

PHAGAN TOWNSFOLK AT FRANK HEARING

Their Views on Murder Case Ex- pressed to the Georgia Prison Commission.

COMMISSION SHOWS DOUBT

Impression Made by Judge Roan's Letter—Chairman, Harassed, Prays Nightly for Guidance.

Special to The New York Times.

ATLANTA, Ga., June 1.—Herbert Clay of Marietta, Solicitor General of the Blue Ridge Circuit, headed a party of fifty of his fellow-townsmen, who filed into the audience chamber of the Georgia Prison Commission today and asked that the death sentence against Leo M. Frank be carried out.

The delegation was composed of prominent citizens of Marietta and Cobb Counties. Ex-Governor Joseph M. Brown and Elmer Phagan, uncle of Mary Phagan, the murdered girl, were members. Their visit was a dramatic sequel to yesterday's hearing, when many advocates urged the commission to recommend commutation of Frank's sentence. The commission, although it announced yesterday afternoon that the case was closed, decided today to reopen it to hear opponents of commutation.

"We are here to protest against your interference with the sentence imposed," said Mr. Clay, one of the three spokesmen for the delegation. "We are not a mob, we are law-abiding citizens who feel that the law ought to be enforced. We are doubly interested in the enforcement of the law in this case because Mary Phagan was a Cobb County girl, born there and raised there, and her grandfather was as good a citizen as the county ever had.

"As we understand the customs controlling this commission, it is usual for the Judge, the Solicitor, and the twelve jurors to join in the application for a commutation of sentence. Without these recommendations in this case we think the commission should not interfere.

"Something has been said about prejudice and an unfair trial. We believe the evidence shows this man guilty. The jury has said so. The courts have said so. If you are going to commute this sentence, capital punishment might as well be abolished. If the extreme penalty ever should be enforced, it is in this case.

"People outside of Georgia who have read biased, I might say subsidized accounts of this case have been urging you to commute this sentence. Because of that fact the people of Cobb County in a mass meeting assembled last night adopted these resolutions."

Mr. Clay read the resolutions, which urged the Prison Commission and the Governor to let the verdict stand.

The next speaker was Fred Morris, Representative-elect from Cobb County to the Legislature. Mr. Morris said:

"The people of Cobb County want to see the law enforced, impartially on rich and poor alike. It is unpleasant to come before you asking that a man be hanged, but we feel it is our duty as citizens. If Leo M. Frank is not guilty of the murder of Mary Phagan he should be freed. If he is guilty he should be hanged. There is no ground in this case on which a commutation of sentence can be asked."

Judge T. E. Patterson, of the Prison Commission, interrupted Mr. Morris, and said:

"What we are seeking to do is to arrive at a just conclusion, and your statement is interesting. Judge Roan in his letter says his mind was uncertain. He took the position that a man ought not to be hanged unless the jury and the Judge and the Governor were satisfied of the man's guilt. Judge Roan said he was not satisfied.

"The letter was published after that good man's death," Mr. Morris replied. "I have always felt that if he believed Frank should have had a new trial he would have granted it."

Judge Patterson: "But Judge Roan said it was possible that he showed undue deference to the verdict of the jury."

Mr. Morris: "But he doesn't express anything new in his letter."

Judge Patterson: "Yes, he does—a doubt as to his own action. Before his doubt was as to the correctness of the jury's verdict. In the McNaughton case there was not a reasonable doubt, but only an element of doubt. So we recommended a commutation."

The last speaker for the delegation was John T. Dorsey, (Dem.) Representative-elect from Cobb County to the Legislature. He said:

"We come before you representing 99 per cent of the people of Cobb County. Judge Roan's letter yesterday was characterized by Mr. Howard as a voice from the tomb. We bring another voice from the tomb—the tomb of W. J. Phagan, Mary Phagan's grandfather, a noble citizen who went to his grave with his mind fully made up as to the guilt of Leo M. Frank.

"As we see it, no one has asked for mercy in this case. No man would have the nerve and gall to stand before you and ask for mercy in the event Leo M. Frank is guilty. So the only argument advanced, as I see it, is that he did not have a fair trial, and that there is doubt as to his guilt.

"But Judge Roan said he had a fair trial, and denied him a new one. Then Judge Ben Hill said he had a fair trial, and the Supreme Court sustained him. Finally, the United States Supreme Court said he had a fair trial and declined to interfere. So I imagine there is no further room for argument on this point.

"It has been argued that Judge Roan had a doubt. But the Judge, under our system of the administration of law, does not have to be convinced. The Judge is there to see that the man on trial has a fair and legal trial. He is not a component part of the jury.

"I see Judge Powell says Judge Roan was not himself after the trial. That being the case, I don't see why importance should be attached to his letter. There is not a word here from the Solicitor or the jury in Frank's behalf.

"We feel that Frank has run his course in the courts. We believe it would be setting a dangerous precedent in Georgia for you to commute his sentence on account of a nation's interest.

"There were good men here yesterday from over the country who urged you to commute the sentence. But the nation has been inflamed by headlines saying an innocent man will be murdered unless we interfere. It is an easy matter, with such headlines, to get countless petitions. We do not believe the opinions of these people, who know nothing of the merits of the case, should affect the administration of law in Georgia."

R. E. Davison, Chairman of the Commission, said:

"We want all the light possible in this case. There is no member of this commission but wants to do right. This matter involves the most prayerful consideration. God in Heaven knows that

every night since this case has been before the commission I have gone to Him on my knees and asked for guidance.

"It should be understood that this commission does not confine itself to the recommendations of Judges and Solicitors. The action of this commission is not necessarily governed by such recommendations or the lack of them. There have been numerous times when the commission allowed a condemned man to be hanged, although the Judges and solicitors recommended a commutation of sentence, and likewise the commission has in other cases recommended commutation when there was no request from the Judges and solicitors. "I wish it understood by the people of Cobb County and over the State that the members of this commission are unbiased and have no prejudices in this case. We are, as it were, between two millstones, and we are being ground by both. The people may rest assured, however, that whatever this commission does will be done in thorough accordance with the dictates of the conscience and judgment of the members, after the most profound consideration."

The commission probably will take at least a week to consider the case. Chairman Davison said that meanwhile the commission would not close its doors against any one who desired to be heard either for or against Frank's petition; if any such come forward the commission would give him respectful attention.

Leo Frank and the negro Jim Conley will meet tomorrow afternoon at a hearing to be held in the jail in the case of Mrs. Coleman, mother of Mary Phagan, against the National Pencil Factory. Mrs. Coleman is suing the factory for \$10,000 damages for the death of her daughter. Frank and Conley will testify to the girl's death, and interesting developments are probable.

Conley, who was sentenced to twelve months as accessory to the murder of the girl, will go free tomorrow, getting two months off for good conduct.