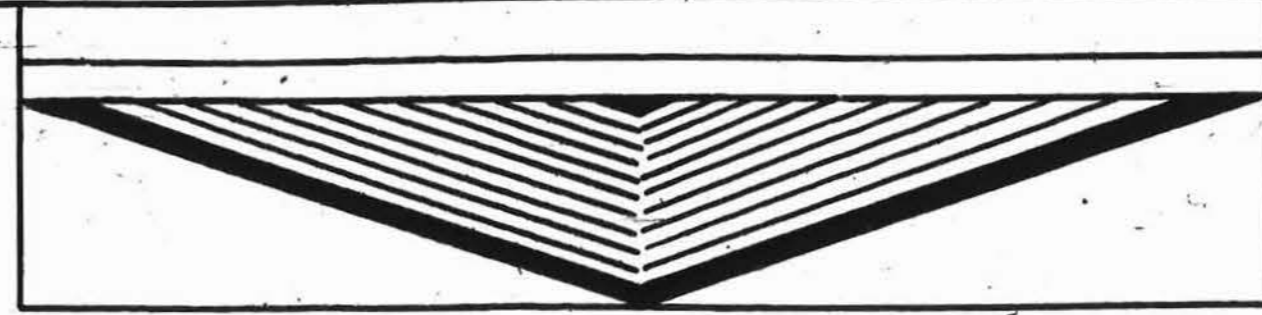


FOR PHOTOGRAPHERS AND LABORATORY USE ONLY

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Haga una película de esta "Prueba Modela" al principio del libro, volumen, o materia que esta fotografiando, concentrado, a la reduccion que se emplea y al fin de cada "Volumen" y "continuará." Rellene la reduccion y exposicion ("Red." "exp.") con fototipo.

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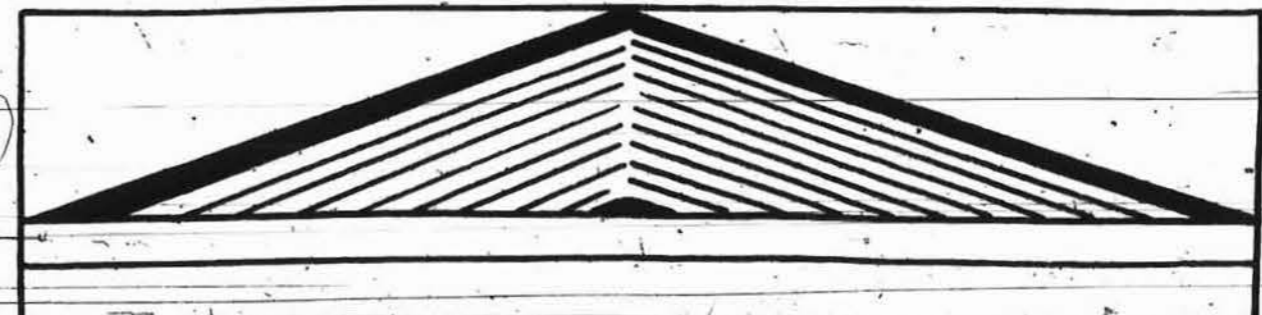
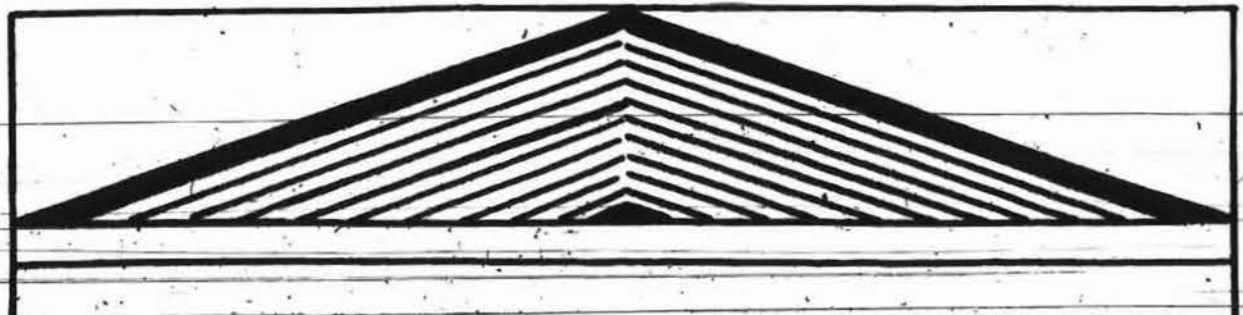
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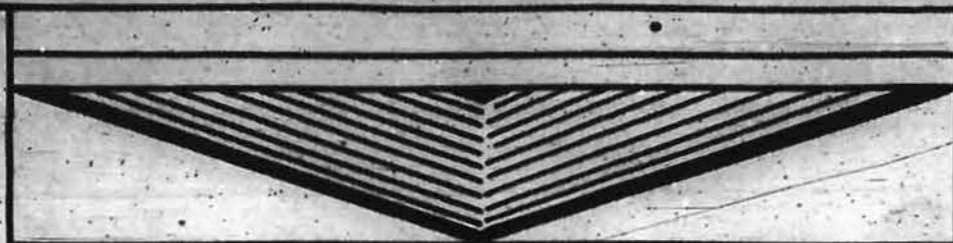
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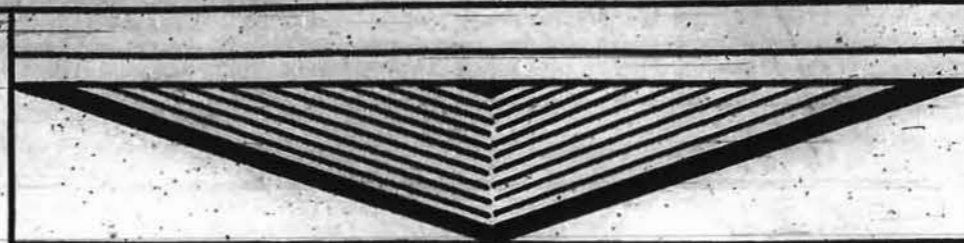
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RED. 10

