BOTH SIDES HEARD ON FRANK APPEAL

Solicitor Dorsey Opposes, Then ex-Congressman Howard Urges Clemency Before Governor.

YET TO CONCLUDE HEARING

Decision Tomorrow or Thursday —No Session Today—Execution Set for Next Tuesday.

HOWARD ACCUSES CONLEY

Negro Held Up as Murderer—Dorsey Denies Disorder at Trial—Minister Advocates Commutation.

Special to The New York Times.

ATLANTA, Ga., June 14.—As ex-Congressman W. M. Howard was making the final plea for the commutation of the death sentence imposed upon Leo M. Frank for the murder of Mary Phagan, Governor Slaton at 6 o'clock this evening adjourned the hearing until 9 o'clock Wednesday morning, when, it is expected, it will be concluded. Governor Slaton was obliged to take this action because he had to leave Atlanta at 8 o'clock tonight for Athens, where he is to make an address tomorrow at the commencement of the University of Georgia.

In adjourning the hearing Governor Slaton announced that he probably would render his decision as soon as the arguments were concluded on Wednesday, and that he certainly would announce his decision not later than Thursday. The execution of Frank is set for Tuesday, June 22.

During a recess today Governor Slaton, accompanied by attorneys for Frank and representatives of Solicitor General Dorsey's office, went to the National Pencil Factory, in which Mary Phagan was murdered, and made a thorough inspection of the premises, paying particular attention to the metal room, where, the State contended, the crime was committed, and the basement, where the body was found. The elevator, over the working of which there had been much controversy, also was closely scrutinized by the Governor.

At the hearing today Solicitor Dorsey spoke for three hours in opposition to commutation. He contended that the evidence was overwhelming against Frank, that he had been fairly tried and convicted, the conviction having been upheld both by the Georgia Supreme Court and the United States Supreme Court, that there was no disorder at the trial, and that there were no grounds to justify Governor Slaton in commuting the death sentence. Mr. Dorsey asserted—and this seemed to interest the Governor—that the case against Frank was complete, even with the evidence of Jim Conley, the negro, eliminated. Mr. Dorsey practically excluded Conley's testimony in his argument. He concluded by declaring that to commute Frank's sentence would be to invite the reign of the mob in Georgia.

Minister Appeals for Frank.

The Rev. Dr. C. B. Wilmer, rector of St. Luke's Protestant Episcopal Church, followed with a brief but strong appeal for commutation. He spoke as the representative of a committee of ministers. The appeal, he said, was not based on mercy.

"We appeal," he said, "on moral grounds and for justice. We appeal against the provincial prejudice which has been evident against outside interference and against the prejudice of Gentiles against Jews."

Dr. Wilmer criticised the methods of the city detectives in working up evidence against Frank. This caused Solicitor Dorsey to reply that the detectives were as "good men as Dr. Wilmer or any other wearer of the cloth in Atlanta."

Dr. Wilmer has shown unusual interest in the case. The wife of Governor Slaton is a communicant of his church.

Ex-Congressman Howard at 3 o'clock began the final plea for Frank. He said the circumstances pointed strongly to Conley as the murderer. He analyzed the evidence and declared that, but for excitement and prejudice, Frank never would have been tried and that Conley would have been indicted. He charged that State authorities deliberately elected to accuse Frank, instead of Conley.

Mr. Howard sharply criticised the speech of ex-Governor Brown in opposition to commutation. He showed by the record that Mr. Brown just before he went out of office pardoned forty convicts, including twenty-five who had been convicted of murder, in some cases overturning the verdict entirely on the original testimony, something that he argued against in his anti-Frank speech.

"And yet he comes here," said Howard, "and asserts that Governor Slaton has no right to commute Frank's sentence."

Dorsey Begins His Argument.

