

# HOPE FOR FRANK IN FINAL FIGHT

## Prison Board Begins Tomorrow Hearing on Plea for Com- mutation of Sentence.

### MILLIONS URGE CLEMENCY

Chicago, Boston, and Denver  
Committees on Way to At-  
lanta with Big Petitions.

### GEORGIA FEELING CHANGED

Marked Revulsion of Sentiment in  
Frank's Favor — Hearing  
May Consume a Week.

Special to The New York Times.

ATLANTA, Ga., May 29.—The final battle to save Leo M. Frank from the gallows and to give him an opportunity to prove that he was unjustly convicted of the murder of Mary Phagan will be opened on Monday in the Capitol before the Georgia Prison Commission, and if surface indications count for anything the struggle will in all probability result in a decision favorable to the condemned man.

Frank, his attorneys, and his friends are optimistic as to the outcome of the hearing on the petition for commutation of the death sentence to life imprisonment. They base their optimism on what they believe to be a marked change in Georgia sentiment in Frank's favor. This change is the result of the almost daily discussion of the case which has gone on in the newspapers of the State in the last few weeks—a discussion precipitated by the thousands of appeals sent by persons outside the State to Governor Slaton and the Prison Commission, urging that clemency be shown to the condemned man.

These outside appeals have served to arouse Georgians to a sense of how the country at large regards the case and have caused them to study the circumstances under which Frank was convicted, with the result that the belief has grown by leaps and bounds that the State cannot afford to hang Frank and that the very least that can be done is to commute the death sentence, thereby giving Frank and his friends time to prove that he is innocent of the crime for which he was convicted.

The Prison Commission which will hear Frank's plea for commutation consists of three members, T. E. Patterson, R. E. Latham, and W. H. Rainey. After hearing the arguments advanced for and against commutation they will make a recommendation which will go to the Governor, who has the power to approve or disapprove. As a rule the Governor approves the action taken by the commission, and so its decision may be considered as practically final.

With the hearing so near at hand there is naturally much forecasting as to how the Commission will vote on the plea for commutation. Gossip at the Capitol has it that certainly two of the Commissioners will favor commutation and very probably all three. In fact, it is asserted that two of the Commissioners who have followed the case from the beginning and attended Frank's trial expressed themselves soon after the conviction to the effect that the sentence ought not to be carried out. It will not be at all surprising, if the three Commissioners vote unanimously in favor of commuting the death sentence.

#### The Spokesman for Frank.

W. M. Howard, formerly of Lexington, and now of Augusta, an ex-Congressman and one of the best known lawyers in the State, has been engaged to present to the Prison Commission and the Governor Frank's petition for commutation. Mr. Howard for twelve years represented the Eighth District in Congress. Upon his retirement from Congress, he moved to Augusta and formed a law partnership with Enoch H. Callaway. Previous to his election Mr. Howard for twelve years was Solicitor General of the Northern Circuit.

While he was Solicitor General Mr. Howard took part in a number of notable criminal trials and earned the reputation of being one of the ablest lawyers in Georgia. With Judge Andrew J. Cobb of Athens and Judge Enoch H. Callaway of Augusta he represented Judge Emory Spear of the United States Court in the Southern District of Georgia, before the Congressional Investigating Committee.

Mr. Howard has made a careful study of the whole case, from the time of the crime at the pencil factory, through Frank's trial and his subsequent appeals to the courts. He is very confident that Frank will obtain a commutation and that the people of Georgia will approve the finding. He says:

"The people of Georgia are rapidly coming to the conclusion that Leo Frank is innocent of the murder of Mary Phagan, or at least that the doubt of his guilt is so grave that his sentence should be commuted to life imprisonment."

A week may be consumed in the hearing before the commission, as it is the purpose of that body to go into the case thoroughly. Nothing sensational is expected at the hearing except the possible production of a letter said to have been written by the late Judge Roan, who presided at Frank's trial, in reference to the case. Judge Roan, in refusing Frank a new trial, said that he did not know whether the prisoner was guilty or innocent, but asserted that he was not the one to be convinced. That was a matter for the jury, and as the jury was convinced he, therefore, refused a new trial.

It is asserted that the Frank case preyed on Judge Roan's mind and that some months before his death he wrote a letter in which he said that Frank ought not to be executed, and that if he (Roan) were living when the case reached the Prison Commission he would appear before that body and plead for pardon or commutation. It has been reported for some time that Frank's lawyers have this letter and that it will be presented at the hearing.

Much curiosity is expressed as to whether Solicitor General Hugh Dorsey, who prosecuted Frank, will appear before the commission and oppose the plea for clemency. If he does appear it will be something he has never done before.

