

New Trial Denied Leo Frank; No Argument by Hugh Dorsey

Judge Ben Hill Denies Extraordinary Motion of the Defense Without Hearing From the State—Motion Drawn Before He Leaves Bench.

SECOND MOTION IS SET FOR NEXT SATURDAY

Date of Resentence Has Not Been Set—Leo Frank Still Has Three More Opportunities to Escape Death on the Gallows.

Attorney Reuben Arnold stated last night that within twenty days the extraordinary motion for a new trial for Leo Frank would be carried before the supreme court as a subsequence to the denial of a new trial by Judge Ben Hill yesterday morning.

Frank's counsel has already begun work on the bill of exceptions, which will soon be sent to the printers, and which will contain every ground that was set forth in the motion extraordinary before Judge Hill.

This will be the second time the Frank case has been before the supreme court. Accompanying the bill of exceptions will be an opinion by Judge Hill subsequent to his review of the grounds contained in the extraordinary motion.

Judge Hill's decision came as a bolt from the blue Wednesday morning. Without giving Solicitor Dorsey time to make answering argument to the speeches by Attorneys Arnold and Rosser, he sat calmly in the chair in which he had presided over the retrial hearing, and rendered his overruling decision.

A development which followed the denial Wednesday was the arrest of George Epps, the newsboy witness, who was tried before Judge Eugene Thomas in the afternoon on a warrant issued by B. Bernard, charging false swearing.

Dorsey Represents Epps.

Epps had identified Bernard and swore in an affidavit that Bernard was one of the trio who was implicated in his alleged abduction to Birmingham during the early part of the year, when he made an affidavit repudiating his testimony in the Frank case.

Bernard denied the charge and issued the warrant. It was given hearing before Judge Thomas. Witnesses testified in behalf of both Bernard and the accused newsboy. Solicitor Dorsey represented Epps and also took the stand in his behalf, saying that Epps had not directly accused Bernard, but had singled him out as the man who looked like the one who lured him to the Alabama city.

The warrant was dismissed and the young witness released. It was rumored persistently following the trial that Epps was planning to prosecute Bernard on a charge of malicious prosecution and that charges would be preferred against him at once. This report, however, could not be verified, as no one associated with Epps would talk of it.

"We are busily at work on the bill of exceptions," said Attorney Arnold last night, "and will certainly carry the motion before the supreme court. We cannot determine yet the exact time, but will act as early as possible under the circumstances."

Judge Hill's Order.

The order of Judge Hill was: "State of Georgia, County of Fulton, The State of Georgia v. Leo M. Frank.

"After hearing the arguments and evidence on the application of Leo M. Frank on his extraordinary motion for a new trial the same is hereby overruled and denied.

(Signed) "BEN H. HILL,
"Judge of the Superior Court."

A move will be made to speed the bill of exceptions to the supreme court. The date for re-sentence has not been set. Solicitor Dorsey and Judge Hill will confer at once regarding the judge's certification to the bill of exceptions, and the remarks which he will write for the supreme court.

The final session of the retrial hearing was occupied by arguments from Attorneys Luther Z. Rosser and Rube Arnold of the defense. Rosser spoke first, taking up an hour and ten minutes. Arnold's speech was a bit longer.

Charges Prejudice.

"There is nothing more unfortunate to the community than the Mary Phagan tragedy," Mr. Arnold said in his argument. "No punishment can be too severe for the guilty. The original tragedy, though, was no more horrible than the trial of the man convicted.

"It is to be expected that the community would rise agal st a crime of this sort, but there was no cause for the overwhelming prejudice and hysteria that reigned during Frank's trial. There was positively no reason why the attitude of the public should let the horror of the crime obscure the issue at trial.

"If your honor will look at the trial record, you will see that the state's main witnesses were dreadful criminals—Albert McKnight, Jim Conley, C. B. Dalton, J. E. Duffy, George Epps. They are the five men on whom conviction rested almost exclusively. And what a lot they are!

"Their pasts were submerged in secrecy at time of the trial. The jury was forced to take them purely at their face value. But now the light has been thrown on each of them. Developments in our re-trial motion have thrown a flood of luminance upon their viciousness and the careers of crime they have led. And this revelation will produce an entirely new effect in another trial.

"Furthermore, nearly all the counter evidence of the state revolves around these men. The perjuries committed by them and others of their ilk are enough to sicken any man. Wheth-

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man who was the state's witness—Dr. Claude Smith. He found one blood corpuscle to the lot, and he stated that it could have been the blood of a rat or a mosquito which had sucked human flesh. Also, he stated that the blood could have been on the floor one or four years or more.

"All this practically eliminates the state's theory that Mary Phagan was murdered on the second floor. And, certainly, it was absolutely necessary for the crime to have been committed there for Frank to have been guilty."

Conley Not a Pervert.

It was shortly following that Arnold made the startling declaration that Jim Conley was not a pervert and that he, Arnold, disagreed with Detective Burns in this respect.

