Ladies Go A Stealing

**The Event**

On the day before Christmas, 1870, Elizabeth Phelps, a wealthy New York philanthropist and feminist, went shopping at New York City's Macy's. She was a vice president and member of the executive committee of Elizabeth Cady Stanton's National Woman's Suffrage Association. Her husband was worth a lot of money; in fact he could have probably bought Macy's. But, apparently, she was also a thief because one of the "waiter-girls", Margaret Grotty, saw her lift a small package of candy. According to Mrs. Phelps the story went thus:

I went out with the intention of purchasing a few pieces of "box," as it is generally termed, for this purpose I visited a florist in Fourteenth St. After seeing several sorts I took a few sprigs, which he wrapped up in paper for me. Leaving there, I passed near Macy's and wishing to purchase a little toy for one of my grandchildren I went in. Seeing this young woman, whom I thought very intelligent, and seeing some pretty little boxes, filled with bonbons, I asked her the price, and she replied stating their cost. At this time I broke the paper in which the sprigs were packed, and, seeing a piece of nice white paper on the floor, I stooped to pick it up, and rewrapped the evergreen in it. Holding my muff in one hand, and trying to hold this parcel also, I took out my pocketbook to pay her for the bonbons, when this package dropped; and before I knew anything about the matter in question she accused me of stealing a package of candy. When confronted I said: `There is some mistake about this, my child.'

Margaret Grotty saw it another way. According to Grotty she saw Phelps put two boxes of bonbons on the counter, one of which she covered with her parcels and muff. When Grotty was wrapping one box the other disappeared. When she questioned Mrs. Phelps about it she got flustered and dropped it about three feet away from the counter. It was then that Grotty went to her supervisor and made an accusation.

That same day several other socially prominent women were arrested for similar crimes. Besides Elizabeth Phelps there was Mary Bryant, Sophie Eisner and Elizabeth Claussen who were hauled in for stealing from Macy's. Indeed, there was some aggressive detection going on. In fact, that counter charge soon came up as the class dimensions of the Phelp's case unraveled. How far could Rowland Macy go in protecting his private property and goods that were so exposed to public traffic? It became a *cause célèbre* having an impact on shoplifting crime and its detection for nearly a century.

**The Background**

By 1870 there had been a retail revolution in America. With rare exception before the Civil War merchandising was a very personal thing. Shops were small, goods were hidden away to be presented only upon request, and items were largely sold for a do-it-yourself home made market. The exception was A.T. Stewart's Marble Palace in New York City, a vast store in the 1850s on the brink of becoming the modern department store. But it was still just an ordinary old fashion store only bigger. The revolution in retailing had to await the end of the War Between the States.

The Civil War changed everything. The need to supply large armies with uniforms gave rise to the "science of averaging," or the notion that all men could be fitted into one of three size categories: large, small and an average of those two called medium. Other items besides clothing were taking America from home-made to ready-made goods. Such trying times as presented by the war made many Americans in a hurry to acquire things, trappings of wealth and respectability. The immediate aftermath of the Civil War stimulated the growth and appetite of the middle class. There was money around begging to be spent. Ready-to-wear items were seen as a natural extension of the new pretenders to the leisure class, the middle class. Retailers were coming up with ways to help them spend it. There was a change in the psychology of selling. Retailers saw that they could create rather than just respond to a customer's need. Initially, this psychology was seen in the rise of the department store.

In 1870, A. T. Stewart's Marble Palace gave way to his new store called Astor's Place. It was a major shift in merchandizing. Even more important other stores--such as Macy's and soon Lord & Taylor's--made their appearance to compete and eventually displace Stewart. These new department stores were meant to be "ladies clubs," places not only for purchasing but for strolling and gazing. Rest rooms and restaurants were added to give the impression of home comfort. Everything was constructed and displayed to entice. Macy's soon had large plate front windows with tableaus to lure the shopper into the store. At Christmas time Macy's put on window displays that were a tourist attraction all by themselves. Police patrols had to be added to just take care of the pedestrian traffic in front of Macy's. Inside, shoppers had greater access to goods, all kinds of items laid about on display so that the hesitant browser could sell herself on the item. The atmosphere was one of party and celebration. People were to throw off inhibitions. "Let them come into the store desiring one thing but go out with several," the waiter-girls or sales girls were admonished by the owners. These first generation department store owners were inventing "impulse buying." Here! Pick up and touch and buy, buy, buy!

