

AN ATLANTA APPEAL FOR FRANK

Editor of The Atlanta Journal Presents a Forcible Review of the Case and Urges That Sentence Be Commuted.

This editorial, by James R. Gray, editor of The Atlanta Journal, which appeared in that newspaper last Sunday, clearly and forcibly reviews the Frank case and indicates how thoughtful sentiment is changing in the city of the mysterious murder that heretofore has been surcharged with prejudice and passion.

Commute Frank's Sentence to Life Imprisonment.

TO whatever extremes of passion the popular mind may be swept, reason eventually regains its sway; after the wind and the earthquake and the fire there always speaks "a still small voice." It is in this spirit that the people of Georgia have come to consider the case of Leo M. Frank. They are thinking quietly and profoundly of this man who stands in the deepening shadow of death. They look back upon his trial, which was conducted amid the frowns 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?"

Thus the public thinks; but there is only one power that can act as reason and conscience now require; and that power is vested in the State Board of Pardons and the Governor. It is for the board to recommend and for the Governor to determine whether Frank shall be hanged for a crime of which he has not been proved guilty and of which many believe him innocent, or be granted a commutation to life imprisonment. Upon their decision depends not only the life of a man but the good name and integrity of a Commonwealth.

Two years ago last April a little girl blossoming into womanhood was murdered mysteriously in a pencil factory of which she was an employe. The horror of the crime naturally set popular feeling aflame, and the lack of direct or substantial evidence to indentify the criminal made the demand for expiation all the more clamorous. Suspicion turned to Frank, the factory superintendent, and grew by the excitement and vengeance it fed on. In these circumstances, he was indicted and brought to trial. According to law, a defendant should be presumed innocent until his guilt is proved beyond a reasonable doubt. But Frank was presumed guilty at the outset of his trial. Every doubt in his favor was rejected, while the lightest trifles

against him were welcomed and magnified. The chief and, indeed, the only considerable witness of the prosecution was a negro of criminal record, who implicated himself in the crime that he charged to Frank. On this negro's unsupported testimony, Frank was convicted.

Furthermore, the atmosphere within and without the courtroom was such as to make a fair trial impossible. The jury was confronted with row upon row of onlookers who vented, sometimes in noisy outbreaks, their approval of the prosecution and their hostility toward the defendant. The streets about the Court House were thronged with an ominous crowd, and it is a matter of common knowledge that in the closing hours of the trial the case was carried over from Saturday afternoon until the following Monday as a precaution against violence. It is no reflection upon the gentlemen of the jury to say that these conditions influenced the verdict. They were influenced unconsciously, no doubt; but unconscious influences are the most subtle and the most potent of all. Only superhuman strength could have resisted the prejudice and passion that surcharged the Frank trial from beginning to end.

The presiding Judge himself declared afterward from the bench that he was not convinced of the defendant's guilt; but inasmuch as it was solely the jury's province to pass upon the evidence he refused to set the verdict aside. And to this hour, no court has reviewed the evidence on which Frank was convicted. The case has been appealed twice to the Supreme Court of Georgia and twice to the Supreme Court of the United States, but in every instance the questions considered and decided were wholly questions of law and of legal procedure. It is noteworthy that even on these points there were strong dissenting opinions in both the State and the United States Supreme Court. But the all-important fact is that the justice of Frank's case as distinguished from its technicalities has never been judicially weighed. 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. In determining whether Frank shall be hanged or his sentence commuted to life imprisonment, they will determine issues of vast consequence to the reputation and the character of the State. The question is not merely whether one man shall live or die but whether the State of Georgia shall be true or false to the principles of justice and humanity.

The Governor is empowered to meet just such emergencies as this. The

makers of our law and Constitution wisely foresaw that occasions might arise in which all ordinary legal processes would fail to establish the innocence of a person accused. They realized that times might come when a case, although settled so far as the courts were concerned, would involve questions of grave doubt. Therefore, they authorized the Pardon Board to recommend and the Governor to grant a commutation of sentence in such circumstances.

Never was there a plainer demand for the righteous exercise of this power than in the pending case of Leo M. Frank. If he be guilty, he has not fairly been proved so. If he be innocent, his execution will amount morally to murder. It is not asked of the board and the Governor that they declare him innocent, but only that they recognize, as did the trial Judge, the serious doubt of his guilt and by commuting the death sentence to life imprisonment leave a chance for the future establishment of justice and truth.

This ought to be done, because it is reasonable and because it is right. It is well, moreover, in such an issue as this to take note of the country's sober opinion. Not only in Georgia, but throughout the South and throughout the Union, thoughtful men are appealing individually and collectively for a commutation of Frank's sentence. No criminal case ever stirred the nation's conscience so deeply. Localities and groups are often moved by gusts of sentiment to intercede in a condemned prisoner's behalf, but that is not the source or character of this appeal. A few hundred or a few thousand impressionable persons here and there could be swayed by mere pity, but when hundreds of thousands of people in every part of the United States reach the same conclusion and urge the same request, we may be sure that they act upon a solemn conviction that terrible injustice is about to be done.

The press of the nation is virtually a unit in urging that Frank's sentence be commuted. Various Legislatures, among them being those of Tennessee, West Virginia, and Pennsylvania, have adopted resolutions to the same effect. Governors and other public officials have added their voice to nation-wide appeal. 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.

These convictions and expressions are eminently worthy of consideration by the Pardon Board and the Governor. But, above all, the inner merits of the case itself demand a commutation of the sentence. It has often been said that it were better for ninety-nine guilty men to escape than for one innocent man to be executed. But that is not precisely

the issue here involved. 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."