

# HOWARD TO FINISH APPEAL FOR FRANK EARLY WEDNESDAY

**Governor Forced to Adjourn  
Hearing Monday Afternoon  
to Take Trip to Athens.  
Slaton's Decision in Case  
Expected Either Wednes-  
day or Thursday.**

## **STORY TOLD BY CONLEY NECESSARY TO CONVICT FRANK, SAYS HOWARD**

**The Ex-Congressman Tells  
Why the Defense Did Not  
Cross-Examine the State's  
Witnesses Who Charged  
That Prisoner's Character  
Was Bad.**

While Attorney William Howard was in the midst of an impassioned argument in behalf of Leo M. Frank, Governor John M. Slaton Monday afternoon at 6:10 o'clock adjourned the hearing on the commutation plea at the capitol until Wednesday morning at 9 o'clock, at which time it will be concluded.

A decision is expected by Thursday. Governor Slaton left last night at 8:30 o'clock for Athens, where he goes to deliver the commencement address at the University of Georgia. He carried with him a volume of documentary evidence and court record bearing upon the Frank case, which he intends to study on the train and at leisure moments in Athens.

Every possible effort has been made to expedite the hearing and to reach an early decision, and the conservation of time has been one of the most important factors in the hearing. The speech of Mr. Howard had lasted three and a half hours Monday afternoon, and will, in all probability, continue for two hours or more tomorrow morning.

### **Attacks Brown's Plea.**

The opening words of the attorney were an answer to former Governor Brown's address of Saturday, in which the former executive had argued against commutation. He charged Mr. Brown with inconsistency, and, in refutation of the former governor's argument, spoke of a number of pardons and commutations granted in Brown's official career that were inconsistent, he argued, with the ex-governor's protest against clemency for Frank.

"I wish at the very outset," stated Mr. Howard, "to admit that Mr. Brown was entirely within his rights as a citizen and in view of his former high office to present to your excellency an argument against commutation. But Mr. Brown must stand solely upon his reasons for argument. When he undertakes to draw upon his own practices, the sincerity of his purposes should be borne out by his record in office.

"If it happens his own record is at variance with what he asks you to do, it is becoming of you to look into his own official conduct.

"He intimated that it would be abuse of pardoning power to attempt to interfere with the verdict of the courts, but it appears that on June 18, 1913—but a few days before his retirement from office—he issued forty pardons, twenty-five of which were to convicts sentenced for murder.

"I would judge this a liberal dispensation of the grace invested in the governor by our system, which he seeks to deny your excellency. Governor Brown, I am afraid, misconceives the real pardoning power—it is essentially a bestowal of mercy from sovereign to unfortunate, and is one of the great boons of our civilization.

### **Mercy Is Essential.**

"Governor Brown cannot sincerely argue that the question of mercy does not enter into the pardoning power invested in the executive office. It is one of its most essential elements.

"In his attack on commutation in the present case, the distinguished ex-governor seems to have lost sight entirely of the gracious rules laid down by the pardoning system of our laws—and more so of his own merciful acts of office. In direct conflict of the rules he sought to apply to the Frank case, he pardoned Lee Myers, of Bibb county, who was sentenced for twenty years and served only one, and in whose case a letter was sent by Judge Hawkins recommending mercy. Governor Brown, however, acted solely upon the record in the case. He substituted, in that instance, his own reasoning for that of the jury.

"Other similar cases were those of Wash Dean, of Houston county; J. W. Elyea, of Troup, and Henry Harper, who was pardoned in 1909.

"The astute Mr. Dorsey, as able as he is, has given away his case—he states that, with Conley eliminated, there is a chain of circumstantial evidence sufficient to convict Frank. But there isn't. There isn't a single circumstance that will associate Frank with the corpus delicti. Every single, solitary bit of evidence on which a jury bases its verdict of guilty must point unerringly to the prisoner's guilt.

### **Amounts to Suspicion.**

"But Dorsey's chain of circumstances amounts to no more than suspicions and a series of descriptions of Frank's possible mental state. There is not a single substantial strand in his entire 'cable of guilt.'"

"What does it matter that Frank was nervous on the morning of the crime's discovery; that he shivered en route to the city; that he asked for coffee; that he looked furtively; if at all, upon the body of the slain girl?

"You may consider carefully every word of Dorsey's argument and you won't find a single link or circumstance that isn't susceptible to an explanation that exonerates Frank.

"You can't, according to law, take a word of the trial record and touch a single hair on Frank's head.

"Not until Conley came into the case did Frank become connected with the corpus delicti. And it is absolutely

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# HOWARD TO FINISH APPEAL FOR FRANK

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necessary that the prisoner be undeniably connected with the body of the victim before guilt can be established."

The speaker then began to show the connection of Conley with the case. He described the murder notes and asked, who had written them.

## Conley Wrote Notes.

"Conley admitted he wrote them, even though he claimed Frank dictated them, he said.

