

FRANK NOW SEEKS HABEAS CORPUS WRIT

Petition Filed in Georgia Federal
Court, Alleging Violation of
Due Process of Law.

TO SUPREME COURT AGAIN

Will Go There on Appeal—Mob
Spirit and Absence When Jury
Reported the Grounds.

Special to The New York Times.

ATLANTA, Ga., Dec. 17.—Charging that he was unjustly and illegally held in imprisonment by the State of Georgia, Leo M. Frank today renewed his fight to save his life, when counsel in his behalf filed a petition for a writ of habeas corpus before Judge W. T. Newman in the United States District Court for the Northern District of Georgia.

An immediate hearing on the petition was not given because of the absence of Solicitor General Hugh M. Dorsey, who was detained by a trial at the Court House. The argument will be heard at 10 o'clock Saturday morning.

This new move will again carry the Frank case into the United States Supreme Court at Washington. If Judge Newman should grant the writ, the State of Georgia would be entitled to appeal to the Washington court. If he should decline Frank would have the right to appeal to Washington.

Warren A. Grice, Attorney General of the State, is automatically brought into the present fight. To him was supplied a copy of Frank's petition this afternoon, and he has begun actively to aid the Solicitor General.

Frank's petition is voluminous, setting forth a history of the case and averring that the petitioner is entitled to freedom because of "his conviction without due process of law." The petition declares:

"My imprisonment is wholly without the authority of and contrary to the law and in violation of my rights as a citizen of the United States, particularly under Section 1 of the Fourteenth Amendment to the Constitution, which provides that no State shall deprive any person of life, liberty, or property without due process of law, or deny to him the equal protection of law, the protection of which I expressly invoke."

Frank gives these reasons why he should be freed:

Points in the Petition.

The reception, in my absence, of the verdict convicting me of the crime tended to deprive me of my life and liberty without due process of law, within the meaning of the Fourteenth Amendment to the Constitution.

I had the right to be present at every stage of my trial, including the reception of the verdict, the polling of the jury, and the discharge of the jury, this right being a fundamental right essential to the due process of law.

My involuntary absence at the time of the reception of the verdict and the polling of the jury deprived me of the opportunity to be heard, which constitutes an essential prerequisite to the due process of law.

This opportunity to be heard included the right to be brought face to face with the jury at the time of the rendition of the verdict and the polling of the jury.

My counsel, having had no express or implied authority from me to waive my presence at the time of the rendition of the verdict, and it being, in any event, beyond my constitutional power to give them such authority, their consent to the reception of the verdict in my absence was a nullity.

Since neither I nor my counsel could expressly waive my right to be present, that right could not be waived by implication or in consequence of any pretended ratification by me or acquiescence on my part in any action taken by my counsel.

My involuntary absence at the reception of the verdict, constituting, as it did, an infraction of due process of law, incapable of being waived, directly or indirectly, expressly or impliedly, before or after the rendition of the verdict; the failure to raise the jurisdictional question on my motion for a new trial, did not deprive me of my constitutional right to attack as a nullity the verdict rendered against me and the judgment based thereon.

My trial did not proceed in accord-

ance with the orderly processes of the law essential to a fair and impartial trial, because dominated by a mob which was hostile to me, and whose conduct intimidated the court and jury and unduly influenced them and neutralized and overpowered their judicial functions, and, for that reason also, I was deprived of due process of law and of the equal protection of the law, within the meaning of the Fourteenth Amendment of the Constitution.

"Wherefore," the petition concludes, "I pray that a writ of habeas corpus may issue, directed to C. Wheeler Mangum, Sheriff of Fulton County, Georgia, and to each and all of his Deputies, requiring him and them to bring me and have me before this court at a time to be set, by this court determined, together with the true sense of my detention, to the end that due inquiry may be had in the premises, and that I may be relieved from my said unlawful imprisonment and detention."

Mob Spirit at the Trial.

The petition contains a description of the crowds that frequented the courtroom and its environs during his trial, especially on the day of the verdict.

"The courtroom was constantly crowded," the petitioner declares, "and sentiment seemed greatly against me. Considerable crowds gathered in the streets and alley, and the noises that emanated from the crowds could be heard in the courtroom."

"These crowds were bolsterous. Several times during the trial the crowd in the courtroom and outside of the Court House applauded in a manner audible to both the Judge and jury whenever the State scored a point. The crowds outside cheered, shouted, and hurrahed, while the crowd inside evinced its feelings by applause and other demonstrations."

"The jury, in going to and from the courtroom each day, depended upon passageways made for them by officers through the crowds. The jury box which was occupied by the jury was inclosed by the crowd, sitting and standing in such close proximity to it that whispers of the crowd could be heard during a part of the trial."

Attorneys for Frank say they feel confident in the success of this new move. It will probably delay the execution scheduled for Jan. 22, 1915. The case will be carried to the United States Supreme Court with the same rapidity that marked the appeal that was unsuccessfully made two weeks ago.