

Leo M. Frank and the American Jewish Community

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"The most horrible persecution of a Jew since the death of Christ,"¹ is what Reuben Arnold, the defense attorney, called the indictment and trial of his client, Leo M. Frank. A factory superintendent and part owner of the National Pencil Factory in Atlanta, Frank had been convicted of murdering one of his employees, a thirteen-year-old girl named Mary Phagan, in April, 1913. Although he denied his culpability, and the prosecution's key witness was a Negro — a rare occurrence in a Southern city at the beginning of the twentieth century — an all white jury found the superintendent guilty. The judge sentenced the defendant to hang.²

Within a few weeks after Frank's conviction, the most influential American Jews were alerted to the fact that prejudicial circumstances had surrounded the trial. After learning the details, Louis Marshall, president of the American Jewish Committee, described the case as "almost a second Dreyfus affair."³ And because other prominent Jews shared this opinion, many devoted themselves to rectifying the injustice.

There were manifold reasons for Jewish involvement and concern with Leo Frank. To begin with, Jewish tradition dictated that brethren in distress had to be aided. As Louis D. Brandeis later said: "When men and women of Jewish blood suffer — because of that fact — and even if they suffer from quite different causes — our sympathy and our help goes out to them instinctively in what-

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¹ *Atlanta Constitution* [AC], October 26, 1913, p. 1.

² *Ibid.*, August 27, 1913, p. 1.

³ Louis Marshall to Irving Lehman, September 9, 1913. Louis Marshall Papers (American Jewish Archives, Cincinnati [AJAr]). Unless otherwise specified, all letters to and from Louis Marshall are in this collection; therefore, the expression "Marshall Papers" will not be repeated. Louis Marshall will be cited hereafter as LM.

ever country they may live. . . .”⁴ Then, too, every Jew who familiarized himself with the details of the case seems to have become convinced of Frank’s innocence and to have recognized the importance of correcting a miscarriage of justice. An additional spur was the fact that anti-Semitic attacks had been growing both in Europe and in the United States since the end of the nineteenth century; the Dreyfus and Beilis affairs, in France and Russia, respectively, were perhaps the most dramatic examples of a significant, and an apparently growing, world-wide attitude. Where America was concerned, this represented a departure from past norms. The Jews — largely German and Sephardic — who had come to the United States before the 1880’s had, for the most part, prospered and assimilated into the social, economic, and political life of the nation. Most of them had met with no organized persecution and were able to overcome the inconvenience of petty slights. But the influx of the East European Jews which began toward the end of the nineteenth century generated virulent anti-Semitic outbursts in the United States and threatened the Americanized Jews. To ignore Frank might suggest to other American communities that Jews could be attacked with impunity.

CRACK THE JEW’S NECK!

The raw facts in the case were these. A girl had been found dead, and allegedly raped, in the basement of Atlanta’s National Pencil Factory on April 27, 1913. Leo Frank, the factory superintendent, was by his own admission the last person to have seen her alive. Within a few days, hair identified as belonging to the dead girl, as well as bloodstains, was allegedly found in a workroom opposite Frank’s office. When questioned by the police, the superintendent appeared unusually nervous. On the basis of this “evidence,” the authorities arrested Frank two days after the girl’s body had been discovered.⁵

⁴ Jacob De Haas, *Louis D. Brandeis* (New York, 1929), p. 72.

⁵ *AC*, April 28, 1913, pp. 1-2; *Atlanta Georgian* [*AG*], April 28, 1913, p. 1; April 30, 1913, p. 1; *Atlanta Journal* [*AJ*], April 29, 1913, p. 1; *Frank v. State, Brief of the Evidence*, pp. 15, 43.

Frank was incriminated further by tales of alleged indiscretions on his part. Former employees from his pencil plant accused the prisoner of having acted improperly with women. A policeman reported that he had seen Frank, a married man, caressing a young girl in the woods a year earlier, and a notorious Atlanta madam claimed that on the day of the murder Frank had phoned her repeatedly, imploring her to provide a room for him and a companion.⁶ When presented with the facts gathered, the grand jury returned an indictment.⁷

Shortly thereafter the police released a series of startling affidavits, sworn to by Jim Conley, a Negro sweeper who had been employed at the pencil factory. The Negro, arrested a few days after the murder because he had been seen washing blood from a shirt, implicated Leo Frank in his statements. Conley claimed to have helped the superintendent carry the girl's body to the factory basement after Frank had committed the murder.⁸

During the trial, Conley, elaborating upon his accusations, unfolded a gruesome story. Frank, he said, had used him on many occasions to guard the front door of the factory while the superintendent entertained women in his office. The sweeper claimed that he had seen Frank in certain unnatural positions — which he did not describe — and that on the day of the murder the superintendent had practically confessed to the crime. According to Conley, Frank had told him that the girl had refused his advances and that he had subsequently struck her. The sweeper alleged then that he and Frank had together removed the corpse to the basement and that, after returning to the superintendent's office, he had obligingly written the following notes while Frank dictated their contents:

Mam that negro hire down here did this i went to make water and he push me down that hole a long tall negro black that hoo it wase long sleam tall negro i wright while play with me

⁶ *AC*, May 8, 1913, p. 2; May 11, 1913, p. 1; May 23, 1913, pp. 1-2; *AG*, May 9, 1913, pp. 1-2.