"What more evidence do you want? We know he wrote the notes; that he was stationed in the dark near the stairway, and that Mary Phagan came down from the second floor with a handbag containing \$1.20 that has never been recovered.

"Conley was in position to observe her and was within easy distance to make one step and grab her handbag and her throat. Circumstances were most propitious for him to commit the robbery, stifle her outcries and then commit the subsequent murder.

"Was he the sort of negro to commit this series of acts? He was young, a drunkard, master of a concubine, lustful, licentious, and a criminal with a record of seven prison sentences. More than that—he was generally penitence and always in need of money, perpetually borrowing from persons around the factory.

"That was the character of man who lurked in the darkness of the first floor that fatal day; lecherous, lascivious, drunken, debauched, penniless. His first blow was struck for robbery. But was robbery the only crime? Did her body reveal other violations than robbery? There were unmistakable evidence of rape, and, when I say it, I mean the jungle brand.

"Yet the solicitor argues that she was violated in an unnatural way by Frank. To the contrary, we have the word of a number of doctors that there was no such violence, and Dr. Willis Westmoreland testified that the violence ascribed by Mr. Dorsey was in no wise proved.

## Work of a Beast.

"The case against Conley is too evident. Suppose you put Frank on trial on Conley's story. The first link against him is the negro's story of the dictation of the notes. There is nothing strange or remarkable about the fact that a criminal caught will adopt a ruse to shoulder the crime upon someone else.

"To begin with, the notes are not the mental act of Frank. The language and form of expression are that of the negro, and not of the cultured mind of —."

At this juncture Mr. Howard was interrupted by Governor Slaton, who made this inquiry:

"Does anything in the record of evidence show that there was a desk in the basement at the time of the murder?"

He was assured that the record would be examined for this purpose. It was not disclosed, however, at the time.

Following which, Mr. Howard took up and discussed at length each of the three Conley affidavits made before the Frank trial, in which he repudiated three confessions, the third being the substance of the story to which he testified on the witness stand.

## Reads Affidavits.

When the affidavits had been read, he said:

"Here are the corrupt lessons learned in the school over which Harry Scott and John Black presided, and on which the courts would hang an innocent and worthy white man. The trouble with the case is too many people have fooled with it who don't know the negro.

"How anybody can believe Conley's story in the face of all these circumstances, and more especially his network of lies, is beyond my understanding. You can't, in any spot in the evidence, put Conley in a place where he'll stand hitched to a semblance of the truth. He has never hesitated to change or alter any fact that suited him.

"It meant hell for somebody, but the line of least resistance to Conley and his tutors."

While the speaker was reviewing that part of the story of Conley bearing upon the charges of perversion, Governor Slaton interposed:

"Why wouldn't it have been consistent for Conley to have charged natural lasciviousness instead of perversion," he asked.

"Because," replied Mr. Howard, "doctors had testified to the effect that there was no evidence of violent rape, and, more likely, because perversion is such a degrading charge.

"In that same respect, perversion, insinuations and suspicions constitute the pith and marrow of the Frank case, and there is nothing but suggestion and innuendo to substantiate it. You can't insinuate a man into the toils of the law. They have relied upon suspicion to enmesh him. And, at the instance of a degraded, bestial negro, they made Frank an easy victim."

Here Mr. Howard turned his attack from Conley to C. Brutus Dalton, the witness who had supported Conley in his story of lasciviousness on the part of Frank.

## Does Not Charge Perversion.

"But even Dalton, the man without character, the thief," he resumed, "does not testify to a single fact that manifests perversion."

Mr. Howard went at length to explain the motives of Frank's lawyers in failing to cross-examine the twelve girls put upon the stand by the state as character witnesses.

"It is held against us because we did not cross-examine these character witnesses," he said, "who stated that the

prisoner's character was bad. Why did we refuse? Simply because what they would have answered would not have been admissible except to test the correctness of their original statement. His lawyers were acting wisely and prudently—there were abundant reasons. The women and girls could have said anything—they could have even given hearsay testimony.

"Don't we know—and I'm sure you know—that this question of telling the exact truth about our neighbor's character is the hardest thing on earth to do. It is thus with big and little young and old. The hardest thing to do in art is make a perfect lens-mirror for telescopes. The character witness, in our process of law, is a personification of the difficult lens-mirror.

"Instead of reflecting the truth, he invariably reflects a mirage.

"I don't doubt that there was no wiser decision made by Rosser and Arnold in their defense of Frank than to let the character testimony alone."

It was at this point that the governor, forced to prepare to catch the 8:30 o'clock train, called adjournment.

At the conclusion of the morning's session, which was brought to a close at 1 o'clock, Governor Slaton, accompanied by two representatives of Frank's counsel and by Solicitor Dorsey and an aide, visited the pencil factory, where a tour of inspection was made in order that Governor Slaton might visually familiarize himself with the scene of the crime.

No newspaper reporters accompanied them. The examination was made in private. It had been asked by the governor that the party be permitted to go by themselves.

