

FRANK'S LAWYERS SCORE DORSEY FOR HIS STAND

Luther Rosser and Reuben Arnold Declare He Is Going Out of His Way to Dictate to the Grand Jury.

EXCEEDS PROVINCE OF SOLICITOR GENERAL

Grand Jury Will Meet at 10 O'Clock Monday Morning to Take Up Conley Case. Call Is Sent Out.

In reply to Solicitor General Hugh M. Dorsey's statements in regard to the proposed indictment by the grand jury of James Conley, the negro who has confessed complicity in the murder of Mary Phagan, Attorneys Reuben R. Arnold and Luther Z. Rosser issued a statement Saturday afternoon in which they openly attacked the stand taken by the solicitor in protesting against the indictment of the negro.

That the solicitor is exceeding his legal functions as a state officer is one point that the lawyers defending Leo M. Frank make in their statement, and they also severely criticize the solicitor for his detective work in the Phagan murder.

The card also contains a reference to the statement made in The Constitution Saturday morning by Attorney William M. Smith, representing the negro Conley. The card of the Frank defense takes Attorney Smith to task for rushing to the aid of the solicitor.

Solicitor General Dorsey also issued a statement in which he declared that he no more believed that the grand jury, when it meets Monday, would indict James Conley than he believes that Judge J. T. Pendleton will accede to the request of Frank attorneys to draw the venire for the trial jury from the box containing names of grand jury veniremen.

Roan Out of City,

Judge L. S. Roan, who is to preside at the trial of Frank, which takes place next Monday, a week from tomorrow, will be out of the city during the greater part of this week and as requested Judge Pendleton to draw the veniremen for the trial.

It became known that Judge Pendleton had been requested by the defense to select the veniremen from the grand jury box instead of from the regular petit jury box, and Solicitor Dorsey immediately protested to both Judge Pendleton and Judge Roan.

There are something like 500 names on the grand jury list, and these men are presumably of a decidedly higher class of citizenship than the average among the list of those to be used on petit juries. The Frank defense, in asking that these men be the ones from whom the jurors would be selected, argued that a higher class and more intelligent set of men would thus be selected.

Solicitor Dorsey stated, however, that such action would be irregular, and that he was opposed to it. He declared that so far everything connected with the case had been done in the regular way, and that he wished no departure from this, or for Frank to be treated differently from scores of others who have gone on trial for their offenses.

When Solicitor Dorsey was pressed for his reasons for stating that he did not believe that Conley would ever be indicted by the grand jury, he declined to enter into an explanation of this.

"Under the situation and considering the circumstances," he said, "I do not believe that this grand jury or any other would indict the negro."

Does Not Expect Indictment.
"Do you mean to indicate that the grand jury may return a 'no' bill against the negro?" he was asked.
"Well, I'm not discussing that any

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farther," he replied, "but I don't expect Conley's indictment to result from the meeting."

The grand jury will meet at 10 o'clock Monday morning to take up the investigation of Conley's connection with the case. A call was sent out Friday afternoon by the foreman, who gave the directions after the solicitor had flatly refused to issue the call.

W. D. Beattie, a real estate operator, who is foreman of the grand jury, also stated to the solicitor that the grand jury wished him to be on hand Monday.

That the solicitor will make every effort to have the grand jurors reconsider their action in investigating Conley's connection with the case is not denied by the solicitor himself, and it is expected that the warmest fight that ever occurred in a grand jury room in Georgia will take place Monday when the question comes up.

It is said that several of the members are desirous of following the wishes of the solicitor and letting Conley's case alone until the disposition of the indictment against Frank, whom he accuses, and the struggle between the two factions of the grand jury is expected to be a long and hot one before a decision is made.

The statement issued by the attorneys for Frank's defense is in full as follows:

Statement of Attorneys.

"Counsel for Leo M. Frank have refrained from making a statement for the papers except under strong provocation. Clearly counsel on both sides should refrain from any comment of or criticism on any action of the grand jury to be taken at its meeting next Monday, which might tend to hamper or limit the grand jury in their action upon the Conley case.

"The grand jury is an independent body; it is under the control of no one.

"A solicitor general is the advisor of that body as to legal principles merely, but he has no right to exercise any sort of control in determining who shall or shall not be indicted.

"To permit a solicitor general to use the position intrusted to him by the people, to decide for himself who shall and who shall not be indicted, is a danger too great to be contemplated.

"With this preliminary statement we reluctantly make a reply to Solicitor Dorsey's interview in this morning's paper.

"It is rather remarkable that the solicitor general and a person admitting complicity in a grave crime should get together in such harmonious concert of action as these two interviews show. Mr. Dorsey admits that the indictment of Conley will have only a 'mild but undesirable effect on the state's case against Leo M. Frank.'

"Ought the solicitor general for one moment to be influenced in his advice to the grand jury by any consideration of the effect upon anybody's case?"

"It is not our understanding that the grand jury is organized to aid the solicitor general in his management of cases in court; their function is a higher one. They investigate every case of probable guilt and return an indictment. It could just as well be argued that the indictment of Frank might have had a mild but undesirable effect on Conley's case, in case Conley had been first indicted.

"The position of the solicitor general in this case has, from the beginning, been most remarkable. It has been heretofore understood that the solicitor was to try cases sent to him by the grand jury; but in this case, detective-like, the solicitor is seeking to determine who shall be indicted. Forgetting his legal and constitutional functions; he is undertaking to control the action of the grand jury.

"The citizens of this county elected Mr. Dorsey as solicitor general, but Mr. Dorsey has mistaken the purpose of his election. Evidently he believes that he was elected to be also the grand jury.