When the hearing was resumed this morning, Solicitor General Dorsey began his argument. He said:

"This petition is based upon three grounds: First, that the defendant was not accorded a fair trial. Second, that the evidence did not show him guilty beyond a reasonable doubt. Third, that Judge Roan was not convinced of his guilt.

"The defendant's attorneys have said that it was humanly impossible for Frank under the circumstances existing to get a fair trial. They made no motion for a change of venue. It is inconceivable that counsel for Frank should permit him to go to trial here if it was humanly impossible for him to be given a fair trial here.

"The court on its own motion could have ordered a change of venue. The record shows that at the trial the disorder was not more than the disorder incident to any large gathering. The defense at first did not contend that there was any serious disorder. They began to make objections only when

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the conclusiveness of the State's evidence became apparent; even then no motion for a new trial was made until after the arguments had been rendered."

Solicitor Dorsey read from opinions of the Supreme Court that a defendant might have friends in the audience to create a disturbance for the purpose of securing a new trial.

"I have affidavits," he went on, "which show that this was done in this case.

"Judge Roan did not express any doubt as to the fairness of Frank's trial. On the contrary, when he sentenced Frank, he declared that the trial was fair. The six Justices of the Supreme Court of Georgia were united in saying that he had a fair trial. The division was occasioned only by the question as to the admissibility of Conley's evidence.

No Outcries Against Frank, He Says.

"Despite this action by the Supreme Court, each succeeding motion by counsel for Frank has brought forward this charge, as have also the false and slanderous statements appearing in newspapers from coast to coast. It has even been printed that men in the crowd shouted to jurors, 'Hang Frank or we'll hang you.' The records show that during the trial there were no cryings out against Frank whatever.

"Will the statements of outsiders be set up above the action of the trial Judge? Will the opinion of the trial Judge and the opinion of the Supreme Court be disregarded in favor of these false newspaper reports? If so, it will be a sad day for the administration of law in Georgia.

"In the court records Frank has sought to create doubts by the same methods and false statements used by those in charge of his publicity propaganda. Frank in making his motion to the United States District Court on the ground of being absent when the verdict was rendered again brought in his allegation of disorder in the courtroom. But Judge Newman, with proper respect for the State courts, disregarded this plea, and the Supreme Court of the United States upheld him, saying:

"'The petition contains a narrative of disorder and hostile demonstrations, but it appears that these allegations were submitted to the trial court and to the Supreme Court of Georgia, and considered at different times by those courts, entirely free from mob domination, and both found the allegations to be groundless.'

"But, in view of the fact that you have received letters from prominent men outside of the State, I have brought here affidavits from officers, jurors, and citizens showing that there was no disorder or demonstration during the trial; that there was no occasion for the solicitude of the public press, and that at no time was there any reason for calling out the militia."

The Rev. Dr. Wilmer Heard.

At this point Solicitor Dorsey gave way for the Governor to hear from the Rev. Dr. C. B. Wilmer, rector of St. Luke's Protestant Episcopal Church, who asked for a commutation of sentence. Dr. Wilmer read a petition to this effect signed by leading ministers of Atlanta, the same petition that was read to the Prison Commission by the Rev. Dr. John E. White, pastor of the Second Baptist Church. The petition appealed for clemency on the grounds that commutation would not change the jury's verdict or reflect on the Solicitor or the courts; that a life sentence would vindicate the severity of the law; that time might disclose new facts about the crime, and that commutation would be an act both of justice and humanity.

Dr. Wilmer announced that owing to the different views of the various ministers signing the petition they had not deemed it advisable to include appeals additional to those stated.

"However, speaking for myself," said Dr. Wilmer, "and for the ministers in general, I wish to repudiate any impression that there is anything here to indicate an appeal for mercy. Such an appeal would be based on a confession of guilt. The appeal which I make is based on moral grounds and on a sense of justice.

"I was surprised to read a few days ago that a certain public man had declared that the sentiments of people outside of Georgia should not be considered, only the sentiments of the people of this State. That, Sir, is a declaration that the case should not be decided on its merits. I contend that you should give to sentiment in Georgia and outside just that weight to which it is entitled, and no more.