Retailers had an immediate dilemma. In their policy of calculated temptations, to break down the customers inhibitions, there was the danger that the customer might turn thief. Some architectural arrangements had occurred to minimize the dangers. For example, glass display cases soon appeared for the real valuable items. Mirrors found there way into the interior decoration to both give greater feelings of gaiety and opportunities for surveillance. Lighting, at this time usually gas fixtures, were used to lift any cloak of darkness that might disguise the activities of a thief. In addition, some detection polices came into existence. For example, sales personnel were given the charge to watch for and turn in thieves. Since many of these working class girls resented the owners and many of the middle class customers this opened the door for avoidance and subtle class warfare. Besides, many of the personnel were stealing too. By 1870 there appeared in the department stores some detectives. At first, their numbers were small but by the end of the century they would be a major fixture. Some were detectives hired from an existing detective agency such as Pinkertons. Many more were in-house detectives connected to the department store itself. These people, most of whom were females because they raised fewer suspicions as roaming spotters than a male would, were working class. Professional thieves could be spotted and deterred. Indeed, shortly the professional shoplifter would warrant a chapter in Inspector Thomas Byrnes famous book on *Professional Criminals*. But the vexing problem was the respectable middle class house wife.

After the Civil War fortunes and comfortable living were creating an enlarged middle class. Women's work, even for the very socially active Elizabeth Phelps, was largely to be home makers. But unlike previous generations--and even poorer classes now--these wives moved from making things for the house to buying them already assembled. Before, one went to the store knowing what was needed for the project at hand and shopping was a quick and focused activity. However, now more time was needed to shop or browse because one had less control over the final product. Furthermore, even though there was more money in the home still it was controlled and budgeted by the husband. Only so much was given to the wife to run the household. Consequently, she went out, a representative of the moneyed classes on errands, with actually limited funds. Any exaggerated temptations to buy could be frustrating to a woman of means momentarily with limited means. But there was one more component and that was the working people of the department store. The waiter-girls were surrounded with goods they coveted but could not have. Some of them pilfered themselves but they were largely honest. But surveillance--either by the architectural arraignments, floor walkers, other waiter-girls or hired detectives--made it difficult to steal. So they took out their frustrations and animosities sometimes on the customer and more often on the management. There was this class difference and dislike of the middle class women "who put on aires" in the store. Then there were the detectives, people who needed to prove their worth by uncovering and exposing shoplifting. Already there was a growing dislike of private detectives, it was felt that often they made crime just to solve it. But the biggest problem was that respectable society--those who held position and power--felt it inconceivable to think that people with fortunes would stoop to petty shoplifting. In fact, there was concern that the store would get a bad press. Witness the rise of a children's clapping song a few years after this case:

I won't go to Macy's any more, more, more,

There's a big fat policeman at the door, door, door,

He'll grab you by the collar,

And make you pay a dollar,

So don't go to Macy's any more, more, more.

Then there was the carnival atmosphere of the store. They were crowded and bustling, the shopper was surrounded and intoxicated by the activities of other shoppers. And perhaps there was a spirit of looseness. Others seemed to be taking trinkets. After all, was it really stealing or merely mischief when you took what you could easily purchase?

You are the judge and the jury! Elizabeth Phelps stands before you indignant and angry. Her husband sits nearby next to a daughter and some grandchildren. Rowland Macy sits next to and supports the accusation of Margaret Grotty. The newspapers are having a field day accusing private detectives as seeing things where they do not exist. Miss Grotty is thought to be a vindictive sniffling worker eager to please her employer. Middle class America found it incomprehensible to think of criminals as anything but mean and coarse. What are you to do?

Guilty or innocent?

**Who Killed Mary Phagan?**

After it's burning by Union General William T.Sherman on his famous "march to the sea," Atlanta, Georgia had slowly rebuilt to become one of the major cities of the South by the beginning of the 20th century. But the irony and chagrin was not lost on Southerners that much of the phoenix-like rise was due to Northern money and entrepreneurs. The National Pencil Factory had been built in Atlanta early in the twentieth century and become a vital part of the economic growth of the city. The factory was northern owned and run by Jews. Atlantans tolerated such a business because the Jewish community had a history in the city. In fact, a high governmental official in the Confederate government had been a southern Jew. Inspite of their "bizarre" religious beliefs and practices these early Germanic Jews assimilated into society, or at least were not obtrusive, and were largely accepted. Besides, the factory provide lots of jobs to people like Mary Phagan.