The concluding words of Solicitor Dorsey's argument were dramatic. "Judge Roan's letter," he says, "is nothing more than a repetition of his remarks at the time he refused to give Leo Frank a new trial. No envelope has been shown in which the letter came to its recipients, and I am aware that it was procured not wholly in response to a letter from the attorneys who received it, but at the personal instigation of an Atlanta attorney whom I can name, and who went to the sanitarium in which the judge was confined to importune him to write the missive.

## Not Without Mercy.

"I am not without mercy, your excellency. You are aware that I have been before you to ask commutations of sentences of the poor and needy. But this man's guilt was established in a trial that lasted thirty days. And I am only solicitous that the laws be fairly and impartially enforced.

"I am fearful that if the verdict in this case is not sustained against a man of influence, that the consequences to the state-wide respect for the law will be exceedingly injurious, not to mention dangerous."

Opening his address, Mr. Dorsey said: "During Frank's trial the state put upon the witness stand ten girls who testified that Frank's character for lasciviousness was bad, and it was this lasciviousness that furnished a motive for the crime. Frank's counsel could have cross-examined these witnesses, yet failed. It therefore put the state at a handicap, because, under such circumstances, we were unable to have them go into specific instances.

"It was disclosed that Frank was in a habit of leering at pretty girls of his working force, invading their dressing rooms and spying upon them when they were not completely clothed. His explanation for this was the lame one that he was seeking to break up flirting during working hours. It was shown that he once held a meeting with one of the foreladies in a dressing room and remained therein fifteen minutes with her.

"Mary Phagan was a beautiful and well-developed girl. Despite his own stories to the contrary, it was proved that Frank was acquainted with her. He was seen, on one occasion, making advances to her, which she sought to repel. The Saturday on which she was murdered was a holiday. Making out the payroll, he discovered that she would come on that day—and that was why he refused to give her money to Helen Ferguson.

## Conferred With Conley.

"Furthermore, we proved by Mrs. Waites, a woman of unquestioned character, that Frank was seen conferring with Conley at Nelson street at the time Saturday morning when Conley says Frank arranged for the negro to come and watch for him during the noon hour that Mary Phagan would come for her pay."

The solicitor went into practically every vital detail of the trial—summing it up as thoroughly as he had done in his jury speech. He dwelt upon the testimony of the factory worker, Mell Stanford, who had swept the factory on the Friday preceding the day of the crime, and perceived no blood upon the lathing machine or adjacent flooring, where blood was found the following Monday, and at which spot Mary Phagan was, according to the state, slain.

He spoke of the blood spots that had been, as he charged, "planted" upon the first floor more than a week after Frank's arrest in effort to point the finger of suspicion more firmly in Conley's direction by indicating that the crime was committed on the first floor. He pointed out the alleged contradictory statements of Frank at the coroner's inquest and the trial, chief of which was his assertion regarding his whereabouts at the time Monteen Stover reached his office and found him absent.

## Rogers and Black.

Dorsey then went into the testimony of Boots Rogers and John Black, the latter of whom is the police headquarters detective, and the former the ex-county policeman, now a detective in the employ of the William J. Burns agency.

He spoke of the nervousness manifested by Frank when Rogers and Black went in an automobile to the Frank home early on the morning of the discovery of the crime to bring Frank to the factory in answer to a telephone call from Detective John Starnes.

Frank, they had testified, was visibly agitated, made a number of conflicting statements, and did not gaze upon the body of the girl when the trio entered the undertaking establishment to look at the corpse.

The testimony of George Epps, the newsboy chum of the murdered girl, that Frank had made advances upon her, and that she was growing fearful of him, was referred to by Dorsey. The testimony of Epps was also used by Dorsey to establish the time that Mary Phagan reached the factory.

Other elements of the state evidence used by Dorsey in his arguments were the bloody shirt found in Newt Lee's home, which, Dorsey charged, had been planted; the blood spots found on the second floor, establishing the theory that the murder had been committed there; Frank's quick employment of an attorney before his arrest had been arranged, and the hair found upon the lathe, identified by Magnolia Kennedy as having come from the head of Mary Phagan.

Dorsey also declared emphatically that the state had always contended that Frank was a pervert, and that his perversion actuated the crime. This he stated in answer to a question from the governor.

## Dr. Wilmer's Address.

Dorsey's speech followed an address by Dr. C. B. Wilmer, pastor of St. Luke's Episcopal church, who presented a petition pleading for commutation from a group of prominent ministers of the city.

Dr. Wilmer asserted that it was impossible for Frank to have had a fair trial owing to the strong influences that prevailed both in and outside the courtroom. The questions of politics and race prejudice, he said, that had been injected into the case, had also tended to injure Frank and hamper the fairness of his trial.

"If there is any doubt in your mind as to what to do," he said, "there is no doubt what to do. Unless you, the governor of this state, can say in your own mind that this man is guilty beyond the shadow of a doubt, you cannot afford to let him go to death upon the gallows."