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EXP. 50

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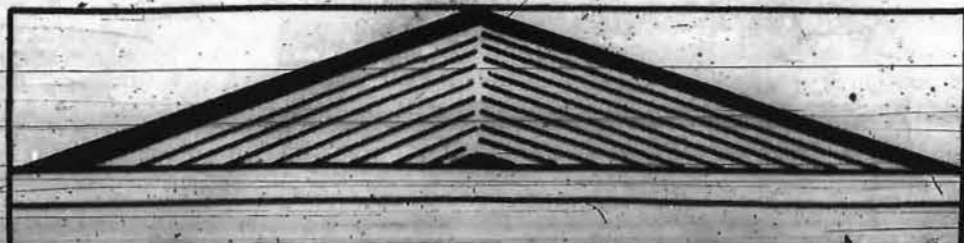
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Archives and History
330 Capital Avenue
Atlanta
30334



MISS CARROLL HART, DIRECTOR
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Georgia - Supreme Court

Supreme Court Case File

Leo Frank v. The State

Due to a high reference rate in the past and an anticipated high rate in the future, these portions of a much larger record series are filmed as a protection and as an assist to researchers.

Feb. 17, 1914 First Appeal 141Ga243

Bill of Exceptions or Enumeration of Errors
Brief of Evidence
Record of case

Oct. 14, 1914 Second Appeal 142Ga617

Brief of Evidence, original and amended
Record of case including copy of first appeal

Nov. 14, 1914 Third Appeal 142Ga741

Record Group Georgia Supreme Court 92
Sub-Group Office of Clerk of Supreme Court 1
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CONTINUED

duction for April 18th, 19th, 22nd and 23rd, but he had omitted the entry for the 24th, and the 24th not being there, of course it was not totaled or headed, so it became necessary to look in this bunch of daily reports (Defendant's Exhibit 4a, 4b, 4c, 4d) which was handed in every day by the packing forelady, sort out the various pencils noted on there, and place them in their proper places. Before proceeding further on that, I want to call your attention to the fact that we use this sheet (Defendant's Exhibit 7) for two weeks. You notice two weeks ending down there April 27th, April 17th, and one ending the week later, April 24th. Mr. Schiff, I notice, put April 17th at the top and the date corresponds to the entries here on the side; these are the dates alongside of each entry. Now, where we have any special pencil, as a general rule—for instance, take two 10-X special up there; we manufacture two 10-X special for the Cadillac Motor Company. Now, there is a 660-X pencil (Defendant's Exhibit 7); that 660-X pencil we call Panama, but in this entry it is called Cracker-Jack. Now, here is another 660-X special (Defendant's Exhibit 7), ours being Panama and this the Universal 660-X special. In other words, gentlemen, we put the name of the customer, if he wants business in a sufficient quantity. Well, I had to go through this report for Thursday (Defendant's Exhibit 4a), handed in by Miss Flowers, the forelady of the packing department, as she said, on Friday; I had to go through it and make the entries. Now, after I made the entries, I had to total each number for itself; that is, the number of 10-X, 20-X, 30-X, etc. Now, I notice that both of the expert accountants who got on the stand, pointed out two errors. While those errors are trivial, yet there is enough of human pride in me to explain that those errors were not mine. Those errors, one of one and a half gross and one of one gross, in totalling up, these totals here on the 18th and 19th—those entries were made by Mr. Schiff. I don't expect he meant to make an error, but they happen to be in his handwriting. Those totals were already down there for the various days when I got the sheet and I always take them as correct without any checking of his figures. The only figures that I check are my own figures. I add my correct figures to his figures and of course, not having checked the figures, I had to assume he entered it correctly, so I would not have known it. As I say, my usual method is to take his figures as correct per se. Now, after I entered them in the total, the next thing I did was to make out the job sheet; the job or throw-outs. Now in regard to these jobs, if I recall it correctly, was the only error that the expert accountant found in my work on the financial sheet for that day, but it really was not an error, as I will show you. He didn't know my method of doing that, and therefore, he could not know the error. When I explain to you fully the method in which I arrived at these figures you also will see they are not in error. Now among the packing reports that are handed into the office just like Miss Eula May handed this (Defendant's Exhibit 4a) in from the packing room proper, there is another room where pencils are packed, viz.: the department under the foreladyship of Miss Fannie Atherton, head of the job department. The jobs are our seconds or throw-outs