As the Solicitor is strongly opposed to commutation, it is probable that he will appear before the commission and fight Frank's plea. Following custom, the commission notified Dorsey of the plea and asked if he had anything to say. Dorsey replied, setting forth the reasons why he thought commutation should be refused Frank. This letter has not been made public, but it is said the Solicitor makes a complete brief of the case, showing its progress through the courts and asserting that if there is anything in the way of Executive clemency it should be a full pardon, over the action of all the courts.

#### Complete Brief for Frank.

The brief to be presented by Frank's attorneys is complete. It is a minute chronology of the case from the date of the crime's discovery up to the application for clemency.

The three basic reasons for the appeal are given as (1) the doubt of Judge Roan, as expressed when he denied the first motion for a new trial several months after the original verdict, (2) the dissenting opinion by Chief Justice Fish and Justice Beck of the Supreme Court, (3) the dissent of Justice Hughes and Justice Holmes of the United States Supreme Court. The dissenting opinion of Justices Holmes and Hughes is to be submitted in full to the prison body.

It is reported that Solicitor Dorsey has affidavits to the effect that two of the

Commissioners said months ago that Frank was innocent. Just what the Solicitor intends to do with these affidavits, if he has them, no one seems to know.

The change of sentiment in Frank's favor since the United States Supreme Court decided that there was no legal reason for annulling the verdict of the Georgia courts has been most remarkable. That decision brought the people face to face with the fact that Frank, so far as the courts were concerned, was doomed. This put them to studying the evidence against him and the circumstances that attended his trial, and the more they studied the stronger grew the feeling that there was grave danger of hanging a man who might be innocent.

Then, too, the United States Supreme Court decision was taken as vindicating the Georgia courts of the charge that they had been dominated by the mob spirit, and as the anger caused by that charge lessened the animosity against Frank also lessened. As a result thousands of Georgians who have been bitter against Frank are now asking the Commission and the Governor to show clemency.

#### Editor Wants Commutation.

Representative of this class is Thomas W. Loyless, editor of The Augusta Chronicle. Mr. Loyless has been bitterly anti-Frank and virulent in his criticism of those persons and newspapers outside of Georgia who have attacked the Frank verdict. Mr. Loyless has changed and is now appealing to the Prison Commission not to allow Frank to be hanged.

"Personally, I have always believed," he says, "and I still believe, Frank to be guilty of the crime of murder; which, however, I think he committed more as the result of an accident, following an attempted assault, than through any premeditation."

"But I do not know, and no one knows, this to be the fact beyond a doubt. I might even say a reasonable doubt—and I would not send any man, white or black, to his death without the practical certainty that he richly deserved such a fate. Moreover, Frank was convicted, largely, but not solely, on the unsupported evidence of an admittedly depraved negro, and under conditions of great public excitement—such as are hardly conducive to an entirely fair and proper administration of law and justice. For these reasons I stand for commutation of the death sentence to one of life imprisonment."

"In this way, it seems to me, we might best live up to our State's motto—Wisdom, Justice, Moderation—and I am perfectly confident, from the hundreds and hundreds of expressions I have heard from the most representative people of this and other sections of the State, that the intelligence and character of Georgia will strongly approve of such a course."

The large element represented by The Atlanta Journal believes Frank is innocent and insists that he was not fairly tried. The Journal has always asserted that the mob convicted Frank, and in an editorial urging clemency, it says:

"The people of Georgia look back upon his trial, which was conducted amid the howls and clamor of a packed courtroom, and the echoes of a threatening crowd upon the street; and, remembering, they ask, 'Was it possible that justice could then be done?' They recall that in the subsequent reviews of his case by higher courts questions of legal procedure alone were passed upon. They realize that the essential evidence and the broad merits of his cause have been presented to only one jury, and that a jury which sat under the glare and heat of mob consciousness. Pondering these things, fair-minded people ask: 'Can our State afford, in honor and justice, to hang a man who really has not been convicted and whose blood, if he be innocent, will rest upon our heads in tragic and everlasting shame?'"

"His death sentence rests wholly on an unfair trial and on the testimony of a depraved and drunken negro who in the mature opinion of his own attorney is the real culprit of the crime."

"Now that every recourse to obtain a new and a fair trial has failed, the Pardon Board and the Governor are the only and the final hope of justice."

#### Assaults Unfair Trial.

"We know that the rank and file of the Atlanta bar are convinced that Frank's trial was unfair, and we believe that the rank and file of the entire Georgia bar are of the same opinion. With the utmost conservatism we can go further and say that a great majority of the people of Georgia feel that Frank's guilt has not been proved beyond a reasonable doubt and that a great many of them consider him innocent."

