PROOF OF CHARGES WILL MEAN A NEW TRIAL, SAYS COURT

Evidence Against Jurors Henslee and Johenning the Most Important To Be Introduced.

ATTITUDE OF CROWDS WILL BE STRESSED

Verdict in Trial Was Delayed for Two Days on Account of Fear of Mob Violence, Roan Admits.

It developed Thursday during the Frank hearing for a new trial that the verdict in the original trial was delayed two days for fear of mob violence to the accused man.

Also, that Judge Roan was prevailed upon by the editors of the three Atlanta newspapers, militia officials and the chief of police to make this move of continuance. It was feared if the verdict was submitted on the trial's final Saturday, during which day the crowds were largest, that violence might result.

During the close of the trial, while Solicitor Dorsey was ending his historical argument, Judge Roan ordered adjournment at noon on Saturday, August 2. This was his action to prevent any possible outbreak of the crowds. Had court not been adjourned at that time, the solicitor's speech would have been finished before nightfall and the verdict returned by earlier than 10 o'clock at night.

Judge Roan certified to the conference he had held with military officials and the chief of police.

In hearing section 115 of the new trial motion, the judge gave a certificate of approval to the defense's argument upon the temper of the crowds that attended the trial. He stated that, in his opinion, the attitude of the majority of the crowds was hostile to the defendant, and that it was evinced frequently both within and without the courtroom.

This attitude of the crowds, it is apparent, will be one of the strongest cards of Frank's counsel in seeking for a new trial. Not less than fifteen or twenty grounds tendered at Thursday's session pertained to demonstrations and public temper. Coupled with these grounds and the evidence to be submitted against Jurors Henslee and Johenning, the defense seems to have made decided headway.

Charges Sufficient, If Proved.

Judge Roan, upon reviewing the grounds relating to Henslee and Johenning's alleged prejudice, said:

"If these facts can be proved, it would be hardly necessary to continue with the hearing."

The volume of 115 grounds was finished at the close of Thursday's session. Beginning at 9 o'clock this morning, a review will be made of those which were passed up because of doubt, following which will come the arguments, which are expected about 10 o'clock this morning. Affidavits and other evidence will also be considered today.

New Affidavits Presented.

The defense sprang a surprise Thursday when they declared affidavits were in their hands contradicting Henslee's story that he was not in Albany, Ga., at the time he is alleged to have expressed bias. Colonel Rosser declared that he had evidence of Henslee's signature upon the hotel register and of an order which the accused juror took in Albany on the date in question.

Upon the establishment of this, or jury prejudice, depends the success or failure of the new trial motion.

Judge Roan, in telling of the delayed verdict for fear of an outbreak, stated that he had been prevailed upon

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by military officers and police officials to defer the end of the trial until the following Monday. This was done when it looked as though the verdict would be returned Saturday night.

"This was done," said the judge, "because the temper of the crowd was obviously at high tension. I do not doubt that the prisoner might have suffered violence if proper steps had not been taken."

Letters From Editors.

Judge Roan was apprised of the defense's knowledge of a personal communication which the court had received during the trial from James R. Gray, of the Journal; Foster Coates, of The Georgian, and Clark Howell, of The Constitution, suggesting that the verdict be deferred until the following Monday.

The judge was asked to certify to this. He would not, on the grounds that the communication was personal, but said that if the editors gave permission he would make the desired certificate. Neither would he certify to the section of the motion appealing for new trial on the ground that the defense was not officially represented when the verdict was returned.

This clause was the subject of a stubborn battle between the defense and prosecution. Solicitor Dorsey maintained that Stiles Hopkins, a member of the Rosser & Brandon law firm, was present in the courtroom at the time the verdict was returned, and received it legally.

To this Colonel Rosser replied that Hopkins was given no instructions to represent the defendant, and that no one connected with the defense was supposed to have been in the courtroom at the time it was read. Hopkins was called to the hearing to testify. He stated that he had received no instructions, as stated by Mr. Rosser.

First Witnesses Heard.

The first witness were heard Thursday. Mr. Hopkins was the first. Afterwards a newspaper reporter testified to the scenes outside the courtroom on the day of the verdict, when the solicitor was hoisted to the shoulders of a number of men in the crowd. A number of witnesses, it is said, will be put up today.