"Burns isn't familiar with the vernacular of our negro and that is why he believes Conley to be a pervert. I understand he bases his opinion on the vile language used in Conley's letters. Conley isn't a pervert. There isn't any perversion in this case. Frank isn't—no one connected with it is. Mary Phagan was killed to slake the bestial lust of a depraved mind. This perversion business is rot.

"Annie Maud Carter is a dissolute, criminal creature, but she is telling the truth. The letters show for themselves. I don't doubt, however, that if the detectives had been able to get hold of her, she would have joined in the popular pastime of recanting. Furthermore, Conley, in his own affidavit, doesn't deny writing Annie Maud Carter these letters.

"Your honor," Mr. Arnold said in conclusion, "we have presented this case under extreme difficulties. Any fact we have shown has been subjected to the vilest and most merciless attacks. And, therefore, those facts which did stand muster certainly are meritorious of deep consideration. Your honor, Leo Frank deserves a new trial. It is justice that he be given one."

Mr. Rosser spoke, in part, as follows:

"Much of the testimony that has been presented by the state has been let in by your honor on the ground that it showed the manner of getting the testimony—attacks on the methods of the defense, so to speak.

"Anybody who understands human nature in the least knows full well the power of the state and the power of the city—knows that this power is sufficient to cause a witness who has changed his testimony to change it back again.

"An individual hasn't the power or capacity of the state or city. I want to say that it isn't necessary for the solicitor or city officials to use their power wrongfully to exercise a tremendous influence over these witnesses.

"The solicitor's access to the grand jury is sufficient. Not a single man who testified falsely in the Frank case ever had an opportunity to rectify his testimony if he wished to do so. The solicitor doesn't have to put it in public print that he will prosecute for perjury. All he has to do is to sit still and his very power rests in the stillness of his office which is sufficiently potent."

Mr. Arnold went on to show that the power of punishment that rested in the hand of the solicitor inspired fear into the hearts of witnesses who had told false stories on the witness stand, and that it was this fear which impelled them to recant their affidavits when confronted with the prospects of prosecution.

He defended the agents of the defense who had accumulated the evidence presented in the extraordinary motion, and referred to numerous affidavits supporting his defense. He scored the detectives who had been employed on the case and jocularly remarked that, from the number of headquarters men working with Dorsey, it was no wonder that the city of Atlanta was suffering a crime siege.

He dealt extensively with the testimony of Dr. Roy Harris and Dr. Harris' statement that the hair found on the lathe was not Mary Phagan's. He called Dr. Harris an 'artful dodger,' and said that his tactics outraged those of the famous Dickens character of that name.

He dwelt at length on the state's theory that Mary Phagan was murdered on the second floor, and took up each bit of evidence that appertained to the second-floor theory, showing its lack of strength and logic in the face of evidence that was produced by the defense in rebuttal.

NEW TRIAL REFUSED TO LEO M. FRANK

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er or not their original testimony was correct, it has been shown that they are wholly unworthy of belief.

Calls Them Crooks.

"God alone knows the truth of these recanting witnesses. They seem to have stories to fit any necessity. These confessed perjurers are responsible for the conviction of Leo M. Frank. If not, then, he was convicted on no evidence at all. Why, you could search the chaingangs, prisons and penitentiaries over the nation and you wouldn't find a more choice set of crooks than those with whom my friend Dorsey convicted Frank.

"I have never seen such depravity in mankind as has been developed in these witnesses and in the entire case. It has forced me to believe in utter depravity. If anything occurred outside of Russia like the conviction of Leo Frank, I have never heard of it."

Following his attack upon the various witnesses who have repudiated their testimony time and again, Mr. Arnold dwelled upon the Ragsdale episode, saying that Ragsdale's lie was insignificant in comparison with the lie told on the witness stand by Jim Conley.

"There was where Dorsey had an excellent chance to indict witnesses," he spoke. "Conley admitted on three distinct occasions that he had perjured himself. Dorsey had an excellent opportunity then and at other times to do a little indicting of men in his own camp.

"We were justified in putting in Ragsdale's affidavit, because he was a minister of good position, connected with a respectable church and vouched for by Rev. John E. White. If he told a lie, it is only an addition to the thousands that have been told in the Frank case.

"There has been nothing unclean in our methods. We have sought nothing but the truth, and our constant instructions have been to touch nothing but the truth. But, bless you! when we get the truth, the detectives take it away from us. In time, God will reveal it. It may be after Frank is hanged, but it will be revealed. That can be depended upon."

At this point of his address, Mr. Arnold took up what he designated as two outstanding weak points in the state's chain of evidence, which, he declared, had been highly instrumental in convicting Frank. They were the hair found upon the lathing machine, and the blood spots.

"First of all," he said, "we'll exclude the hair, because Dr. Harris, it has been shown, has said that it was not Mary Phagan's hair. The blood spots were chipped up and examined by a