In Re

Leo M.Frank,Sentenced to be Hung.

Application for Executive Clemency.

Memorandum of Recommendation by
T.E.Patterson,Prison Commissioner.

For some time prior to April 26th,1913,Leo M.Frank was Superintendent of the manufacturing plant of the National Pencil Company situated 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 26th,1913,having worked only one day,she had earned $1.20. On this date about noon she went to the factory building for the purpose of 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 hung. He made a motion for a new trial,which was denied by Hon.L.S.Roan, the trial Judge,and this 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 satsified 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 there was not sufficient evidence on which to base the

verdict. 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 to warrant the inference that a different verdict might have been reached had these facts been known at the time of the 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 that there is 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 examing 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. 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 wrote the notefound by the body; that Conley made several conflicting affidavits as to his connection with the crime;and that Conley in making these statements was trying to protect himself,as is inferred from the following taken from his testimony (page 67 of printed testimony) that "as to why I didn't put myself there on Saturday,the blame would be put on me." This shows that Conley was thinking about protecting himself and not Frank. These circumstances and evidence fixes the crime on Conley unless he is able to explain them. This he attempts to do in such a way as to make Frank guilty as principal and himself guilty as an accomplice. Thus we have Frank,who protests his own innocence of participation or knowledge of the crime,convicted on the testimony of an accomplice,when the known circumstances of the crime tends most strongly to fix the guilt upon the accomplice. The accomplice has the highest motive for placing primary responsibility on Frank,that of self protection, which is shown to have been in his mind when testifying.

However,there are other XXXXXX reasons inherent in the record that would justify and authorize the exercise by the Governor the right of commutation in this case. The trial judge who passed upon the motion for a new trial,who heard the testimony of Conley and the other witnesses,who saw Conley on the stand, observed his demeanor when testifying,and who had a trained and experienced mind in observing and weighing these matters,says in a letter which he authorized to be used in this hearing,concerning Conley's testimony as follows: "After months of continued deliberation I am still uncertain of Frank's guilt. This state of uncertainty is largely due to the character of the negro Conley's testimony, by which the verdict was evidently reached." It cannot be said that this was wrung out of Judge Roan while sick,for he orally expressed practically the same uncertainty when passing upon the motion for a new trial.

Also there is the dissenting opinion of two Judges of our

Supreme Court, Chief Justice Fish and Justice Beck, in which they use the follwoing language in discussing the effect of certain testimony of this negro Conley and other witnesses upon the minds of the jury, which they consider was inadmissible: "The admission of the evidence in relation to them (certain prior acts of lasciviousness) was certainly calculated to prejudice the defendant in the minds of the jurors, and thereby deprive him of a fair trial."

In the language of the Supreme Court this case depends largely upon circumstantial evidence, if not altogether. In my investigation, I cannot find where the Executive has allowed a man hung when the trial judge was not satisfied as to his guilt. Some have been allowed to be hung when the trial judge recommended commutation, but this was in cases where it was simply a question of what punishment should be meted out where the perpetrator of the crime was known. The sentence of 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. But 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 hung 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. 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 atate 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 substitute 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,

J. E. Patterson

Prison Commissioner.

Pardon Commission

Leo M. Frank

Application for Executive Clemency

Recommendation of T. E. Patterson Pardon Commission