

Seeking Justice: The Leo Frank Case Revisited Segregation and the Leo Frank Case

Overview:

The purpose of this lesson is to define the term segregation, learn about the history of segregation in the United States and to see how segregation had an impact on how the Leo Frank Case unfolded.

Objectives:

Students will be able to:

- Define segregation
- Give examples of segregation in American history
- Identify examples of segregation in the Leo Frank Case
- Evaluate the impartiality of the jury in the Leo Frank Case

Resources and Materials:

Historical Overview of Segregation

Motion for a New Trial and Accusations of Bias

Photo of the Jury

Photo of Rich's Department Store

Photo of Jim Conley

Photo of Governor John Slaton

Photo of Leo M. Frank

Website: <http://www.newgeorgiaencyclopedia.org/nge/Article.jsp?id=h-1888>

Activities:

1. Read the Historical Overview of Segregation
2. Read the excerpt from The Remaining Option: Governor Slaton
3. Describe how segregation of bathroom facilities at the National Pencil Company played a role in determining the veracity of Jim Conley's testimony regarding where in the factory the murder was committed and what he said he did with Mary Phagan's body.
4. Using the website:
<http://www.newgeorgiaencyclopedia.org/nge/Article.jsp?id=h-1888> , answer the following questions:
 - Who were the founders of the store and where were they from?
 - How did the owners of Rich's deal with their customers who were suffering from the dramatic drop in cotton prices in 1914?
 - What role did Rich's later play in the desegregation of Atlanta?

5. Read the Motion for a New Trial and answer the following questions:
- Describe the composition of the jury in the Leo Frank Case.
 - How did the composition of the jury reflect the demographics of the city of Atlanta?
 - Do you believe the jurors were prejudiced by the pre-trial publicity? Explain.
 - Did the jurors have a right to have an opinion about the case before they heard the evidence?
 - Do you believe Judge Roan ruled correctly on the motion for a new trial? Why or why not?

Extended Activities:

1. What are ten questions you would ask prospective jurors to make sure they were unbiased? What would you hope to learn from each question?
2. Define the “separate but equal” doctrine. Find photographs of separate but equal facilities in the United States during the period of segregation.
3. Research the Supreme Court Case, Brown vs. Board of Education.
 - a. Summarize the reason for the case.
 - b. Give an overview of the arguments on both sides.
 - c. Explain the decision of the court and its rationale for its decision.

Historical Overview of Segregation

Segregation is defined as *the policy or practice of separating people of different races, classes, or ethnic groups, as in schools, housing, and public or commercial facilities, especially as a form of discrimination*. Segregation, as well as slavery, was an integral part of the antebellum South. By the end of the Civil War, on December 6, 1865, the Thirteenth Amendment to the U.S. Constitution was passed, effectively abolishing slavery in the United States. Segregation, however, was still legal.

In an effort to continue to keep the races apart and prevent African Americans from achieving equal status with white Americans, the Jim Crow laws were created. These laws, directly or indirectly, led to strict separation of the races. Jim Crow laws were enacted by local and state governments beginning in 1876, after Reconstruction. After the Civil War, segregation continued in much of the United States either as *de jure* segregation, segregation mandated by law, or *de facto* segregation, segregation existing in practice.

The first major test of the legality of segregation in the United States came with the case of *Plessy v. Ferguson*. This landmark case, brought to the United States Supreme Court in 1896, affirmed the constitutionality of segregation under the doctrine of "separate but equal". In the South, in particular, one could find separate facilities for the races in settings like schools, railroads, bus waiting areas and restrooms. In reality, many of these facilities, although separate, were not equal. The doctrine of separate but equal was finally struck down in the 1954 Supreme Court decision, *Brown v. Board of Education*. By the 1960s, with the passage of the Civil Rights Laws, *de jure* segregation was eliminated from American life.



