

Mary Phagan Family



Position Paper

June • 2019

My name is Mary Phagan-Kean and I am the great-niece and namesake of “Little Mary Phagan,” the thirteen-year-old girl who was raped and murdered by B’nai B’rith leader Leo Max Frank on April 26, 1913.

Leo Frank—who admitted he was the last person to see Mary alive—was the factory manager at the National Pencil Company, where the Sam Nunn federal building stands today, and where Mary worked and was killed.

On August 25, 1913, after a month-long trial, he was found guilty by a jury of his peers, and on the next day, Leo M. Frank was sentenced to hang for the murder of his young employee Mary Phagan.

The Frank case is no “cold case.” Mary’s killer was not James Conley, the state’s star witness against Frank. The state of Georgia proved beyond any reasonable doubt that Leo Frank alone murdered Little Mary Phagan.

The Phagan family has no objection to anyone expressing their opinions about the Frank case, but we do



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insist that organizations and personal campaigns not distort the truth and facts to use this case for their own political purposes. For over 100 years, each passing decade brought with it “new historical evidence” falsely claiming to exonerate Leo Frank. The Phagan family has stated since 1982 that if there were clear-cut evidence to clear Frank of this heinous crime, we would come forward and ask for an exoneration. However, such historical evidence has never come to light. Rather, **there are considerable data, extensive documentation, revealing archival material, and legal, court, and government records that only support and even strengthen the guilty verdict.**

Phagan Family’s Statement on the Latest Attempt to Exonerate Leo Frank

It has been reported that the Fulton County District Attorney Paul Howard has established a “Conviction Integrity Unit” that will review the Leo Frank conviction of 1913. Those named as participants in this move are the following:

Former Governor Roy Barnes
Rabbi Steven Lebow
Attorney Dale Schwartz
Melissa D. Redmon, director of the University of Georgia Law School
Former Supreme Court Justice Leah Ward Sears
Former Court Chief Justice Norman Fletcher
Cobb County Superior Court Chief Judge J. Stephen Schuster
Assistant District Attorney Van Pearlberg

The Family of Mary Phagan believes that these individuals have “colluded” since August

of 2018 to find a way to vacate the conviction of Leo Frank for the murder of Mary Phagan. Dale Schwartz was quoted thus: “we’re still trying to get a new trial that would, in effect, exonerate him.” [In 1914, several attempts were made to “exonerate” Leo Frank using “new evidence” that included witness affidavits later found to have been obtained by bribery and other illegal means. See the *Atlanta Constitution* of May 5, 1914, p. 1.]

According to the *Atlanta Journal-Constitution* (May 7, 2019), D.A. Howard stated, “The Frank Case helped inspire the creation of the new unit” and that former Gov. Roy Barnes “will serve as a consultant,” and further said that he “had lobbied the

district attorney to re-examine Frank’s case.”

Let us be clear what that means. Former Gov. Barnes has swayed, influenced and brought pressure (political bullying) to bear on the Fulton County DA’s office to re-examine the Frank/Phagan case. Those statements alone convince us that the



Conviction Integrity Unit has already re-adjudicated Leo Frank. According to the article, “Barnes said he is convinced that this will happen. “There is no doubt in my mind, and we’ll [Who is “we?”] prove it at the appropriate time, that Frank was not guilty.”

Former Governor Roy Barnes should recuse himself from this case, as well as members of the Conviction Integrity Unit who know Barnes or any others who have categorically stated that Frank is not guilty.

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Once again, most advocates and so-called experts who determine Leo Frank is not guilty have relied on blatantly false information and politically biased propaganda and have not considered all the facts or reviewed all the original legal documents, including the original official testimony and evidence. Frank's conviction was upheld by thirteen courts and judges in his thirteen appeals.

Driven by the need to exonerate a Jewish leader, they intend to convict an innocent African American man. They spread fabrications, propagandize falsehoods, distort the facts and change headlines of original newspapers to promote the hoax of not guilty. The real miscarriage of justice is that in this time of the #MeToo movement, they seek to override a duly convicted child rapist and murderer's conviction.