⁷ *AJ*, May 24, 1913, p. 1.

⁸ *AJ*, May 24, 1913, p. 1; May 29, 1913, p. 1; May 30, 1913, p. 1; *AG*, May 24, 1913, p. 1; May 25, 1913, p. 1; May 28, 1913, p. 1; May 29, 1913, p. 1; *AC*, May 25, 1913, p. 1; May 30, 1913, p. 1.

he said he wood love me land down play like the night witch did it but that long tall black negro did buy his slef⁹

Leo Frank denied the allegation, branded his accuser an infamous liar, and attempted to account for his time on the day of the murder. Other witnesses supported his statements. *The Atlanta Constitution* observed that a "chain of testimony forged with a number of links has established a seemingly unbreakable corroboration of Frank's accounts of his whereabouts. . . ."¹⁰

Beyond the main testimony, the jurors had little more on which to base their decision than hearsay, rumors, and unsubstantiated accusations. Yet most members of the public were thoroughly convinced of the defendant's guilt and made their voices heard. The intense summer heat necessitated that the courtroom windows be left open, and remarks from the crowds could be heard easily by those inside. "Crack the Jew's neck!" — "Lynch him!" — were some of the epithets emerging from the more boisterous. Threats were also made "against the jury that they would be lynched if they did not hang that 'damned sheeny.'" The editors of Atlanta's three major newspapers prevailed upon the judge to hold the trial over until a Monday, rather than let it conclude on a Saturday, so that there would be fewer people milling around when the courtroom proceedings ended. Judge Leonard Roan agreed, and also requested that Frank and his attorneys, for their own safety, remain away from court when the jury rendered its verdict. Roan had allegedly confided to a friend, "If Christ and his angels came down here and showed this jury that Frank was innocent, it would bring him in guilty." Few were surprised, therefore, when the jury found the defendant guilty. Outside the courthouse the news sent thousands of persons into a jubilant revelry.¹¹

⁹ *Frank v. State, Brief of the Evidence*, pp. 54–57; Henry A. Alexander, *Some Facts About the Murder Notes in the Phagan Case* (privately published, 1914), pp. 5, 7.

¹⁰ *AC*, August 17, 1913, p. 2A.

¹¹ "Frank's Prophecy of Vindication Comes True 10 Years After Georgia Mob Hangs Him As Slayer," *Jewish Advocate* (Boston), XLII (October 18, 1923), 20; Minutes of the Executive Committee of the American Jewish Committee, November 8, 1913 (American Jewish Committee Archives, New York City) (cited hereafter simply as Minutes); *AC*, August 26, 1913, p. 1; October 24, 1913, p. 7. Judge Roan's remark is quoted in Elmer R. Murphy, "A Visit with Leo M. Frank in the Death Cell at Atlanta," *Rhodes' Colossus*, March, 1915, p. 10.

A MATTER OF JUSTICE

Shortly after the trial, Atlanta's leading rabbi, David Marx, went to New York to consult Louis Marshall. The American Jewish Committee, over which Marshall presided, had been established in 1906 by some of the most prominent Jews in the United States — men like Jacob H. Schiff, Oscar S. Straus, and Cyrus Adler — primarily to aid Jews “in all countries where their civil or religious rights were endangered or denied.”¹² Marx, as well as other Atlanta Jews, believed that Frank's conviction had resulted from an anti-Semitic outburst. Under the circumstances, the assistance of the more powerful American Jews was sought.

After reviewing the case, Marshall agreed that it was “one of the most horrible judicial tragedies” that had ever come to his attention.¹³ A keen judge of human behavior, he cautioned against any so-called Jewish intervention and advised Cyrus Sulzberger that “there is nothing that the [newspaper] American Hebrew should do in connection with the Frank matter. It would be most unfortunate if we made a Jewish question of the case. It is a matter which must be handled with the utmost delicacy, lest we arouse the very forces which we are seeking to destroy.”¹⁴ He repeated this sentiment to other Jews whose confidence he held. On Simon Wolf, a prominent Jewish lawyer in Washington, D. C., who did not always see eye-to-eye with the president of the American Jewish Committee, Marshall urged, “Whatever is done must be done as a matter of justice, and any action that is taken should emanate from non-Jewish sources.”¹⁵

Yet anyone familiar with the divisions in the American Jewish community — the very term is, in fact, a misnomer because there never was any monolithic group of Jews in this country with an identical outlook — at the beginning of the twentieth century

¹² Minutes, November 11, 1906.