for which we get less money, of course, than for the first. You see that Fannie A (Defendant's Exhibit 4B), that is Fannie Atherton. That is the job department. Now, I took each of those job sheets (Defendant's Exhibit 4B) and separated them from the rest of those sheets, finding out how many jobs of the various kinds were packed that week. Now, this sheet (Defendant's Exhibit 3) shows that there were 12 different kinds of jobs packed that day. Each of them, you will notice, has a different price. That is the number of jobs 0-95, or the number of job 114 (Defendant's Exhibit 3); that is the number of the job, not the amount, but the number by which it is sold. Out here (Defendant's Exhibit 3) you see the amount of that job which was packed; 180 gross, one gross, six gross, 24 gross, etc. Then you will find the actual price we received for each. Then I make the extensions and find the number of gross of pencils, 180 gross at 40 cents, of course, is \$72.00 (Defendant's Exhibit 3). In other words, there is the actual number of jobs packed that day, the price we actually got for them, and the extensions are accurate and the totals are correct; the total amount of gross is totaled correctly, the total gross packed and the total amount of the value of those gross are the two figures that are put on that financial report, (Defendant's Exhibit 2), 792 gross jobs, \$396.75 (Defendant's Exhibit 3), being absolutely correct, but in getting the average price, you notice 50.1 cents down below here (Defendant's Exhibit 3), I just worked it approximately, because nobody cares if it cost so small a fraction—the average price of those jobs, 50.1 cents, and six hundredths—that six hundredths was so small I couldn't handle it, so I stopped at the first decimal. Now, in arriving at the total number of gross and the total value of pencils, which are the two figures really important, I divided one by the other. I also used, in getting up the data for the financial sheet, by the way, one of the most important sheets is this very little sheet here (Defendant's Exhibit 3). It looks very small, but the work connected with it is very large. Now, some of the items that appear on here are gotten from the reports which are handed in by the various forewomen. Now, you saw on the stand this morning Mr. Godfrey Winekauf, the superintendent of the lead plant; there is a report (Defendant's Exhibit 4C) of the amount of lead delivered that week, two pages of it; the different kinds of lead, No. 10 lead, No. 940, No. 2 and No. 930, and so on. Now, here is a pencil with a little rubber stuck on the end; we only put six inches of lead in that, and stick rubber in the rest. Now here (Defendant's Exhibit 4D) is the report of L. A. Quinn, foreman of the tipping plant. He reports on this the amount of work of the various machines, that is, the large eyelet machine, the small eyelet machine and the other machines. Then he notates the amount of the various tips used that he had made that week. Now, we have, I expect, 22 different kinds of tips, and one of them is a re-tip, and we never count a re-tip as a production. Now, this was made out (Defendant's Exhibit 7) for the week ending April 24th by Mr. Irby, the shipping clerk, that is, the amount of gross of pencils that he ships day by day. There were shipped 266 gross the first day, which was Friday in this case, Friday the

18th of April, 562 gross the 2nd day, which was Saturday, a half day, the 19th of April; 784 gross on Monday, which was April 21st; 1232 gross (that was an exceptional day) were shipped on Tuesday April 22nd; 572 gross shipped on Wednesday, April 23rd, and 957 gross, also a very large day, shipped on April 24th, a total of 4374 gross. Now, there is another little slip of paper (Defendant's Exhibit 4AA) here that requires one of the most complicated calculations of this entire financial, and I will explain it. It shows the repack, and I notice an error on it here, it says here 4-17, when it ought to be 4-18; in other words, it goes from 4-17 through 4-24. That repack is gotten up by Miss Eula May; you will notice it is O. K.'d by her. Miss Eula May Flowers, the forelady, packed that; that is the amount of pencils used in our assortment boxes or display boxes. That is one of the tricks of the trade, when we have some slow mover, some pencil that doesn't move very fast, we take something that is fancy and put some new bright looking pencils with them, with these slow movers. That is a trick that all manufacturers use, and in packing these assortment boxes, which are packed under the direction of Miss Flowers, we send into the shipping room and get some pencils which have already been packed, pencils that have been on the shelf a year for all we know, and bring them in and unpack them and re-pack them in the display box. Therefore, it is very necessary in figuring out the financial sheet to notice in detail the amount of goods packed and just how many of those pencils had already been figured on some past financial report. We don't want to record it twice, or else our totals will be incorrect. Therefore, this little slip showing the amount of goods which were repacked is very necessary. That was figured by me, and was figured by me on that Saturday afternoon, April 22nd. There were 18 gross of 35-X pencils selling for \$1.25; 18 gross for \$22.50. It shows right here, I figured that out. That is my writing right down there. Eighteen gross 35-X, \$1.25, \$22.50; 10 gross of 930-X figuring at \$25.00; that added up, as you will see, to \$70.00. In other words, there were 46 gross of pencils, 36 gross of which sell in our medium price goods; 86 gross 35-X; 10 gross 930-X, \$2.50, that is a high price goods. Therefore, the repack for that week was 36 gross medium priced goods and 10 gross of high price goods. I will show you now where the \$70.00 is and where the 36 gross is, and where the 10 gross figured in the financial sheet. There is a little sheet (Defendant's Exhibit 7A) stuck up here in the corner attached to the record—the factory record of pencils manufactured during that week. That shows the production, divided into the following classes (Defendant's Exhibit 7A); cheap goods, the very cheapest we make, outside of jobs, those we figure at 60 cents a gross. Then there is the rubber insert, those we figure 85 cents a gross, and then the job and then the medium; the medium being all goods up to a certain grade that contains the cheap lead, and the good being all those that contain a better class of lead. In this case, Mr. Schiff had entered it up to and through Wednesday, and had failed to enter Thursday, and I had to enter Thursday, and to figure it. This sheet (Defendant's Exhibit 7A) shows the total of the three classes of goods packed.