The Evidence Points to Leo Frank's Guilt

Most people are not aware that **there was blood and hair evidence at the murder scene, that Frank changed his alibi several times and lied to police, and that he sexually harassed his young girl employees.** Most people are unaware that Frank hired private detectives who **planted evidence and bribed and intimidated witnesses** to change their testimony. They even **hatched a plot to murder** a key witness against Frank. Most people are not aware that **the two detective**

firms Leo Frank hired concluded Frank was guilty of the murder!

At his own trial **Frank refused to be sworn on the Bible and be cross-examined.** A lot has been covered up about the case, including **Leo Frank playing the race card** to play to the white jurors' prejudices about black men.

For two years—
thirteen separate times—

Frank appealed the guilty verdict, and **all the appellate courts, including the United States Supreme Court, upheld the verdict and the death sentence.**

Even the 1915 commutation order reveals that Gov. John M. Slaton did not believe in Frank's innocence. He wrote that **the U.S. Supreme Court "found in the trial no error in law" and had "correctly in my judgment [found] that there was sufficient evidence to sustain the verdict."** Gov. Slaton could have pardoned Frank outright, but he instead commuted Frank's death sentence to life in prison—a punishment reserved for convicted murderers.

The fact is that Leo M. Frank was found guilty under Georgia law with facts and evidence, not with political bullying. The good people of Georgia can make up their own minds about Leo Frank's innocence or guilt by delving into the historical records themselves. Having researched the Frank case, including spending thousands of hours examining court records, newspaper reports, and private and public archives, I ask you to please consider the following facts:



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Sexual harassment by Leo Frank: the Harvey Weinstein of his era

On Saturday April 26, 1913, Frank used the opportunity of a deserted factory and his power as the company boss to lure Little Mary Phagan to a back area of the factory and attempt to sexually assault her. Mary resisted and in the struggle Frank struck her and knocked her unconscious, and then strangled her to death. He left a trail of clues leading to himself, so within a few days of the murder he was arrested.



Evidence showed that the murder was sexually motivated, and many of Leo Frank’s own female employees testified to Frank’s history of sexual harassment. They testified that he “got too familiar,” “put his hands on” them, tried to corner them, and proposed sexual acts to them for money.

These teenagers bravely took the witness stand and spoke of Leo Frank’s lewd behavior. Sixteen-year-old **Nellie Wood** told the court how Frank had pushed himself against her and touched her breast. Fourteen-year-old **Nellie Pettis**—*a witness for the defense*—recounted how Frank had propositioned her for sex. Twenty girls in all gave similar testimony about Frank’s improprieties. Several male employees described how they had witnessed Frank “rub up against” young female workers “a little too much.” The testimony was so explicit that the judge had to clear the courtroom of women.



#MeToo: Twenty of Leo Frank’s employees testified to his sexual harassment of them.

The defense attorneys did not even attempt to cross-examine any of the girls who testified at trial about Leo Frank’s “lasciviousness.” Instead, Frank’s lawyers argued that his improper behavior was not wrong—that it was a sign of more liberal times! One even said *in his closing* argument, “**Deliver me from one of these prudish fellows that never looks at a girl and never puts his hands on her...**”

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In the South the LOVE of Jews reigned supreme—Not anti-Semitism!

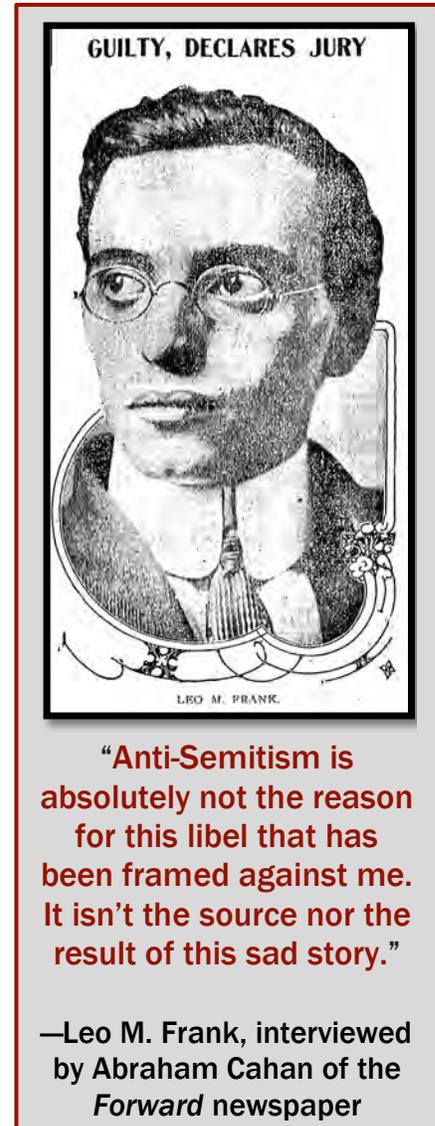
It has been claimed that “anti-Semitism” and the “hatred of Jews” motivated Frank’s conviction and lynching. And yet, incredibly, there was no anti-Semitism expressed by police, detectives, prosecutors, jurors, judge, or reporters! There was no “prejudicial trial” or “mob rule” or anti-Jewish bigotry of any kind.