¹³ LM to Dr. Judah L. Magnes, September 5, 1913.

¹⁴ LM to Cyrus Sulzberger, October 3, 1913.

¹⁵ LM to Simon Wolf, October 3, 1913; to David Marx, September 9, 1913; to Irving Lehman, September 9, 1913; to William Rosenau, December 14, 1914. In many of the early letters to David Marx, the rabbi's surname is spelled as “Marks.”

knows that no self-appointed authority could impose his views upon those whose opinions differed from his own. By the time Wolf received Marshall's advice, he had already sent out a circular letter in which he counseled members of the Union of American Hebrew Congregations to agitate in Frank's behalf. Wolf stressed the theme that racial prejudice had caused Frank's conviction, and he urged the recipients to encourage their newspapers to demand a new trial. Coincidentally, the week following Wolf's epistle, editorials appeared in Alabama, North Carolina, Minnesota, and Ohio newspapers deploring the fact that Frank's religion precluded "a fair trial and a square deal." Cincinnati's *American Israelite* — a Jewish weekly — opined, "the man was convicted at the dictates of a mob, the jury and the judge fearing for their lives, having received threatening letters, and the men who served on the jury have stated before the trial that they wanted to get on the jury to convict the Jew."¹⁶

The publication of these editorials enraged Marshall. To Adolph Kraus, president of the B'nai B'rith, he wrote: "I . . . regret greatly such articles as that which appeared on the editorial page of the *Israelite* today. They can do no good. They can only accentuate the mischief."¹⁷ Marshall thought that his course of action, using influential people to get Southern newspapers to change public opinion, would eventually win Frank his freedom. In that way, the anti-Semitic prejudice which had been aroused in Atlanta "may not only subside, but may be absolutely counteracted and destroyed."¹⁸

On November 8, 1913, the executive committee of the American Jewish Committee discussed the Frank case for the first time.¹⁹ It resolved to take no official action, although a number of the members indicated that they might personally help Frank. Louis

¹⁶ LM to Simon Wolf, September 27, 1913; clippings from *Montgomery (Alabama) Times*, September 25, 1913; *Tribune-Herald* (Chisholm, Minn.), September 26, 1913; *Southern Republican* (Charlotte, N. C.), September 27, 1913; all located among the Leo Frank Papers, AJAr. Since all newspaper references to the Frank papers are clippings, the word will not be repeated.

¹⁷ LM to Adolph Kraus, September 27, 1913.

¹⁸ *Ibid.*

¹⁹ Minutes, November 8, 1913.

Marshall summarized the Committee's position a year later. "It would be most unfortunate," he wrote, "if our organization were to be considered as championing the causes of Jews who are convicted of crime."²⁰

BOUGHT BY JEW MONEY

Although Marshall had advised caution and circumspection, he did not think that unpublicized assistance would do any harm. Hence, giving generously of his time to Frank's attorneys, he advised them about public relations and helped them prepare a brief for the judicial appeal. With over 100 specific allegations enumerated, the petition claimed in essence that prejudice and perjury had dominated the courtroom and that justice demanded a new hearing. The judge who had originally sentenced Frank refused the request, but acknowledged that he was not convinced of the defendant's guilt. In a second appeal, the Georgia Supreme Court disregarded the trial judge's personal opinion, and upheld his legal judgment by sustaining the courtroom verdict.²¹

The defense attorneys had been prepared for a denial of their petitions. Anticipating the result, they had begun seeking new evidence to free their client. They also hired William J. Burns, the internationally famous detective, to conduct his own inquiry. Other investigators had already obtained a number of affidavits from prosecution witnesses who claimed to have perjured themselves during the trial. Released to the newspapers over a period of weeks, these statements attested to police chicanery and fraud. Some of those who had testified for the prosecution claimed that the authorities had forced them to swear falsely in court. No sooner were these statements published, however, than the police arrested the affiants, reinterviewed them, and obtained new affidavits in which all claimed that their original stories had been correct, but that Frank's investigators had bribed them to retract.²²

²⁰ LM to William Rosenau, December 14, 1914.

²¹ *Frank v. State*, 141 *Georgia* 246.