"Several matters have been injected into this case which tend to befog it, and it is with reluctance that I discuss them in public. A prejudice has been engendered between Jews and Gentiles. Even if it were true, as charged by some, that the friends of Frank have done anything of a wrongful character in his behalf, it would not be something for you to consider in an appeal for commutation. There would be no reason why Frank should be hanged simply because of some misguided or misdirected efforts of his friends.

"There is another point to which I wish to call your attention, and I don't know whether I should say it in public. That is that class prejudice has been brought into this case—a prejudice between employe and employer. This was obvious before, during and since the trial.

"Then, politics has been injected into this case; it also should be eliminated.

"In elections votes should be counted. In this case votes should be weighed. Those who feel a reasonable doubt in this case are in the main the supporters of religion and character in the community.

Points to Governor's Duty.

"Nothing in my fifteen years of residence in this, my adopted State, has so amazed me as the contention by many that we ought to hush now, and that the doors ought to be closed on this case because the courts have passed on it. The majority report of the Prison Commission on this case did not take into consideration the full process of the law, and the ex-Governor, who appeared before you on Saturday, held, like the majority of the commission and like many others, that when the jury and the Supreme Court pass on a case that should settle it.

"Let those who say the law must be sustained take into consideration the complete legal machinery provided. This machinery includes an appeal to the Executive, and bestows upon him the power to decide such an appeal as his judgment and conscience may dictate.

"I wish briefly to refer to the atmosphere of this community before and during Frank's trial. I do not purpose to reply to Solicitor Dorsey, but to suggest something for him to reply to. Even should we admit that there was no suggestion of violence whatever on the part of the spectators at the trial, it should be remembered that psychological influence is far more subtle and far more calculated to affect the mind of a brave man than mob violence.

"I wish to call your Excellency's attention to the way in which the evidence for the prosecution was worked up by the detectives. I appeal to your knowledge of how the testimony of the principal witness, on which Frank was convicted, was prepared day after day and week after week to make it fit the theory of the State. I cannot give my consent to hang a man on such testimony. The self-interest of this witness should also be taken into consideration. I don't believe the evidence was carefully analyzed before the jury.

"It there is any doubt in your mind as to what you should do, then there is no doubt as to what you should do. Unless the Governor can say in his own mind that this man is absolutely guilty beyond a reasonable doubt, it is his solemn duty to give him the benefit of the doubt.

"No matter what may be said about the working up of sentiment in this case, when the prejudice and passion have faded away, the future historian, summing up and writing of him who made the final decision, would, if the Governor refused to commute, have to write that he did so in the face of the best legal and judicial opinion of his own State."

Solicitor Dorsey Resumes.

This concluded Dr. Wilmer's argument, and Solicitor Dorsey resumed.

"It is not my purpose," said he, "to alter the course of my argument to reply to Dr. Wilmer. Most of what he said has been heard from other sources from over the country. He and Mr. Osborn, the handwriting expert, may stress such indefinite propositions as hypnotic and psychological influence, but I will say that it was in the atmosphere that this man Frank was guilty—and it was also in the atmosphere that there was no chance to convict him. A Judge on the bench who was my friend advised me not to press the case. The newspapers for ten days made fun of the evidence in course of preparation. Only after the medical and other direct evidence showed that the girl met her death in thirty minutes after she left home did public sentiment get the idea that Frank was guilty.

"I am not going to take up your time to reply to Dr. Wilmer's statement that the intelligent, religious people believe in Frank's innocence, and the unintelligent, irreligious people in his guilt. The detectives who worked up the evidence for the State are as good men as he and as good as any other men of the cloth in Atlanta. I want to state right here and now that the State had absolutely conclusive evidence of Frank's guilt, without and independent of the testimony of Jim Conley."