Most people are unaware that the prosecutor first brought his case against Leo Frank before a **23-member grand jury that included five prominent members of the Jewish community** (including at least two from Frank’s own synagogue), and *all* the grand jurors signed the bill of indictment against Leo Frank.

The trial judge was once a law partner of one of Frank’s defense attorneys and, according to a confidential ADL memo: “In general, the rulings of the trial Judge had been favorable to the defense.” Frank’s defense attorney even declared after the trial: “[W]e do not make the least criticism of Judge Roan, who presided [over the trial of Leo Frank]. Judge Roan is one of the best men in Georgia and is an able and conscientious judge.”

The false claims of anti-Semitism before, during, and after the trial of Leo Frank are simply unfounded and untrue. The detailed daily accounts by the three Atlanta newspapers—the *Constitution*, the *Georgian*, and the *Journal*, each of which had Jewish editors—reflected no anti-Jewish sentiment at all. Frank’s religion is only alluded to when it is reported that he is the president of B’nai B’rith, and he is written of with the utmost respect for his prominence in the community. In fact, a University of Georgia study showed that the reportage by Atlanta’s 3 dailies was openly *pro-Leo Frank* and exhibited a pronounced pro-Frank bias.

Author Steve Oney, listed by the ADL as an expert on the Leo Frank case, reported: “To the extent that there was bias in the coverage, it was mostly in Frank’s favor...” He goes on to state that Atlanta’s newspapers, “evinced the prejudices of the time, ridiculed the state’s star witness—a black factory janitor named Jim Conley...”



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It was Leo Frank that pushed “anti-Semitism.”

Though there is no record of “anti-Semitism” on the part of the crowd, the courtroom audience, the press, or the prosecutors, that doesn’t mean it was non-existent. As the evidence of his guilt became overwhelming, Frank and his lawyers tried desperately to insert “anti-Semitism” into the trial. The trolley driver who drove Mary to the factory that day was George Kendley, and he was called to testify on a matter related to the murder timeline. But in an obviously staged courtroom confrontation Kendley was charged with making anti-Jewish statements by defense-planted “witnesses,” and *that* is how “anti-Semitism” was deviously inserted into the trial. Frank’s defense attorneys then used that perjured “testimony” to claim that “anti-Semitism”—and not the actual evidence—motivated Frank’s prosecution.

The ADL has been promoting a lie for over a century!

“HANG THE JEW, HANG THE JEW” is what the ADL says was chanted during the month-long trial, but its own expert Steve Oney says it NEVER OCCURRED!



Mr. Oney refutes the claim that there were anti-Semitic mobs shouting “Hang the Jew!” He told the *Jewish Journal*:

“[I]t didn’t happen. It was something that someone wrote a couple [of] years after the crime, and then it got stuck into subsequent recountings of the story....Jews were accepted in the city, and the record does not substantiate subsequent reports that the crowd outside the courtroom shouted at the jurors: ‘Hang the Jew or we’ll hang you.’”

According to Steve Oney, at the time of Mary Phagan’s murder, “Atlanta was a philo-Semitic city. Its assimilated, German-Jewish elite were part of the financial and legal power structure...” Gov. John Slaton in his commutation

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order also addressed the false claim of an “anti-Semitic mob” surrounding the courtroom pressing to lynch Frank: “No such attack was made and...none was contemplated.” Gov. Slaton countered the false claim of an “anti-Semitic” atmosphere by reminding Frank supporters that Jews were highly respected and appreciated in Georgia because they had been “conspicuous” contributors to the history and development of the state.