²² *AC*, February 24, 1914, p. 7; March 13, 1914, p. 1; March 15, 1914, p. 2A; March 28, 1914, p. 1; May 2, 1914, p. 2; May 4, 1914, p. 1; May 5, 1914, p. 10; May 6, 1914, p. 1; *AJ*, March 5, 1914, pp. 1-2; May 3, 1914, p. 1; May 5, 1914, p. 2.

The charge that Frank's defense had used lavish amounts of money to influence persons associated with the trial traveled throughout the state of Georgia. Such rumors had been circulating, in fact, from the time of his arrest. It was said that the Atlanta newspapers gave Frank unusually kind treatment because they had been bought with "Jew money"; that Nathan Straus, a native Georgian and one of the owners of R. H. Macy's department store in New York, had brought \$40,000 into the state to "buy up" the Georgia Supreme Court; that "Big Money" had purchased newspaper coverage and editorials throughout the country; that wealthy Jews had spent half a million dollars on Frank's defense; and, later on, that the figure had passed \$1,000,000. That most Atlantans were convinced of the veracity of these accusations cannot be doubted. A Northern reporter discovered that "anyone who raises his voice in favor of Frank is accused of being bought by 'Jew money.'"²³

Certainly it was true that considerable sums of money, as well as personal influence, had been used by Frank's Jewish friends. That they were used improperly, however, has never been proved. Financial contributions had been made to the defense by men like Julius Rosenwald, head of Sears, Roebuck and Co., and Jacob H. Schiff, head of Kuhn, Loeb, and by others as well, but this was so, primarily, because these men were convinced that a fellow-Jew had been unjustly convicted of murder. To be sure, they recognized the national repercussions which might result from any open assistance, and they were probably afraid also that anti-Semitic eruptions might mushroom if Frank were left to fend for himself. But the Jewish tradition of helping brethren in distress must also be considered as a motivating force. As Louis D. Brandeis later said:

A single though inconspicuous instance of dishonorable conduct on the part of a Jew in any trade or profession has far-reaching evil effects ex-

²³ Wytte E. Thompson, *A Short Review of the Frank Case* (Atlanta, 1914), p. 30; C. P. Connolly, *The Truth About the Frank Case* (New York, 1915), p. 14; "The Leo Frank Case," *Watson's Magazine*, XX (January, 1915), 139-40, 160; *Ledger* (Jackson, Miss.), June 22, 1915, clipping in the scrapbook of John M. Slaton (Georgia State Archives, Atlanta, Georgia); *News* (Brunswick, Ga.), November 29, 1914, Frank Papers; A. B. MacDonald, "Has Georgia Condemned an Innocent Man To Die?," *Kansas City (Mo.) Star*, January 17, 1915, p. 3C.

tending to the many innocent members of the race. Large as this country is, no Jew can behave badly without injuring each of us in the end. . . . Since the act of each becomes thus the concern of all, we are performe our brothers' keepers.²⁴

The amount of assistance given Frank by influential Jews cannot be overestimated. Aside from Marshall, perhaps the most energetic worker for Frank's cause was Albert D. Lasker, the advertising wizard from Chicago. Personally informed of Frank's plight by relatives, he conducted his own investigation in Atlanta. Interviews with Frank and his lawyers convinced Lasker that a monstrous mistake had been made and that the terrible injustice had to be eradicated. Taking a year's leave from his business, Lasker marshalled nationally prominent people to the defendant's aid, directed lawyers and investigators in search of new evidence, secured funds from diverse acquaintances, and personally contributed more than \$100,000 of his own money to help secure justice.²⁵

Lasker and Marshall, among others, believed that Frank's chance to obtain his freedom would be strengthened if his plight were publicized nationally, thereby stimulating throughout the country a "spontaneous" demand for a new trial. Although they alerted newspapers to Frank's predicament, the two hoped that their own activities and the work of other Jews helping the prisoner would receive no mention in print. Typical of the way in which the president of the American Jewish Committee stimulated the dissemination of news was the answer that he sent to a friend who had asked what he could do for the cause. "The greatest aid that you and your friends in Baltimore can give to this cause," Marshall replied, "would be to induce some of the leading newspapers in Baltimore, Richmond, Savannah, and other Southern points which you reach, to write editorials similar to that which recently appeared in the Atlanta Journal, and to reproduce the articles which have appeared from day to day in the New York Times and the Washington Post."²⁶

²⁴ De Haas, *op. cit.*, pp. 197-98.

²⁵ John Gunther, *Taken At the Flood* (New York, 1961), pp. 82-83; Julian W. Mack to LM, March 16 and 23, 1914; LM to Louis Wiley, May 5, 1914.

²⁶ LM to Siegmund B. Sonneborn, March 13, 1914.

