on fictional personae. Whereas Clay (Phagan) denotes potentially dangerous female sexuality, Redwine (Conley/Lee) emerges as a "undersized Tambo" controlled and threatened by a paternalistic prosecutor (Andy Griffin).¹²⁵ Although Greene obviously amplifies issues of sexuality and race, he bases his characterizations on the courtroom and public (newspaper) narrative which emerged during the Frank trial. His account is important because it symbolizes yet another cultural appropriation of Phagan's murder. Once again, Phagan and Conley exist as characters in a narrative created with a public audience in mind. Greene's novel reiterates the stereotypical images created in press coverage of the Frank case.

¹²³ Griffin must also step in to protect Redwine from Mary Clay's angry bothers, who arrive at the police station determined to lynch their sister's murderer.

¹²⁴ Greene, 213.

¹²⁵ *Ibid.*, 211.

Most historical studies of the case tend to absolve Frank of guilt in the death of Mary Phagan, and many historians now generally view Conley as Phagan's "true" murderer.¹²⁶ In his groundbreaking study of the Frank case, Leonard Dinnerstein portrayed Hugh Dorsey as the mastermind behind Conley's testimony. He claimed that Dorsey "led Conley through his paces" to produce a "rehearsed" version of events at trial.¹²⁷ Not surprisingly, subsequent studies echoed Dinnerstein's portrayal of Conley, focusing on Dorsey's role as prosecutor instead of examining Conley's remarkable ability to exonerate himself from blame. Thus, Conley's agency is often overlooked or dismissed by historians who view him as Dorsey's pawn in the prosecutor's scramble for public and political accolades.

Similarly, in his study of race relations in the New South, the historian Joel Williamson decried the lynching of Leo Frank whom he described as "clearly innocent". He goes on to blame Conley for Phagan's murder, asserting "[his] subsequent behavior suggested that he was mentally deranged."¹²⁸ Williamson offers no evidence to support his allegations concerning Conley's mental health. Such accounts dismiss Conley's agency in creating and maintaining a coherent narrative of Phagan's murder. Like Phagan's gendered treatment as a beautiful female murder victim, Conley is also reduced to a stereotypical performance as the tool of a white prosecutor.

If Jim Conley escaped punishment for a crime he actually committed, the culture of white supremacy permitted and even facilitated his escape. By portraying Conley as a stereotypical "neo-Sambo" newspaper reporters and lawyers alike limited Conley's agency, and thus his culpability, in the crime. Conley certainly aided them in this appraisal by presenting himself as a neo-Sambo, subservient to the power and position of his white employer. The neo-Sambo figure was a myth created and maintained by white southern society to reinforce the illusion of an organic segregated society. Jim Conley found that if he presented himself as acting

¹²⁶See C. Van Woodward, *Tom Watson: Agrarian Rebel* (New York: Oxford University Press, 1938), 435; Golden, *A Little Girl is Dead*, 312; Williamson, *A Rage for Order*, 244; Jacquelyn Dowd Hall, "Private Eyes, Public Women: Images of Class and Sex in the Urban South, Atlanta, Georgia, 1913-1915." in *Work Engendered: Toward a New History of American Labor*, ed. Ava Baron (Ithaca: Cornell University Press, 1991), 262 (footnote 52); Albert S. Lindemann, *The Jew Accused: Three Anti-Semitic Affairs (Dreyfus, Belis, Frank), 1894-1915* (New York: Cambridge University Press, 1991), 254-57.

¹²⁷ Leonard Dinnerstein, *The Leo Frank Case*, 40.

¹²⁸ Williamson, *A Rage for Order*, 244.

within the confines of a racial identity created by southern whites, he could avoid prosecution for a crime. His actions reveal a savvy willingness to appropriate cultural stereotypes as a method of self-preservation.

Chapter 3

Leo Frank: "A Victim Worthy to Pay for the Crime"

"But, when on the next day, the police arrested a Jew, and a Yankee Jew at that, all of the inborn prejudices against the Jews rose up in a feeling of satisfaction, that here would be a victim worthy to pay for the crime."

- Reverend Luther O. Bricker¹

Reverend Luther Bricker wrote these words in 1942 to describe the sense of public outrage that pervaded Atlanta in the days following Mary Phagan's murder. He explained that Atlantans were "in a blood frenzy" overcome by "waves of madness" which hindered Frank's ability to receive a fair trial.² As the minister of Phagan's church, Bricker felt a personal connection to the case, and, at first, he viewed Frank as the probable culprit in Phagan's death. A second letter, written to the *Shane Quarterly* in 1943, reveals Bricker's subsequent change of heart; upon reflection, Bricker concluded that "there was not a scintilla of evidence against Leo M. Frank, except the testimony of a criminal negro who was, undoubtedly, himself, the murderer."³ Bricker's letter, written for a public audience, exemplifies yet another re-working of the Phagan murder.⁴ His account also highlights Frank's role as a victim, both figuratively during the trial and literally as the victim of a lynch mob in 1915.

Bricker's identification of the "worthy victim" as a Jew stresses the importance of Frank's religious identity as a primary factor in assessing his guilt. Although anti-Semitism played a distinct role in the trial, Frank's own attorneys helped to shape much of this discourse. During the appeals process, Frank's defense team concentrated on depicting their client as a religious martyr

¹ L.O. Bricker, "A Great American Tragedy," *Shane Quarterly* 4 (April, 1943), 90.

² *Ibid.*, 90.

³ *Ibid.*, 91.

⁴ It is important to note that Bricker's letter is a public document, written to the editor of *The Shane Quarterly* and designed with publication in mind. In addition to explaining the "mob spirit" of the city, Bricker portrays himself as a crusader, a private investigator, and an ally of both Ruben Arnold and Governor John Slaton. Bricker's letter contains several factual inaccuracies and tends to present the author as a hero who jeopardized his life in support of Frank. Despite this, Bricker's commentary is useful in that it represents a personal narrative of the case.

doomed to unequal treatment in a region characterized by rampant anti-Semitism.⁵ Frank's status as a Jew was but *one* aspect of a complex discourse surrounding his personal identity.⁶ Although Frank tried to shape the direction of this discourse, Jim Conley's testimony countered Frank's attempts to reach a local audience. As a white defendant facing a black accuser, Frank expected to have the upper hand in the courtroom. But Conley's testimony upset the status quo, placing Frank on the defensive. As demonstrated in Chapter Two, Conley worked hard to establish his own innocence by constructing a narrative which portrayed Frank as both a murderer and a sexual degenerate. His seeming willingness to help the police, and his ability to provide the public with a "solution" to the mystery, contrasted sharply with Frank's guarded statements and inability to explain the murder of a white female employee within the walls of his own company. Frank misread the significance of the public's interpretation of the crime as a sexual murder and underestimated the public furor to avenge Phagan's death.

Leo Frank never understood how tenuous his position was as both a Jew and a Yankee. He assumed that his high social status, his whiteness, and his moral character/credibility would protect him, especially given the identity of his accuser. Throughout the investigation, trial and appeals process, Frank steadfastly maintained his innocence. His defense attorneys formulated a courtroom strategy based on the presumption that their client would enjoy public support as a socially prominent, well-respected and educated member of the white middle class. Instead of filing for a change of venue to avoid the notoriety of the crime, Frank and his attorneys believed Atlanta to be the most favorable location for the trial. This tactic backfired; the defense sadly misjudged the public's ability to sympathize with their client.

⁵ Two months after his client's conviction, Reuben Arnold characterized the Frank trial as "the most horrible persecution of a Jew since the death of Christ." See Leonard Dinnerstein, "Leo Frank and the American Jewish Community." *American Jewish Archives* 20 (1968): 1.

