

LUTHER Z. ROSSER HOLDS CONFERENCE IN NEW YORK OVER LEO FRANK'S CASE

Lawyers for Prisoner Tell New York Newspaper Men Atlanta Was Stirred by Large Number of Un-avenged Murders, and That the Newspapers and People Were Determined on Meting Out Punishment to Slayer of Girl.

FAIR TRIAL POSSIBLE IN ATLANTA NOW, SAYS ROSSER IN INTERVIEW

Harry Latham Returns to Atlanta With New Affidavit, in Which Attack Is Made on Time Element as Presented by Prosecution. It Is Expected That Prisoner Will Be Brought Before Judge Ben Hill Today to Be Sentenced.

New York, March 3.—(Special.)—Luther Z. Rosser, of Atlanta, chief counsel for Leo M. Frank, arrived in New York today and tonight emphasized the contention of his associate, Herbert J. Haas, that their client had not had a fair trial, that such had been impossible in Atlanta last summer because of local conditions and the sensational report that had been spread broadcast concerning the character of the accused.

Mr. Rosser pointed out that the verdict of the Georgia supreme court, in declining a new trial, was not based on the evidence submitted in the lower court but upon whether errors in laying down and following the law had been made by the judge who presided at the trial.

WHY FRANK WAS CONVICTED.

"Why was Frank convicted?" was asked Mr. Rosser.

"The reasons are difficult to explain to any one who does not know what the situation was in Atlanta at the time," he said. "My associate, Mr. Haas, pointed out the other day that a large number of murderers had gone unpunished and that the people and the newspapers were determined that this murder of a little white girl should not go unavenged.

"You see, the Jewish population of Atlanta is not large. Frank came to Atlanta a stranger and engaged in a new enterprise."

"He knew few people who were not of his own religion, being closely occupied with his business, and this fact rather counted against him at the time.

"There was the prejudice to be found in the south, of the employee class against the employer and some local prejudice against a stranger. Outrageous statements about the reputation of Frank and about the condition of the body of the girl were printed and given wide circulation. Such was the effect of these statements that were published at the time, many people in Atlanta today still believe them, in spite of sworn testimony at the trial that absolutely refuted them.

"The negro, Jim Conley, was the sole witness and asserted Frank was a man of bad character—a pervert.

CONLEY MURDERER.

"That this same Conley is the mur-

derer of that little girl there is not a shadow of doubt.

"In reference to the statement of Helen Ferguson, printed in the Atlanta papers yesterday and telegraphed up here, I may say that Mary Phagan had not worked for two days in the pencil factory where she was employed and of which Frank was superintendent. The hands were usually paid on Friday. Now, Helen Ferguson testified on the witness stand that she had gone to the factory on Friday and asked for Mary Phagan's wages, and that Frank had said to her, 'No,' and that she left before he could make any further statement.

"The statement as printed yesterday, which told that Helen Ferguson had made an affidavit that she was approached by the negro Conley at the same spot on the ground floor of the factory, where the defense contends the Phagan girl was killed; also added that at the trial she had asked for Mary's wages on the day before the murder, and that Frank had told her she could have the money, adding that Mary herself was coming for her wages the next day. Such testimony as this was not given by Helen Ferguson in the trial, as the records will show.

SAYS NOTES

CONVICT CONLEY.

"To anybody who knows the negro character, the notes found near the body absolutely show who committed the crime. It is my opinion that no white man ever could have dictated the notes, whose intention was apparently to fasten the crime upon somebody else than the perpetrator.

"The prosecution claimed that the word 'negro' in the notes was a white man's word. Now in Georgia white folks call a black man a 'nigger,' but 'negro' is the first word the negro learns to spell at school and that is the one word that he always pronounces correctly.

"It was really the affidavit of the woman Formby as presented by the police, and which the woman declared the other day was total perjury and that the police really put the words into her mouth, that started the talk against Frank's moral character.

"In our extraordinary motion for a new trial we hope first to show that some of the witnesses in the trial now admit they gave false testimony.