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from day to day. Now, I have had very few clerks at Forsyth Street, or anywhere else, for that matter, who could make out this sheet (Defendant's Exhibit 2) successfully and accurately. It involves a great deal of work and one has to exercise exceptional care and accuracy in making it out. You notice that the gross production here (Defendant's Exhibit 2) is 2765½. That gives the net production. The gross production is nothing more than the addition, the total addition, the proven addition of those sheets containing the pencils packed. This other little sheet (Defendant's Exhibit 7A) behind here represents the pencils packed the week of April 17th—that week's production. Now, this little sheet I had to work on, showing the pencils that were repacked, going into the display boxes, and the numbers, and subtracted that from the total amount 46 from 2765½, which leaves 2719½; in other words, I just deducted the amount that had been taken out of the stock room and repacked from the total amount that was stated to be packed, showing the amount of repacked goods. Now all I had to do was to copy that off, it had been figured once. The value of the repack was \$70.00; that was mere copying. Now, the rubber insert entries, I got those that morning, the number of pencils packed during the week ending April 24th; that is Thursday, April 24th; that insert rubber is a rubber stuck directly into wood with a metal tip or ferret to hold it in. I have to go through all of this data, that being an awfully tedious job, not a hard job, but very tedious; it eats up time. I had to go through each one of these, and not only have to see the number, but I have to know whether it is rubber insert or what it is, and then I put that down on a piece of scratch paper, and place it down here, in this case it was 720 gross. Then the rubber tipping, that means tipped with rubber; that is the rubber that is used on the medium priced pencils that have the medium prices, we ship with the cheap shipping. I had to go through this operation again, a tedious job, and it eats up time; it is not hard, but it is tedious. I had to go through that again, to find out the amount of tip rubber that was used on this amount of pencils. Then I had to go through the good pencils. Now, it has been insinuated that some of these items, especially this item, if I remember correctly—that when I have gotten two of the items, I can add it all up and subtract from the total to get the third by deduction, but that is not so. Of the pencils that still remain unaccounted for, there are many pencils that don't take rubber at all. There are jobs that don't take rubber on them, plain common pencils, going pencils that don't have rubber on them at all, and I have to go through all of that operation, that tedious operation again that eats up so much time. Then there is the lead of the various kinds that we use; there is good lead and cheap lead, the large lead and the thick or carbon lead, and the copying lead. That same operation has to be gone through with again. Now this sheet (Defendant's Exhibit 3) (exhibiting) is where the expert accountant said I made a mistake. I had to go through with each of those pencils to see if they were cheap rubber or if they were good lead or copying lead. So I had to go through this same operation and re-add them to see that the addition is correct before I