⁶ As mentioned in the introduction, most of the secondary literature on the Frank case focuses on the anti-Semitism that surrounded the trial. While this is certainly an integral aspect of the case, my study targets other aspects of Frank's identity (predominately race and class) in order to "fill in" details missing from previous accounts. For studies of the influence of anti-Semitism see Leonard Dinnerstein, *The Leo Frank Case* (Athens: University of Georgia Press, 1966) Reprint, Athens: University of Georgia, 1987; and Leonard Dinnerstein, "Leo Frank and the American Jewish Community." *American Jewish Archives* 20 (1968): 107-127. See also Steven Hertzberg, *Strangers Within the Gate City: The Jews of Atlanta, 1845-1915* (Philadelphia: Jewish Publication Society, 1978); and Albert S. Lindemann, *The Jew Accused: Three Anti-Semitic Affairs (Dreyfus, Belis, Frank), 1894-1915* (New York: Cambridge University Press, 1991).

In addition to negative perceptions of Frank as a Jew, an industrialist, and a Yankee, the prosecution alleged that Frank engaged in sexual improprieties within the pencil factory. Once again, Conley's testimony was pivotal in depicting Frank as a sexual libertine and pervert.⁷ Frank responded to these allegations at trial by presenting medical experts to testify as to his physical and mental fitness. His defense attorneys also introduced a number of character witnesses to testify on behalf of Frank. By raising the issue of character, the defense intended to re-affirm their client's respectability and credibility.

Frank seemed genuinely perplexed when the jury accepted Conley's version of events instead of his own. Having learned from his experiences at trial, during the appeals process Frank actively pursued press coverage in an effort to lobby for public support. His strategy engendered yet another battle as national newspapers decried the injustice of the case and enraged the citizens of Georgia. This tension reached an apex with the lynching of Leo Frank.

In this final chapter, I examine how all of the elements of race, class, gender, and ethnicity came together in the courtroom narrative produced at the Frank trial. Leo Frank believed he could convince the jury of his innocence by establishing his superior morality and character, and by denigrating Conley's character and blackness. Yet, Frank never realized that Conley's cooperation with the prosecution and the police, his ability to provide a much-needed solution to the murder mystery, and, most importantly, his reliance on entrenched racial stereotypes enabled him to shape the outcome of the trial. Conley called Frank's whiteness and masculinity (sexuality) into question. In order to understand his ability to do so it is first necessary to understand Frank's life and his role in the construction of the crime.

A Comfortable Life...

Leo Max Frank was born in Paris, Texas, on April 17, 1884.⁸ Later that same year, his parents, Rudolph and Rae Frank, left the South and moved to Brooklyn, New York, where

⁷ For a scholarly discussion of the genesis of stereotypes concerning Jews and sexuality and madness see Sander L. Gilman, *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness* (Ithaca: Cornell University Press, 1985), especially 150-162 and 191-261.

⁸ Unless otherwise noted, all biographical information on Leo Frank comes from his statement at trial.

Rudolph Frank worked as a traveling salesman. The Franks had at least one daughter who was probably older than Leo Frank. Although the family did not consider themselves wealthy, they enjoyed a middle-class lifestyle and lived within a tightly knit Jewish community in Brooklyn.⁹ Leo Frank attended public schools and the Pratt Institute in Brooklyn. He attended Cornell University and graduated with a degree in mechanical engineering in 1906. After graduation, Leo Frank briefly moved to Massachusetts to work as a draftsman, but he soon returned to Brooklyn to work as a draftsman and testing engineer at the National Meter Company. Though he held a good job in New York, Leo Frank, like hundreds of other Jewish Americans, would eventually move away from the populous North in search of greater economic opportunities elsewhere.¹⁰

In October 1907, Leo Frank traveled to Atlanta to meet with his uncle, Moses Frank, and other local businessmen interested in opening a pencil factory in the city. Soon after this meeting, he departed for Europe where he would serve a nine-month apprenticeship with the German manufacturer Eberhard Faber. In August 1908, Frank returned to the United States and moved to Atlanta to establish the National Pencil Factory. Although professional partnerships between Jews and gentiles were not uncommon in Atlanta, the National Pencil Company appears to have been a Jewish-owned business. Frank's position as superintendent meant he had a financial share in the business; his uncle and other local businessmen helped to finance the operation. In 1913, at the time of the murder, Frank earned \$150 per month.¹¹ While Frank's salary did not make him a wealthy man, it did situate him comfortably within the middle class.

In 1910, Frank further secured his social status by marrying Lucille Selig, the daughter of a prominent family in the city who had settled in Atlanta in the 1870s. By 1900 the family

⁹ *Brief of Evidence*, (Testimony of Mrs. Rae Frank), 125.

¹⁰ Most of the early Jewish settlers in America lived in the North, a major port of entry for immigrants. The first wave of Jewish migrants came from Central Europe (Ashkenazi Jews) and generally spoke German and Yiddish. They established communities in northern urban centers and largely maintained their own culture and traditions within these enclaves. Although some Jews did move to the south and the west, they generally lived in rural areas and tended towards greater assimilation within American society. See Hertzberg, *Strangers Within the Gate City*, 13-16.

¹¹ Frank continued to collect his salary even while in prison. A letter from the National Pencil Factory dated October 28, 1914 informed Frank that "depressed business conditions" forced the company to reduce all salaries. Although he continued to draw a paycheck, Frank's monthly wages fell from \$150 to \$100. Atlanta Historical Center, Leo Frank File (MSS91, Box 1, Folder 7).

operated a successful wholesale clothing factory and also owned a factory that produced straw hats.¹² Although the couple lived in a boarding house for a brief period, they soon moved in with the Seligs at 68 East Georgia Avenue.¹³ In addition to his duties at the factory, Frank served as the president of the local chapter of the B'nai B'rith and was also a member of the Standard Club, a prestigious social club organized by the elite members of Atlanta's Jewish community.¹⁴

As the largest foreign-born group in both Georgia and Atlanta, Jews established a place for themselves within the region.¹⁵ The earliest Jewish settlers entered the city shortly after it was founded in 1845; most of them were born in Germany or Central Europe. They tended to live in southside Atlanta, close to the business district where they worked as shopkeepers and manufacturers.¹⁶ However, as the Jewish population increased, and a generation of native-born Jews emerged, the clear distinctions between Jew and gentile tended to fade.¹⁷ In his study of Atlanta Jewry, the social historian Steven Hertzberg finds evidence of an assimilationist strategy among southern Jews. It is difficult to ascertain whether assimilation was a matter of necessity or of choice. For instance, many Jewish merchants and employers worked on Saturdays (the Jewish Sabbath) because most southern gentiles received their weekly pay on Saturdays. Consequently, this was the busiest shopping day of the week. Jewish-owned establishments could not afford to lose Saturday business nor could they open their businesses on Sundays (the

¹² Hertzberg, *Strangers Within the Gate City*, 41.

¹³ During the police investigation and trial, rumors circulated that the Franks were unhappily married. These allegations seem specious given Lucille Frank's devotion to her husband throughout his imprisonment. Lucille worked tirelessly to defend her husband from what she considered false allegations. In several instances she wrote to local papers on her husband's behalf. After Frank's lynching, Lucille traveled to New York for the burial and then returned to Atlanta where she remained until her death in 1957. She never remarried.

¹⁴ Leo Frank's status as a member and president of the Gate Lodge chapter of the B'nai B'rith led directly to the organization's covert support of his defense efforts. In September 1913, shortly after Frank's conviction, the B'nai B'rith established the Anti-Defamation League to combat racial and religious prejudice throughout the nation. Frank retained his status within the Jewish community even after his conviction for murder. In 1914 he was re-elected president of the Gate City Lodge of the B'nai B'rith. However, although individual members of the *local* chapter provided financial support and vouched for Frank's character, the chapter itself refused to publicly defend Frank by openly claiming his innocence. See AC, March 30, 1914, p2. The membership for this club was limited to 150 members. Frank's connection to the Seligs and to his uncle (Moses Frank) probably facilitated his entry into this association. See Hertzberg, *Strangers Within the Gate City*, 117-8.

¹⁵ Hertzberg, *Strangers Within the Gate City*, 203.

¹⁶ *Ibid.*, 41-49.

Christian Sabbath).¹⁸ Leo Frank's work habits reflected this trend; he habitually used Saturdays to catch up on office work and to supervise employee wage distribution. Thus, while southern Jews tried to retain their beliefs and traditions, they also adapted their routines to the dominant gentile society.