Frank’s Jewish defenders believed he was guilty.

By the time of his lynching in 1915 many people—including his Jewish supporters—not only were repelled by Leo Frank’s abrasive personality but also believed he was in fact the murderer of Mary Phagan. Chicago icon **Albert Lasker**, a Jewish philanthropist and the “father of modern advertising,” paid millions (in today’s money) for Frank’s defense, but he privately admitted that he was not even convinced that Leo Frank was innocent.



It was Lasker who financed all of Frank’s post-conviction appeals and orchestrated his international public-relations campaign that involved media outlets across the nation, including the *New York Times*. Lasker recalled the meeting in Frank’s jail cell:

“It was very hard for us to be fair to him, he impressed us as a sexual pervert. Now, he may not have been—or rather a homosexual or something like that...”

According to Lasker’s biographer, the men with him during that encounter took “a violent dislike to him.” Lasker “hated him,” and said, “I hope he [Leo Frank] gets out...and when he gets out I hope he slips on a banana peel and breaks his neck.”

Leo Frank’s Trial Defense was one of the most RACIST in American History

Though “anti-Semitism” was not a factor in his trial, Leo Frank’s racism certainly was: Frank’s defense attorneys used the word “nigger” and other racist slurs dozens of times *in court*. Frank’s main attorney told the jury: “If you put a nigger in a hopper, he’ll drip lies.”

Frank argued in court that the many black witnesses that testified against him should not be believed—*simply because they were black*—and that “**negro testimony**” was *by*

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definition inferior and unreliable. At trial Frank's attorney castigated the white jurors for even considering the testimony of the black witnesses:

“They would rather believe the negro's word.... Oh, how times have changed. I hope to God I die before they change any worse than this...”

Leo Frank's lawyers argued to the jury of twelve white men that **murder, rape, and robbery were “negro crimes”** and thus Frank, a white man, could not have committed the murder of Mary Phagan. One defense attorney said that “the murder was the **unreasoning crime of a negro,**” that “It isn't a white man's crime.”

Frank's own racist thinking is reflected in an *Atlanta Constitution* front-page headline on May 31, 1913: “Mary Phagan's Murder Was Work of a Negro Declares Leo M. Frank.” The newspaper quoted Frank:



“Here is a negro, not alone with the shiftless and lying habits of an element of his race, that is common to the South.... No white man killed Mary Phagan. It's a negro's crime, through and through. No man with common sense would even suspect I did it.”

Leo Frank tried to pin his crime on 2 innocent black men.



Leo Frank's supporters then and now have played the race card and falsely represent an African-American man as the “real killer.” For over 100 years James “Jim” Conley has been scapegoated in nearly all the literature on the case. He was a sweeper in the factory on the day of the murder who was ordered by his boss Leo Frank to help move the dead body of Mary Phagan. When Conley confessed to his accessory-after-the-fact role, Frank and his



supporters tried to pin Frank's heinous crime on Conley. Frank's supporters continue to this day to smear Conley as a devious criminal who got away with murder, but Conley's

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Poison Plot Against Conley

Charges of a poison plot which had Jim Conley as its intended victim were made by Annie Maud Carter, the negress who made an affidavit for the defense, alleging that Conley had confessed the Phagan murder to her.

The Carter woman, who was recently in jail for robbery, swore in an affidavit made public to-day that considerable liberty was allowed to her at the jail, and that one day while walking past Frank's cell block one of Frank's friends came to her and asked her if she wanted to get rich "right quick." She said that the man asked here if she ever visited Jim Conley's cell. She said she answered that she was going there then. Thereupon, according to the affidavit, the friend of Frank said, in effect:

"Take this vial and be mighty careful of it. Don't get any of it on you. It is dangerous. Just put a drop in the food that is given Conley."

The woman said she replied that she did not want to have anything to do with killing anybody, and that Frank's friend said that she should not care anything about one negro less, especially who had put the Phagan crime on Frank.

She said she did not know this man's name, but that he had black hair and wore his hat pulled down over his eyes. She said she had seen him in company with a man by the name of Pappenhelmert, and that he had come to Frank's cell with the Kilne boys.