can arrive at the proper figure. The same way to find the good lead and the cheap lead, the large lead and the copying lead; that operation had to be gone through in detail with each and every one of those, and the same with each of the boxes, and that is a tough job. Some of the pencils are packed in one gross boxes and some in half-gross boxes, and, as I say, we use a display box, and there are pencils that are put in individual boxes, and we have to go through carefully to see the pencils that have been packed for the whole week, and it is a very tedious job. Now in these boxes there is another calculation involved, and then I have to find the assortment boxes, but that is easily gotten. Then I have to find out whether they are half-gross boxes or one-gross boxes, and then reduce them to the basis of boxes that cost us two cents apiece; reduce them to the basis of the ordinary box that we paid two cents a box. After finding out all the boxes, then I have to reduce that to some common factor, so I can make the multiplication in figuring out the cost at two cents. That involves quite a mathematical manipulation. Then I come to the skeleton. Skeletons are no more than just a trade name. They are just little cardboard tiers to keep one pencil away from the other, that is all a skeleton is. I have to go through and find out which pencils are skeletons. If it is a cheap pencil they are just tied up with a cord, and there are pencils in a bunch, and there are pencils that we don't use the skeleton with. That must all be gone through and gotten correctly, or it will be of no worth. Then comes the tip delivery, which is gotten from this report from Mr. Lemmie Quinn that I showed you before. Then there is another entry on this sheet of the tips used and I can give you a clear explanation of the manner that I arrive at that. You can't use tips when you don't have some rubber stuck in it, so I just had to go through the rubber used to find that. Then we have what we call ends; there are a few gross of them there. Then the wrappers. Pencils that are packed in the individual one dozen cartoons don't take wrappers; they are in a box. Pencils that are packed in the display boxes don't take a wrapper; they just stick up in a hole by themselves. The cheap pencils are tied with a cord and they don't take any wrapper, so the same operation, the same tedious operation, had to be gone through with that to get at the number of wrappers, and then the different number of gross and the number of cartoon boxes used in the same way. On the right hand side of this sheet you notice the deliveries. There is the lead delivery from the Bell Street plant and the Forsyth Street plant. This doesn't mean the amount of lead used in the pencils packed for this week only, but it shows the amount of our lead plant delivery, for information. Then the slat delivery, that is not worked out that week; that is not worked out simply because that is Mr. Schiff's duty to work that out and that is a very tedious and long job and when I started in to do that I couldn't find the sheet showing the different deliveries of slats from the mill, so I let that go, intending to put that in on Monday, but on Monday following I was at the police station.

I took out from this job sheet (Defendant's Exhibit 3), the correct amount of gross packed—791 as figured there—correct value \$396.75, as shown on this sheet, and the average is that one, that I didn't carry out to two decimal places; I didn't carry it to but one. Then from the pay-roll book I got the pay-roll for Forsyth Street and Bell street, and then as a separate item took out from the pay-roll book total, separate the machine shop, which that week was \$70.00. The shipments (Defendant's Exhibit 6), were figured for the week ending April 24th on this sheet; as far as I—oh, you notice the entry of the 24th; those are those invoices, the first piece of work that I explained to you, sitting up there; I explained that from the chair, and couldn't come down here; that's the piece of work that I explained to you how we did it in triplicate. That's the work that I did that morning, and completed, as I told you, that each of the invoices was wrong, and I had to correct them as I went along, simply because I needed it on the financial, and there's where I entered it on the sheet as shipments; (Defendant's Exhibit 6); I needed that so as to make the total; and that's where I entered it—(Defendant's Exhibit 6)—shipments, the 24th, on this sheet (Defendant's Exhibit 6), during the afternoon \$1,245.57, and totalling it up, the pencil factory shipped that week \$5,438.78. Those amounts you see are entered right in there, and the amount of shipments is gotten from this report \$4,374.00 handed in by Mr. Irby, and the value of the shipments are gotten from this sheet, the last entry on which I had to make.

Then the orders received. The entry of the orders received that day involved absolutely no more work on my part than the mere transfer of the entries. On this big sheet (Defendant's Exhibit 2), I have here the orders received are in terms of "total gross" and "total value," and we need that to compare the amount of shipments with the amount of orders we are receiving to see whether we are shipping more than we are receiving, or receiving more than we are shipping. That amount is given here. Down there it tells you the total amount of dollars and cents of all the orders received, total gross, and the average. The average is important, though it is usually taken over on a separate paper on Friday morning to Mr. Sig Montag so that he knows how sales for the week have come out long before he receives the financial. He didn't receive the financial usually until Monday morning, when I go over there.

Now one of the most intricate operations in the making up of the financial report is the working out of the figures on that pencil sheet, as shown by that torn little old sheet here, (Defendant's Exhibit 3), that data sheet. Now with this in hand, and with that pencil sheet record of pencils packed (Defendant's Exhibit 7), the financial report is made out. This sheet (Defendant's Exhibit 2), the financial, I may say is the child of my own brain, because I got it up. The first one that ever was made I made out, and the fact that there is a certain blue line here, and a certain red line there, and a black

line there, and certain printing on it, is due to me, because I got this sheet up myself. On one side you notice "Expense," or two main headings "Expense," "Materials." Together they comprise the expense for the week. On the other side, like the debit and credit sides of a ledger, is the "Value," "Gross Value" of the goods, which have been packed up during a given week. Down here below you will notice "Less Repacked." You remember the repacked, that I told you about, the pencils taken out of stock and repacked to make them move better. That value is deducted, so that it won't allow error to enter into this figure. Then we take off 12 per cent. down at the bottom. That 12 per cent. allows for freight allowances, cash discounts, and possibly other allowances, and gives us the net value or the net amount of money for those pencils, which the treasury of the Pencil Company receives in the last analysis.

On the other side is the materials, the cost of materials, that went into the making of those pencils, based on the amounts and kinds of pencils, which of course, as in this instance, comes from the data sheet.

