

Surely, if Judge Roan entertained the extreme doubt indicated by his statement and had remembered the power granted him by the Code, he would have sentenced the defendant to life imprisonment.

In a letter written to counsel, he says, "I shall ask the prison commission to recommend to the governor to commute Frank's sentence to life imprisonment * * * *. It is possible that I showed undue deference to the jury in this case when I allowed the verdict to stand. They said by their verdict that they had found the truth. I was in a state of uncertainty, and so expressed myself * * * *. After many months of continued deliberation, I am still uncertain of Frank's guilt. This state of uncertainty is largely due to the character of the Conley testimony, by which the verdict was largely reached.

"Therefore, I consider this a case in which the chief magistrate of the State should exert every effort in ascertaining the truth. The execution of any person whose guilt has not been satisfactorily proven is too horrible to contemplate. I do not believe that a person should meet with the extreme penalty of the law until the court, jury, and governor shall have all been satisfied of that person's guilt. Hence, at the proper time, I shall express and enlarge upon these views, directly to the prison commission and governor.

"However, if for any cause I am prevented from doing this, you are at liberty to use this letter at the hearing."

It will thus be observed that if commutation is granted, the verdict of the jury is not attacked, but the penalty is imposed for murder, which is provided by the State and which the judge, except for his misconception, would have imposed. Without attacking the jury or any of the courts, I would be carrying out the will of the judge himself in making the penalty that which he would have made it and which he desires it shall be made.