"The solicitor general does his duty when he tries to the best of his ability cases sent him by the grand jury. The solicitor falls far below the dignity of his office when he inflames public opinion, thereby inducing a conviction, innocent or guilty.

"The solicitor has closed his eyes to these plain truths and has rushed into print, day by day, proclaiming the guilt of Frank and the innocence of this negro, apparently for no purpose but to convict Frank, innocent or guilty, for the gratification of his professional pride.

"So far has the state's counsel forgotten the function of a prosecuting which is to ascertain the truth and convict the guilty, that Mr. Dorsey's detective assistant, Chief Lanford, in an interview in this morning's paper, uses the following language as to the Pinkerton Detective Scott, and Lanford's refusal to allow him to see Conley: 'We did not want to embarrass Scott by requesting him to keep silent and did not risk the probability of letting new developments reach Frank's attorneys, therefore we were forced to prevent him from seeing the negro.'

Why So Much Fear
"It seems, therefore, a matter for great endeavor on the part of the state, as the solicitor and his associate detective sees it, to keep whatever facts they rely upon to convict Frank, from the defendant, and his attorneys and the public.

"If the facts in the solicitor's possession were the truth, why so much fear as to letting them out? Is it possible that the effort is to ambush the defendant by the proof of circumstances on the trial, which he has no opportunity to meet or explain? Is it possible that the state's object is to keep the defendant in the dark as to the state's evidence and to so conduct

its case that he will have no opportunity to know the facts relied upon to convict him, and no opportunity to clearly meet them and disprove them, if they be false?

"The solicitor has undertaken in this case to hold certain witnesses in custody. He undertook to do this in the case of the negro Conley; but so fearful was he that the negro might dare to tell all he knew, that he went through the farce of requesting the superior court to no longer incarcerate Conley and to discharge him, and immediately upon obtaining this order of discharge, he went through the greater farce of having him loosed upon the streets, and then immediately and illegally returning him to the city station house, where he now is carefully watched, counseled and interviewed by the solicitor, his assistant, Mr. Hooper, and his detective assistants.

"We have no criticisms of the former grand jury, but some things happened before it, as reported, that tend at least to provoke serious inquiry:

"When Leo M. Frank's case was before the grand jury and in the midst of it, Conley made his first confession, forced thereto by the discovery that he could write. It was suggested to the solicitor that this confession be brought to the grand jury's attention. That would have been a fair thing to do. It was not done, and rumor has it that Mr. Dorsey directed that it be not done.

"One other thing is almost incredible, according to the public prints, when the solicitor wanted a vacation he was so afraid that the grand jury might act in his absence that he sought to extract a promise from these sworn servants of the state not to indict in his absence.

"When before was it ever suggested to a grand jury that they must await the termination of a pleasure trip before they should indict in any case where indictment was necessary?"

"Little need be said in reply to lawyer W. M. Smith's interview given in support of the solicitor's petition.

Reply to Smith.

"It is remarkable that the solicitor has to rely for support upon an argument made by Conley's counsel. It is, however, appropriate that he should bolster up the solicitor as he depends mightily upon the solicitor to protect his negro Conley. Conley's counsel realizes who is Conley's friend and rushes in print to his rescue.

"We are publishing this interview neither in an effort to have Conley indicted nor in an effort to have him not indicted. That is a matter solely for the grand jury. We are not making any appeal to them or to anybody else as to the effect Conley's indictment would have on the Frank case. So far as we are concerned we feel that the failure of the solicitor general to secure an indictment against a confessed accessory to the crime of murder would make far more capital in favor of Frank upon his trial than if he were indicted. We think any jury, and we think any community would resent the rank favoritism shown this confessed criminal.

LUTHER Z. ROSSER,

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Statement by Conley's Lawyer.

"This Phagan case certainly has its surprises," said Attorney William M. Smith, Conley's lawyer. "The grand jury breaking all known precedents, setting a new pace in Georgia criminal procedure, and now comes the remarkable proposition to disqualify five thousand good honest citizens of this county from service upon the jury in this case. It is said there are six thousand citizens of this county who are considered by our jury commissioners to be sufficiently 'honest, and upright' to serve upon our juries and pass upon the question of the guilt or innocence of Mr. Frank.

"Mr. Frank, in his defense, proposes, according to the papers, to have his jury selected from the grand jury list alone. It seems he is getting some sympathy from that direction at this time. There are only about 1,000 on the grand jury list. This seems to mean that the other 5,000 who do not happen to be in the grand jury list are, therefore, considered by Mr. Frank, in his decision, to be 'undesirable jurors.'

"It is rumored that friends of Mr. Frank are busily circulating among our people, with a view to obtaining from each possible juror, an expression as to the personal opinion each man has as to the guilt or innocence of Mr. Frank. This would be much easier if the list was only 1,000 instead of 6,000 to work up. This is strange news, that in a county such as ours of more than 200,000 population, only 1,000, composed mainly of our wealthier class, are considered 'sufficiently honest and upright,' by this man, to try his case.

"Conley is not begging to be shielded. All he asks is a square deal, and he ought to have it. Let them both render account for their part in this brutal murder before juries selected regularly from the 6,000 honest jurors of this county and not from any 'select' juror class. It took twelve Virginia farmers to give a rich white man named Beattie justice in Virginia, and I doubt if any one of them was in the grand jury box of their county.

"As to indicting Conley at this time, I have looked over the list today, and I know too many honest men on the grand jury to believe that it will be done, without some fight. Frank may have sufficient friends and influence to put it over, but we will wait and watch the line-up."