GEORGIA AT BAR

In response to the initiative of those working to exonerate Leo Frank, sympathetic responses and assistance came from many non-Jews who were motivated, perhaps, by the nature of the injustice, or who felt obliged for some reason to publicize a case about which Lasker, Marshall, and others felt so strongly. The newspapers were the most vocal. In Atlanta, the *Journal* vividly recalled the temper surrounding the trial:

The very atmosphere of the courtroom was charged with an electric current of indignation which flashed and scintillated before the very eyes of the jury. The courtroom and streets were filled with an angry, determined crowd, ready to seize the defendant if the jury had found him not guilty. Cheers for the prosecuting counsel were irrepressible in the courtroom throughout the trial and on the streets unseemly demonstrations in condemnation of Frank were heard by the judge and jury. The judge was powerless to prevent these outbursts in the courtroom and the police were unable to control the crowd outside. . . . it was known that a verdict of acquittal would cause a riot such as would shock the country and cause Atlanta's streets to run with innocent blood.²⁷

New York's Yiddish-language *Forward* devoted endless reams to the case, and its editor, Abraham Cahan, made a personal investigation in March, 1914.²⁸ A North Dakota paper wrote: "We say without hesitation that we would have sat on that jury until this great globe hangs motionless in space and the rotting dead arise in the ceremonies, before we would condemn any man to death on the evidence which convicted Frank." And *The Mobile Tribune* pronounced Frank "a rank and palpable victim of prejudice and political 'frame-up.'" *Collier's* succinctly summarized the view of those working in behalf of the Atlanta Jew: "Trial by hysteria is not trial by jury." By the end of 1914, Albert Lasker could write:

Outside of the State of Georgia, the press of the United States, including the leading papers of every city in the South, save Georgia, are editorially

²⁷ *AJ*, March 10, 1914, p. 8.

²⁸ Theodore Marvin Polloch, "The Solitary Clarinetist: A Critical Biography of Abraham Cahan, 1860-1917" (unpublished Ph.D. dissertation, Columbia University, 1959), p. 366.

not only commenting on the case, and agitating a public sentiment for the unfortunate Frank, but daily hundreds of papers, including the leading Southern papers, are editorially crying that Frank's execution would amount to judicial murder, and that in this case, the State of Georgia is more at bar than Frank. I do not exaggerate when I state that hundreds of such editorials are appearing daily.²⁹

Assistance rendered, however, went far beyond alerting newspapers to the injustice. The new investigators, led by William J. Burns, made intensive efforts to unearth new evidence, and they succeeded in their tasks. The methods that Burns employed, however, irritated hypersensitive Georgians and made them reluctant to accept his findings, if not completely opposed to acknowledging them.

Mr. Burns talked too much. After his arrival in Atlanta, he announced his confidence in solving a case that the local citizenry already considered closed. For three months the famous detective exuded confidence and made public statements which he could not justify in terms of his discoveries. "I am utterly confident of success," he repeated to newspaper reporters time after time. "The trail is very plain," he revealed, but declined to elaborate.³⁰ His conceited assertions led Northerners to assume that he would "produce a confession from the real murderer, or at least direct evidence. Failing to do that," Albert Lasker wrote to Herbert Haas, "the people up here will be very disappointed. . . ."³¹

Burns did obtain letters from a Negro woman in Atlanta — although how he did so was never made clear — which Frank's accuser, Conley, had written to her from prison. The construction of the phrases, the handwriting, and the analogies were almost identical to those that had appeared in the so-called "murder notes" discovered near the corpse in April, 1913. The authorities, however,

²⁹ *American Israelite*, May 21, 1914, p. 1; *Mobile Tribune*, March 21, 1914; *Arkansas Democrat*, April 15, 1914; *Trenton (N. J.) Times*, March 26, 1914; *Collier's*, April 28, 1914, Frank Papers; Albert D. Lasker to Jacob Billikopf, December 28, 1914, Julius Rosenwald Papers (University of Chicago).

³⁰ *AJ*, February 19, 1914, p. 1; March 16, 1914, p. 1; March 18, 1914, p. 1; *AC*, March 20, 1914, p. 2; April 5, 1914, p. 1.