The Solicitor here returned to his written brief, reading therefrom, and said he had affidavits from the Sheriff and his deputies, from Police Chief Beavers, Colonel Pomeroy of the Fifth Regiment, newspaper reporters, and others in refutation of the charges of a hostile atmosphere and violent demonstration during the trial. He remarked that these charges could be likened to a tomtit in the original motion for a new trial and to a turkey gobbler when Frank's lawyers reached the United States Supreme Court.

Mr. Dorsey Impatient.

Passing to the second division of his argument, the doubt as to Frank's guilt, Solicitor Dorsey reviewed the circumstantial evidence against Frank, touching very lightly the testimony of Conley, and asserted that it was conclusive. In the course of the review Governor Slaton asked a question or two, evidently seeking light, and several times Attorney Howard interrupted Mr. Dorsey to correct statements from the record. The second time was when Mr. Dorsey was speaking of the hair found on the machine in the pencil factory. Mr. Dorsey said the hair was identified by Frank's own witness, Magnolia Kennedy, a friend of the dead girl, as being the hair of Mary Phagan. Attorney Howard, pointing to a page in the record, remarked:

"The witness' exact words were, 'It looked like her hair.'"

This interruption seemed to make Solicitor Dorsey impatient.

"I don't care how much you quibble," he retorted, in an irritated tone, "the fact is that Frank's own witness said it was Mary Phagan's hair. All she could say was that it looked like her hair. All quibbling aside, she identified the hair so far as she could identify it."

Asks About Carter Notes.

At a point when Mr. Dorsey appeared to be nearing the end of his argument, Governor Slaton asked: "Do you intend to make any reference to the Annie Maud Carter notes?"

"During the hearing of the extraordinary motion for a new trial," said the Solicitor, "William M. Smith, then in my employ, was delegated to get Conley's affidavit. Now Conley admits writing certain portions of these notes, while other parts he says he didn't write, especially some of the worst parts."

This statement caused unusual interest among the attorneys for Frank, for Conley asserted, just after his recent release from the chain-gang, that he did not write the notes. He made the statement in the presence of several reporters and the Solicitor.

Mr. Dorsey referred without much further comment to the record of the extraordinary motion which, he told the Governor, would explain fully how these notes were obtained. Continuing, Mr. Dorsey said:

"Judge Roan's letter, as Mr. Patterson of the Prison Commission says, amounts to little more than a repetition of his oral remarks when denying a new trial. No envelope of the letter has been produced. It bears no postmark and no date. It was obtained not wholly in response to a letter; but a personal appeal was made by a prominent attorney, whose name I can give if desired, when the Judge was admittedly weak from physical infirmities.

"I am not without mercy, as your Excellency knows, for I have been before you to ask commutation of sentence of the poor and the penniless, but this man's guilt was established in a trial that lasted thirty days. And I am only solicitous that the laws be fairly and impartially enforced. I am fearful that if the verdict in this very plain case is not carried out against a man of influence, the consequence to the respect for law in the State will be most serious."

As soon as Solicitor Dorsey concluded Mr. Howard began the final plea for Frank.

Criticises ex-Governor Brown.

"On Saturday," he said, "after I concluded my remarks outlining the case which we make, ex-Governor Joseph M. Brown appeared before you in opposition to our petition. At the outset I wish to admit in the fullest way possible that the distinguished ex-Governor was thoroughly within his rights as a citizen, if he felt it his civic duty, to appear before your Excellency and present whatever arguments against Frank as appeared to be proper in his judgment; but ex-Governor Brown in appearing in that rôle must stand on the reasons presented by him, just as any other man must stand, and when he undertakes to draw upon his own practices as Governor of Georgia to advise you, the sincerity of his purpose should be borne out by his practices. So, when ex-Governor Brown undertook to argue from the Scripture, both Old and New, and from the Constitution of the State, what the duty of the Governor is in a case like this, and when he narrowed his contentions under the scope of the Constitution, he must be prepared to defend the limitations which he prescribes. If he does not, it is a matter which your Excellency is entitled to have brought to your attention.

