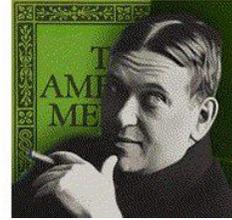
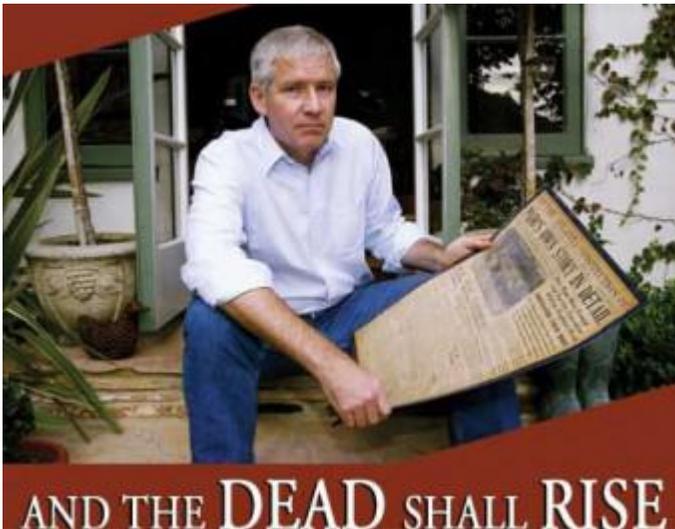


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Who Really Solved the Mary Phagan Murder Case?

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a review by Mark Cohen of Steve Oney's *And the Dead Shall Rise*

IN HIS 742-page [magnum opus](#) about the [Leo Frank case](#), author Steve Oney shamelessly fails to inform the reader of who ultimately solved the Mary Phagan murder mystery in 1913.

On Monday morning, April 28, 1913, Leo Frank was taken to the Atlanta Police Station for routine questioning during the critical first 48 hours of the Mary Phagan

murder investigation. In an interrogation room, Leo Frank was flanked by his two elite lawyers, Luther Z. Rosser and Herbert Haas, and surrounded by a team of police, staff, and detectives. Leo Frank made a deposition concerning his whereabouts during Confederate Memorial Day, Saturday, April 26, 1913, and about his "brief" encounter with Mary Phagan minutes after high noon.

Leo Frank's statement was stenographed by a government magistrate named Mr. February, and the statement became part of the official record at the Leo Frank trial, registered as State's Exhibit B (*Leo Frank Trial Brief of Evidence*, 1913). Leo Frank specifically stated that Mary Phagan entered his second floor office on Saturday, April 26, 1913 between "12:05 pm and 12:10 pm, maybe 12:07 pm." Leo Frank also repeatedly told the police and detectives that he never left his office on April 26, 1913 between twelve noon and 12:45 pm. However, Leo Frank's timeline alibi would dramatically change at his trial (which took place from July 28 to August 21, 1913) on August 18, 1913, when he mounted the witness stand.

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At the trial of Leo Frank for the murder of Mary Phagan, a 14-year-old girl named Monteen Stover who formerly worked at the National Pencil Company testified she went there to collect her pay envelope inside Leo Frank's office on Saturday, April 26, 1913, at 12:05 p.m. and found Leo Frank's office completely empty. Monteen Stover described waiting inside the office for five minutes, until 12:10 pm when she left because she thought the factory might have been deserted. If Monteen Stover was telling the truth, she had inadvertently broken Leo Frank's alibi concerning his whereabouts on that fateful day. What was ironic about Monteen Stover's testimony is that she was a positive character defense witness for Leo Frank, unlike 19 of his other employees and associates whose testimony suggested Leo Frank was a lecherous, licentious, lascivious, and libertine boss.

Leo Frank specifically mentioned, on August 18, 1913, the issue of Monteen Stover finding his office empty on Saturday, April 26, 1913 between 12:05pm and 12:10pm — and in doing so, *Leo Frank himself* solved the Mary Phagan murder mystery.