The first item under "Expense" items is "Labor," and the labor is divided, as you all know, into the two classes, direct and indirect. The direct labor is that which goes directly into the making of the pencils themselves, and the indirect constitutes the supervising, shipping, office, clerical help, and so forth. These figures are brought directly from the pay-roll. The indirect labor, however—as in this case \$155.00—is an empirical figure, a figure, which we have found out by experiment to be the correct figure, and we arbitrarily decide on it, and keep it until such time as we think we ought to change it and then change. The burden that a business has to carry is the fixed charges, the expense that it carries, irrespective of whether it will produce two gross or 200,000 gross, like rent, insurance, light, heat, power, and the sales department. The sales department expense usually goes on whether the salesman sells little or big bills; his salary goes on and his expense goes on. Rent, heat, light, power, sales department men, and all that, is figured out, as you could find by looking back, continuously from week to week, and there is no work other than jotting it down to figure in this total.

The repair sundries is also arbitrary at \$150.00. The machine shop, however, is available. It appears alongside of "Investment." "Investment" is crossed out, and "Machine Shop" written in. There is a reason for that. The time was at the inception of our business when every machine built by us was so much additional added to the value of our plant. In other words, it was like investing more money in it, in the plant, but the time came, when we quit making machines, and then we simply kept them in repair, and we charged that to expense, crossing out "Investment" and putting down "Machine Shop" as an expense item.

The material is arrived at on the basis, gross, net. The gross basis is the total amount of pencils packed, as per the packing reports handed in by Miss Eula May Flowers, and the net basis is the total amount, total gross, packed by report of Miss Eula May Flowers less the amount of repacked, of which I have spoken. In this case the gross amount was 2,851 gross, net 2,830 1-2 gross, the smaller being the net figure. The slats are figured at 22 cents per gross, and that's simply taking the 2,830 1-2 gross down to the slat item, and multiplying that by 22 cents, and putting it down to the materials. Then from the figures derived from the packing reports we figure rubbers used according to the character or grade of the pencil manufactured; 6 1-2 cents cheapest, 9 cents medium, 14 cents high grade. Then comes the tips. The tips is simple, gotten by adding together the amounts of rubber used in ferrules, the medium rubber, and the better class of rubber. In other words, it's gotten by adding together the rubber at 9 cents a gross, and the rubber at 14 cents a gross, and adding together the total amount of gross used. And you see it says "materials," and it is reckoned at 10 cents; in other words, the materials used in making the tips in that tip plant we figured at 10 cents a gross, and the labor is included in that pay-roll item up above. Then there is 25 gross of these medium ends.

Then the lead, which is used, is taken from this sheet, multiplying 15 cents for the better lead and 10 cents for the cheaper lead. Then 5 cents a gross has been figured out after months of careful keeping track of what we use to include such materials as shellac, alcohol, lacquer, aniline, waxent, and oils—that's oils used in manufacture, not for lubrication of transmission or machinery. It also includes that hascolene compound, of which we have heard so much. That's included in this 5 cents per gross.

Then comes the boxes at 2 cents a gross, then assortment boxes at an average of 4 cents a gross; then come wrappers at one cent a gross; that is the number of wrappers used in wrapping up one gross of pencils are worth one cent. Then cartoons, boxes, holding one gross of pencils, figured at 28 or 18 cents. Then down below "pay-roll Bell Street, \$175.21." Then show what was delivered, just a plain copy of what I have on this sheet. I have been looking at the sheet for the week ending April 17th, but it is practically the same way. I have here down on the bottom of this financial (Defendant's Exhibit 2) made out on the 26th what's delivered, good and cheap. There is no entry there. You will remember I said I didn't work that out. I put that out there preparatory to working that out Monday morning before I would take it over. Then it tells tips delivered from Mr. Quinn's report.

Now on the right side you will notice this entry, "Better grades, gross, net." From this small sheet we get total of better grades, 710 gross. Then right below it says 700 gross net. There are 710 gross, and on that repacked sheet I called out there 10 gross good goods repacked, therefore the difference

of 10 gross. Then we look on down this pencil sheet, cut down each and every one of the items accordingly—you will notice in some places I marked some items, "142 1-2 2-10-X"—and so on down the sheet. In this case there were 29 or 30 different items, all of which had to have the prices correctly traced down, extensions correctly made, checked, re-checked, added up, and totaled, and checked back, and there pack had to be deducted, after which the 12 per cent. had to be figured out, and deducted, giving the net value of the production for that week. Then we take the net value of the production that week, and from it take the total amount of expense, and materials used, the expense including labor, rent, light, insurance, and so forth, and, if this expense is greater than the value of the pencils, then the factory has operated that week at a loss. In this case a deficit shows, showing that that week we operated at a loss. The shipments were gotten off down there from this sheet. Those are my initials on the top.

Now, besides the making of this large sheet (Defendant's Exhibit 2) proper, there is in the making of the financial report three other sheets, that I usually make out. Now one of those little sheets, that are usually made—and I want to call your attention to the fact that I didn't typewrite this; I just filled these figures in; I am no typewriter; I can not operate a machine; I have two or three dozen of those every now and then typewritten together, and keep them in blank in my desk; I didn't typewrite those on that day, or any other day; I just filled those figures in those blanks—this is the sheet (Defendant's Exhibit 11), called the comparison sheet between 1912 and 1913, which is nothing more nor less than taking the vital figures, the vital statistics of one week of 1913, and comparing them with the same week of 1912, to see how we have improved or gone backward every week one year apart. Of course the putting of these down involves going back into the proper week in this folder, and getting that out. However, I noticed the week in 1912 corresponding with the week of April 24th in 1913, was a week of 45 hours instead of 50 hours.