"It is not a question of Frank's acquittal and freedom, but simply a question of commuting his sentence to life imprisonment, in order that truth and fairness may yet be brought forth. The Pardon Board ought to recommend this commutation, and the Governor ought to grant it. They should do so for the honor of the State, for the cause of human justice, and for that higher law 'whose seat is the bosom of God.'"

The Journal's assertion in regard to the unanimity of opinion of lawyers that Frank was not fairly tried is true. It may well be doubted if ever in criminal history the lawyers of a State were so nearly a unit in asserting that a defendant did not have a fair trial as are the lawyers of Georgia in saying that the trial of Frank was a mockery of justice. Practically all of them are appealing to the Governor and the commission to commute Frank's sentence.

In a letter to the Prison Commission Judge Arthur Powell, who was for several years a member of the Court of Appeals, says:

"I was an intimate friend of Judge Roan. If he were living I would not attempt to speak for him. Since his mouth is closed by death, I feel that it is due to him and to Frank that I should give you the benefit of what I know of how he felt as to the defendant's guilt."

"Frequently during the trial he advised with me, sending for me often to come to the Court House. I cannot with brevity detail the conversations I had with him. The substance of what he told me is that he did not believe the defendant to be guilty. He expressed this opinion, in substance, to me at varying times during the trial."

"At his request I prepared portions of his charge to the jury. I mention this fact merely to show that I had opportunity of intimate knowledge of the state of his mind."

"Why with these views he did not grant the new trial, which from his conversation with me I fully expected him to grant, I do not know and cannot explain. I have known Judge Roan for a number of years, and I can say he was not himself during the trial and afterward."

#### Frank Innocent, Says Former Judge.

"Furthermore, I wish to say that I was present in court a number of times during the trial, and kept up tolerably well with the evidence. I had no interest in it. If I was theoretically interested it was on the side of the State, as my partner, Mr. Hooper, was engaged in the prosecution. What I saw of the trial convinced me that the defendant was innocent. To any critical mind there must be grave doubt of his guilt. As a citizen of the State, let me say that I hope he will be pardoned or that his sentence will be commuted."

"I can say further that I have recently been in various parts of South Georgia and have been surprised to find how strong and practically unanimous the sentiment there is against his being hanged, though there was considerable feeling against him in that section at the time of the trial."

Colonel P. H. Brewster, one of the veterans of the Atlanta bar, senior member of the law firm to which Solicitor Dorsey belongs, in an appeal to Governor Slaton, after reviewing the case, says:

"I urge you to save this man from the gallows and commute his sentence to life imprisonment and you will have done the great State of Georgia a service. You will have vindicated the law and left it possible, if in the future his innocence is demonstrated, the State will not have committed so great a wrong as to have executed an innocent man."

Hollins N. Randolph, attorney for the Federal Reserve Bank of this district, says: "I have carefully read the records of the case and there is in my mind a reasonable doubt as to the guilt of the accused."

Attorney W. A. Wimbish, prominent in cases before the Interstate Commerce Commission, says: "I favor commutation of the sentence of Leo M. Frank, without undertaking to determine his guilt or innocence, because Frank was convicted wholly upon circumstantial evidence, not even Conley claiming to have seen Frank commit the crime or any act that led immediately to death."

Judge Andrew J. Cobb of Athens, for-

merly of the Georgia Supreme Court, and Judge W. H. Felder of Macon, for years of the Bibb Circuit, have written in similar vein. Both believe that the evidence is not conclusive and that, under the circumstances, the State cannot afford to inflict the death penalty.

#### Ministers Want Commutation.

Similar unanimity is manifested by the bankers and ministers. Every banker in Atlanta has appealed for commutation, and the ministers have organized and will appear in a body before the Prison Commission. Dr. C. B. Wilmer, rector of St. Luke's Protestant Episcopal Church, is responsible for the organized action of the ministers. Dr. Wilmer recently spent an afternoon with Frank in the latter's cell, and he left with the conviction that Georgia could not afford to inflict the death penalty on him. He called a meeting of the ministers, told of his visit to Frank, and of the impression made on him by the prisoner.