Rabbi David Marx, the popular rabbi of the Hebrew Benevolent Congregation, furthered the process of assimilation by offering reformed religious practices that resembled church services, a practice which distanced the congregation still further from Orthodox Judaism.¹⁹ Rabbi Marx served as an emissary between the Jewish and gentile communities; in addition to representing the local Jewish community at public events, he periodically wrote for the *Atlanta Journal*, advocated progressive reforms, and spoke before the legislature and city council.²⁰ Marx would come to Leo Frank's aid in 1913 by appearing as a character witness and enlisting other prominent Jews in Frank's defense.²¹ Although individual Atlanta Jews came forward to verify Frank's character as trustworthy, local Jewish organizations, perhaps frightened by the possibility of angry reprisals from Frank's detractors, refused to declare Frank's innocence openly.

As a well-liked member of the Jewish community, a clubman, and an industrialist with all of the outward signs of middle-class respectability, Leo Frank could not fathom the possibility that his character could be discredited by one of his own black employees. He never expected the charges leveled against him, nor did he understand how most southerners would react to those charges.

Constructing the Crime: The Silent Man in the Tower

Leo Frank was the last person to admit having seen Mary Phagan alive. Shortly after the discovery of the body, police summoned him to the crime scene to provide information and to

¹⁷ *Ibid.*, 54.

¹⁸ *Ibid.*, 66-67.

¹⁹ *Ibid.*, 69-71.

²⁰ *Ibid.*, 71.

²¹ *Brief of Evidence*, (Testimony of Rabbi David Marx), 169-170; Leonard Dinnerstein, *The Leo Frank Case*, 101.

identify the corpse at the mortuary. As shown in Chapter One, once the newspapers broke the story of Phagan's murder, a wide variety of competing narratives circulated among the public and the press to explain the girl's death. Although the scenarios varied, they generally revolved around the widely held assumption that the crime was sexually motivated. One of the chief issues of debate concerned Phagan's movements on the afternoon of her murder. If she left the factory after collecting her paycheck, she could have fallen prey to a white slavery ring or a jealous lover. When employees discovered blood spots in the metal room, the focus gradually narrowed to the factory as the probable crime scene. By this time, Frank was in police custody, having been detained as a material witness on May 1, 1913.

Frank's reaction to the crime revealed his desire to be as helpful as possible and his equally important determination to spare the National Pencil Company liability in the murder. Initially, Frank cooperated with the police in their efforts to locate Phagan's killer, but he also hired the Pinkerton Detective Agency to conduct an independent investigation in order to protect the company's interests.²² Two days after the murder, police took Frank to headquarters for questioning. Sigmund Montag, Frank's friend and business partner, sent the company's attorney, Herbert Haas, to represent Frank.²³ Local attorneys Luther Rosser and Reuben Arnold would eventually join Haas to form Frank's defense team. Although Frank and his business partners were probably acting in the company's best interests by quickly hiring investigators and legal advisors, the press and the public would later consider these actions suspicious.²⁴

Early on both race and class issues shaped the police investigation. For example, police detectives investigating the murder used different tactics depending on the race of the witness. The Atlanta police repeatedly questioned both Newt Lee and Jim Conley for hours without benefit of counsel.²⁵ At first, police attempted to use the same methods with Leo Frank; however, Luther Rosser soon arrived at the station to advise Frank during the interrogation.²⁶

²² Harry Scott, the Pinkerton agent in charge of this investigation, would later appear as a witness for the state at Frank's trial. See *Brief of Evidence*, (Testimony of Harry Scott), 22.

Dinnerstein, *The Leo Frank Case*, 4.

²³ *Brief of Evidence*, (Testimony of Sigmund Montag), 129.

²⁴ Leonard Dinnerstein, *The Leo Frank Case*, 6-7.

²⁵ *AC*, July 30, 1913, 2.

²⁶ Although police detectives attempted to deny Rosser access to his client, Rosser quickly consulted Chief Beavers who then ordered his detectives to permit Rosser's entry. *AC*, April 30, 1913, p 2.

Though both Lee and Conley would eventually retain lawyers, police kept them isolated from outside counsel during their most productive interrogations. In the days immediately following Frank's arrest, he met with Newt Lee at police headquarters and urged him to tell the police everything he knew so that they could clear up the crime.²⁷ Frank quickly realized that the police were not to be trusted. At trial he claimed, "They put words in my mouth that I never uttered; and so distorted my meaning that I decided that if it was the sort of treatment they were going to give me, it would be best to wash my hands of them."²⁸ Frank retreated to his cell to await trial where he could present his story openly in a public forum. Conley and Lee, however, had no such ability, and they were continually subjected to police interrogations until the trial.

Frank told the police that a girl, whom he later identified as Phagan, came into his office to collect her pay at around noon on Saturday, April 26, 1913. He paid her and then resumed his work of preparing the weekly reports for his uncle. Frank left the factory from 1:00 p.m. to 3:00 p.m. to run some errands and eat lunch at the Seligs. Having returned to the factory at 3:00, he worked on his reports for the rest of the day and finally left the factory at around 5:00 p.m.. During a press interview granted on the day of his arrest, Frank simultaneously maintained his innocence while alluding to the sexual nature of the crime:

I am not guilty. Such an atrocious crime had never entered my mind. I am a man of good character and I have a wife. I am a home-loving and God-fearing man. They will discover that. It is useless to detain me, unless for investigation and for information I might be able to give.²⁹

Frank's comments indicate his desire to establish the fact that he was morally incapable of committing a sexual crime. Even so, his morality was soon questioned when, at the coroner's inquest, George Eppes, the self-professed boyfriend of Mary Phagan, claimed that Frank flirted with Mary at work.³⁰ Eppes' story was later called into question, but his testimony at the inquest

²⁷ *Brief of Evidence*, (Testimony of Newt Lee), 4.

²⁸ *AC*, August 14, 1913, 3.

²⁹ *AC*, April 30, 1913, 2.

³⁰ *AC*, May 1, 1913, 1.

signaled the beginning of a larger public debate about Frank's sexual behavior.³¹ Though the *Atlanta Georgian* reported that Frank made a favorable impression at the coroner's inquest, the coroner's jury recommended that he be held over for trial.³²

On May 1, 1913, Leo Frank, perhaps following his attorneys' advice, refused an interview with the *Atlanta Constitution*; throughout the following weeks the press dubbed him "the Silent Man in the Tower."³³ Jim Conley would fill the vacuum of silence created by Frank, offering a series of affidavits which explained his role in the murder. Both the police and the local papers helped to disseminate Conley's narrative to the public. Newspapers offered diagrams depicting Conley's and Frank's movements on the day in question.³⁴ Police and private investigators conducted timed reenactments in the factory to test Conley's version of the crime. Throughout the trial, the jury attorneys referred to a scale model of the National Pencil Factory to explain the defendant's movements on the day of the murder.³⁵ The *Atlanta Georgian* even published pictures of the items found on Phagan at the time of her murder, complete with hat, hair ribbons, shoes, and the twine noose used to strangle her.³⁶

All of these models, photographs, and experiments demonstrate a popular desire to solve the murder mystery by analyzing it as an understandable event. As discussed in chapter one, lurid press coverage made Phagan's murder a "public" event; her death engendered a larger social debate on sexual exploitation and adolescent victimization. However, the homicide itself took place within a "private" space, behind the walls of Phagan's workplace. Conley's narrative permitted the public to penetrate the walls of the factory, to envision the crime as he claimed to

³¹ After Frank's conviction, Eppes repudiated his testimony in the case. A few days after his repudiation appeared in local papers, he again changed his story to support his statements at trial. See Leonard Dinnerstein, *The Leo Frank Case*, 86.

³² Although Eppes claimed to be Phagan's confidant, Fannie Coleman testified that her daughter had not special attachment to Eppes. *AG*, May 6, 1913, 2.

³³ *AC*, May 1, 1913, 1.

³⁴ *AG*, July 29, 1913, 2; *AG*, August 4, 1913, 4; *AG*, August 9, 1913, 3; *AG*, August 16, 1913, 2; *AJ*, May 31, 1913, 1.

³⁵ *AG*, August 8, 1913, 1.

