

FRANK MAY AGAIN ASK FOR A WRIT

His Attorneys Discuss Advisability of Taking Case Before Supreme Court Once More.

SAY MOB RULED COURT

New Point for Appeal Was Mentioned in Opinion by Justice Holmes—Frank Re-sentenced Today.

Special to The New York Times.

ATLANTA, Ga., Dec. 8.—Attorneys for Leo M. Frank held a long conference today to decide whether they would appeal to the courts again, or take his case direct to the Pardon Board and the Governor, with a plea for a pardon, or, at least, a commutation of the sentence.

Should the first course be decided upon it is stated authoritatively that a new effort will be made to get the case before the United States Supreme Court, this time on the ground that Frank was convicted without due process of law in that the distinctly hostile attitude of the people in the courtroom and the crowds outside of it prevented a fair trial.

This point was made in the original motion for a new trial of the case, which was denied by Judge L. S. Roan, the trial Judge, and the Supreme Court of Georgia.

Should the attorneys decide to appeal to the courts, on this ground, they will first go to the Supreme Court of Georgia, and there ask for a writ of error, on which the case might be appealed to the United States Supreme Court. In event of the refusal of the State Supreme Court to certify to the writ, the same course as that pursued with the motion to set aside the verdict, would be followed.

The new turn of the case is particularly interesting in view of the opinion expressed by Justice Holmes of the United States Supreme Court, who said that he did not believe that Frank had a fair trial.

The "question of practice," which many lawyers of note say contributed principally to the failure of the motion to set aside, would not, it is said, be involved in such a motion as is now contemplated, for the reason that the point that Frank was not convicted with due process of law in that a mob surrounded the Court House was made in the first motion that followed the trial.

In other words, the attorneys now contemplate the taking of a point from the original motion as basis for an appeal to the high court, instead of a motion brought after the filing of motion for a new trial and an extraordinary motion for a new trial.

Other plans in the fight for Frank's life were considered at the conference, but this one appeared to offer the most advantage at present.

If this plan is not adopted, the lawyers, after the resentencing of Frank, will ask for a respite in which to place their appeal for commutation before the Prison Commission and the Governor.

"We are no less firmly established in our belief of the innocence of Frank than we were at the beginning," said Leonard Haas, one of counsel, "and we propose to employ every resource at our command. If there is any legal and proper expedient to save an innocent man from the gallows we intend to use it."

Court officials are preparing for the resentencing of the condemned man, which is expected to take place tomorrow. Judge Hill announced he would be at the Court House in the morning, at which time he will confer with Solicitor Dorsey on the matter. It is believed at the Court House that Frank immediately will be taken from the tower to the Criminal Court room to hear sentence pronounced. This may mark his final appearance in the courts, as any further delay in the execution, unless the Supreme Court decides to reopen the case, can only come about through a respite by the Governor.

NOT CONVINCED OF GUILT.

Augusta Chronicle Believes Frank Should Have Had a New Trial.

From The Augusta (Ga.) Chronicle.

At the request of a good friend and subscriber who lives in Maryland we are reproducing elsewhere on this page, today, an editorial from The Baltimore Sun dealing with the Leo Frank case, which will be found interesting, if not entirely convincing, to those who believe in Frank's guilt.

The Sun seems to be sincerely convinced of Frank's innocence—a view, in all frankness, which The Chronicle does not share—but it does not make the mistake; as so many Northern papers have done, of attributing Frank's conviction to the fact that he was from the North and a Jew.

On the other hand, The Sun thinks it was "community hysteria" that caused Frank's conviction; in other words, that it would have been impossible for any man to have secured an absolutely fair and impartial trial under such conditions.

And herein, we are frank to say, lies the only indictment that could be brought against the people of Atlanta, and the court which tried Frank: that the inflamed condition of the public mind at the time of the trial, as well as the scenes in and around the Court House—the court there occupying temporary quarters on the first floor of a building located at the corner of two busy streets; where a crowd that amounted, both in numbers and conduct, almost to a mob—rendered it difficult, if not well-nigh impossible, to accord the defendant such a dispassionate trial as the law contemplates.

While not believing with those who hold Leo Frank innocent of the hideous crime for which he was convicted—yet not certain, in our own mind, of his guilt beyond all doubt—we, nevertheless, would have been glad had either the State Supreme Court or the United States Supreme Court found it possible to grant a new trial; but, mainly, because we would have the State of Georgia, itself, freed from the charge of having convicted a man through prejudice as to his race or religion, or because of the inflamed condition of the public mind.

We would have preferred to see a change of venue in the Frank case at the very outset, in order that the latter element might not enter into Frank's conviction, and yet, we believe he would have been convicted, just the same, by any jury in any other county in Georgia—or elsewhere, as for that matter.

But we cannot for one moment conceive that the fact of his being a Jew or

a Northern man had or could have had the slightest effect in his conviction. If there is any prejudice in Georgia against either—we mean, of course, any that is seriously worth considering—we have yet to come in contact with it. Certainly, it is not of a kind that would send an innocent man to the gallows.

It is true, however—and upon this ground alone, it seems to us, a new trial or a change of venue might not have been out of place, nor yet have defeated the ends of justice—that public opinion was almost unanimous in its belief of Frank's guilt; in fact, our only wonder was that they managed to find twelve men in Atlanta at the time who were willing to swear that they had neither formed nor expressed an opinion as to the guilt or innocence of the defendant.

We willingly reprint The Baltimore Sun's editorial on the Frank case, as we have been requested by our good friend to do, and we congratulate that paper for not having made the inexcusable mistake of trying to see a sectional or racial and religious "issue" in the case. For Georgia is not that kind of a State, even though she—like other States—is obliged to admit that she has a fair share of citizens who are narrow, prejudiced, and intolerant to a degree.