

BOARD DENIES

FRANK CLEMENCY

**Two Members Recommend That
Death Sentence Be Carried
Out, One Dissenting.**

PATTERSON'S GRAVE DOUBT

**Negro Conley's Testimony Sus-
pected by Trial Judge Roan and
Two Supreme Court Justices.**

GOVERNOR THE LAST RESORT

**Final Plea to Slaton Probably To-
morrow—Prison Commission's
Decision a Great Surprise.**

Frank Still Believes His Life Will Be Spared

Special to The New York Times.

ATLANTA, Ga., June 9.—Leo M. Frank said tonight that he believed even yet that his life would be spared.

"I have the confidence of an innocent conscience," he declared, "and, somehow, I can't reconcile myself to believe that the courts will hang a man not only innocent, but so obviously innocent. You will always find me confident, and I faithfully believe that, even though it waits until the last moment, vindication will come."

Special to The New York Times.

ATLANTA, Ga., June 9.—Greatly to the surprise of the general public the Prison Commission of Georgia, in a report submitted this morning to Governor Slaton, declined to recommend that the death sentence imposed on Leo M. Frank for the murder of Mary Phagan be commuted to imprisonment for life.

The board adopted this report by a vote of two to one. The report was just the reverse of what had been expected. It had been reported at the Capitol for days that the commission certainly would recommend commutation by a vote of two to one and possibly by unanimous vote.

Two members of the commission, R. E. Davison and E. L. Rainey, signed the majority report and attached a brief memorandum stating their reasons therefor. The third member of the commission, Judge T. E. Patterson, submitted a minority report recommending commutation, with an attached memorandum of his reasons.

In his cell in the Tower, Frank denied himself to newspaper men for the first time in the several crises in his case. His father and his wife were with him when news of the commission's finding was brought to him by Milton Klein, a friend. When Klein reappeared in the jail corridor, he said:

"Mr. Frank has nothing to say just now. He seems unmoved by the shock of this great disappointment. He may wish to say something to you later."

Frank said later that he still believed he would be vindicated and his life spared, even at the eleventh hour.

Concerning the hearing to be had before him, the last stand of Frank for his life, Governor Slaton said:

"When I am formally asked for a hearing, I will name the date."

Hearing Perhaps Tomorrow.

The date set for the execution of the death sentence is June 22. Frank's attorneys will go before the Governor tomorrow, and the hearing may be fixed for Friday. Solicitor General Dorsey has notified the Governor that he intends to appear and oppose the plea for clemency. Mr. Dorsey, it is understood, has prepared a statement containing evidence—some of it said to be new—to combat the appeal; but he is saying nothing about it further than that he will be present at the hearing and offer his views.

Harry A. Alexander of counsel for Frank said: "The action of the majority of the Prison Commission will be a great surprise, I believe, to the majority of the people of the State. The dissenting opinion of Judge Patterson simply accentuates the dreadful doubt that has shown itself at every stage of the case and still persists."

The commission's report was rendered to the Governor on the usual printed form and read:

Office of the Prison Commission of Georgia.
R. E. Davison, Chairman; T. E. Patterson, E. L. Rainey, Commissioners;
G. H. Yancey, Secretary.

Atlanta, Ga., June 9, 1915.

In regard to Leo M. Frank's application for executive clemency.

To his Excellency, the Governor:

Sir: The Prison Commission have had under consideration an application for executive clemency in behalf of Leo M. Frank, who, at the July term, 1913, of the Superior Court of Fulton County, was convicted of murder and sentenced to be hanged, and beg leave to report that they decline to recommend clemency. Respectfully submitted,

R. E. DAVISON, Chairman.

E. L. RAINNEY, Commissioner.

Report Against Clemency.

The memorandum of Commissioners Davison and Rainey follows:

None of the grand jurors who found the indictment, none of the trial jurors who heard the evidence under oath, nor the prosecuting attorneys, have asked that the sentence be commuted. The Judge who presided at the trial and had the right to exercise the discretion of fixing the penalty at either life imprisonment or death imposed the latter sentence and overruled a motion for a new trial.