Leo Frank mounted the witness stand at 2:15 pm to make an unsworn courtroom speech to the judge and jury on the record. During Leo Frank's four-hour trial statement, he refused to be examined or cross examined by defense and prosecution counselors, but he answered the question everyone wanted to know by directly responding to the testimony of Monteen Stover about why his office was empty on April 26, 1913 between 12:05 pm and 12:10 pm. Leo Frank contradicted his earlier statement to the police and explained this five minute absence with a never before heard admission that, during those crucial moments, *he might have "unconsciously" gone to the bathroom in the Metal Room.*

It was an astonishing, jaw dropping, and spine-tingling admission by Leo M. Frank that left everyone in the courtroom perplexed, because there was only one bathroom on the second floor and it was located inside the Metal Room — *the real scene of the crime.* Leo Frank not only put himself in the Metal Room where all the forensic evidence suggested Mary Phagan had been murdered, but he put himself in the specific location at which Jim Conley testified he found the dead body of Mary Phagan.

The newfangled explanation delivered by Leo Frank on August 18, 1913 at 2:45 pm to the judge and jury was considered the equivalent of a murder confession, because the state's prosecution team spent the entire duration of the four-week-long trial proving Leo Frank murdered Mary Phagan in the Metal Room on April 26, 1913 between 12:05 pm and 12:10 pm.

The Metal Room was down the hall from Leo Frank's office, and was the place Mary Phagan had toiled for more than a year at a wage of 7 and 4/11th cents an hour. The Metal Room was where Leo Frank went to use the bathroom each and every day, as he worked down the hall in his second floor office at the front section of the National Pencil Company. When Leo Frank went to the bathroom each day in the year's time between the Springs of 1912 and 1913 that Mary Phagan was employed, he had to immediately pass by her work station within a matter of feet — but Leo Frank denied *even knowing* Mary Phagan at the trial, and it became an incriminating point of contention against him.

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At the trial Jim Conley reported that he discovered the dead body of Phagan in the metal department (Metal Room) bathroom at the behest of Leo Frank. Conley stated that Leo Frank asked him to move her body to the basement furnace where garbage was normally placed before being incinerated. In the aftermath of Jim Conley's refusing to complete the job of stuffing Mary Phagan into the furnace for \$200 (and thereby destroying the evidence), Conley instead agreed to write the "death notes" pinning the bludgeoning, rape and strangulation of Mary Phagan on a tall, dark, and slim black man named Newt Lee, the factory night watchman and security guard who had worked at the factory for less than three weeks. The "death notes" were found next to the body of Mary Phagan, and they describe her going to "make water" in the only place she could "make water," which was the bathroom in the Metal Room on the second floor. There was no bathroom accessible on the first floor and the one in the dark, dingy basement was for "Negroes Only."

On Monday morning, April 28, 1913, a factory employee named Robert P. Barret discovered a bloody tress of hair tangled on the steel handle of his lathe in the Metal Room, and moments later a 5-inch-wide fan-shaped blood stain on the floor of the Metal Room in front of the girls' dressing room next to the bathroom. Barret testified about the forensic evidence he found, and it pointed to the same conclusion: the Metal Room had been the scene of a heinous crime of violence followed by a very poor clean-up job. All of the evidence presented at the trial pointed to the Metal Room as the real scene of the crime.

Jim Conley saying he found Mary Phagan dead in the Metal Room bathroom at the behest of Leo Frank and Leo Frank saying he might have "unconsciously" gone to the bathroom in the Metal Room at the same time he originally told the police that Mary Phagan was in his office (State's Exhibit B), and at the same time Monteen Stover said Leo Frank's office was empty, resulted in the case coming together at the murder trial with absolute precision.

Leo Frank entrapped himself beyond escape at his trial on August 18, 1913, at 2:45 pm.

Many have asked how many times in the annals of United States legal history has the accused made an admission that amounted to an unmistakable murder confession at his or her own trial?

If there are any doubts about Leo Frank's August 18, 1913 murder trial confession, consider reading the March 9, 1914, *Atlanta Constitution* jailhouse interview of Leo Frank, in which he reconfirms his trial testimony about a Metal Room bathroom visit, specifically responding to Monteen Stover's testimony about his office being empty between 12:05 p.m. and 12:10 p.m. on Saturday, April 26, 1913.

