

LEO FRANK'S FATE NOW RESTS WITH HIGH TRIBUNAL

Stirring Speeches Are Made
by Attorney General Fel-
der for State and Luther
Z. Rosser for Defense.

FELDER IS CRITICAL OF JUDGE L. S. ROAN

He Declares the Judge's
Comments Had No Right-
ful Place in the Bill of
Exceptions Filed.

The expression of doubt made by Judge L. S. Roan, the trial justice in the Frank case, was the subject of a searing attack Tuesday morning from Attorney General Thomas Felder in his address before the supreme court, where the fight for a new trial for the convicted man came to a close at 1 o'clock in the afternoon.

Much stress was laid by the defense upon Roan's expression. Attorney Arnold not only made liberal display of the words of the trial judge, in which Roan stated that he was not convinced of either the guilt or innocence of the prisoner, but Luther Rosser also dwelt extensively upon them.

Mr. Felder, however, the only speaker to combat this particular phase of the new trial fight, said:

"We are met in the bill of exceptions by a statement of the trial judge that he, himself, was not entirely satisfied with the trial, and that he was not convinced of either the guilt or innocence of the man.

No Place in Bill.

"That expression has no place in this bill of exceptions. The judge who uttered these words should not be allowed to impeach his own judgment as he has done. Neither should he be allowed to impeach the verdict of the jury which he, himself, approves. There is no evidence of doubt incorporated in this order of the court refusing to grant a new trial. This, and not an expression of the court's sentiment, is that which should be accepted by the supreme court."

Mr. Felder's speech was short, owing to the liberal amount of time occupied by Solicitor Dorsey. He defended Dorsey against the attacks of the defense, and attempted to outline, in the short space of time allotted to him, the chain of circumstances on which he declared Frank had been convicted.

The concluding argument was made by Attorney Luther Z. Rosser. He, also, was granted a limited time on account of the amount occupied by his colleague, Rube Arnold, who made the opening argument. Most of Mr. Rosser's speech was devoted to an arraignment of the prosecution for the infection of testimony to prove lasciviousness and perversion, which, he averred, had done equally as much toward convicting Frank as the "mob which terrified the jury."

Rosser Expects New Trial.

Mr. Rosser's speech was begun at 11:37 o'clock. He said, in part:

"Let me say, in beginning, that this verdict will be reversed. I am assured at the outset of this. First, let me draw a little scene which occurred at the early part of the trial: In the contest for the show of Frank's alleged perversion, the defense lost. At the judge's decision, the crowd broke out in a wild uproar like a blood-thirsty mob at a bull fight.

"The scene was outrageous, and a travesty on justice. The audience applauded openly in the courtroom, and, for a while, it looked as though a violent demonstration would ensue. The attorney general was not present at this trial. Therefore, he isn't as familiar with the circumstances as we.

"I don't think any other attorney-general has ever made any such assertions as he. The wildness, however, can be accounted for in his limited knowledge of the original circumstances. He has a decided penchant for exonerating Dorsey. He exonerates Dorsey for most everything Dorsey has ever committed. He exonerates him for using Frank's wife as a witness.

"And, do you know what that means? Nothing less than the fact that Dorsey made the good wife sit in judgment against her husband and adjudge him guilty. She couldn't testify, yet, the solicitor, under these circumstances, literally made her go upon the stand against her mate. It was a miserably unfair argument, as even

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trip the prosecution would have no case. This isn't true. Conley is in the case, but, without him, we have a chain of evidence fully as complete as could be forged with him as the connecting link.

"Conley might be a dirty, lousey, stinking negro, but the trial jury has seen fit to believe him. The jury has taken the truth—the truth whether it be in tatters or silk.

"Suppose we come up to the rule in this question of the two jurors who have been assailed. In the case of these two men, the state has made a counter-showing and a perfect one. This court has always ruled that when the trial judge hears the motion and the counter-showing, your honors, consider him the trier of the case. That wipes out all contention the defense might make regarding the jurors.

"In the motion for new trial on grounds of outbreaks of the audience the defense should know well enough that the court cannot countenance such action when, in the beginning, counsel had ample opportunity to adjust the situation by compelling the trial justice to not only rebuke the audience, but instruct the jury accordingly.