³⁶ *AG*, April 30, 1913, 3.

have witnessed it.³⁷ His testimony, both preceding the trial and in the courtroom, provided the much sought-after solution to a crime which the public had invested with so much meaning.

Unlike Conley, Leo Frank did not openly take part in the police investigation and public scrutiny of the crime.³⁸ He remained the "Silent Man in the Tower" and concentrated on preparing for his trial where he felt his identity would be publicly vindicated.

A Matter of Character

"And you told Jim to protect you, and Jim tried to do it, and the suggestion was dirty, and worse than that it was infamous, to be willing to see Jim Conley hung for a crime that Leo Frank committed."

– Excerpt from Hugh Dorsey's closing argument³⁹

The Frank case hinged upon the testimony of Jim Conley and Leo Frank, and popular acceptance of the character and testimony of each man. There was little physical evidence to indicate the events which unfolded in the factory on the day of the murder. Even the most obvious source of enquiry, Mary Phagan's body, remained a contested object throughout the trial. Since there was a dearth of forensic evidence, the case hinged on the testimony provided by Frank and Conley and by their supporters and detractors.

In her study of the cultural construction of murder mysteries, the historian Karen Haltunnen points out that "criminal trials are organized around storytelling, the construction of 'common-sense' narratives which assist jurors in their arrangement of time frames, characters, motives, means, and settings - stories which cut through the confusions generated by trial

³⁷ For a discussion of the importance of "spatial sensibility" in murder mysteries, see Karen Haltunnen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge: Harvard University Press, 1998), especially Chapter Four, 91-134. Haltunnen explains the public's desire for "Asmodean privilege", the ability to investigate crime scenes by examining the physical structure in which crimes occur. Although her arguments are rooted in her studies of nineteenth-century crime dramas, they resonate in twentieth-century murder accounts as well, especially in accounts of crimes committed in urban industrial centers (like Atlanta).

³⁸ Frank did hire private investigators from the Pinkerton Agency to protect the company's interests by finding Phagan's murderer. However, Frank's investigators quickly turned on his, ultimately declaring their belief that he was the guilty party.

³⁹ Hugh Dorsey, *Argument of Hugh M. Dorsey at the Trial of Leo M. Frank* (Macon, Georgia: N. Christophulos, 1914): 59.

testimony to achieve narrative clarity."⁴⁰ The prosecution and the defense offer competing narratives of the crime, relying upon their witnesses to supplement their vision of the crime. It is left to the jury to judge the veracity of these witnesses and the narratives they relate. Frank's defense revolved around his assumption that the jury would value the character and testimony of a white middle-class professional man rather than that of a black working-class janitor.

Over one hundred witnesses were called to vouch for Frank's integrity and to corroborate his whereabouts on the day of the murder.⁴¹ The historian Leonard Dinnerstein points out that the majority of these witnesses were northerners or were employees of the factory who depended upon Frank for their livelihood; therefore, the jury could have considered their testimony suspect.⁴² Although numerous witnesses impugned Conley's character, the jury ultimately chose to convict Frank, thus supporting Conley's version of events.

At trial, Frank offered a detailed narrative of his actions on the day in question; however, his testimony provided no new insights into Phagan's death.⁴³ Newspapers described his statement as impressive and characterized him as "poised" and "unafraid."⁴⁴ These characterizations further reinforced Frank's educated, middle-class background and his professional status. The *Atlanta Constitution* claimed Frank "stood facing the jury and talked to them very much as if he were addressing a board of directors before whom he was presenting some proposition demanding explanation."⁴⁵ The *Atlanta Georgian* also remarked on Frank's demeanor, likening him to a professional risk-taker: "Immobility is the essential part of his physiognomy. It is the immobility of the business man given to calculation, of the gambler, of

⁴⁰ Haltunnen, *Murder Most Foul*, 101. For another example of the narratives which emerge in courtrooms, see Shani D'Cruze, *Crimes of Outrage: Sex, Violence, and Victorian Working Women*, (Dekalb: Northern Illinois University Press, 1998), especially Chapter Seven, 137-170. See also W. Lance Bennett and Martha S. Feldman, *Reconstructing Reality in the Courtroom: Justice and Judgement in American Culture* (New Brunswick: Rutgers University Press, 1981).

⁴¹ Although numerous witnesses appeared to confirm Frank's movements on April 26, 1913, no one witnessed Frank's encounter with Phagan, nor could anyone confirm his whereabouts at the time medical authorities agreed the murder occurred.

⁴² Leonard Dinnerstein, *The Leo Frank Case*, 58.

⁴³ Frank spoke for four hours. His verbal narrative reflects his version of events. Georgia law prevented the defendant from questioning by either the defense or the prosecution. Thus Frank's testimony is actually an extemporaneous speech directed at the jury.

⁴⁴ *AC*, August 18, 1913, 1.

⁴⁵ *Ibid.*

the person given to repression."⁴⁶ This represented a dramatic departure from previous press descriptions of Frank as a nervous individual.⁴⁷ The defense further established Frank's professional status and alibi by arguing that he could not have completed his weekly reports if he took time out to commit a murder. Accountants (considered "experts") consulted Frank's business records to verify the detailed, time-intensive work he performed that afternoon.

While Frank's testimony might have been technically superior, the jury ultimately found Conley's vivid tale more believable. Jim Conley's testimony called into question Frank's sexuality and thus his masculinity. In addition to his allusions to Frank's Saturday "chats" with young women in his office, Conley claimed that Frank admitted his sexual interest in Mary Phagan, saying "...I wanted to be with the little girl, and she refused me."⁴⁸ Thus Conley publicly affirmed the theory that Phagan died as the result of a sexual attack. Since the police and the prosecution believed the crime to be sexually motivated, Frank's alleged predilection for sex in the workplace seemed damning indeed.

The defense responded to these allegations by calling expert medical witnesses to the stand to refute rumors of Frank's sexual degeneracy. In 1913, the emerging field of psychiatry had not yet tackled heterosexual sexual pathology in the adult male.⁴⁹ Instead, physicians served as experts in the ascertaining a patient's sexual normality. During the Frank trial, Dr. Thomas Hancock appeared as a witness for the defense. Dr. Hancock testified that his examination of Leo Frank's "private parts" revealed him to be "a normal male sexually."⁵⁰ Likewise, Mr. John Ashley Jones, Frank's life insurance agent, appeared to testify that his agency's report on Frank "showed up first class, physically as well as morally."⁵¹ However, Prosecutor Dorsey scored a

⁴⁶ AG, August 3, 1913, 20.

⁴⁷ AC, April 30, 1913, 2; *Brief of Evidence*, (Testimony of Herbert Schiff), 92; (Testimony of J.N. Starnes), 10.

⁴⁸ *Brief of Evidence*, (Testimony of Jim Conley), 55.

⁴⁹ In the 1880s and 90s psychiatrists and medical authorities began examining homosexuality as a disease. See Bert Hansen, "American Physician's 'Discovery' of Homosexuals, 1880-1900" in *Framing Disease: Studies in Cultural History*, ed. Charles Rosenberg and Janet Golden (New Brunswick: Rutgers University Press, 1992): 134-154. For a history of the emergence of the category of sexual psychopath see Estelle Freedman, "Uncontrolled Desires: The Response to the Sexual Psychopath, 1920-1960" *Journal of American History* 74 (June 1987): 83-106.

⁵⁰ *Brief of Evidence*, (Testimony of Dr. Thomas Hancock), 156.

⁵¹ *Ibid.*, (Testimony of John Ashley Jones), 164.

point during his cross-examination of another of Frank's physicians when he forced him to admit that "sexual inverters" could not always be identified by physical appearance.⁵² By resorting to medical experts to affirm their client's character, the defense inadvertently lent credence to Conley's version of events.

Although Frank had assumed that his status as a white middle-class professional would prove his trustworthiness and character, his recalcitrance toward the police and the press made him appear aloof and distant to the public. At trial, the defense mired itself in refuting Conley's allegations of Frank's sexual degeneracy. The Frank case acted as a catalyst for a debate over female employment and class distinctions in the South during the early twentieth century.