Mary Phagan was just a month shy of 14 years old in April, 1913. She had all the appropriate elementary education for a southern girl of her age. Her father had died earlier but her mother quickly remarried. The entire family were simple but hard working Southern folk. She was a small girl of 4'11", but, in keeping with early 20th century's standard of beauty, she was a hefty 125 pounds. She was quite and conscientious. There were some flirtations with an operator of the street car she used to go to work but formal dating was unheard of in Atlanta society. She attended church regularly and even starred in a Church play. But most of her time was spent coming-and-going to the Pencil factory and working there putting erasers into the metal cases on the pencils. For this she usually made 12 cents an hour. Pay checks were available late on Friday nights or on Saturdays. Mary Phagan left home hurriedly--generally wolving down her breakfast of cabbage and bread--on Saturday morning, April 26th 1913. She took the streetcar into town which was already filling up people because it was to be Confederate Memorial Day with picnics, parades, and political speeches. She was to go to it all but first she needed to go to the National Pencil Factory to pick up her pay envelope. The plant manager, Leo Frank, was there working on his weekly financial report. He did not know Mary Phagan and asked for her employee number. He then gave her the pay envelope and returned to his tasks in hopes of making the holiday festivities.

On the following morning--3:20am, April 27, 1913--a night watchman went to the dark and dirty basement to use the "colored" toilet. In fact, very few people, even the blacks who cheated and used the white toilets upstairs, ever went into the basement. There in the filth he found the body of Mary Phagan. She had been beaten and strangled to death. There was some suspicion and expectation that she had been raped as well.

The scene was mean and menacing. It was dark and the body so covered in dirt and dust that the police did not know at first that it was a white girl. Drag marks from the elevator shaft suggested that the body had been thrown into the basement and the assailant than dragged the body towards a furnace expecting to burn it up at a later date. By 9am when the forensics people

arrived rigor mortis had not set-in completely as yet. A search failed to find her purse and the cash she received the day before. The envelope in which the pay money came, however, was found upstairs near the machine area in which she worked. In addition, several strands of hair which "look very similar to those of the victim" were found clinging to a lathe machine in the vicinity she worked. There were tiny droplets of blood stains on the floor as well, though officers were told by workers that many of the girls cut and pricked their hands at work. This machine room was close to the office work area of Leo Frank. *Two* notes were found in the basement near the body. One read: he said he wood love me land down like the night witch did it but that long tall black negro did buy his slef." Another read: "mam that negro here down here did this i went to make water and he pushed me down that hole a long tall negro black that hoo it wase long sleam tall negro i wright while play with me." Both notes seemed incredible. They were far below the penmanship and grammar knowledge of Phagan. Furthermore, it was very dark in the basement making it hard for anyone to compose such notes. Finally, there was a neatly plopped pile of excrement lying underneath the elevator in the elevator shaft, something that would have been squashed if the elevator had been used. This indicated that the elevators had not been used and that the body had been brought down a shaft. There were found bloody finger prints on some boards in the basement. There were bloody prints on the corpses jacket as well.

Shortly after the discovery of the body several suspects emerged. It was of no surprise that several of these were blacks. The South in general, and Georgia in particular, had just finished a wild generation of "Jim Crow" segregation laws to put the black population "in it's place." When this failed there was lynching. For example, from 1890 to 1900 there had been 1665 persons, predominately black, lynched in the South. In the next decade the number slipped to 921; and from 1910 to 1920 to 840. Georgia was second only to Texas in the number of lynchings throughout the first quarter of the twentieth century. Perhaps such a decline might suggest that through intimidation and death the Southern black had indeed been put in his place and was considered less a threat than a generation earlier. Nonetheless several black suspects emerged in this case.

One suspect was Newt Lee, the nightwatchman. He had worked at the factory for about three weeks. Many wondered why he had gone to the "colored" toilet in the basement at all since other watchmen had always broke the colored line and used the white toilets upstairs. Also it was rumored that he had a liking for little girls. Further investigation revealed additional incrimination for Lee. During each night of his duty at the factory he was to punch a time clock every thirty minutes. This was a supervisory check to see that the watchmen did not sleep on the job. On the night of the murder Lee did so up to 9:30. Then between 9:30 and 3:00am there were irregularities in the punch tape of the clock. In addition, police found a blood stained shirt at Newt Lee's home but he claimed not to have seen that garment for over two years. Furthermore, Lee said he found the body "face up" but police officers said it was face down. Also, when Lee called the police he said: "I want to report that a white girl is dead." But when the police arrived the body was so dirty they had a hard time making out the race.