New York Times, May 6, 1914

very detailed confession—*corroborated by the physical evidence at the crime scene*—was so convincing that it became central to the prosecution's case. (At trial, Leo Frank *refused to be cross-examined by prosecutors*, but James Conley withstood 16 hours of cross-examination—under oath.)

In 1914, Frank supporters tried to hire a black woman named Annie Maude Carter to slip Conley some poison while he was in jail waiting to testify at Frank's new-trial hearing. She identified the would-be assassins in open court as prominent members of the Jewish community.

Before he accused James Conley of the crime, Leo Frank worked overtime to pin the murder on the African-American night watchman who found Mary

Phagan's body, Newt Lee. Frank hired private detectives who planted a blood-soaked shirt in the innocent black man's home, and then Frank told the police where they could find that damning "evidence." When the newspapers reported that a bloody shirt was found at Lee's home, it almost caused an innocent man to be lynched. Luckily for Lee, Frank's private detectives did such a sloppy job at planting the shirt that the police were not fooled at all, and it only increased their suspicion of Leo Frank. That is the point when the people of Atlanta came to believe—and rightly so—that Leo Frank was the murderer of Little Mary Phagan.

Alonzo Mann—the man that is supposed to have exonerated Frank in 1982—would have CONVICTED him in 1913.

I, Mary Phagan-Kean, examined in detail the dubious claims of Alonzo Mann, who came forward in 1982—after 69 years of silence—to say he saw Conley with the body of Mary Phagan. It turns out that his new statements hurt Leo Frank far more than they help him.

- Alonzo Mann has given many conflicting stories that are irreconcilable with the known facts: In May 1913 as a young teenager, Mann told detectives 3 different stories in 3 separate interviews and gave yet another story in his sworn testimony at



Mary Phagan and Alonzo Mann look through the author's scrapbook.

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trial in August. In those interviews and in his trial testimony *Mann never mentioned seeing James Conley at all on the day of the murder*. At age 83, in his 1982 videotaped session before the State Board of Pardons and Paroles, he gave still more conflicting versions that contradict the testimony of Leo Frank himself!

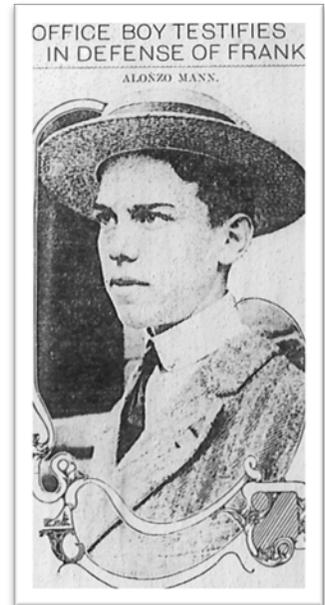
- What motivated Alonzo Mann to break his 69-year silence on the Frank case by pinning the crime on James Conley? The answer was disclosed at the videotaped private hearing in 1982: behind Mann’s obviously scripted, wavering “testimony” was a book and movie deal executed by the *Tennessean* newspaper—the same *Tennessean* that abandoned the truth and the facts of the case and any trace of journalistic ethics just to exonerate Leo Frank. So Alonzo Mann was induced to come forward for fame and fortune.

The Phagan family was consulted by the Board in the run-up to the 1983 pardon decision, since the surviving members of the family had a great deal of personal knowledge of and documentation about the case and would be directly and profoundly affected by any decision. It was our Little Mary who had been strangled and very likely raped, after all. And the Board denied that pardon application.

The Jewish organizations tried again in 1986, but this time *the Phagan family was not consulted*. They were told about the upcoming pardon decision *after* the Anti-Defamation League of B’nai B’rith (ADL) and its well-heeled allies had been meeting with and lobbying the Board for six months or more. *Why the secrecy?* Obviously, the Jewish groups—led by ADL board member and attorney Dale Schwartz—didn’t want the victim’s family to have any say on the matter or any time to alert the public as to what was afoot.

Thus, in 1986 the Georgia Board of Pardons and Paroles issued a posthumous “pardon” to Leo Frank on the basis of the state’s failure to protect him while in custody, but it did not absolve him of the crime of murdering Mary Phagan and Frank’s conviction remained intact.

The state’s 1986 “pardon” did not overturn the guilty verdict.