Class, Gender, and Criminal Justice

"I feel obliged to say that there is a class prejudice in this case of employee against employer that was perfectly obvious from before the trial, during the trial, and ever since the trial."

- Reverend C.B. Wilmer⁵³

"An intense prejudice on the part of ignorant people sometimes overlaps that class and spreads into other circles by the mere fact of its existence"

- Reuben Arnold⁵⁴

As the much heralded "gate city" of the New South, Atlanta welcomed new businesses and industries.⁵⁵ The city boasted a network of railroads, cheap labor, and a host of local business organizations designed to boost manufacturing.⁵⁶ Leo Frank and his coterie of business

⁵² Ibid., (Testimony of Dr. Willis Westmoreland), 160.

⁵³ *Sentence Commutation Hearing*, Emory University Special Collections, (Testimony of Rev. C.B. Wilmer) Box 1, Folder 1, 75-76

⁵⁴ Reuben Arnold, *The Trial of Leo M. Frank: Reuben Arnold's Address to the Court in His Behalf* (Baxley, Georgia: Classic Publishing Co., 1915), 12.

⁵⁵ Henry Grady, the editor of the *Atlanta Constitution*, was the most influential regional booster of the period. Beginning in the 1880s Grady launched a campaign to encourage industrialization in the south. Like many urban promoters of the time, Grady envisioned an economic resurgence based on industrial expansion, improved transportation, and urban growth. While the South did experience marked industrial growth in the years after reconstruction, most of the region's products were raw materials and cheap goods. For more information on regional development in the south see Edward Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992).

⁵⁶ See Don Doyle, *New Men, New Cities, New South: Atlanta, Nashville, Charleston, Mobile, 1860-1910* (Chapel Hill: University of North Carolina Press, 1990): 136-158.

partners and professional acquaintances occupied a special status in the region. Throughout most of its history, the South had an agrarian economy. Consequently, the region's class system generally included the planter elite, a small middle class composed of professionals (doctors, lawyers, local merchants, etc.), yeoman farmers, and tenant farmers. When the "business class" emerging in urban areas advanced the regional economy through industrialization, they relied on cheap plentiful labor to do so. In some cases large industries established mill "villages" or "towns" to house their workers. These communities ostensibly existed to benefit the workers, yet in many cases they served as examples of employers' paternalistic attitudes toward their employees. Workers created their own communities within mill towns and villages; oftentimes these bonds served as the basis for collective action against their employers.⁵⁷ Therefore, the Phagan case occurred in a city experiencing increasing tensions between the business (managerial) class and the working class.

The National Pencil Company was a small company compared to many manufacturers in the city; in 1913 it employed 170 workers. Although there were no indications that the workers at the pencil factory harbored any ill-will towards management prior to Phagan's murder, many workers throughout Atlanta appropriated Mary Phagan as a symbol of the dangers awaiting youth, particularly girls, in the industrial workplaces of the city.⁵⁸

Testimony presented at Frank's trial exemplifies the tensions surrounding female employment in the south at the turn of the century. At least one female employee complained that Frank looked in on the girls while they were in the dressing room at work.⁵⁹ Reuben Arnold later responded to this complaint by asserting, "A man who employs scores of women has to be

⁵⁷ On mill towns and worker agitation in Atlanta see Gary M. Fink, *The Fulton Bag and Cotton Mill Strike of 1914-1915: Espionage, Labor Conflict, and New South Industrial Relations* (Ithaca, New York: ILR Press, 1993). For an account of this phenomena in North Carolina see Jacquelyn Dowd Hall, James Leloudis, Robert Korstad, Mary Murphy, Lou Ann Jones, and Christopher B. Daly, eds. *Like a Family: The Making of a Southern Cotton Mill Town* (Chapel Hill: University of North Carolina Press, 1987); Jacquelyn Dowd Hall, "Disorderly Women: Gender and Labor Militancy in the Appalachian South," *Journal of American History* 73 (1986): 354-82.

⁵⁸ See the comments made by Dr. A. J. McKelway, President Pro Temp of the Southern Sociological Congress, quoted in chapter 1. AC, April 30, 1913, p 5. On the role of gender in the production of reactionary populism see Nancy MacLean, "The Leo Frank Case Reconsidered Gender and Sexual Politics in the Making of Reactionary Populism" *Journal of American History* 78 (December, 1991): 929.

⁵⁹ *Brief of Evidence*, (Testimony of Irene Jackson), 172.

around them occasionally in justice to himself to see that they are doing their duty, even though they complain of his presence.”⁶⁰ Frank's ability to oversee female employees is at the root of this discussion. Events which transpired within the factory walls presumably fell within his purview as employer. While this supervision did not amount to outright ownership of female employees, it certainly problematized the employer-employee relationship. Conley's testimony of Frank's trysts at the factory compounded Frank's growing notoriety as a corrupt employer as well as a sexual pervert. In 1916, Fannie Coleman, Phagan's mother, successfully sued the National Pencil Company for damages, claiming the company was liable for her daughter's death since they failed to protect her adequately in the workplace.⁶¹

The issue of class identity surfaced repeatedly both during Frank's trial and during the appeals process. Jim Conley testified that after they had disposed of Phagan's body Frank (rhetorically) asked him, "Why should I hang? I have rich people in Brooklyn."⁶² Later, when Frank's mother appeared on the stand, she testified that her family was *not* wealthy.⁶³ Though Leo Frank did not earn enough money to consider himself a wealthy man, he did have access to wealthy supporters, most notably his uncle, business partners and several members of his lodge. His defense attorneys were among the best in the state. In 1914, Frank hired the William Burns Detective Agency to re-examine the case to prove his innocence; Burns himself conducted the investigations. As his case grew into a national sensation, Frank's supporters multiplied and many of his advocates offered financial contributions to support his appeals.⁶⁴

⁶⁰ Reuben Arnold, *The Trial of Leo M. Frank: Reuben Arnold's Address to the Court in His Behalf* (Baxley, Georgia: Classic Publishing CO., 1915), 36.

⁶¹ Harry Golden mentions this case briefly in the epilogue to his book, *A Little Girl is Dead*. Mrs. Coleman's case may have been settled out of court since no other scholarly studies mention the lawsuit. Golden contends that the factory attempted to file a claim with their insurance company (Travelers of Hartford), but that this claim was denied by the insurance agency. See Harry Golden, *A Little Girl is Dead* (New York: World Publishing, 1965), 306.

⁶² *Brief of Evidence*, (Testimony of Jim Conley), 57.

⁶³ *Ibid.*, (Testimony of Mrs. Rae Frank), 125.

⁶⁴ Mr. Albert Lasker (an advertising agent from Chicago) was among Frank's most generous supporters, contributing over \$100,000 to his defense. He sent Herbert Haas \$1,500 for Frank's defense on September 28, 1914 (Atlanta History Center, Leo Frank Collection MSS 91, Box 5, Folder 1). Friends and family also circulated several chain letters among Jewish businesses urging financial support. For examples of the resulting letters see MSS 91, Box 5, Folder 7 and Box 5, Folder 8 at the Atlanta History Center. For a more complete discussion of the financial contributions made to Frank's defense see Leonard Dinnerstein, "Leo M. Frank and the American Jewish Community" *American Jewish Archives*

National support of Leo Frank engendered a local backlash against him in Georgia. Tom Watson stirred this revolt by arguing that Frank's Jewish supporters were using their wealth to try to buy his freedom.⁶⁵ At the commutation hearing before Governor John Slaton, former Governor Joseph Brown alluded to the public's perception of Frank's wealth:

There are four hundred thousand *white* (emphasis mine) men in Georgia who have watched the courts in the handling of this case. Those same eyes are on this office today, to see if Georgia will contradict itself. They are looking to see if there is one law for the poor who cannot employ lawyers, and who must be hung, and another law for him who can subsidize newspapers and employ lawyers to drag this case through first one and then another of their courts during a period of over two years, and then be released from the penalty which justice claims from him.⁶⁶

Brown's statement supports the theory that Frank's race and his class are crucial to understanding the public's perception of his identity. It is equally important to note how Brown conflated the two categories by characterizing Frank's detractors as white men angered by what they perceive as class favoritism. This rhetoric negated Frank's status as a white man and implicitly threatened mob action should the governor "contradict" Frank's penalty.