In addition to that, I made out two condensed financial reports, (Defendant's Exhibits 43 and 46), that is, give the main figures. I didn't typewrite this sheet, either; as I say, I can not operate a machine. I just filled in the figures, which have to be picked out from this large financial report, fill them in for the week ending—that does not show the date it was made, but it shows for the week ending April 24th, the production in dollars, the total expenditure in dollars, the result, which in this week, as I wrote in "deficit" in dollars; show the shipments, which in this week were very good, and the orders received, which were gotten from that great big sheet. These were enough figures for a director or stockholder of the Company to receive, and are practically the only figures he is interested in. He don't care to hear how much we make of this pencil or that pencil. The only thing he is interested in is dividends, if we are able to give them to him. One of these sheets

I always make out and mail to Mr. Oscar Pappenheimer (Defendant's Exhibit 46), who was formerly a member of the Board of Directors, though he is not now. The other sheet (Defendant's Exhibit 43), I always invariably sent to my uncle, Mr. M. Frank, no matter where he is, who is president of the company. On this particular Saturday, my uncle had during the week ending April 26th, gone to New York, stopping at Hotel McAlpin, preparatory to taking his annual trip abroad for his health, he being a sick, feeble old man. When I made out that financial, I really made out two small ones, and I put one (Defendant's Exhibit 46), in an envelope, addressed it to Mr. Oscar Pappenheimer, care Southern Furniture Company, Atlanta, Georgia; the other one (Defendant's Exhibit 43) was put in this envelope, which you see right here, and sent to my uncle, Mr. M. Frank, together with a letter, (Defendant's Exhibit 42), which I wrote him, after having finished the financial sheet, the sheet showing the comparison of vital statistics for the same weeks of 1912 and 1913, and after having completed these two small condensed financial reports. I wrote that letter (Defendants Exhibit 42) to my uncle, and I sent him that report (Defendant's Exhibit 43), and also sent a price list, to which I referred in that letter; hence the size of the envelope, (Defendant's Exhibit 44). I am going to show you one of those price lists. Its a great big sheet when it is folded up, it is much too large for the ordinary size; hence the reason I used a great big envelope like that. I addressed that letter to my uncle, Mr. M. Frank, care Hotel McAlpin, Greely Square, New York, N. Y., as has been identified.

This ends practically the work on the financial. After finishing the financial, I wrote these letters, and sealed them, and placed them aside to post. After finishing the financial, I folded this big report up (Defendant's Exhibit 2), and put it with the comparison sheet (Defendant's Exhibit 11) for the week of 1912 and the same week of 1913 in a large envelope, addressed it to Mr. Sig Montag, General Manager of the Pencil Company, and put it under my inkwell, intending to take it over on the morning of Monday following.

I then came to the checking up of the cash on hand and the balancing of the cash book. For some reason or other there are no similar entries in this book after those of that date. That's my handwriting (Defendant's Exhibit 40), and I did that work on Saturday afternoon, April 26th, as near as might be between the hours of 5:30 and 5 minutes to 6:00. Now in checking up it didn't take me an hour and a half. I did that in about 25 minutes. In checking up the cash the first thing to do is to open the cash box. We have a little coin bag in there, and there was in cash actually on hand that day about \$30.54; that's all there was. That's all there could have been, and that \$30.54 was to the best of my recollection composed of about three dollars in one dollar bills, about four or five dollars in quarters and halves, and the balance dimes, nickels, and one-cent pieces. That's some job to count that, not only to count it, but to separate the different denominations, and stack it up into