"Ex-Governor Brown intimated that it would be an abuse of the pardoning power and of the minor power of commutation if this power should be exercised without extraneous or additional matter as justification therefor. He argued that the exercise of the power under such circumstances should be very rare and that the circumstances applying to this case should have no standing whatever.

"On June 18, 1913, nine days before Governor Brown went out of office, he issued forty pardons, of which one was an attempt-to-murder case, one a burglary case, one a forgery case, four were robbery cases, eight were manslaughter cases, and twenty-five were murder cases. This, you will see, was quite a liberal dispensation of that grace invested in the Governor under our system, a dispensation which he would now deny to you, insisting that justice and justice alone should control.

"Ex-Governor Brown misconceives the real meaning of the pardon power. It is a grant, a bestowal of mercy, which the Executive may, in his discretion, exercise for the welfare of the people and the State. The distinguished ex-Governor seems to overlook the fact that only after the courts have finished with a case can the Executive be asked for or bestow clemency.

Analyzes Brown's Pardons.

"As I stated, ex-Governor Brown granted twenty-five pardons in twenty-five murder cases. Let us take the Leo Meyer case from Bibb County. Governor Brown based his opinion upon the record, stating that the evidence showed that the murder was committed in self-defense and that the jury undoubtedly would have so found if the deceased had been a man. The case was never submitted to the Pardon Board, but was taken up by Governor Brown directly. There was no recommendation from the jury or the Solicitor General. Here we find Governor Brown injecting his own penetrative brain power into the mind of the jury.

"Then there is the case of Wash Dean from Houston County. In Governor Brown's opinion appears the following: 'A review of the record does not show any great provocation for the crime, but it was evidently committed on impulse and under such circumstances as would easily justify a recommendation of the mercy of the court.'

"Again we find Governor Brown, knowing the sanctity of the verdict, undertaking to put his own interpretation on what the verdict should have been, based on the evidence, and changing the verdict to one which he thought in justice and mercy was justifiable.

"There was the case of J. W. Elliott from Troup County. Governor Brown in this, as in the other cases mentioned, goes into the record.

"Governor Brown alluded to the old Jewish law that you should not take a man's life where there was not more than one witness against him. We are perfectly willing to abide by that rule; but I insist that there shall be at least one. My brother Dorsey very ably has brought forward many isolated instances which, he says, constitute strands in a cord which, if woven together, make a cable strong enough to hang anybody. Mr. Dorsey, however, has there given away his case by arguing that, with Conley eliminated, the rest of these inferences make this cable strong enough to justify a verdict.

Frank's Conduct Explained.

"I will show you that no overt act of Leo M. Frank connects him with the corpus delicti. What does it matter that he was nervous when he learned of the crime? What does it matter that he dreamed he heard a telephone bell ringing? What does it matter that he asked for bread or coffee in the morning? What does it matter that he shuddered when he looked on the body? All of these things are perfectly compatible with the demeanor of an innocent man.

"My brother, Dorsey, even reads guilt into a telegram which he wrote. I tell you that telegram was perfectly normal. He makes the fact that Frank told that the body was in the basement point toward his guilt. I tell you that the telegram was to a man thoroughly familiar with the factory and a part owner of the business. It is but natural that he should describe the place where the body was found.

"Mr. Dorsey would have you believe the silence about the crime in the Selig home was proof of Frank's guilt. Yet the record shows Mrs. Selig was ill, and the next day she was operated on, so naturally, in loving consideration for her feelings, the family refrained from any conversation that might tend to excite or prove harmful to her. When such a circumstance as that can be ignored by our indefatigable and ingenious Solicitor and can be distorted into an evidence of guilt, what a pass we have come to!"