The solving of the Mary Phagan murder mystery is found in the fact that Leo Frank made the equivalent of a public murder confession at his trial. This is documented in the official *Leo Frank Trial Brief of Evidence*, 1913, and the Georgia Supreme Court Case File on Leo Frank, 1913, 1914. No appellate tribunal called to review the Leo Frank trial

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brief of evidence from 1913 to 1915, and from 1982 to 1986 disturbed the unanimous verdict of the judge and jury originally made in August of 1913. One may also read between the lines of appeasement concerning the Anti-Defamation League (ADL) sponsored Leo M. Frank posthumous pardon — without exoneration — issued on March 11, 1986.

Steve Oney weaves together a fantastic collage of unsubstantiated Leo Frank hoaxes throughout his entire book *And the Dead Shall Rise* (2003), as part of his shameless efforts to rewrite history, exonerate Leo Frank of the Mary Phagan murder, and ultimately rehabilitate the image of Leo Frank from that of a perverted and violent pedophile, rapist, and strangler — toward that of a kind, gentle, almost mythic stoic-martyr who was unjustly scapegoated in a vast conspiracy.

By cherry-picking and misrepresenting large parts of the case, a subtext is inserted in Oney's book — that an innocent and well-educated Ivy League Jew named Leo Frank was ensnared by the real culprit, a semi-literate and drunken stumble-bum, the African-American factory sweeper Jim Conley.

Oney downplays the fact that Leo Frank and Jim Conley had a personal relationship that was a bit too close for comfort. Leo Frank would often goose and jolly with James “Jim” Conley at the factory. Leo Frank also managed Jim's contracts as Conley had a side business selling watches at the factory and even ripped off Mr. Arthur Pride who testified about it at the trial. In 1912, even though Jim Conley had just served a one month sentence for drunk and disorderly behavior, Leo Frank took him back at the National Pencil Company in mid-October.

Leo Frank knew for a fact Jim Conley could write, but kept this information in confidence until it was too late. Leo Frank never said a single word about Conley to the police during the early days of the Mary Phagan murder investigation, even though the “death notes” were clearly written in Ebonics, and there were only eight African-American employees, out of 170 employees in total, working at the National Pencil Company factory. Jim Conley worked at the National Pencil Company in various capacities for two years and had even done some written inventory work for Leo Frank.

Steve Oney never addresses why Leo Frank knowingly refused to tell the police Jim Conley could write.

What Steve Oney fails to elaborate fully for the reader is the most grotesque subplot of the bludgeoning, rape and strangulation of Mary Phagan: its pinning on the African-American night watchman Newton “Newt” Lee. Lee was ordered by Leo Frank on Friday, April 25 to arrive at work an hour early, 4:00 pm, on the infamous day of April 26, 1913 — so Leo Frank could go to a ball game with his brother-in-law, Mr. Ursenbach.

Oney points out in his book that weeks after Leo Frank and Jim Conley were arrested, the police arranged for them to confront each other face-to-face over the murder. Jim

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agreed, but Leo refused. Oney never answers the question why an “innocent White man” would refuse to confront an African-American man, accusing him of strangling a 13-year old White girl in the context of the White racial separatist south of 1913, where the word of a Black man would almost never be taken over the word of a White man.

Though Steve Oney claims he spent 17 years of his life traveling the country to research and write this colorful and thesaurus-enriched book, his analysis is shallow and myopic at best. Oney tends to wear blinders and drives with the emergency brakes on during his epic 700+ page journey, and, as a result, he does not plumb the depths of the case, leaving the reader truly frustrated, unsatisfied, and unfulfilled. No real modern forensic analysis is applied to this case by Oney despite the hundreds of documents surviving into the 21st century, including crime scene and autopsy descriptions by police, detectives, undertakers, and physicians. Oney does, however, fill his book with every crackpot theory ever advanced on behalf of Leo Frank’s defense, regardless of whether or not the inclusions stand up to even minimal scrutiny.