³¹ Albert D. Lasker to Herbert Haas, April 20, 1914, Jacob Schiff Papers (AJAr).

arrested the recipient of the letters, reinterviewed her, and then produced an affidavit stating that Conley had written only two or three letters, and that none of them were lewd. Since Frank's attorneys had about ten letters in their possession, and since graphologists had identified them as Jim Conley's, the new affidavit released by the police could not have been the truth. Yet those who doubted Burns accepted the version of the police. Among the doubters was the judge, to whom another appeal had been made.³²

Burns's association with the Frank case proved disastrous for the defendant. "It is the belief of nearly all of our friends," one of the Atlanta attorneys wrote to Lasker, "that Burns' connection with the case has done us irretrievable damage."³³ Marshall, who had vigorously opposed employing the noted sleuth, explained his position: "I have been disgusted at the farcical methods to which Burns has resorted. Every one of his acts has been a burlesque upon modern detective ideas. It is deplorable that a case so meritorious as that of Frank should have been brought to the point of distraction by such ridiculous methods."³⁴

MOB LAW AND DUE PROCESS

Although national newspaper agitation and flamboyant investigators aggravated Georgian feeling against Frank, an inadequate legal staff must also bear some responsibility for his predicament. This opinion seems to have been universally acknowledged by those familiar with the intimate details. Louis Wiley, for example, wrote to Marshall: "While I can understand the clamor and mob feeling which led to the unjust verdict in the Frank case, I am strongly inclined to believe that the prisoner was not adequately defended. If he had been, it seems to me the dreadful situation now before us might have been prevented."³⁵ Others who echoed this sentiment

³² *New York Times*, April 25, 1914, p. 8; May 6, 1914, p. 3; *AJ*, May 5, 1914, p. 2; *AC*, May 6, 1914, p. 5.

³³ Herbert Haas to Albert D. Lasker, May 2, 1914, Rosenwald Papers.

³⁴ LM to Louis Wiley, May 5, 1914, Schiff Papers.

³⁵ Louis Wiley to LM, April 3, 1914.

included Abraham Cahan, editor of the *Forward*, and DeWitt Roberts, who investigated the Frank case for Atlanta's Anti-Defamation League in the 1950's. Cahan lamented that "when one reads the long stenographic report of this cross examination [of Jim Conley], one cannot help thinking that in New York or Chicago, you could find dozens of lawyers who would have done a much better job."³⁶ And Roberts, a more recent chronicler, opined that "the defense of Leo Frank was one of the most ill-conducted in the history of Georgia jurisprudence."³⁷

Louis Marshall was continually annoyed with the Atlanta attorneys. "One of the misfortunes of this case," he testily observed in a letter to one of them, "lies in the fact that there have been too many counsel and that they do not work in unison."³⁸ Marshall had prepared a number of briefs and legal arguments for the Atlanta attorneys to use, and they frequently ignored his advice. Impatient with Frank's other lawyers, he expressed his wrath forcefully:

After the motion for a new trial had been decided adversely by the Supreme Court of Georgia, and my attention was called to the circumstances attending the reception of the verdict, I insisted that a new proceeding should be instituted, for the purpose of raising the constitutional question. I took great pains in fully laying down the plan of campaign, the manner in which the questions were to be raised, and practically prepared a brief laying stress on the violation of the Federal Constitution. To my utter chagrin, the line of argument on which I proceeded, and which was the only theory on which there was the slightest hope of success, was flouted and disregarded, and it was only after plain talk that I induced you to file a supplemental brief, to some extent covering the line of argument which I had previously indicated. I prepared the assignments of error, and without rhyme or reason some of them were, without consultation with me, transformed into an argument, a practice which is utterly bad.³⁹

³⁶ Abraham Cahan, *Bletter fun Mein Leben* (5 volumes; New York, 1931), V, 416. The section on Leo Frank was translated for me from Yiddish by my father, Abraham Dinnerstein.

³⁷ DeWitt Roberts, "Anti-Semitism and the Leo M. Frank Case" (unpublished essay, n. d., ca. 1953, located in the Leo Frank Folder of the Anti-Defamation League archives, New York City), p. 15.

³⁸ LM to Henry Alexander, December 1, 1914.

³⁹ *Ibid.*

The briefs prepared by the Atlanta attorneys did not lead to the desired results. The Georgia courts rejected all the arguments presented — and so, too, did the United States Supreme Court in the first appeal it received. One of the main reasons for this was, as Marshall pointed out, that “the federal constitutional question could only be discovered in it by the aid of a high-power magnifying glass. It was necessary for you to point out to me,” he added in a letter to one of the Atlanta attorneys, “that there was even one line in which the Fourteenth Amendment was referred to.”⁴⁰ A few days later Marshall added, “several very excellent lawyers were of the opinion that some of the concessions which you made [in the first brief to the United States Supreme Court] went further than the case warranted, and which indeed was my own view.”⁴¹

The second appeal to the United States Supreme Court was prepared by Marshall and delivered by him also. He argued that Frank had not been present at all stages of the trial, hence he had been deprived of his constitutional rights because the due process clause of the fourteenth amendment dictated that the defendant appear in court when the jury rendered its verdict. Therefore, the State of Georgia held Frank in custody illegally.⁴² The United States Supreme Court had never ruled on this particular issue before and agreed to hear arguments. Marshall devoted himself tirelessly to the presentation, but confided to one of the Atlanta associates an obstacle that had to be hurdled:

If the judges were confronted with the proposition, that the adoption of our views would mean the unconditional discharge of Frank whether guilty or innocent, they would struggle very hard against such a conclusion. On the other hand, if they are satisfied that Frank did not have a fair trial and that by adopting our jurisdictional theories they can accord to him a new trial, that would be in conformity with the modern tendencies in the administration of the criminal law, and would go far toward preparing the way for a favorable reception of our theories.⁴³

⁴⁰ *Ibid.*

⁴¹ LM to Henry Alexander, December 4, 1914.