Several appeals were taken to both the Appellate Court of the State and the Supreme Court of the United States, (all of which were denied and the judgments of the lower courts affirmed,) thus assuring the defendant of his legal and constitutional rights under the laws of the land. It further appears that there has been no technical proposition of law or of procedure that has prevented the petitioner from having his guilt or innocence passed upon by a jury of his peers and by the highest constituted appellate authorities; and, no new evidence or facts bearing upon his guilt or innocence having been shown, we see no reason for taking this case out of the ordinary rules of law and justice, and feel constrained not to interfere

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with the enforcement of the orderly judgment of the courts.
The dissenting opinion of Judge Patterson follows:

The Dissenting Opinion.

In regard to Leo M. Frank, sentenced to be hanged; application for Executive clemency; memorandum of recommendation by T. E. Patterson, Prison Commissioner:

For some time prior to April 26, 1913, Leo M. Frank was Superintendent of the manufacturing plant of the National Pencil Company, on South Forsyth Street, in the City of Atlanta, Ga., and Mary Phagan, a young girl, scarcely 14 years old, was an operative in said factory. During the week ending April 26, 1913, having worked only one day, she had earned \$1.20. On this date, about noon, she went to the factory building for drawing her pay. She went into the office of Leo M. Frank, and the next time she was seen her dead body was found in the basement of the factory about 3 o'clock on the next morning by Newt Lee, the night watchman.

Frank was indicted for her murder, and a negro by the name of Jim Conley was indicted as accessory after the fact. On the trial of Leo M. Frank he was convicted without a recommendation, and was sentenced to be hanged. He made a motion for a new trial, which was denied by the Hon. L. S. Roan, the trial Judge, and the judgment was affirmed by the Supreme Court.

That a young girl should go to a manufacturing plant where she had been employed, in the heart of a great city, for the purpose of drawing her pay and there be murdered and possibly maltreated in other ways and no one seeming to know anything concerning the crime, which was such an atrocious one, makes a case where the verdict of the jury and the sentence of the Court should not be disturbed except for very grave reasons. Under our laws the juries are the judges of the facts, with only the limitation that the trial Judge, in the exercise of a sound discretion, may, if he is not satisfied with the finding of the jury, grant a new trial. The only review that the Supreme Court has over trials is for the correction of errors of law. They can only interfere with the verdicts of the juries on the facts when they can say as a matter of law that there was not sufficient evidence on which to base a verdict.

Inherent in the Record.

The right of trial by jury, guaranteed under our Constitution, is so sacred that I have always felt that the verdicts of the juries should be upheld and not disturbed unless there was something inherent in the record to indicate that a mistake had probably been made, or there is some development after the trial, or some facts become known that the jury did not have the benefit of, or warrant the inference that a different verdict might have been reached had these facts been known at the time of rendition of the verdict. Therefore in approaching this case I do so in view of those principles.

There has nothing developed since the trial of this case that throws much more light upon the transaction than the jury had at the time of the rendition of their verdict; therefore, I think there was nothing of that kind in this case on which to base a commutation of this sentence.

The question then left for consideration is: Is there anything inherent in this record to indicate that there was a possibility of a mistake by the court and jury, and would therefore warrant the Governor in exercising the right to impose the penalty of life imprisonment, instead of the extreme penalty of death, a right the jury had in the case and, this being a case based on circumstantial evidence, the Judge had in the absence of a recommendation by the jury.

In examining the evidence in this case, as I have done carefully, having read the printed record several times, I could agree with many eminent lawyers and jurists of Georgia, some of them connected with the firms engaged in the prosecution of the case, that the very nature of the evidence against Leo M. Frank was such as, upon the consideration of it, the mind is left in a state of uncertainty as to whether or not there is room to doubt the story told by Conley, inconsistent and contradictory as it was in the telling of it in different portions and contradicted by his own affidavits made previous to the trial and by other testimony on the trial.

Conley's Motive Apparent.

If we take the evidence of the case outside of that of Conley and Leo M. Frank, we find that both Frank and Conley had equal opportunity and motive for committing the crime, with the possible added motive of robbery on the part of Conley; that Conley

Dewberry in Atlanta was not disturbed, where the Judge was not in doubt, but the Solicitor General expressed a doubt as to the identity of the accused.

As above stated, I don't find in any case founded on circumstantial evidence, such as the instant case, where a man has been allowed to be hanged where the trial Judge was not satisfied as to his guilt and so communicated to the Governor. In the John Wright case, from Fannin County, a most atrocious murder, the sentence was commuted on the recommendation of the trial Judge and the Solicitor General, on the ground that the main witness for the State at a preliminary investigation had failed to identify Wright as the murderer, and that fact left a doubt in the minds of the Judge and Solicitor as to the identity of the accused.