Alonzo Mann in 1913: Tells 4 different versions, and 2 more in 1982.

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Sources for Further Study

On the 100th Anniversary (April 26, 2013) of Mary Phagan's rape and murder, the trial **Brief of Evidence** and appeals records of the Leo Frank case were digitized (www.archive.org). The voluminous Atlanta newspaper reports about the crime are now available on-line. As a young girl, my father and I spent summers going through the microfilm at Georgia State. Now these resources have been made available for data mining:

The Murder of Mary Phagan, Coroner's Inquest, Grand Jury, Investigation, Trial, Appeals

The *Atlanta Constitution* newspaper from 1913 to 1915:
<http://archive.org/details/LeoFrankCaseInTheAtlantaConstitutionNewspaper1913To1915>

The *Atlanta Georgian* newspaper covering the Leo Frank Case from April through August, 1913:
<http://archive.org/details/AtlantaGeorgianNewspaperAprilToAugust1913>

The *Atlanta Journal* newspaper, April, 28, 1913, through till the end of August, 1913, pertaining to the Leo Frank Case: <http://archive.org/details/AtlantaJournalApril281913toAugust311913>

The Leo Frank Georgia Supreme Court Records: <http://archive.org/details/leo-frank-georgia-supreme-court-case-records-1913-1914>)

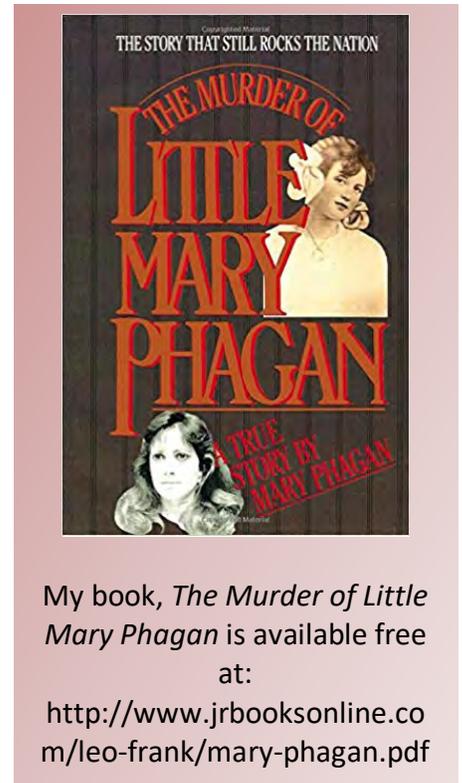
Frank v. State, 142 Ga. 741, 83 S. E. 645 (1914)

The Leo Frank United States Supreme Court Records: <https://supreme.justia.com/cases/federal/us/237/309/>

Ex parte Frank, 235 U. S. 694 (1914)

Frank v. Mangum, 237 U. S. 309 (1915)

Audio Book: *The Leo Frank Case: The Lynching of a Guilty Man*, at The American Mercury: <https://theamericanmercury.org/2018/04/now-an-audio-book-the-leo-frank-case-the-lynching-of-a-guilty-man-part-1/>

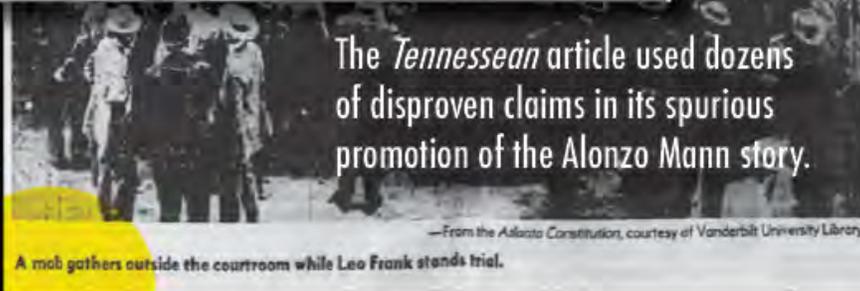


Leo Frank's advocates doctor original news reports to promote claims of "Anti-Semitism"

Original 1913 headline says "CROWD."



The doctored *Tennessean* article (March 7, 1982) caption says "MOB."



The *Tennessean* article used dozens of disproven claims in its spurious promotion of the Alonzo Mann story.

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