Solicitor Dorsey objected that there was nothing in the record about an operation. Mr. Howard read from the evidence of Mrs. Selig that Frank and the other members of the family spared her feelings that day because she was ill and expected to have an operation the next day and did have the operation. Continuing Mr. Howard said:

"Mr. Dorsey says Frank employed counsel while undergoing a quasi examination and that this was a point tending to show his guilt. As a matter of fact Luther Z. Rosser was sent to Police Headquarters by friends of Frank, and Frank had no knowledge that Rosser was employed until he walked in and claimed him as a client and demanded that his rights be not disregarded. Is that to be distorted into evidence of guilt? There are other points, many others, that Mr. Dorsey has brought up, but all are to be explained in the same manner and fashion.

Conley's Motive for Murder.

"Take out Conley and the murder notes and see where we stand. Conley wrote the murder notes by his own admission. The murdered girl was in Frank's office that day. Conley's own admission puts him in the same locality. By his own admission she passed within ten feet of him. Now, what is the evidence that points to a motive? We know that when she left Frank's office she carried a mesh bag containing $1.20. We know he was lounging within reach of her, and could have grabbed her mesh bag and choked off her screams.

"Now, what manner of a man was it who had that advantage? Conley described himself as 27 years old, a ginger cake negro, living with a concubine, a gambler who had gamed that morning. In addition, by his own admission, he drank according to his capacity to buy wine, whisky, and beer, and got a pint of whisky before he went to the plant that morning, presumably from a blind tiger.

"Was the criminal instinct there? In five years he had been arrested seven times and had served as many sentences in expiation of offenses against the municipality. In the record he says he was 'broke,' that his wages were never sufficient for his necessities, that he would slink away on pay day to avoid his creditors and have another negro draw his wages.

"That is the character of the man who lurked there that morning—lecherous, drunken, debauched, a gambler, a forger, a repeated convict, 'broke,' a holiday, fired up with liquor. That was the kind of creature who crouched there when Mary Phagan came down the steps.

"Was he by nature, by the conditions surrounding him, essentially a purse-snatching thief? That mesh bag containing money never has been found. The hat, the parasol, and other articles were found, but the mesh bag never—because the mesh bag is in his possession was proof conclusively of one of his crimes—that of robbery."

Mr. Howard discussed the evidence concerning assault. Governor Slaton interposed: "But Dr. Hurt says he found no external evidence of violence."

"But your Excellency," Mr. Howard replied, "there is the doctor who conducted a post mortem examination. He testified that evidences of violence were present, but that he would not undertake to say precisely how this violence was incurred.

"Conley was not above committing that kind of a crime. He answered it in his life. He answered it in his debasement. Who knows better than an instinctive brute the necessity for protecting himself from the fury of an outraged community? Consider the cord around the little girl's neck, which choked out her life. That cruelty was in keeping with the other two crimes that preceded it."

Erasure in Minister Note.

The Governor interrupted to ask Solicitor Dorsey where it was in the record that Conley said Frank told him, while he was writing the notes, to rub out the "s" in "Negros" and make the word read "Negro." The Solicitor replied that he could not point this out, saying Conley had stated that he wrote several notes. The Governor remarked that he thought if this was true the notes ought to bear the evidence of the erasure, and he held in his hand the original murder notes.

"You will remember," Mr. Howard said, resuming, "that for some time after his arrest Conley denied that he could write. Later we find that he can write, and reluctantly he admits that he can. Conley swore that the first note he wrote was the white one. Yet, anybody can see that the white note was written last, because of its sequence, and because the yellow note began at the top of the paper and began with an address. It must be plain, therefore, to Your Excellency, that Conley wrote the yellow note first and the white note second.

"When he was confronted with the fact that his writing showed that he wrote the murder notes and was asked where he was on the Saturday of the murder, he told a rambling story which put him everywhere except at the pencil factory. Later he makes a change in his statement. After a series of denials, of prevarications, of efforts to conceal his identity, he admits that he wrote the notes, but tries to put the blame on somebody else, claiming that he wrote one and Frank the other.