Should Commute the Sentence.

In the instant case we not only have the trial Judge expressing a doubt as to the guilt of the accused, but he states that this doubt arises from the character of the testimony of the State's main witness, who was charged with being an accomplice and who had equal opportunity and motive for the crime. In addition to this state of uncertainty in the mind of the trial Judge, we have the fact that two Justices of our Supreme Court say that in their opinion this applicant has been denied a fair trial.

In view of these facts in the record, besides others that might be mentioned, I am persuaded that the Governor is authorized to and should commute the sentence of Leo M. Frank to life imprisonment, especially as this does not disturb the verdict in the case found by the jury, but only substitutes one penalty that is prescribed by law for murder, that of life imprisonment, for the extreme penalty of death, either of which satisfies the law and the verdict of the jury, this being a case founded upon circumstantial evidence. Respectfully submitted.

T. E. PATTERSON,
Prison Commissioner.

Frank's Attorneys Still Hopeful.

Frank's attorneys said tonight that they would make a vigorous fight before Governor Slaton and that they hoped to induce him to grant clemency, despite the unfavorable action of the Prison Board. They will submit data that have accumulated since the commutation hearing before the Prison Commission last Monday a week ago.

Ex-Congressman W. M. Howard, who represented Frank before the Prison Commission, said:

"While not criticizing any member of the Prison Commission, the report of the majority deals solely with negatives. It says only that none of the jurors, the Solicitor General nor any one connected with the prosecution of the case has asked for commutation. It does not go into what the law contemplates in applications for Executive clemency. The dissenting opinion by Mr. Patterson is an expression from a legal mind on an analysis of the record.

"We will go before the Governor tomorrow and present our application to him. Our position will be, as it has been, that the record does not show that this man is guilty, that the record shows he is innocent. We hope to present this to the Governor's legally trained mind."

CALLED OUTRAGE ON JUSTICE.

Resentment in Brooklyn, Frank's Home Town, Over Board's Finding.

Particular interest in the Leo M. Frank case has been felt in Brooklyn, Frank's former home and still the home of his

parents. Discussing the latest development in the case, the Rev. S. Edward Young, D. D., pastor of the Bedford Presbyterian Church, at Nostrand Avenue and Dean Street, said yesterday:

"The Georgia Prison Board evidently has been under the spell of Georgia prejudice against Frank. I trust that the new Governor of Georgia will rise above the local unjudicial sentiment. Now is the time for the whole nation to express itself to the Governor of Georgia by telegram, letter and petition. Of course, the war issues so far overshadowed everything else as to make it difficult for those of us who stand for a square deal in the Frank case to be heard extensively. The more is the pity, and the more should all who are convinced that Frank has been denied American citizenship privileges make their voices strong and insistent in his behalf."

County Judge Harry E. Lewis of Brooklyn, an intimate friend of Frank's family, who was an observer of conditions at the trial of the young Brooklynite in Atlanta, said:

"I was never so shocked in all my life to think that the letter of the trial Judge should go for naught, especially

when there was such a grave doubt in his mind as to the guilt of the accused man. No Judge in New York State, in my opinion, would allow a man to be executed where there was a doubt in his mind as to the guilt of the defendant. I noticed during my presence in the trial room that the room was crowded with those who were applauding the witnesses for the prosecution and those who were hissing the witnesses for the defense.

Judge Lewis said he favored starting a national movement to petition President Wilson for justice in Frank's behalf.

Borough President Lewis H. Pounds, who was one of several hundred in Brooklyn who signed a petition sent to the Governor of Georgia urging Executive clemency for Frank, said: "This action of the Prison Board is harsh. It looks as though they have carried out the policies that seem to have been in force against the boy all the time. There was a sort of atmosphere against him."

Rabbi Max Raisin said: "This refusal of commutation of sentence for Frank is an outrage of justice in general. The State of Georgia stands self-condemned by her action. The State, as a whole, has been clamoring for the blood of this apparently innocent young man. In my opinion, Frank is a victim of race prejudice and of general dislike for the Northerners through the South, else he would not have been convicted on the testimony of a negro."