An attack was made upon Judge Roan's charge to the jury in ground 73 of the new trial motion. His failure to charge the jury to put no credence in Conley's story because of admitted falsehoods was another contention in a following section.

The ground relating to the alleged illegal charge reads as follows:

"The court erred in charging the jury as follows: 'Is Leo Frank guilty? Are you satisfied with his guilt? Are you satisfied with his statement? Are you satisfied with the evidence? Is his plea of not guilty the truth?'"

Object to Pickett Letter.

A plea is also based upon the injection into the solicitor's argument of a letter received from District Attorney C. M. Pickett, of San Francisco, bearing on the Durant case in California. It is alleged that the use of such material was illegal and prejudicial, and that the court was in error in not excluding it. References by Dorsey to Oscar Wilde, the Richeson and Beattie cases were also objected to.

A vigorous protest was made to the solicitor's accusation that the expert medical testimony introduced by the defense was obtained by money and influence. In answer to this, Dorsey stated that he never made such an allegation:

"I only intimated it," he said.

Charges Against Jurors.

Section 74 bore upon the charges against Jurors Henslee and Johenning. It read:

"That a new trial should be granted because A. H. Henslee and Marcellus Johenning, two jurors, were prejudiced and expressed prejudice before being selected for jury service."

When asked to consider this section, Judge Roan deferred it on the ground that a thorough investigation should be promoted along that line before the matter was to be considered as evidence.

Complain was made by the solicitor when Judge Roan certified in behalf of the defense to the public temper at the time of trial

"In doing this," said Dorsey, "you are sustaining only a contention of the defense. That should be specified in your certificate."

"I am not sustaining a contention," Roan answered, "I am only expressing my personal opinion."

"There was as much sentiment for Frank as there was against him," replied the solicitor.

"I wish there had been," laughed Colonel Arnold, of the defense.

Seventy-five grounds were considered Thursday. This completes the volume. The arguments, both the defense and prosecution predict, will occupy at least two days.

A majority of the grounds submitted Thursday related to contended testimony and evidence produced at the trial, and to the demonstrations and temper of the crowds in attendance, mostly the latter. Also a large number of grounds were devoted to questioned portions of the solicitor's speech.

Says Jury Was Scared.

In talking of the spirit of the crowd, Colonel Rosser said.

"Your honor, the jury was actually frightened to return any kind of verdict other than guilty. They were afraid to turn in their tracks. Why, for the first sixteen days of the trial, when their box was jammed up into a part of the audience, there were whisperings and jeers and threats going on all the time from a lot of men sitting in the vicinity.

"The jury heard all this—it couldn't help it. I've never seen any situation like this one. That is, none except an out-and-out lynching. And until you yourself see a lynching, you'll never see a similar performance. We don't try folks in America on the spirit of the mob. We are supposed to mete justice."

Thursday's hearing was as stubbornly fought as was the first day's. The solicitor and attorneys for the defense grappled tenaciously for every bit of ground. Wrangling and disputes occupied a large part of the time.

Up to adjournment for lunch at noon only thirteen sections had been submitted of the remaining volume of seventy-five that were left over from Wednesday. The afternoon session, however, was fast and spirited. It was Judge Roan's expressed idea to rush the proceedings, which was echoed by both the defense and prosecution.

It is now predicted that the hearing will not last as long as was first feared. Less than a week, it is said, will be occupied.

A relentless fight is being waged by the defense to obtain a new trial on a basis of the illegality of the evidence of immorality that was produced by the defense mainly in Conley's story. The contention is that Conley's testimony and other similar evidence was extremely prejudicial, irrelevant and illegitimate.

In speaking before Judge Roan, Colonel Arnold declared that the introduction of such testimony was nothing short of criminal, and that it had no place whatever in Frank's trial. "Would you bring a crime of hog stealing against a bigamist?" he asked. "No? Well, it's the same thing. Evidence of immorality or perversion has nothing to do with the charge of murder against this man."

On the ground that it was error of the court in allowing the testimony to enter the case, Frank's counsel are striving desperately to gain their greatest ground on these particular points. Fully a fourth of the 115 sections in the motion are devoted to Conley's story and the admission of testimony pertaining to perversion.

The defense, however, has made no explanation of the delay in moving to exclude Conley's testimony other than saying that their plea, as late as it was, was proper because of their failure to cross-examine the witness on points of perversion.

Dorsey will base his answer on the delay of their plea of objection.