

JURY OF WRITERS IN FRANK CASE

Attorney Smith to Submit "Murder Notes" to American Literary Men for Judgment.

AUTHOR: FRANK OR CONLEY?

"Literary Style" of Each Will Be Illustrated—Court Argument on Frank Motion Oct. 26.

Special to The New York Times.

ATLANTA, Ga., Oct. 6.—Attorney W. M. Smith, who defended "Jim" Conley, but who now says that the negro murdered Mary Phagan, and that Leo M. Frank, under sentence of death for the crime, is innocent, has prepared a letter which will be sent to the foremost literary men of America, whose opinions he wishes to obtain in confirmation of his statement that no educated white man could have dictated the notes that were found by the body of the murdered girl.

Attorney Smith declares that Conley wrote the notes without suggestion or dictation from Frank or any one else. He says he is prepared to demonstrate this. He desires the opinions of the men of letters merely to corroborate and strengthen striking proof which he says he possesses.

In the letter which will be sent to the literary men, Mr. Smith, after briefly outlining the circumstances, says:

"Conley contended that the Superintendent (Frank) killed the girl and induced the negro to write the notes, the Superintendent dictating to Conley what should be written in the notes. A large number of people believe Frank did not dictate the notes and knew nothing about the notes, and that Frank did not murder the girl. These same people believe that Conley, the negro, murdered the girl and wrote the notes, without dictation by Frank or any one else, and placed them by the side of the girl himself.

"The question therefore is: Who dictated the language of these two notes? Whose English style is pictured in these notes—that of the ignorant negro or that of the educated white Superintendent? Whose dictation is it, Conley's or Frank's?

"Inclosed you also will find specimens of the style of Conley as he testified in court and of Frank as he testified at the Coroner's inquest and later as he made his statement at his own trial. These two specimens will give fair opportunity for comparative study of their style of English as related to the words of the death notes.

"Inclosed you also will find observations made by two who have given only a running glance at the Conley style and who are, as you see, of the opinion that Conley alone is the author of the notes. These are not given to influence your judgment, but are offered as the only concrete facts in our possession suggesting a line of study. What we want is the truth—to know whose mind conceived and fathered the death notes. Kindly give us help with your opinion and the detailed facts upon which you base your judgment."

Argument on Solicitor General Dorsey's demurrer to the motion to set aside the verdict in the trial of Frank will be heard Monday, Oct. 26, before the Georgia Supreme Court. Designation of the date was announced to-day. Should the Supreme Court sustain the demurrer, it will preclude the argument of the motion itself before Judge Hill and later before the Supreme Court. Should the demurrer be denied, it will be favorable to the defense to the extent that Frank's lawyers will be allowed to argue before Judge Hill the points of law involved in the motion. The major points, however, are involved in the argument on the demurrer, and if the Solicitor fails to show adequate grounds for his objections to the consideration of the main motion, it will be regarded as an important victory for Frank's lawyers.

Some division exists among leading lawyers as to whether the motion to set aside the verdict can be carried to the United States Supreme Court in the event that the demurrer is sustained by the Georgia Supreme Court. Some maintain that the main question involved in the demurrer being one of practice, the Federal Court will not allow itself to be drawn into the case, but will leave the matter entirely to the State courts. Others declare that the constitutional phase cannot be divorced from the issue as it now is before the Georgia Supreme Court, and that the Federal Court, therefore, must take cognizance of it. The constitutional phase is involved in Frank's claim that his constitutional rights were violated when the verdict was returned during his absence from the court room.

The extraordinary motion for a new trial, presented and argued by counsel for Frank, is still with the Supreme Court, and probably will not be ruled upon until after the demurrer on the motion to set aside the verdict is argued.

SCHLEY ALIMONY UP AGAIN.

First Wife Wrote Defendant She'd Never Remarry.

J. Montfort Schley, nephew of the late Rear Admiral Schley, testified again yesterday before Justice Giegerich in the Supreme Court in his application for the cancellation of the agreement he said he had with his wife to pay her \$35,000 at the rate of \$200 a month if she would divorce him in Texas. Mrs. Schley got the divorce, and the alimony was paid without protest until she married again. Mr. Schley thought he should not be compelled to make any more monthly payments.

Mrs. Andrews, formerly Mrs. Schley, was clad in a tailor-made suit of blue broadcloth. She eyed Mr. Schley almost constantly and appeared greatly interested when he became embarrassed, as he was, on being asked:

"Did you not strike your wife, knock her down, and then kick her while she was on the floor?"

Mr. Schley refused to answer, and the court sustained him. He was asked if he did not receive the following letter from his wife in March, 1911:

"I am glad you intend to willingly and gladly do what you ought by me. You were not stingy with me. If I could not make you love me, my confidence in wedlock is rightfully shattered. I will not interfere with your love. I shall never marry again. If I believed you would not take another drink, I would come back. If you took one, I might come flying back here to my poverty. I hope you will rise to the heights God meant you to. I have forgiven you and rejoice in your success."

Mrs. Andrews testified that her agreement with Mr. Schley was entirely independent of her divorce suit.

It came out at the hearing that Mr. Schley has married again. His present wife is Edith May Schley. Briefs will be submitted.