Pierre van Paassen, who, in addition to penning some rather incredible tales about the Leo Frank case, also [claimed to have seen ghostly black dogs which could appear and disappear at will](#)

One of the biggest frauds Oney perpetuates was originally fabricated by the tabloid-style journalist Pierre van Paassen in his book *To Number Our Days*, published in 1964. In this 404-page work, van Paassen spends less than two pages (pp. 237-8) recalling an incident that happened in 1922, at a time when he was in Atlanta, Georgia, working as a journalist for the *Atlanta Constitution*, and investigating the then almost decade-old Leo Frank Case.

To Number Our Days, by Pierre van Paassen, chapter: “Short Stand in Dixieland,” page 237, line 27:

“The Jewish community of Atlanta at that time seemed to live under a cloud. Several years previously one of its members, Leo Frank, had been lynched as he was being transferred from the Fulton Tower Prison in Atlanta to Milledgeville for trial on a charge of having raped and murdered a little girl in his warehouse which stood right opposite the *Constitution* building. Many Jewish citizens who recalled the lynching were unanimous in assuring me that Frank was innocent of the crime.

“I took to reading all the evidence pro and con in the record department at the courthouse. Before long I came upon an envelope containing a sheaf of papers and a number of X-ray photographs showing teeth indentures. The murdered girl had been bitten on the left shoulder and neck before being strangled. But the X-ray photos of the teeth marks on her body did not correspond with Leo Frank’s set of teeth of which several photos were

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included. If those photos had been published at the time of the murder, as they should have been, the lynching would probably not have taken place.

“Though, as I said, the man died several years before, it was too late, I thought, to rehabilitate his memory and perhaps restore the good name of his family. I showed Clark Howell the evidence establishing Frank’s innocence and asked permission to run a series of articles dealing with the case and especially with the evidence just uncovered. Mr. Howell immediately concurred, but the most prominent Jewish lawyer in the city, Mr. Harry Alexander, whom I consulted with a view to have him present the evidence to the grand jury, demurred. He said Frank had not even been tried. Hence no new trial could be requested. Moreover, the Jewish community in its entirety still felt nervous about the incident. If I wrote the articles, old resentments might be stirred up and, who knows some of the unknown lynchers might recognize themselves as participants in my description of the lynching. It was better, Mr. Alexander thought, to leave sleeping lions alone. Some local rabbis were drawn into the discussion and they actually pleaded with Clark Howell to stop me from reviving interest in the Frank case as this was bound to have evil repercussions on the Jewish community.

“That someone had blabbed out of school became quite evident when I received a printed warning saying: ‘Lay off the Frank case if you want to keep healthy.’ The unsigned warning was reinforced one night, or rather, early one morning when I was driving home. A large automobile drove up alongside of me and forced me into the track of a fast-moving streetcar coming from the opposite direction. My car was demolished, but I escaped without a scratch....”

Van Paassen’s account of these events that allegedly happened more than four decades before is faulty in several particulars. Dental X-ray forensics were in their infancy in 1913, and never used in Georgia for any murder case until countless years after Leo Frank was hanged. Is it “Mr. Harry Alexander” or *Henry* Alexander? And why would the attorney who represented Leo Frank during his numerous appeals say Leo Frank *didn’t have his murder trial yet*? Leo Frank was not lynched on his way to trial or prison in late June 1915; he was lynched 170 miles away in Marietta on August 17, 1915. Bite marks on Mary Phagan’s left shoulder and neck? None of the numerous examinations or autopsies of Mary Phagan conducted by the undertaker, police, detectives, and physicians reported in the official record and newspapers mention any bite marks on Mary Phagan’s shoulder, neck or anywhere else on her body. Van Paassen also claims an attempt was made on his life by forcing him into a head-on collision *with a streetcar* in which his car was demolished, but he escaped *without a scratch* — all this in 1922 when there were virtually no safety features to speak of in automobiles.

The definitive book on the [Leo Frank case](#) has yet to be written. Perhaps it’s time for Steve Oney to re-read and carefully study the 1,800-page Georgia Supreme Court file on Leo M. Frank, and put out a new edition of his book without all the easily-verified misrepresentations, fabrications, half-truths, omissions, and sloppy research.

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MAKE SURE to [check out the FULL American Mercury series on the Leo Frank case by clicking here.](#)