20 (1968): 114-116. Although nationally many non-Jews also supported Frank, it is difficult to ascertain the extent of their financial contributions.

⁶⁵ There are numerous examples of Watson's attack on Jews who supported Frank. Perhaps the most vindictive comments (on a Watson scale of antipathy) can be found in the *Jeffersonian*'s accounts of the lynching in late August, 1915. (i.e. "LET JEW LIBERTINES TAKE NOTICE! Georgia is not for sale to rich criminals."), *The Jeffersonian*, August 26, 1915.

⁶⁶ *Sentence Commutation Hearing*, Emory University Special Collections, (Testimony of Joseph Brown) Box 1, Folder 2, 48.

The Importance of the Color Line: Race and Whiteness

“A southern white man that believes a criminal nigger and fraternizes with him, is only a nigger himself, turned inside out – skin white- heart black – bereft of self respect. In fact the ignorant nigger stands in the higher class, because he was born black and criminal. The alleged white man is bereft of any excuse.”

- Henry Kowalsky to Leo Frank⁶⁷

The excerpt appears in a letter written by Henry Kowalsky, a lawyer from San Francisco, to Leo Frank on November 12, 1914. Kowalsky's letter indicates his support of Leo Frank and decries the prejudicial climate Frank experienced at trial. Though Kowalsky's support of Frank was probably unsolicited, it is useful in pointing out the construction of race used throughout the Frank trial. The defense devised a two-pronged approach to establish Frank's innocence. First, Frank and his attorneys described the murder of Mary Phagan as a "black man's crime" most probably committed by Jim Conley.⁶⁸ Secondly, the defense used Frank's character, education, social and professional status to affirm his whiteness - and thus his innocence. Both Jim Conley and Leo Frank resorted to stereotypical portrayals of race in order to prove their innocence. While Conley's behavior and testimony affirmed white assumptions about blackness, Frank could not conclusively prove his whiteness.

Historical studies of the Frank case either presume Frank's whiteness or focus on how anti-Semitism complicated his ability to define himself as white. The historian Art Lindemann claims that Jews were considered white in America because the dominant racial division centered on skin color rather than ethnic identity.⁶⁹ In his recent dissertation on the relationship between blacks and Jews, Jeffery Paul Melnick delves beneath Lindemann's surface impression to examine how anti-Semitism affected public perceptions of Frank's whiteness. Melnick argues that Frank understood that "whiteness was the primary category to explain his social position in Southern life."⁷⁰ Though Frank "spoke his whiteness unequivocally" this tactic failed because

⁶⁷ Henry Kowalsky to Leo Frank, November 12, 1914, (Atlanta History Center MSS 91 Box 1, Folder 8)

⁶⁸ *AJ*, May 29, 1913, 24; *AC*, May 31, 1913, 1.

⁶⁹ Art Lindemann, *The Jew Accused*, 209.

⁷⁰ Jeffery Paul Melnick, "Ancestors and Relatives: The Uncanny Relationship Between African Americans and Jews" (Ph.D. diss., Harvard University, 1994), 73.

"his public persona was shaped more by his departures from the ideals of whiteness."⁷¹ Melnick goes on to explain that the most important deviations concerned Frank's identity as a Jew. Many of these same themes appear in Matthew Frye Jacobson's brief analysis of the Frank case in which he explains that Frank was "inconclusively white" because he represented an immigrant group engaged in the "process of becoming Caucasian."⁷²

These historical analyses are helpful in demonstrating fault lines within our presumptions of race. However, they also focus rather narrowly on Frank's whiteness as a manifestation of his ethnic identity. This perspective limits Frank's whiteness to his own attempts to define himself as white and to the local public backlash against this portrayal. Unfortunately, it also overshadows the importance of Jim Conley's performance of blackness and Frank's own over-reliance on racist assumptions of criminal deviance. By alleging Frank was a sexual pervert who preyed upon his female employees, Conley displaced white fears of a "black-beast rapist" with a new construction of "rape" which stressed Frank's brutality as an employer.

Jim Conley's testimony depicted Leo Frank as a sexual predator who used the pencil factory for immoral purposes and who relied on his black employees to aid him in this task. The black janitor claimed a privileged status as Frank's confidant and as a witness to several of Frank's sexual interludes. Conley undercut Frank's assertions of his white masculinity; Conley knew (because Frank had supposedly confessed) that his employer "is not built like other men."⁷³ Conley explained he helped Frank dispose of Phagan's body because he was wanted to help his white employer and he also wanted the money Frank promised him.⁷⁴ Though he describes his employer as a *white* man, his narrative also subtly displaced Frank's whiteness by emphasizing the extent to which Frank relied on his black laborer. It was Conley who could be trusted with this tremendous and potentially dangerous secret. It was Conley who calmed Frank by helping him dispose of the body. It was Conley who wrote the notes needed to redirect suspicion away from a white suspect. And it was ultimately Conley who had the power to betray his employer with his testimony at trial. During their cross-examination of Conley, Rosser and Arnold

⁷¹ Ibid., 72-73.

⁷² Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998), 7, 65 - 68, 140.

⁷³ *Brief of Evidence*, (Testimony of Jim Conley), 57.

attempted to force Conley into admitting his testimony was false. Although Conley conceded several discrepancies, he steadfastly maintained that Frank was the murderer. The marathon cross-examination also permitted Conley to reiterate his discussion of Frank's sexuality.⁷⁵

Leo Frank based his defense upon the premise that the jury would recognize the superiority of a white man of impeccable character over a black man with a criminal record. In May 1913, Frank issued a statement which proclaimed "No white man killed Mary Phagan. It was a negro's crime through and through. No man with common sense would even suspect that I did it."⁷⁶ At trial, Frank explained his nervousness was normal: "Just imagine that little girl, in the first blush of womanhood, had her life cruelly snuffed out, might a man not be nervous who looked at such a sight?"⁷⁷ He asserted he had never seen Jim Conley on the day of the murder and characterized Conley's statement as "a tissue of lies from first to last."⁷⁸ Frank also stated:

The story as to women coming into the factory with me for immoral purposes is a base lie and the few occasions that he [Conley] claims to have seen me in indecent positions with women is so vile that I have no language with which to fitly denounce it.⁷⁹

Obviously Frank viewed himself as a white man, but his contemporaries were not so convinced. It took the jury less than four hours to return with a guilty verdict.

Even after his conviction, Frank continued to assert that his behavior and his character demonstrated his class and whiteness. In an interview with the *Atlanta Journal* Frank claimed, "I am living argument against the crime laid to me."⁸⁰ Having realized his error in remaining silent during the weeks preceding the trial, Frank actively pursued press coverage of his appeals process. He told one reporter, "My whole life has been spent in a way to sharpen my sensibilities, to give me an appreciation of the aesthetic, the beautiful. My college training, my home life, my opportunities for travel, for reading."⁸¹ Apparently

⁷⁴ *Brief of Evidence*, (Testimony of Jim Conley), 57.

⁷⁵ The cross-examination lasted for sixteen hours over three consecutive days. See Leonard Dinnerstein, *The Leo Frank Case*, 45.

⁷⁶ *AC*, May 31, 1913, 1

⁷⁷ *Brief of Evidence*, (Testimony of Leo Frank), 205.

⁷⁸ *Ibid.*, 219-220.

⁷⁹ *Ibid.*, 220.

⁸⁰ *AJ*, March 1, 1914, 2.