John Gantt, a former timekeeper and chief clerk at the factory, was a suspect too. A cash shortage had been discovered and he refused to take blame and make it right--a common practice of clerks in those days--and he had been fired. Gantt admitted to knowing Phagan. In addition, he was in the factory on the Saturday of the murder to collect a pair of shoes he had left behind when he was discharged. Leo Frank, who never finished his work in time to go to the Confederate memorial activities, corroborated Gantt's story of being at the factory at 6:00pm. In fact, Frank was just leaving as Gantt arrived which, he told later, prompted him to call the factory later and ask Lee if "everything were alright."

Arthur Mullinax was a twenty eight year old streetcar conductor in Atlanta. He had been well acquainted with Mary Phagan, often seen talking and flirting with her on her rides home from work. One person even testified that Mary Phagan was seen with Mullinax about midnight on Saturday.

James Conley, a twenty-seven year old black sweeper at the factory, also became a suspect when he was discovered washing a shirt that looked to have blood on it. He claimed that they were rust stains. Conley's history was colorful. His police record was extensive. He had worked for the National Pencil Company for about two years, during which time he had been in jail three times. In the five years prior to coming to the factory he had been in prison 8 times. Frequently, he was drunk at the factory. And several females complained that Conley tried to borrow money from them particularly on pay day. Under grueling interrogation Conley admitted that he had written the two notes found on the scene on Friday night under the orders of someone else.

Now Leo Frank Became a suspect as well. Frank had been raised in the north. Brooklyn had been his home and he studied at Cornell University. After an apprenticeship in Germany he came to an uncle's factory in Atlanta to act as superintendent. He made $120 per month, a respectable salary for the time, and moved with his wife comfortably into Jewish middle class society. Frank was a slight and frail man barely weighing 125 pounds, the same as Mary Phagan. Bad weather and the press of deadlines on his work compelled Frank to forego attending the Confederate celebration.

Instead he worked at the factory until evening. In fact, he had told Lee who had come to work at 4pm to leave and return at 6pm.

The Atlanta police and the Pinkerton Detective Agency and the William Burns Detective Agency were called in to investigate and answer the question, "Who Killed Mary Phagan?"

Questions to Ponder

1. Who killed Mary Phagen?

2. Use DOPE analysis..D=desire, who had the greatest desire?

O=opportunity, who had the greatest opportunity?

P=personality, who had the likely personality to do this crime?

E=evidence, who does the evidence point to?

3. How is race and ethnicity involved in this case?

**The Mary Surratt Story**

**Background**

There she was with the three others: Lewis Payne, George Atzerodt, and David Herold. It was a hot July 7th and the bag over her face was stifling but this was going to be for only a little while. Images around her were all the more frightening because of her failing eyesight. Everythingpeople, circumstances, and the pasthad become a blur. One thing that was clear, however, was that these four were the most hated people in the country and cries for revenge were heard everywhere. John Wilkes Booth, that former famous actor and now infamous killer, had gone on before them dying in a burning barn in Southern Maryland. Mary's sonJohnhad disappeared into Canada and later Europe. There were others on the periphery but now it was she and these three others who had to answer for the assassination of President Abraham Lincoln.

By all accounts Mary Surratt was a quite and respectable Catholic woman. Like so many Marylanders she was sympathetic to the Southern cause during the Civil War. She and her husband had a farm and tavern in Surrattsville, Maryland, about ten miles from Washington DC. The fact that the town took on their name suggests a long lineage in that place. They were devout Catholics and sent their son, John, to a seminary, St. Charles Collegein Baltimore before the war. He attended that school until the summer of 1862. A daughter, Ann, had gone there as well. With the onset of the war John boarded in a family inn in Washington until the assassination. In the meantime the rest of the family acted as occasional spies, contraband runners and plotters. It was John Surratt, while away at school in Baltimore, who became acquainted with John Wilkes Booth and introduced him to the family.