"One of the most vital questions at stake in the trial was whether Frank was in the pencil factory between 1 o'clock and 1:30 on Saturday afternoon, the day of the murder. We thought we had demonstrated that he was not. We have additional testimony to this effect. The negro claims

that he was with Frank disposing of the body from four minutes before 1 until half past 1. He said Frank left the factory at 1:30. If we show that is not true everything else Conley says falls to the ground and is false.

HELEN KERN'S

TESTIMONY.

"Now Helen Kern, a little girl of 17, a typewriter, has an important piece of testimony. She stated on the stand that on the afternoon of the murder she had been making some purchases at a store and was to meet a girl friend at ten minutes past one and go to the parade that was going to take place that afternoon. This was on a corner four blocks from the factory. She looked at a clock on the corner to notice the time, and between one and ten past the hour she saw Frank nearby and saw him board a car going in the direction away from the factory. She knew Frank, because she had applied for a position in his office.

"As the situation stands, do you think Frank could now get a fair trial in Atlanta," Mr. Rosser was asked.

"While there is still a lot of misinformation and prejudice there, I think people have changed their opinions," he replied. "At any rate, there is not as strong prejudice as there was. If the trial court agrees, we are willing to have the case tried there again, because we believe people are awakening to a realization that a terrible mistake may have been made."

According to a dispatch from Atlanta tonight it was reported there that Messrs. Rosser and Haas had come to New York to interview William S. Osborne, a handwriting expert, who had been paid by the prosecution to examine the murder notes in the Phagan case.

Mr. Rosser said that there was no truth in this. "I came up here on certain business matters," he said, "and I may say that this afternoon I have conferred with certain persons who are interested in the Frank case. I expect to leave for home tomorrow or the next day."

An intimate friend stated last night that Harry Latham had returned from New Orleans last Friday, and had brought an affidavit from a man in the Crescent City in which it is sworn that Mary Phagan was seen on the streets on the day of the tragedy at a time which conflicts materially with the prosecution's famous time theory. The name of the affiant was not disclosed. Latham, after staying over two days, departed Sunday night. He is now in Birmingham, Ala., where he is said to be furthering an investigation into the Phagan mystery. Friends say he will return home at an early date.

Latham is also stated to have produced other evidence in behalf of the convicted man. Much mystery now surrounds Latham's actions. The defense has repeatedly denied that he has any connection with Frank's counsel, and stated that the first they knew of his reported trip to New Orleans in effort to get affidavits, was when it was read in an exclusive story published recently by The Constitution.

Disclaims Relationship.
It was first reported that the man whom Latham went to New Orleans to interview, purported to be an uncle of the murdered girl. It was said that he told Latham this story when the Atlanta man met him on a recent visit to Louisiana. It is now said, however, that the man denies relationship to the dead girl.

The affidavit, it is said, states that Mary Phagan was seen on her way to the pencil plant on the day of the murder at a time which contradicts the theory introduced by the prosecution, and which was a strong link in its evidential chain. Whether or not the document will be made public soon is not known. Neither is it known whether or not it will be used by the defense.

Mrs. Formby May Return.
It became known last night that Mrs. Nina Formby is now in Chattanooga. Former associates say it is her intention to return to Atlanta soon and personally make her charges against the detective and police departments. John Gossett, a former court official, who has been connected with the woman's counsel in the past, stated to a reporter for The Constitution that she had come to Chattanooga recently, where she is residing temporarily.

Her address, Gossett stated, was 1715 Ninth street, where she is stopping with friends. She will not return to Atlanta, he said, until advised to do so by her attorneys. In the meantime, she will remain in Tennessee, her former home. Gossett declared that she was ready and willing to personally face the police and detectives she accuses and verbally make the sensational charges set forth in her scathing affidavit made public by The Constitution last Sunday.

The prospects are that Leo Frank's sentence will be pronounced some time

this afternoon, but it will not be until a few days before the execution date that his defense will file its motion extraordinary for a new trial.

It was intimated in court circles Tuesday—on which day the supreme court remittitur was received by the superior court—that Solicitor Hugh Dorsey would apply for habeas corpus proceedings to have the convicted man appear before Judge Hill this afternoon for resentencing.

