

FRANK A MOB VICTIM, RABBI WISE ASSERTS

Doctor Pleads for Commutation of Sentence in the Hope That Time May Reveal Truth.

SAYS TRIAL WAS NOT FAIR

Submits Facts to Show Accused Was Not Proved Guilty and Says Court Was Terrorized.

Dr. Stephen S. Wise, Rabbi of the Free Synagogue, yesterday raised his voice in the country-wide plea to the Governor of Georgia to commute the death sentence of Leo M. Frank to life imprisonment. Dr. Wise did not ask that Frank be pardoned; he did not even assert Frank's innocence; he based his plea for commutation on his belief that Frank had not had a fair trial for the murder of Mary Phagan and on the hope that eventually his guilt or innocence would be proved by legal evidence. Dr. Wise gave his chief justification for his plea in these words:

"If Leo Frank is hanged, he will have been lynched."

The fate of Frank, the individual, was not dwelt upon by Dr. Wise as the most important issue of the case. The matters of concern, the speaker said, were that a man who had been denied a fair trial by law might be put to death in the name of the law, and that although responsible citizens of Georgia believed that Frank had not had a fair trial they were muzzled by fear of social and economic damage resulting from a despotism of hostile public opinion. The honor of the State of Georgia, Dr. Wise said, was involved in the issues raised by the case.

Dr. Wise delivered his plea at the regular Sunday morning service of the Free Synagogue in Carnegie Hall, and, although it rained for some time before the service, more than 1,500 persons filled the main floor, the two tiers of boxes and a part of the dress circle of the auditorium.

Dr. Wise began his sermon with an emphatic disavowal of racial interest in the Frank case. He said that, although he did not believe in the principle of capital punishment, he would not speak against the death of Frank if he believed that Frank had had a fair trial.

Spirit of the Law Violated.

Dr. Wise said that to understand the man's condemnation it was necessary to know that the City of Atlanta was "swept off its feet by a gust of passion when the crime was committed for which Frank was tried." He continued:

"I am not unmindful of the duty of every American citizen to accept the judgments which are registered by the courts as final. If then I venture to make a last plea touching Leo Frank, it is because I believe, yea I know, that, though the forms were observed, the spirit of the law was violated in the trial which resulted in the conviction of Frank, and that it was the very observance of the outward forms of law, while its spirit was being violated, which has forever made impossible the granting of a trial that should give to Frank the substance as well as the form of the law.

"I hold that Frank was denied a trial, in so far as the court was terrorized throughout the so-called trial, in so far as the jury were virtually under the necessity of condemning Frank, innocent or guilty, or sentencing themselves to the fate which they could not help knowing awaited them in the event of Frank's acquittal. In proof of the terrorization of the court, it needs but to be pointed out that the presiding Justice of the court found it necessary to arrange for the appearance of the militia in the event of the jury failing to find Frank guilty, and that Frank was warned against making a personal appearance in court upon peril of his life if acquitted he should be.

Frank Not Proved Guilty.

"That Frank was not found guilty beyond a doubt is established by two unassailable testimonies—the testimony of the presiding Judge at the trial, who said that the evidence did not convince him either of the guilt or the innocence of Frank, and the word of Justice Holmes of the United States Supreme Court: 'I very seriously doubt if the petitioner has had due process of law.'

"Seeing that the spirit of the law has been violated in his trial from the beginning to the end, if Frank is to be hanged, he will have been lynched just as truly as if he had been slain by the mob in the courtroom. There is such a thing as mob assassination, even though it be without the accompaniment of mob violence, and a mob may exert a pressure which will do a man to death amid all the technicalities of legal observance. Memorable, nay epochal, are the words of Justices Holmes and Hughes recorded in the dissenting opinion of the United States Supreme Court:

"Mob law does not become due process of law by securing the assent of a terrorized jury. We think the presumption overwhelming that the jury responded to the passions of the mob. It is our duty to declare lynch law as little valid when practiced by a regularly drawn jury as when administered by one elected by a mob intent on death."

Georgia People Terrorized.

Rabbi Wise next referred to the persons who believed Frank had not had a fair trial, but who were afraid to speak. He said:

"I know there are numbers of men throughout Georgia and the nation who believe that Frank is innocent, who know as I know that he has never had a fair trial, and who dare not lift up their voices because of the dread of damage and hurt of one kind or another to themselves. And this is one of the gravest aspects of the entire matter, for in a democracy there must be freedom of opinion and untrammelled freedom of utterance.

"I do not ask for the liberation of Frank at this time, because, having been denied the essence of a trial, he has been proved neither guilty nor innocent. Neither his innocence nor his guilt was established in that court of law which in its ultimate decision registered the unmistakable pressure of the mob spirit. I do not ask that Frank be declared innocent, I do not ask that he be pardoned, nor that any extraordinary

clemency be shown him. But until he be proved guilty he ought not to die.

"If, on the morrow, Frank's guilt be established, the wrong has been and will continue to be punished, for he will have begun to dwell and throughout his life would abide under the shadow of that living death, which we name life imprisonment. If, on the other hand, it come to pass some day that his innocence be established, it will be well for him, but it will be ever better for the Commonwealth of Georgia."

Dr. Wise closed with an assertion of his belief that the Governor of Georgia would save Frank and his State by commutation of the death sentence.