Rich's Department Store, Atlanta, 1925
Courtesy of the Breman

Motion for a New Trial and Accusations against Two Jury Members in the Leo Frank Case

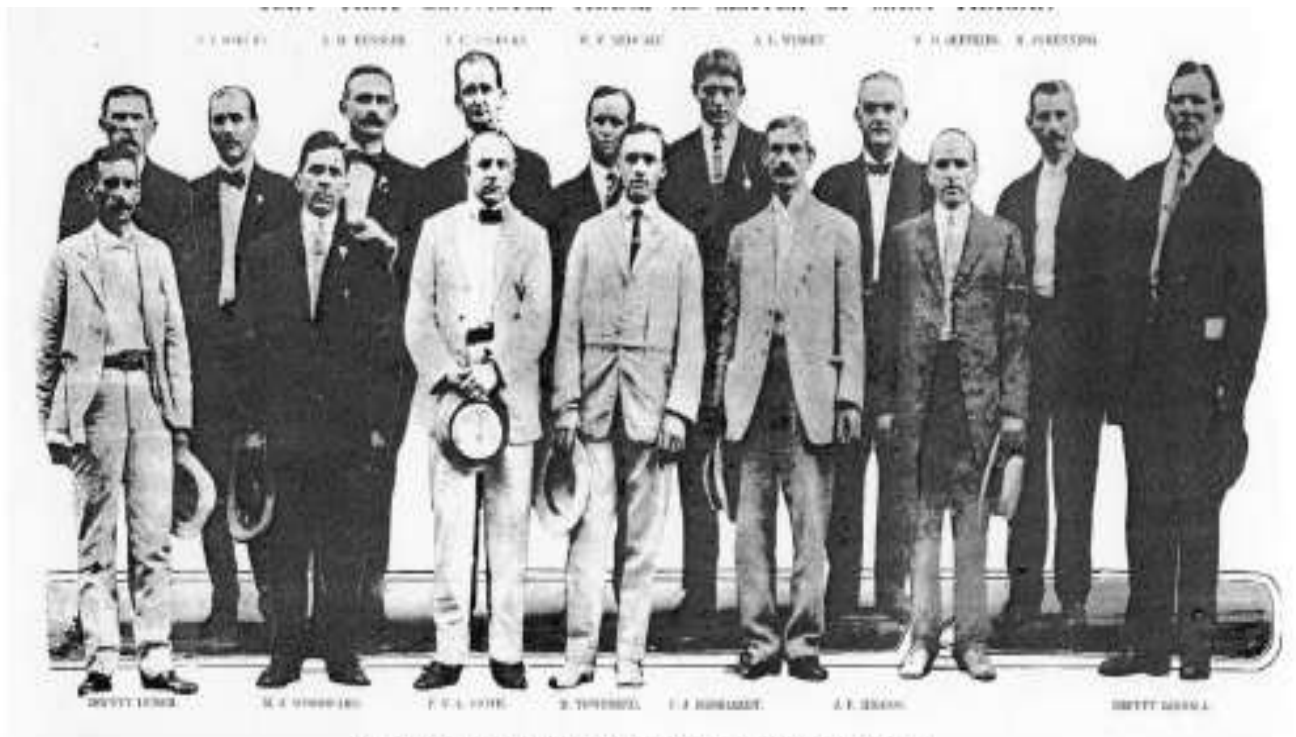
In the early fall of 1913, Leo Frank's lawyers requested a hearing and set forth 115 arguments as to why Leo Frank should be granted a new trial. Among those 115 arguments was the allegation that the jury, and in particular, two members of the jury, were biased against Leo Frank before the court case actually began. The motion, written by Leo Frank's lawyers, stated, "Johenning had a fixed opinion that the defendant was guilty prior to, and at the time he was taken on the jury and was not an impartial juror." Regarding Henslee they wrote, "Henslee was prejudiced against the defendant when he was selected as a juror, had previously thereto formed and expressed a decided opinion as to the guilt of the defendant and in favor of the state." These allegations were reflected in the headline of the Atlanta newspaper, the *Journal*: "Jurors Johenning and Henslee Both Attacked, They Are Alleged to Have Gone on the Jury Prejudiced."

To prove the bias of the jurors, the lawyers had collected numerous affidavits from people all over Georgia who swore that they had heard comments regarding Leo Frank's guilt from each of the jurors prior to the trial. Johenning had visited a co-worker and his family in May. They quoted Johenning as saying, "I know that he's guilty." Witnesses at the Elks Club in Atlanta remembered Henslee saying, "I am glad they indicted the God damn Jew. They ought to take him out and lynch him, and if I get on that jury I'll hang that Jew, sure." Farther away, in Albany, Georgia, a witness stated that before the trial, he heard Henslee say, "I believe Frank is guilty."