On the heels of the remittitur's receipt, members of counsel for the defense said that it would be a considerable while yet before their motion extraordinary—which is now in process of formulation—would be put in the hands of Judge Hill. A few days before the execution date they stated would be the time.

Rosser and Haas Missing.
Work on the new motion will likely be checked for a short time on account of the absence of two members of the defense—Herbert Haas and Luther Z. Rosser, who are in New York. It is persistently rumored that both men are in that city on new developments in their fight.

Their colleagues, however, deny that there is any connection of their visits with the Frank case, and that Haas and Rosser are in Manhattan on separate missions. It is also reported that they have gone north to investigate the connection of William S. Osborne, a famous handwriting expert, who was paid \$100 by the prosecution, but whose testimony was never used.

Solicitor Dorsey stated Tuesday that Osborne had examined the murder notes at the solicitor's instructions, but that this was the expert's only connection with the case. His testimony was never used, Dorsey said, because Jim Conley admitted having written the missives.

It became known Tuesday that Dr. B. Wildauer, the dentist, and Milton Klein of Daniel Klein & Son, employed Detective William J. Burns to investigate the Phagan murder. They are close friends to Leo Frank, and stated that their object in employing the famous investigator was to make an impartial investigation into the case to ascertain if any stone has been left unturned in the previous investigation.

Burns Returns Tomorrow.
Officials of the Atlanta agency of Burns' organization say that their chief will return to Atlanta tomorrow and resume his probe. He is now in Jackson, Miss., where he went upon a business trip.

Wide interest is now centered on the fight to be made for a new trial. The defense is generally known to possess a mass of evidence to be submitted in their retrial application. Much of this evidence has already been made public, such as the affidavits made by Albert McKnight, the negro witness; Nina Formby, who charges detective crookedness; Helen Ferguson, who accuses Conley of making a drunken advance upon her one week before the murder, and the disclosure by Dr. Harris relating to the hair found upon the pencil plant lathe.

It is reported that Frank's counsel will turn over to the superior court numerous other affidavits, most of which were made by witnesses for the prosecution. A blanket of secrecy has thus far been thrown around these documents, but it is predicted that they will be made public at an early date—many days this side of the retrial plea.

Remittitur Received.
The remittitur from the supreme court denying a rehearing, and which makes the findings of the superior court those of the supreme court, was received by the clerk of the superior court of Fulton county on Tuesday morning. It was entered upon the docket in the case of the State v. Leo Frank as final judgment in the litigation.

The next move in the matter of the return of the remittitur will probably be taken within the next 48 hours, when Solicitor General Hugh Dorsey will file a writ of habeas corpus with Judge Ben Hill, of the criminal division of the superior court, asking the court to order that Frank be brought before that tribunal for resentencing.

Judge Hill will follow precedent in the matter, it is known, and at once order his deputies to bring Frank before him.

It is rumored that at this point the defense will enter a unique plea.

Unique Plea.
Depending upon the wording of section 63, of the code of Georgia, which, in substance, says that a "presiding judge" has it within his discretion to sentence a man convicted of murder to life imprisonment where the testimony in the case has all been circumstantial, the lawyers for Frank will attempt to prove that Judge Hill, sitting in the court of resentencing, is the "presiding" jurist in the case, and ask for a life sentence.

This move will probably be answered by Solicitor General Dorsey, who will cite the one hundredth Georgia decision, page 559, which declares, in substance, that a prisoner is sentenced to execution but once, and that the act of resentencing "is in fact but the re-dating of a sentence already inflicted."

Judge Ben Hill has it within his power, should he resentence Frank to death by hanging, to set the time anywhere within twenty to sixty days of the time Frank appears in court.

Only two subsequent moves on the part of the defense would act as automatic stays of sentence, one as an appeal to the prison commission and the other an appeal to the federal courts. A plea to the governor for clemency or to Judge Hill on the basis of an extraordinary motion for new trial, on the basis of newly discovered evidence, would have no effect upon the date of the execution unless the plea were granted.