The ministers were so impressed by Dr. Wilmer's statement that they decided to organize and present their views to the Prison Commission in favor of commutation. Acting with Dr. Wilmer are Dr. Charles W. Daniel, pastor of the First Baptist Church; Dr. John E. White, pastor of the Second Baptist Church; Dr. Jacob L. White, pastor of Tabernacle Baptist Church; Dr. H. M. Dubose, pastor of the First Methodist Church, and Dr. C. O. Jones, pastor of Trinity Methodist Church; Dr. Richard Orme Kinn, pastor of the North Avenue Presbyterian Church. Speaking for the ministers, Dr. Daniel says:

"A number of the ministers who have discussed the matter feel that justice would adequately be served and the consequences of a mistake avoided by commuting Frank's sentence to life imprisonment. This feeling is based on the grave doubt as to his guilt."

Despite the great change of sentiment in Frank's favor there is a small but noisy element in Georgia which is insisting on the carrying out of the death sentence. Thomas E. Watson, once Populist nominee for the Presidency, is the spokesman for this element. Watson publishes a weekly paper at Thomson, Ga., called the Jeffersonian, and for months he has been filling it with abuse of Frank and his friends. His articles are appeals to prejudice and passion. He has become especially violent on the eve of the hearing before the Prison Commission and is practically threatening the Governor and the commission if they interfere with the verdict.

Watson is bitter against Commissioners Davison and Patterson. He goes so far as to say that if Frank's sentence is interfered with the action of the commission will be made an issue in the next State campaign. Ex-Governor Joseph E. Brown agrees with Watson and has written a letter protesting against any interference with the verdict. Watson and Brown, however, represent a small minority and no one believes that their threats will have any influence on the commission.

Governor Slaton, who will pass on the finding of the commission, if it reaches him before his term expires on June 26, has given no hint of his attitude. The Governor, however, is one of the ablest lawyers in the State, and those closest to him believe that he views the case as do his fellow lawyers.

Should Governor Slaton go out of office without passing on the recommendation of the commission the final decision will be made by Judge Nat E. Harris of Macon, who will be inaugurated on June 26. The Governor-elect has indicated his attitude as follows:

"You can just say for Nat Harris that if the matter of dealing Executive clemency to the condemned man is to be considered by him, the entire outside world will not be taken into consideration one bit. It is entirely a Georgia matter, and if I am to consider the case I shall consider it altogether from a Georgia basis, with the interests of Georgia and the interests of Georgia persons at heart."

Governor-elect Harris made the above statement after spending several hours in reading appeals for clemency sent by persons outside the State.

#### Flood of Appeals.

The appeals in behalf of Frank from outside the State are a remarkable feature of the case. They have come from everywhere and from all sorts and conditions of men. It is estimated that when the hearing opens on Monday appeals signed by many more than a million persons will have been received. Governors, Congressmen, women's organizations, and even little girls have made appeals for clemency. Among those who have written are Senator Borah of Idaho, Senator Reed of Missouri, Senator Newlands of Nevada, Senator Thomas of Colorado, Senator Sherman of Illinois, Fred A. Delano of the Federal Reserve Board, ex-Secretary of State Philander C. Knox, Myron T. Herrick, former Ambassador to France; Judge G. B. Arnold of St. Louis, and Judge Ben Lindsey of Denver. Governors who have appealed for Frank are Dunne of Illinois, Brumbaugh of Pennsylvania, Hall of Louisiana, Ferguson of Texas, Hatfield of West Virginia, and Ferris of Michigan.

Joint resolutions appealing for clemency have also been sent by the Legislatures of Michigan, West Virginia, Pennsylvania, Texas, Tennessee, and Louisiana. These appeals by Governors and Legislatures are said to be without precedent in the history of the United States.

By the irony of fate, while Leo M. Frank is making his last desperate fight to escape a shameful death, Jim Conley, the negro who confessed that he aided in disposing of Mary Phagan's body and on whose evidence Frank was convicted, will be released from the chain gang. Conley, after Frank was convicted of murder, pleaded guilty to being accessory after the fact, and was sentenced to twelve months on the chain gang. His term expires two days after the hearing begins on Frank's plea for clemency. Conley's term was lessened forty-four days for good behavior.

#### 800,000 SIGN FOR FRANK.

#### Two Crates of Petitions Sent to Georgia by Women.

The Anti-Death Penalty Committee of the Women's Peace Society, which has been working for three weeks at the Cosmopolitan Garden at 46 West Twenty-third Street, shipped two large crates containing 800,000 signatures to a petition for clemency for Leo M. Frank to Governor John M. Slayton of Georgia.

All of the signatures were obtained in three weeks by the committee and a number who volunteered assistance. On the committee were Elberta K. Shipley, Chairman; Emma D. Muller, Mrs. D. J. Agars, Louise de Quo, Mrs. Ethel Stewart, Mrs. M. Bell, Miss A. Peal, Julius Glassman, Julius Goldsmith, J. Rappaport, Edward Farrer, and Sol Rosenblum.