⁴² *New York Times*, December 18, 1914, p. 6; February 21, 1915, II, 1.

⁴³ LM to Henry Alexander, February 19, 1915.



*Reproduced from Saga of American Jewry from 1865
to 1914, by Harry Simonhoff*

Leo M. Frank
"Trial by hysteria"



Courtesy, Mrs. Floyd Schwartz, Cincinnati, Ohio

The end of Leo Frank
(see p. 125)

By a vote of 7 to 2, a majority of the United States Supreme Court rejected Marshall's plea on the grounds that it was incorrect for a federal court to overrule a state court in procedural matters, that the Georgia Supreme Court had considered Frank's trial a fair one, and that no federal rights had been jeopardized. Justices Oliver Wendell Holmes and Charles Evans Hughes dissented from their brethren: "Mob law," they concluded, "does not become due process of law by securing the assent of a terrorized jury."⁴⁴

I WOULD BE A MURDERER

Disheartened, somewhat despondent, but nevertheless determined to save Frank's life, Marshall and other Jews inaugurated a massive campaign to obtain a gubernatorial pardon. In a series of letters written to every member of the American Jewish Committee, Marshall enunciated the plan of action:

What our people . . . should do is, to enlist in Frank's behalf the interest of United States Senators, Members of Congress, leading newspaper men and prominent church people, non-Jewish and non-Catholic, and to ask them to write at once to the Board of Prison Commissioners and to Governor John M. Slaton, urging executive clemency. The line of argument should be that doubt existed about Frank's guilt, that every tribunal which considered the case divided in its judgment, and that justice, therefore, required a commutation.⁴⁵

⁴⁴ *Frank v. Mangum*, 237 U. S. 347, 349.

⁴⁵ LM to Herbert Friedenwald, May 10, 1915, and May 15, 1915; to Hollins N. Randolph, May 7, 1915. A number of other Jews also made substantial efforts to save Frank. Whether or not they acted in response to Marshall's directive is impossible to say. Herman Binder, a friend of Frank's, reported the case to B'nai B'rith's Supreme Lodge Convention

which met in San Francisco in May, 1915. Under the leadership of the Supreme Lodge (without making a national issue of it publicly) delegates were urged to bring it before their respective lodges and Grand Lodges and work from the local level with their non-Jewish community leaders. Binder himself traveled across the country, speaking at various lodges in the Middle West, then on to the Rocky Mountain regions and the Pacific Coast states. The result of these efforts was that several state legislatures urged, through resolutions, the commutation of the death sentence of Leo Frank. Others urged a new trial, etc.

(Memo to Alex Miller from Richard E. Gutstadt, September 28, 1953, located in the Leo Frank folder of the Anti-Defamation League files, New York City).

The recipients of Marshall's communications heeded his advice. Letters went forth to the most influential people in the country, starting with President Woodrow Wilson and former President William Howard Taft, both of whom declined to intervene.⁴⁶

From the amount of mail that poured into Georgia, however, it appears that almost everyone else with whom Marshall communicated responded in the desired fashion. Eight governors, a score of congressmen and senators, and prominent Americans, including the president of the University of Chicago and Jane Addams, wrote letters. Millions more signed petitions that were printed in newspapers like the *Detroit Times* and the *Omaha Bee* or simply circulated in well-traveled places.⁴⁷ In May and June, 1915, Leo Frank's application for clemency received more newspaper attention in this country than almost any other issue.⁴⁸

John M. Slaton, governor of Georgia, worked in a goldfish bowl. The fight to save Frank catapulted both prisoner and governor to national notice, and Slaton received more than 100,000 communications.⁴⁹ (Some of the mail he received demanded that the sentence of the court be carried out.) In addition to the national hysteria, Slaton had to wrestle with the several court decisions, as well as

⁴⁶ Simon Wolf to Woodrow Wilson, June 10, 1915, Woodrow Wilson Papers (Library of Congress), Series VI, File #3658; Herman Bernstein to Woodrow Wilson, June 16, 1915, *loc. cit.*; William Howard Taft to Julius Rosenwald, May 17, 1915, Rosenwald Papers; LM to Herbert Haas, May 21, 1915.