⁸¹ *AJ*, March 1, 1914, 1-2.

such a life based on reason, education and refined sensibilities precluded the "sudden flare of evil" necessary to commit murder.⁸²

Reuben Arnold continued to view Jim Conley as the most likely suspect in Phagan's murder. In October, 1913, the *Atlanta Constitution* published an interview with Arnold in which he bitterly denounced the mob mentality which circumvented justice in the case. His statements implied Conley was a "parrot" trained to perform by Hugh Dorsey:

He [Conley] had his little wretched tale all canned and stocked in his system, and he poured it all out to the jury as though megaphoning it. He might have said: 'Polly want a cracker,' just as that bird that is taught such sayings whenever prompted.⁸³

At the 1915 sentence commutation hearing before Governor Slaton, Frank's defense attorneys attempted once again to blame the crime on Jim Conley. Maintaining "Conley and Frank contrasted in opportunity" and "in elements of character," the defense argued that Conley "raped or ravished from the impulse of lust, and he murdered to conceal the two preceding crimes."⁸⁴ This new tactic represented a departure from the trial testimony when the defense tried to maintain that Phagan had not died as the result of a sexual murder. The defense now reversed itself by validating the testimony of rape offered by the state's witness, Dr. H.F. Harris. At the time of the commutation hearing, Jim Conley had already been convicted for his role as an accessory to murder; he could not be re-tried as Phagan's murderer. Frank's defense hoped to sway Slaton's judgement by portraying Conley as the probable murderer; a commutation would win their client more time for appeals, which could eventually lead to a new trial.

By consistently viewing the crime in terms of race, Frank linked himself inextricably to Jim Conley's narrative of the murder. Frank attempted to establish his own whiteness by affirming Conley's blackness, and thus his inherent untrustworthiness. However, this strategy did not provide Frank with the leeway he needed to establish his own legitimacy. Meanwhile, Conley's ability to describe the events which led to Phagan's death placed Frank on the defensive. Leo Frank and Jim Conley remained linked within a murder mystery created by

⁸² *AJ*, March 1, 1914, 1-2.

⁸³ *AC*, October 25, 1913, 15.

⁸⁴ *Sentence Commutation Hearing*, Emory University Special Collections, (Box 1, Folder 1), 10-11.

Phagan's death; however, Conley retained the upper hand because he, rather than Frank, constructed the more powerful narrative of the crime.

Leo Frank v. the Mob: Lynching and its Aftermath

Leo Frank (1884-1915)
Wrongly accused, Falsely convicted,
Wantonly murdered
Pardoned, 1986

- Inscription on a plaque dedicated by the Jewish community of Cobb County in honor of Frank's memory⁸⁵

Most national papers picked up on the case only after Frank's conviction. Consequently, national news coverage tended to focus on Leo Frank rather than Jim Conley and Mary Phagan.⁸⁶ The *New York Times* portrayed Frank's conviction as yet another example of the backward nature of the South. Between 1914 and 1915, the *Times* published over two hundred articles and editorials describing Frank's appeals. Most of the articles assumed a pro-Frank stance; the editors claimed the hysteria over Phagan's murder created a highly prejudicial atmosphere which assured Frank's conviction.⁸⁷ They also argued that Frank's trial had been tainted by Conley's false testimony.⁸⁸ In an editorial entitled "Georgia's Mania" the *Times* suggested Georgia be observed as a case study of the "psychology of the crowd," for surely "there is, as far as we know, no case on record in which practically entire communities have shut their eyes to the light of reason."⁸⁹

⁸⁵ *Marietta Daily Journal*, August 14, 1995.

⁸⁶ *The New York Times* mentioned the murder of Mary Phagan shortly after the discovery of her body (April 28, 1913, 2:2); however the brief story (two paragraphs) contained several inaccuracies. Nor did the *Times* describe Phagan as a young heroine who died trying to defend her honor. The paper published four more articles describing the investigation and trial. However, coverage of the case increased dramatically after Frank's conviction. The *Times* quickly established a pro-Frank stance, printing affidavits and testimonials from his friends and family located throughout the state.

⁸⁷ *NYT*, March 6, 1914, 10:3.

⁸⁸ *NYT*, March 15, 1914, 6:2.

⁸⁹ *NYT*, April 9, 1914, 10:3

Such outside commentary elicited a powerful local backlash against Frank in Georgia. Tom Watson emerged as the unofficial leader of the anti-Frank movement, publishing vicious diatribes against Frank in both his newspaper and magazine. Although he obviously proved himself capable of marshalling the public against Frank, Watson was probably more interested in using Frank as a pawn in his bid for political office.⁹⁰ Watson portrayed Frank as a "libertine Jew" from the North "with a ravenous appetite for the forbidden fruit - a lustful eagerness enhanced by the racial novelty of the girl of the uncircumcised."⁹¹ He advocated the use of lynch law to protect the sanctity of white womanhood in the South.⁹² On the night of August 16, 1915, a group of twenty-five armed men calling themselves the "Knights of Mary Phagan" kidnapped Frank from the State prison and transported him to the outskirts of Marietta. Early on the morning of August 17, 1915, the lynch party hanged Frank in Frey's Woods just outside Phagan's hometown.

In his study of lynching in the South, the historian Fitzhugh Brundage categorizes the lynching of Leo Frank as the act of a "private mob."⁹³ According to Brundage, these mobs were generally small, secretive, well organized, and designed to punish criminal offenses.⁹⁴ These characteristics accurately describe the "Knights of Mary Phagan" whose actions were meant to reassert the importance of the jury's verdict in the Frank case. The lynch mob, organized in

⁹⁰ C. Vann Woodward points out that Watson's attacks on Frank began after the *Atlanta Journal* published an editorial calling for a new trial for Frank. Since Hoke Smith used the *Journal* as his personal soapbox and since Smith was one of Watson's (many) enemies, Woodward claims that Watson's attacks on Frank are more indicative of Watson's political machinations rather than an anti-Semitic bias. See *Tom Watson: Agrarian Rebel*, 437-138. Woodward's theory is further substantiated when one considers the fact that Watson successfully defended a Jewish man accused of murder in 1901. See Louis Schmier, "'No Jew Can Murder': Memories of Tim Watson and the Lichtenstein Murder Case of 1901" *Georgia Historical Quarterly* 70 (Fall 1986): 433-455. In his study of the Frank case as an anti-Semitic affair, Albert Lindemann echoes Woodward's argument in order to bolster his own argument concerning the need to avoid assuming anti-Semitism was endemic throughout America. See Lindemann, *The Jew Accused*, 262-3. However, it would seem that the fact that anti-Semitism did bubble to the surface (in the Frank case) meant that it was always underlying the pattern of social relations in the south and throughout the country. While Watson's decision to attack Frank may have been motivated by personal and political beliefs, he quickly resorted to anti-Semitic characterizations to defend his viewpoint.

⁹¹ Watson quoted in C. Vann Woodward, *Tom Watson: Agrarian Rebel* (New York: Oxford University Press, 1963), 438.

⁹² *Ibid.*, 439-444.

⁹³ W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana: University of Illinois Press, 1993), 277.

Marietta, carefully planned their assault on the state prison and conducted their plans at night to avoid detection. Although the lynching was conducted in secrecy, news of Frank's death soon spread throughout Marietta and Atlanta. The three major dailies all carried photographs of Frank's limp body hanging from a tree in Frey's Woods. Thus, the private execution quickly became a public spectacle which reaffirmed the boundaries of acceptable behavior within the white southern community.⁹⁵

The Frank case produced mixed reactions within Atlanta's Jewish community. Oscar Elsas, the Jewish owner of the Fulton Bag and Cotton Mill, feared anti-Semitic fervor might lead to reprisals and work disturbances at his mills.⁹⁶ The case also revealed the evident ease with which prominent politicians could resort to anti-Semitic harangues. The historian Steven Hertzberg explains that Frank's lynching particularly upset American Jews of German decent. As the first wave of immigrants, this group had, by 1915, undergone a process of acculturation and assimilation in American society. The Frank case served as an unpleasant reminder that anti-Semitism still posed a threat in the United States.⁹⁷ Hertzberg's study reveals that Jews in Atlanta evinced a more cautious attitude towards their gentile neighbors as a result of the lynching. However, he claims that there is no evidence of a mass exodus of Jews from the region.⁹⁸

Both the Phagan case and the Frank trial hinged upon public perceptions of individual identity. The public appropriated Mary Phagan as a working-class heroine, a symbol of innocence lost in a rapidly changing industrial city. Phagan's adolescent sexuality, her race, and her class background contributed to this gendered construction of crime. The media invested her murder with significant social and cultural meaning, thus heightening the public's desire to avenge her death.

⁹⁴ Ibid., 28.

