

# THINK FRANK'S PLEA WILL WIN NEW TRIAL

Atlanta Lawyers Criticise Judge  
Roan and Many Believe the  
Verdict Will Be Annulled.

SAYS COURT WAS WARNED

Assistant Solicitor Asserts He Told  
Judge to Get Frank's Personal  
Waiver on His Presence in Court.

*Special to The New York Times.*

ATLANTA, Ga., April 17.—The action of the attorneys for Leo M. Frank in asking that the verdict be annulled on the ground that Frank was not in the court room when it was rendered, is causing much discussion among lawyers, many of whom express the opinion that the motion will be sustained in the courts. Solicitor General Dorsey is not of this opinion.

"Under the facts," said the Solicitor, "the motion amounts to nothing."

Frank A. Hopper, who assisted the Solicitor in the prosecution of Frank, had this to say about the motion of the defense to-day:

"As to the incident of the defendant's absence at the time the verdict was received, I will say that in a conference with Judge Roan during the trial, I told him I thought it best that the defendant should agree personally to waive his presence. I doubted that his counsel's consent would be sufficient. The Judge told me he agreed with me, and that the defendant's personal waiver had been or would be obtained. I supposed, of course, that it had been obtained, and was surprised to see a denial of this in the extraordinary motion filed yesterday. The Solicitor and myself were attempting to guard this point, and for that reason I mentioned the matter to Judge Roan."

Many lawyers are inclined to censure Judge Roan for his failure either to have Frank present or to obtain his personal waiver.

The answers of Dr. Harris propounded by the defense before a Commissioner to-day regarding the hair found on the lathe in the factory where Mary Phagan was murdered were regarded as favorable to the State. After having compared under a microscope the specimens taken from the lathe and specimens taken from the head of Mary Phagan, when the body was exhumed, Dr. Harris said:

"The specimens resemble each other so much that it was impossible for me to say definitely that it was not the hair of Mary Phagan. On the other hand, there appeared to be a slight difference in shade and shape, but no difference in texture. Color is determined by the naked eye, and there was not enough hair given to me by the Solicitor's assistant to make an accurate estimate of color. I have recently examined hairs from the heads of several persons. I find that hairs taken from the head of the same person differ as much in shape as the hair given to me by the Solicitor's assistants and the hair of Mary Phagan."

At this point in his examination Dr. Harris plucked two hairs from the head of Commissioner D. O. Smith and pointed out a difference in their shape and color.

"I told the Solicitor it was my impression that the two specimens were different," said Dr. Harris, "but I was careful to say there was no certainty in the opinion. I think this conversation occurred in my office soon after the examination. Mr. Dorsey ap-

peared to attach no importance to the examination nor did I. I told him that the specimens were slightly different in shape and possibly in color.

"I did not specifically say the specimens were not the same."

In the extraordinary motion the defense alleges that Dr. Harris offered to let Dr. R. T. Dorsey, brother of the Solicitor, compare the specimens to determine whether his opinion was correct.

Dr. Harris said to-day that a few days before the trial he discussed his work in the case with the Solicitor, Dr. Dorsey, and others.

"I recall that I talked to Dr. Dorsey about my work in a general way, and I may have told Dr. Dorsey that he could examine the specimen if he so desired," he said.

Dr. Harris said there probably were a dozen hairs submitted to him, although he did not count them. He took about ten hairs from the head of Mary Phagan.

Dr. Harris recently made an exhaustive study of hair, and he probably will be a witness for the State when it attempts to combat the defense's theory that the hair on the lathe was not Mary Phagan's.

Detective William J. Burns has not returned to Atlanta, but the men at the local office of his agency say he is expected at any time.

Leo M. Frank passed his thirtieth birthday in his cell in the tower to-day. He received several letters and congratulatory telegrams from friends from various part of the country, and some from persons whom he did not know. He received several gifts as well. Throughout the day his friends were calling at the tower to see him.

Frank's air of confidence has never left him. To-day he seemed in better health and spirits than usual. He would not discuss for publication the new moves in his case.