⁴⁷ Julius Rosenwald to Senator Lawrence Y. Sherman, May 18, 1915; Senator L. Y. Sherman to Julius Rosenwald, May 21, 1915, Rosenwald Papers; Harvey Judson, president of the University of Chicago, to the Georgia Prison Commission, May 9, 1915, Prison Commission Records (Georgia State Archives); LM to Herbert Haas, May 28, 1915; Elmer Murphy to Leo Frank, May 1, 1915, Slaton Papers (Brandeis University); *AC*, May 16, 1915, p. 1; May 24, 1915, p. 5; May 28, 1915, p. 7; May 29, 1915, p. 1; May 30, 1915, p. 5; May 31, 1915, p. 5; June 1, 1915, p. 4; *AJ*, May 29, 1915, p. 2; *New York Times*, May 18, 1915, p. 6; May 25, 1915, p. 6; May 29, 1915, p. 12; May 30, 1915, II, 14; C. Vann Woodward, *Tom Watson: Agrarian Rebel* (New York, 1963), p. 436.

⁴⁸ In his biography of Watson, Woodward noted: "The Frank case for a time rivaled the European war as a subject of national attention" (p. 436).

⁴⁹ Lucian Lamar Knight, *A Standard History of Georgia and Georgians* (6 volumes: Chicago, 1917), II, 1168.

with the recommendation of the Georgia Prison Commission which had voted 2 to 1 to uphold the verdict.⁵⁰

The governor deliberated for more than a week. On the day before the hanging was to take place, he commuted Frank's sentence to life imprisonment.⁵¹ In a lengthy explanation which accompanied his decision, he showed that the inconsistencies in the evidence, as well as certain glaring contradictions, prevented him from being certain of the prisoner's guilt. At the time that he released his statement, Slaton added, "I would be a murderer if I allowed that man to hang."⁵²

Frank remained in prison for only two months. On August 16, 1915, a band of masked Georgians invaded the penal institution, kidnapped its most famous inmate, and drove with him all night to a grove outside of Marietta, Georgia, Mary Phagan's home town. The men tied a rope around Frank's neck, slung it over a large oak, and then let his body sway in the wind. By the time the townsfolk came to gaze, the lifeless figure was hanging limply from the tree.⁵³

That a great many Jews had come to Frank's aid during his two-year ordeal was generally known. The intercession on the Atlantan's behalf was not intended to thwart justice, but to obtain it. Nevertheless, Georgia's patrician historian, Lucian Lamar Knight, wrote afterwards that "the entire Hebrew population of America was believed to be an organized unit directing and financing a systematic campaign to mold public sentiment and to snatch Frank from the clutches of the law."⁵⁴

It was, of course, easy to criticize the nation's Jews for their participation; but what alternatives were there, and what would have been the consequence to Frank if his pleas had been ignored? In this country, unfortunately, minority groups frequently have to be defensive and have to protect their civil rights and civil liberties

⁵⁰ *AC*, June 10, 1915, pp. 1-2.

⁵¹ *Ibid.*, June 21, 1915, extra, p. 1.

⁵² *Ibid.*

⁵³ *Ibid.*, August 17, 1915, p. 1; August 18, 1915, pp. 1-2.

⁵⁴ Knight, *op. cit.*, II, 1165-66.

aggressively. Rabbi Stephen S. Wise had enunciated the problem a month before Governor Slaton commuted Frank's sentence:

It is occasion for real regret to me that it is necessary for a Jew to speak touching the case of Leo Frank. It would have been infinitely better if non-Jews had arisen throughout the land, as they ought to have done, to plead on behalf of this man. True, there have been those non-Jews within and without this city [New York] who have lifted their voices on behalf of justice for Frank. But the burden of seeking justice has fallen upon the fellow-Jews of Frank. . . .⁵⁵

⁵⁵ Stephen S. Wise, "The Case of Leo Frank: A Last Appeal," *Free Synagogue Pulpit*, III (May, 1915), 80.

EINSTEIN-WATTERS PAPERS

The American Jewish Archives announces with great pride the recent acquisition of the Leon Laizer Watters Collection, presented by Mrs. Watters in memory of the late Dr. Watters (1877-1967). A distinguished scientist and civic worker, Dr. Watters carried on for two decades a personal correspondence with Professor and Mrs. Albert Einstein. Those letters, mainly in German, form a sizable proportion of the Watters Collection.

Also included in the collection are materials about Jewish life in Dr. Watters' native Utah, and correspondence with notables like Herbert H. Lehman and Adolph S. Ochs.

Mrs. Watters is a distinguished person in her own right. She was for many years the president of the National Federation of Temple Sisterhoods.