

FRANK ATTORNEYS FILE SUPPLEMENTAL BRIEF

Insist That Roan Evaded Responsibility in Denying Defendant a New Trial.

Attorneys for Leo M. Frank filed yesterday with the supreme court a supplementary brief on behalf of the defendant consisting of sixty-three closely typewritten pages. Writers of the supplementary brief state at the outset that their sole purpose in filing it is to correct alleged errors in the argument made by Solicitor Hugh Dorsey in his brief.

Every circumstance urged by the prosecution as tending to prove Frank's guilt is taken up in turn and the effort made to show that it is either untrue or a wrong inference drawn from the admitted facts.

Much stress is laid upon the declaration made by the solicitor in his brief that the case rested entirely upon circumstantial evidence. In regard to what the solicitor had to say about Mary Phagan's having, previous to her death, shown, on several occasions, her fear of Frank, the "reply brief" says:

Mary Phagan Not Afraid.

"There is not a line in the record

to show that Mary Phagan was in fear of this defendant, but, on the contrary, though laid off for a few days because of scarcity of material in her department, her intention was to return to work as soon as the material arrived. Would she have come to the factory on a holiday, when it was not likely that anyone but Frank should be there, if she had had any reason to be afraid of him?"

It is denied that Frank knew that Mary Phagan was coming for her pay on Saturday, April 26, and a number of circumstances are pointed out to show that he could not have known in advance of her coming.

Ridicule is thrown upon the idea that the shirt found on Newt Lee's premises was "planted" by Frank or by anyone of his friends. "At the time the shirt was found, Frank was not even under suspicion," the brief goes on. "If planted by anybody, the shirt was planted by the detectives."

Alleged Bias of Jury.

A number of pages of the "reply brief" is taken up with the consideration of the alleged bias of the jury and with the effort to show that the jurors were intimidated by the display of feeling on the part of the populace, in and out of the courtroom. Attention is called to the position taken by the newspapers, in urging that the trial not be continued on Saturday afternoon and also to the fears expressed by the trial judge and the colonel of the Fifth Georgia regiment.

"We urge upon the court," the supplementary brief continues, "that the presiding judge, the editors of the newspapers and the colonel of the Fifth Georgia regiment appreciated the significance of the intense feeling against this defendant and did not act without just cause, and that their action, in attempting to control the situation, demonstrated clearly that this defendant did not have a fair trial."

Judge Roan's Doubt.

The last ten or twelve pages of the "reply brief" is taken up with the expression of doubt on the part of Judge Roan as to the guilt of the defendant when he declined to grant him a new trial. Numerous authorities are cited from text-books, the decisions of this state and of other states in rebuttal of the authorities cited by Mr. Dorsey to show that Judge Roan's expression was not reversible error.

Stress is laid upon the fact that the language used by Judge Roan is now a part of the record, and, as such, must be considered just as much as any other part of it. In speaking of the responsibility of the trial judge, the "reply brief" says:

"It is of the utmost importance that a trial judge, in passing upon a motion for a new trial, should give the verdict his unqualified approval. He should not put all of the responsibility on the jury. To do this would make the judge a mere automaton, a machine, a mere instrument to register the approval of the verdict. If such were the case, the motion for a new trial itself would be unnecessary. But the trial judge is not such an automaton. He is expected and required to exercise a real discretion."

Factory Diagram Filed.

For the court's information Solicitor Hugh Dorsey turned over Wednesday morning the large diagram of the pencil factory which was used by the state on the trial. The diagram shows both exterior and interior views of the factory and was used on the trial to illustrate the testimony of witnesses.

Solicitor Dorsey said some time ago that, if the defense filed a supplementary brief, he would file one also. He is expected to file with the court a reply to the additional brief filed by the defense within a few days.