"If Conley had been on trial and these facts had been submitted to a jury, what would the verdict have been? Can you say that a jury would not find Conley guilty?

"Every fact I have brought to your attention is a practical, undisputed fact, taken out of this record. And against it is Conley, who says another man committed the crime, who says another man told him what to write, therefore another man killed the little girl. These notes are not the mental act of Frank, because the thought, the expression, the language are the thought, the expression, and language of Conley, not of Frank."

Governor Slaton asked Solicitor Dorsey to ascertain by the record if the desk referred to in the record was in the basement when the murder was committed. He added that there was no hurry, since he couldn't decide the case before Wednesday on account of being out of the city Tuesday.

Notes in Conley's Language.

"Mr. Dorsey," Mr. Howard continued, "contended that the notes were not in the language of Conley because they used the word 'did,' whereas a negro would have used the word 'done.' Mr. Dorsey pointed out other words which he claimed to be characteristic of an intelligent man. To get that correct, your Excellency, one only needs go to the Annie Maud Carter notes, which we have here. We are informed by Mr. Dorsey that Conley denies having written the portion of these notes that is vulgar. So for these comparisons we may refer to those portions which are not vulgar."

Mr. Howard pointed out a number of words in the Annie Maud Carter notes similar in spelling, use and writing to the same words in the murder notes.

"When Conley comes to defend himself," Mr. Howard resumed, "he starts out by contending that he was in no way connected with the crime. Then he makes three other statements in an effort to shift the circumstances of the crime from his own shoulders to those of another man. All these go to show whether his defense is in good faith and should be believed, and, therefore, whether the crime should be taken from him and placed upon another."

Mr. Howard read the fourth of Conleys' affidavits made to the detectives, and commented:

"Here are the corrupt lessons learned in the school over which Harry Scott and John Black presided, and on which the courts would hang an innocent and worthy white man. The trouble with the case is that too many people have fooled with it who don't know the negro.

"How anybody can believe Conley's story in the face of all these circumstances, more especially his network of lies, is beyond my understanding. You can't in any spot in the evidence put Conley in a place where he'll stand hitched to a semblance of the truth. He has never hesitated to change or alter any fact that suited him. It meant hell for somebody, but the line of least resistance to Conley and his tutors."

While the speaker was reviewing that part of the story of Conley bearing upon the charges of perversion Governor Slaton asked certain questions concerning them.

"The charge of perversion, insinuations, and suspicions," said Mr. Howard, "constitute the pith and marrow of the Frank case, and there is nothing but suggestion and innuendo. You can't insinuate a man into the toils of the law. They relied upon suspicion to enmesh him, and at the instance of the degraded, bestial negro they made Frank an easy victim."

Mr. Howard went at length into the matter of Frank's lawyers failing to cross-examine the twelve girls put upon the stand by the State as character witnesses.

"It is held against us," he said, "because we did not cross-examine these character witnesses, who stated that the prisoner's character was bad. Why did we refuse? Simply because what they would have answered would have been inadmissible except to test the correctness of their original statements."

"Frank's lawyers were acting wisely and prudently. There were abundant reasons. The women and girls could have said anything; they could have even given hearsay testimony. I'm sure you know that this question of telling the exact truth about our neighbor's character is the hardest thing on earth to do. There was no wiser decision made by Rosser and Arnold in their defense of Frank than to let the character testimony alone."

It was at this point that the Governor announced an adjournment for the day.

After the conclusion of today's hearing ex-Governor Brown said:

"I see that Mr. Howard stated that at the close of my term as Governor I pardoned forty convicts, twenty-five of whom were serving sentences for murder. Those pardons were for men who had been paroled by Governor Smith and those who preceded him. Under the law, when a paroled convict has merited a pardon, the Governor must grant the pardon; he has no discretion in the matter. There was nothing for me to do but grant the pardons."

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