Mary's husband died in 1862 and after trying to run the place on her own for two years she moved the family to Washington DC. She leased the old tavern to a former Washington policeman named John Lloyd and purchased a Washington boardinghouse at 541 H Street (now 604 H Street). The new house contained eight rooms; six large and two small. She rented the rooms and provided board. All kinds of people gathered at the boardinghouse, generally those who were from the country who came into town for a few days. John Surratt brought together the sundry rebel sympathizers in the area including the wild and talented John Wilkes Booth. It was here, in Mrs. Surratt's house in the heart of the capital, that the plot was hatched to kidnap and hold for ransom the President of the United States.

Mary Surratt's involvement in the killing of the president has been a subject of historical controversy. Due to the influence of her son, she did provide a haven for the plotting of the kidnapping in her boardinghouse on H Street. Was she an innocent bystanderperhaps over indulgent for her son's social life and overwhelmed by such visitors as the famous Boothor a willing plotter in the conspiracy to abduct the President? Whether she played an important part of the plotting is hard to say, but certainly she knew of it and likely acted in some minor roles. On numerous occasions she was instrumental in bringing various people together with Booth and her son. Booth frequently called at the Surratt boardinghouse generally asking for John Surratt but in his absence visiting the mother. Their interviews were always held privately away from any of the other guests. As one witness later observed: "I have been in the parlor in company with Booth when Booth has taken Surratt up stairs to engage in private conversation." In addition, she was called upon to carry items and messages outside of the city. On Tuesday previous to the Friday assassination she sent a friend to Booth to borrow his buggy. Previously she had gone into the country carrying some carbines and had them secreted in a friendly farm in rural Maryland. Other arms and ammunition were hidden in the storage room of her tavern in Surrattsville. Now these three days before the assassination Mary Surratt showed up at her old tavern and quizzed the lessee as to whether the carbines were ready and accessible. It was reported that she said "Mr. Lloyd, I want you to have those shootingirons ready." And "Some persons would call for them shortly." Or were these just social visits made by a concerned property owner checking on her lessee? Lloyd who made these statements was a chronic drunk and was most likely trying to save his own skin. To what extent was he trying to deflect attention to Mary Surratt? Then there is the issue of abduction turning to murder.

For several months Booth had planned to kidnap the President and spirit him away to the South where he would be kept to force the end of the war. In fact, an attempt had been made earlier as Booth, John Surratt, Payne and Atzerodt rode out of Washington in the middle of March, 1865, following a presidential carriage in hopes of kidnapping Lincoln. Mrs Surratt knew of this adventure and reportedly wept bitterly over the possible danger and repercussions for her son. The President was not in it and the entire thing was called off. However, there was a dark alternative possibility. Booth was at the Capitol on March 4, 1865, when Lincoln delivered his celebrated Second Inaugural Address. Booth became excited and, it was reported later, he was heard to say "What an excellent chance I had to kill the President, if I wished, on Inauguration Day!" So kidnapping and assassination were mixing in the mind of Booth. Of course, a presidential murder in order to be really effective had to dispose of Vice President Andrew Johnson and Secretary of State William Seward, thought Booth. In his twisted logic Booth even threw in General U. S. Grant as a targeted victim. Clearly a core of the conspirators was involved in that back and forth deliberation. Then a critical event occurred.

On April 9th, 1865 Grant accepted the surrender of Lee at Appomattox and the war was virtually over. There were still some armies and guerilla bands not yet under Union control but the conspirators knew it was over. Washington still remained an armed camp as if an invasion remained a distinct possibility. But now kidnapping for a victory gave way to murder as revenge. Booth was to kill the President. Payne and Herold were to kill the Secretary of State. And indeed Seward received several knife wounds by Payne. Atzerodt was to kill the Vice President but at the last moment was paralyzed with fear and did nothing. So almost overnight the plot to kidnapwhich Mary Surratt surely knew ofswitched to assassination. To what extent she knew of these change of plans is subject debate.

Now as she stood with the other three justice was to be addressed.

Points to Ponder

1. Of what crime is Mary Surratt guilty?

2. Who should have jurisdiction over this case?

3. Why might jurisdictional issues be come important?

4. What concrete evidence is there to Mary Surratt's culpability?

5. What is circumstantial evidence and how might it play out in this case?

6. If guilty of any crime what might be the most fitting punishment for Mary Surratt?