"The feeling of the audience is said by the defense to have been inspired by racial prejudice. Not so. Whoever committed this crime is responsible for the feeling of the public. Every man in Georgia may have a fair trial. The Frank case, however, is not such an exception as one might judge from the surface.

Dorsey Deserves Praise.

"Now, as to this criticism of the solicitor general. He has received much censure. Instead of criticism, I think his hand should be uplifted and that he should be congratulated. He has made a wonderful success, and he has handled the case well.

"He is censured for subpoenaing witnesses to his office. I think he should be commended. It is for the witness to complain, not the defendant. Mr. Arnold, on another hand, thinks it terrible that Dorsey used the conduct of Frank's wife in his argument. The solicitor was right in doing so. This court has held time and again that whatever conduct relating to the crime one way or another is admissible.

"But, to make the solicitor's argument all the more legitimate, Frank himself, on the stand, brings back the conduct of his wife. Your honors, Mr. Dorsey was not supposed to make an argument that would please Frank. The argument was legitimate in the whole, perfectly proper. If Frank had not mentioned the conduct of his wife in his own statement, the matter, I daresay, would never have been discussed at all."

Frank's Mistake.

Solicitor Dorsey renewed at 9 a. m. his argument which was suspended Monday afternoon at adjournment time, 1 o'clock.

"Frank made many errors in the beginning of this case, one of which was the conflicting statements that he had been both in and out of his office during the time Monteon Stover had appeared at the building to get her pay. He told at the inquest that he was in the office all the time, while, at the trial, he, realizing the inestimable value of the time element, stated that he was probably out of the place at the time the girl arrived.

"On the day the Pinkerton detectives were hired, Frank telephoned Herbert Schiff three times to hire the detectives. He told Detective Scott later that he was in the office all the time during the noon hour. Since the Stover testimony developed, however, he told a conflicting story. The defense says that when Miss Stover arrived, Frank was behind the safe door of his office, which is preposterous. Miss Stover looked over the entire room, stayed five minutes, then departed.

"Gentlemen, I warn you against this brief submitted by Frank's counsel. Talking about twisting and contorting. I want your honors to stick entirely to the evidence. Miss Stover says positively that Frank was not in his office, and he wasn't. He was in the metal room, probably gagging the mouth of Mary Phagan with the strip of her underclothing. Either that, or arranging it so it would catch the blood that ran from the gash in her head."

It was shortly following this part of the solicitor's speech, that the court interfered in what was prospective of becoming a lively tilt between Colonel Rosser, of the defense, and the solicitor. Dorsey was relating his theories of the work done on the famous financial sheet, upon which the defense relied greatly during the trial. He was interrupted by Rosser, who said:

"No, that isn't right."

The court interfered at once:

"We assure you gentlemen that we will read over every particle of the evidence thoroughly. There is no need of interruption."

"But he is so radically wrong," said Mr. Rosser, "and I hate to see such things get to the court even verbally."

Perfect Chain of Evidence.

"If your honors will notice," continued Mr. Dorsey, "we are showing a perfect chain of circumstances without Conley. The conviction would have come about even though Conley had been an unknown quantity. We have a case without Conley. Fortunately, however, Conley is in the case."

The audience was larger at the final session than Monday. At least a dozen women were present. There were two young girls who occupied seats in the rear, while one old woman, who appeared not less than sixty-five or seventy years old, sat upon a stool near the entrance—the only seat available.

There was also a large number of prominent lawyers from all sections of

the state, who had come purely for the purpose of witnessing the masterful legal battle between defense and prosecution. The remainder of the audience was composed entirely of friends of Frank and of the idly curious.

Frank's fate now rests in the final resort, that is excluding the governor. The court is expected to go into bank some time in January or February. However, a decision is not anticipated before two or three months, owing to the bulk of record which will have to be examined.

Both the prosecution and defense express confidence of success.

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the attorney-general, in his heart of hearts, will be forced to agree.

"I am using it, however, to show just a single instance. There were many others.