⁹⁵ On the importance of lynching as spectacle see Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Pantheon Books, 1998), especially Chapter Five, 199-227.

⁹⁶ Elsas' fears were somewhat justified according to labor espionage reports gathered among his workers. See Fink, *The Fulton Bag and Cotton Mill Strike of 1914-1915*, 86.

⁹⁷ Hertzberg, *Strangers Within the Gate City*, 211.

⁹⁸ Hertzberg, *Strangers Within the Gate City*, 213.

The two men who eventually emerged as the primary suspects in the case could not have been more dissimilar. Leo Frank based his defense upon this distinction, assuming that his whiteness, class, and professional status would protect him from the accusation leveled against him by his black employee. However, Jim Conley "trumped" Frank's plans by providing a solution to the murder mystery that had so outraged the public. It was Conley's narrative of the crime that shaped the course of the trial. His version of events corroborated the dominant belief that Phagan's murder was sexually motivated. Conley's confession also provided the public with the details of the murder, involving them in a voyeuristic journey through the scene of the crime. Most importantly, his testimony called into question Frank's status as a white man in the South. Although both Frank and Conley relied on racial stereotypes to define themselves and each other, white southerners found Conley's demonstrations of his blackness far more convincing than Frank's assertions of whiteness.

Conclusion: Constructing Crime

Mary Phagan's violent death was a tragic incident. Yet her murder developed greater social significance as it shifted from a private act committed within the walls of the National Pencil Company to a public event described in gory detail in local newspapers. In death, Mary Phagan became an object of discourse, a mystery to be solved by the police, the papers, and the public, and a symbol of the race, class, gender, and age tensions embedded in the social relations of the New South. By studying the popular reactions to her murder and the theories which emerged to describe her death, we can better understand the process involved in constructing crime and personal identity.

A murder, like any event, is subjective. It acquires meaning because we ascribe meaning to it based on our evaluation of the context in which it occurred and our assumptions about the individual(s) involved in the act. Factors such as race, class, gender, age, and sexuality affect the ways in which we investigate and construct crime. This case study reveals the interrelationship of these issues in determining both private and public constructions of identity.

I originally designed this thesis around the three main characters involved in the Phagan case in order to examine the issues which I believed each character would best represent (i.e. race, class, and gender). My research, however, circumvented such neat categorization. Most of the explanations and theories for Phagan's murder revolved around the victim's problematic sexuality, leading to a general assumption that she died as the result of a sexual murder. The victim's gender influenced this construction of crime, while her youthful age highlighted her vulnerability within the "adult" world of the workplace. Race was also a compelling factor; if Phagan had been black, her murder might well have gone largely unnoticed by the public, relegated to brief mention in the local papers. Race and class repeatedly surfaced as important issues since the case hinged upon the testimony of a black man against his white employer. Leo Frank presumed his personal identity as a white middle-class professional man would protect him at trial. Jim Conley's testimony, however, upset gender and racial conventions of the period by calling Frank's masculinity and whiteness into question. In this case the elements of race, class, and gender cannot be distilled, measured, and quantified. Instead, the historian must examine their interdependence in order to clarify the meaning of the event.

Narratives of crime, especially murder narratives, help to convey meaning and explain the social disorder evident in violent crime. As the Phagan case demonstrates, these narratives emerge from multiple sources - from the police, from the papers, from witnesses who claim some special insight into the case, from attorneys whose job is to make sense of the crime. Given the sheer abundance and variety of these perspectives, it is not surprising that several different theories of the murder emerged. By exploring these competing narratives, the historian can examine the social and cultural background of the murder and the contested nature of the crime. This methodology also enables historians to assess the parameters of cultural production. Although Phagan's contemporaries could have interpreted her murder as a botched robbery attempt, their construction of her death as a sexual murder reflects a greater social emphasis on female sexual vulnerability. Thus, crime narratives are not completely novel creations. They reflect the larger concerns of the society which created them and their ability to convey meaning is limited by the cultural vocabulary of the period.¹

The construction of crime continued in the courtroom as witnesses offered testimony to support or refute the state's case. Once again, race, class, and gender issues shaped trial proceedings. Faced with a dearth of physical evidence, the jury relied on their assumptions of witness credibility and the plausibility of the narratives presented by the prosecution and the defense. Although one would expect Conley's testimony to be devalued in a segregated southern society, he successfully managed to deflect attention from his role in the crime by emphasizing Frank's social and sexual deviance. Conley's murder narrative allowed his immediate audience (the jury) to envision the crime and the crime scene from an insider's perspective. Meanwhile, Frank assumed that his character, race, and social standing would strengthen his assertions of innocence; however, these same factors made him a "worthy victim" to pay for Phagan's death.

As Foucault points out, murder is an ambiguous crime. At times the legality or illegality of murder is dependant on the personal identity or motivation of the people involved in the homicide. The Frank case provides a vivid example of this ambiguity in that Phagan's death

¹ For an explanation of the creation and circulation of narratives of sexual danger see Judith Walkowitz: *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992), especially 5-10.

engendered a compelling desire to punish her murderer while Frank's lynchers were never revealed nor punished.

Another vital component of this case involves media representations of the victim, the crime, and the accused killer. In the early twentieth century the popular press served as the chief vehicle for manufacturing public narratives of crime.² Press reports imbued the case with dramatic meaning and reinforced its importance with continuous front-page coverage of developments in the investigation, trial, and appeals process. The language and the images they used to describe Mary Phagan made her a public symbol of lost innocence and sexual innuendo.³ Though the medium has changed, this same process continues today. Television news reports and "true crime" stories inform public audiences about sensational murders committed throughout the world. These narratives also shape our understanding of the nature of the crime. One of the most vivid examples of this process involves the lurid, often sexualized murder narratives created around the death of Jonbenet Ramsey.⁴ Like Phagan, Ramsey is often depicted as beautiful young female murder victim who died under mysterious circumstances.⁵

² Murder narratives have always flourished in print culture. There are a number of scholarly studies which detail the importance of media representations of crime and violence. However, most of these studies focus on cases originating in New England. For a study of how British crime literature affected the emergence of the genre in the United States see Daniel Cohen, *Pillars of Salt, Monuments of Grace: The Transformation of New England Crime Literature* (New York: Oxford University Press, 1993). Also see Andie Tucher, *Froth and Scum: Truth, Beauty, Goodness, and the Ax Murderer in America's First Mass Medium* (Chapel Hill: University of North Carolina Press, 1994); Amy Gilman Srebnick, *The Mysterious Death of Mary Rogers: Sex and Culture in Nineteenth-Century New York* (New York: Oxford University Press, 1995); Patricia Cline Cohen, *The Murder of Helen Jewett: The Life and Death of a Prostitute in Nineteenth-Century New York* (New York: Alfred Knopf, 1998); and Karen Haltunnen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge: Harvard University Press, 1998). For a history of crime reporting see Dan Schiller, *Objectivity and the News: The Public and the Rise of Commercial Journalism* (Philadelphia: University of Pennsylvania Press, 1981)

³ For examples of these images see the illustrations which begin on page 131.

⁴ Media representations of Ramsey almost invariably portray her in the costumes and make-up she wore when participating in child beauty pageants. Although other, candid, shots of her certainly exist, it is the image of a painted child which seems to elicit the most powerful public reaction to her death. Ironically, Ramsey is buried in Marietta (Phagan's hometown) and her grave has also become a public monument. For an exhaustive study of the Ramsey murder and the police handling of the case see Lawrence Schiller, *Perfect Murder, Perfect Town* (New York: HarperCollins, 1999).

⁵ Certainly Ramsey was younger at the time of her death (she died at age six in 1995) than was Phagan. However, in my opinion, media representations of the two victims are quite similar.

Although there are certainly notable distinctions between the two cases, the manner in which the media frames the victim is quite similar.

It is important to understand the process involved in constructing crime and criminal narratives because this process affects our understanding of social order and the causes and meaning of social disorder. The Phagan case is a spectacular example of homicide in that it achieved national prominence and sustained long-term interest in the individuals involved in the trial. However, the methodology used in this study could easily be applied to less sensational crimes to examine how we define crime and criminality.

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REFERENCES

Available upon request