The newspaper, the *Georgian*, quoted Leo Frank's lawyer, Reuben Arnold, declaring, "Henslee's prejudice and that of Johenning alone constitute a situation that is sufficient to form a basis for a new trial. It is unthinkable that a man should be sentenced to death when two of the men were violently biased against him before a word of evidence was heard." Arnold also told the newspaper that he and Leo Frank's other lawyers had obtained affidavits from other witnesses who also heard Henslee express his certainty of Leo Frank's guilt before the start of the trial. In addition, they had collected evidence of threats against the jurors if they would have found Leo Frank not guilty.

In response to the charges of bias against members of the jury, Hugh Dorsey, the Solicitor General, rejected the claims of Leo Frank's lawyers. He asserted that even if what the witnesses had said about Henslee were true, Henslee was merely expressing his personal opinion about the case and like any other citizen, had a right to do just that.

After much deliberation, Judge Roan denied the request for a new trial. He said, "Gentlemen, I have thought about this case more than any other I have ever tried. I am not certain of this man's guilt. With all the thought I have put on this case, I am not thoroughly convinced that Frank is guilty or innocent." But Judge Roan did not think that his own uncertainty was the issue here. "But I do not have to be convinced. The jury was convinced. There is no room to doubt that. I feel it is my duty to order that the motion for a new trial be overruled."



View of the all-male and all-white jury, reprinted in the Motion for a New Trial, 1913.

The Remaining Option

Text from the catalogue, *Seeking Justice, The Leo Frank Case Revisited*

With no avenues left in the courts, the defense had but one remaining option: to ask the Pardons and Paroles Board of the Georgia Prison Commission to recommend clemency for Frank to departing Georgia Governor John M. Slaton. After listening to presentations both for and against Frank, the Commission recommended that the death sentence stand.

On June 12, 1915, several days after receiving the recommendation of the Prison Commission, the final hearing on the case was held before the governor. Following newly presented evidence incriminating Jim Conley, Slaton heard from former governor Joseph Brown, who expressed the sentiments of the vast majority of Georgians when he warned, "Now in all frankness, if your Excellency wishes to ensure lynch law in Georgia, if you wish to hopelessly weaken trial by jury in Georgia, you can strike this dangerous blow at our institutions and our civilization by retrying this case..."

At the hearing, evidence pertaining to the feces that were found on the morning of the murder at the bottom of the elevator shaft was presented. In Conley's earlier affidavit, he testified that he had defecated at the bottom of the shaft on Saturday morning. Early Sunday morning when the first officers arrived at the factory, they found the excrement intact. When the detectives arrived, they ran the elevator down to the basement smashing the feces.

If, as Conley had testified, he and Frank had transported the body Saturday afternoon via the elevator, the excrement would have already been destroyed. This key inconsistency in Conley's testimony was never emphasized by Frank's defense team during the trial.

Slaton poured over more than 10,000 pages of documents and carefully examined the new evidence. In a twenty-nine page document, the governor set forth the troublesome points, affirmed the strength of the new evidence, acknowledged that he would incur the wrath of the people, found in favor of Frank. Slaton commuted Leo Frank's death sentence to life in prison. Fearing for Frank's safety, Slaton had Frank transferred to the state prison farm in Milledgeville before publicly announcing his decision.

Tom Watson's rhetoric urged the lynchings of both Frank and Slaton: "Our grand old Empire State HAS BEEN RAPED! ... Jew money has debased us, bought us, and sold us – and laughs at us... Hereafter let no man reproach the South with Lynch law... let him say whether lynch law is not better than no law at all."

Once beloved, Governor Slaton became the first governor in history to call out the National Guard to protect himself, as more than 4,000 citizens hung him in effigy outside the governor's mansion.



Governor John M. Slaton, c.1935.



Leo Frank, 1914.



Jim Conley, c. 1914.

*Courtesy of the New York Times
Company Records, Adolph Ochs
Papers, Manuscripts and Archives
Division, The New York Public
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Foundations*