"Now, about Conley. If they did not have him, the prosecution's case would have crumbled as the snows beneath a blazing sun. The time element refutes all Conley tells. That alone is sufficient to show the absurdity of the negro's lies. It's as plain as the nose on your face—there is no getting around it, no matter how much they circle and beat around the bush.

"Listen: Conley says he left Frank and the factory after having disposed of the body and went to a nearby saloon. He says he looked up at the clock upon entering the place. It was four minutes until 2 o'clock. That's his testimony and it's in the record. On the other hand, however, we have the statement of Miss Kent—an unimpeached little girl of 16, who says she saw Frank at ten minutes after 1 at Whitehall and Alabama streets.

"Coupled with which is the testimony of Minola and Albert McKnight, who saw Frank at his home away out on East Georgia avenue at 1:30 o'clock. He is known to have telephoned from home between 1:30 and 1:40 o'clock. Then, neighbors on Washington street took the stand to tell of having seen him during the remaining time until 2 o'clock. An excellent chance he would have had to help the negro dispose of the body in accordance with the negro's tale: (aren't we all?)

"That washes away everything Conley can say. The negro's most damaging utterances were his filthy lies of perversion that inflamed the jury mind. This nature of testimony was brought in purely to prejudice the court and jury—that and for nothing else. Why, Henslee said following the trial: 'I was convinced early that Frank was a pervert.'

Perverts Don't Kill.

"Your honors, perverts don't kill. They are sickly, effeminate snides, groveling in the slime, fleeing from their own shadows. They never rise to the majesty of murder—the manhood of it. Murder is manhood to them. They crawl on their bellies in the mud of the earth, and never rise above the level of filth.

"Read Conley's cross-examination! Read it, and it will make you ashamed that he is a two-legged creature like yourself. He has absolutely no regard for the truth. We would catch him in a palpable lie and pin him down. He invariably admitted that he was lying, but could give no explanation. He was the most oily liar—and the most scoundrelly—I have ever listened to.

"Illegal evidence, your honors, can never be the basis of legal verdicts. Conley's evidence cannot be termed legal—not and stay within the bounds of human rights and justice."

Following his attack upon Conley, Mr. Rosser turned his guns upon the character evidence submitted by the state. He explained the putting of Frank's character into evidence by the fact that they were forced to defend their client when the prosecution had sought to "dirty" the man's nature.

Proved Good Character.

"When they had thrown out the drag-net and had shown everything from the man's having looked into a dressing room to the stinking tales of this negro, we were forced to overwhelm it. And we did. There is positively no doubt about that. We did it with 103 irreproachable character witnesses, and we proved his character beyond the shade of a doubt.

"Lasciviousness," the speaker continued, "should not have played a part in the trial. The lady-killer, you know, isn't the man-killer. Don't ask if the murderer was caught peeping into a girl's dressing room or was caught with a lady in Druid Hills. Ask if he fought here, or was uproarious there, or was reckless, careless, blood-thirsty yonder. Bring out the characteristics of the crime.

"Dorsey says that the murder of Mary Phagan grew out of lascivious conduct. I believe he is wrong, for, as I believe in a God, I do not believe this man was lascivious, and that he had a single thought toward this little girl.

"No, but the prosecution took the bucketful of slime and slop and threw it—like water upon a fire—into the jury's minds, degrading them with the prejudicial rot of perversion testimony, and the solicitor saying: 'He is a pervert, his character is bad, and, therefore, he is guilty of murder.' Frank, under these circumstances, had about as much chance as a crippled dove in a den of hungry cats."

Dorsey Is Arraigned.

The close of Mr. Rosser's address was devoted chiefly to an arraignment of Dorsey's tactics in arresting Minola McKnight, the cook in the Sellg household, whose startling affidavit was obtained by the police. He also roasted the solicitor for his system of subpoenaing witnesses to his office.

"This system," he declared, "strikes at the safety of every prisoner in Georgia."

In conclusion, Mr. Rosser said: "When your honors read and see the high-handed conduct of the officers who tried Frank, and how the spy-glass of suspicion was put on the man's every act and how unfair was his trial, you will, I am confident, reverse the decision."

Evidence Mountain-High.

"Your honors," said Mr. Felder, "the evidence against Frank is mountain-high. It has been said by Mr. Arnold that if Conley was taken from the