stacks of a dollar. I did that, stacked them up, checked them, and re-checked them, and I took a piece of paper—haven't that paper—and jotted down the amounts. To that had to be added the amount that was loaned. In this case there was only one loan, that which I loaned to Mr. White that afternoon. That would eventually come back to the cash box. If there had been any errors in the payroll the night previous, I would have had to make it good from the cash box, and it would have gone under the item of "extra pay-roll." I don't know whether that occurred this week or not. However, I added up the total cash I actually had on hand then—\$28.54—and that \$2.00 loaned to Mr. White brought it up to \$30.54, the actual amount which the cash book showed. Now on the left-hand side of this book, the debits for the week between April 21st, which was Monday, previous to April 26th, it being a record simply of the petty cash used by us, showed that we had a balance on hand the Monday morning previous of \$39.85. On April 22nd we drew a check for \$15.00, and on April 24th we drew another one for \$15.00. I mean by that that we would draw a check for \$15.00, and go over to Mr. Sig Montag to sign it; so that during that week all we got from the treasury was \$30.00, and \$39.85 already on hand, made \$69.85, which was the total amount we had to account for. When we spend, of course we credit it. There once was a time, when, as we paid out money, we would write it down on this book. We found it was much better however, to keep a little voucher book (Defendant's Exhibit 10) and let each and every person sign for money they got, and we have not only this record (Defendant's Exhibit 40) but this record on the receipt book (Defendant's Exhibit 10). The first entry on this is 15 cents there—on the 19th of April the National Pencil Company gave 15 cents to Newt Lee for kerosene (Defendant's Exhibit 10). Newt Lee's name is there, but he didn't write it. I wrote it; my initials are on it. He was there when he got the money, but I thought he couldn't write, and I signed his name. Whenever I sign anybody's name, my initials are under it. The next item is 75 cents for typewriter rent (Defendant's Exhibit 10); next item \$2.00 drayage 24th of April. That is Truman McCrary's receipt—he has a very legible handwriting, and one of the little stamps stamped on there. The next item is for cases; some negro signed his name down there. So on throughout the book (Defendant's Exhibit 10), cases, express, drayage, postage, parcels post, etc. Now, after counting the money, finding how much actual cash there was in the cash box, the next thing I do is to take this little voucher book, and lumped the different items that were all alike together. This sheet (Defendant's Exhibit 41) has been identified and explained, and you notice that there were four items of drayage grouped together, the total being \$6.70. I just extend that over to the right there \$6.70. Then I don't have to put drayage down in this book (Defendant's Exhibit 40) four times; just make one entry of drayage for the four times we paid drayage together, which gives the same total, and makes the book a great deal neater. So on throughout, five items of cases, two items of postage, two items of parcels post, one item of two weeks' rent on an extra typewriter, 45 cents for supplies for Mr. Schmee-

gas' department, foreman on the third floor, 85 cents for the payment of a very small bill to King Hardware Company, \$11.50 to a tinsmith for a small job he had done, 5 cents for thread, and ten cents for carfare one item. Then this young man, Harold Wright, of whom I spoke, omitted from the payroll. I added this up, and that was \$39.31, and transferred it from here (Defendant's Exhibit 41) to there (Defendant's Exhibit 40). I then made the balance in the usual way, checking it against the money on hand, that I had in the cash box that night, and after checking and re-checking it, and finding no money missing from any source that we could trace, found that it was \$4.34 short of the cash box, which was due to shortage in payroll in the past three months.

4:35 P. M.

I finished this work that I have just outlined at about five minutes to six, and I proceeded to take out the clock strips from the clock which were used that day and replace them. I won't show you these slips, but the slips that I put in that night were stamped with a blue ink, with a rubber dating stamp, "April 28th (Defendant's Exhibit 1); at the bottom, opposite the word "date." Now, in reference to these time slips and the reason that the date April 28th was put on these slips, which was put in the clocks that night, Saturday night,—no one was coming down to the factory on Sunday, as far as I knew, or as far as custom was, to put the slips into the clocks, and, therefore, we had to put the slips into the clock dated with the date on which the help were coming into the factory to go about their regular duties and register on the Monday following, which, in this case was April 28th. Now on one of these slips, Newt Lee would register his punches Saturday night, and on Sunday night he would register his punches on the other. His punches on Monday night would be registered on two new slips that would be put into clock on Monday night. As I was putting these time slips into the clock, as mentioned, I saw Newt Lee coming up the stairs, and looking at the clocks, it was as near as may be six o'clock,—looking straight at the clock—; I finished putting the slip in and went back to wash up, and as I was washing, I heard Newt Lee ring the bell on the clock when he registered his first punch for the night, and he went down stairs to the front door to await my departure. After washing, I went down stairs,—I put on my hat and coat—got my hat and top coat and went down stairs to the front door. As I opened the front door, I saw outside on the street, on the street side of the door, Newt Lee in conversation with Mr. J. M. Gantt, a man that I had let go from the office two weeks previous. They seemed to be in discussion, and Newt Lee told me that Mr. Gantt wanted to go back up into the factory, and he had refused him admission, because his instructions were for no one to go back into the factory after he went out, unless he got contrary instructions from Mr. Darley or myself. I spoke to Mr. Gantt, and asked him what he wanted, he said he had a couple of pairs of shoes, black

pair and tan pair, in the shipping room. I told Newt Lee it would be alright to pass Gantt in, and Gantt went in, Newt Lee closed the door, locking it after him,—I heard the bolt turn in the door. I then walked up Forsyth Street to Alabama, down Alabama to Broad Street, where I posted the two letters, one to my uncle, Mr. M. Frank and one to Mr. Pappenheimer, a few minutes after six, and continued on my way down to Jacobs' Whitehall and Alabama Street store, where I went in and got a drink at the soda fount, and bought my wife a box of candy. I then caught the Georgia Avenue car and arrived home about 6:25. I sat looking at the paper until about 6:30 when I called up at the factory to find out if Mr. Gantt had left. I called up at 6:30 because I expected Newt Lee would be punching the clock on the half hour and would be near enough to the telephone to hear it and answer it at that time. I couldn't get Newt Lee then, so I sat in the hall reading until seven o'clock, when I again called the factory, this time I was successful in getting Newt Lee and asked him if Mr. Gantt had gone again, he says, "Yes," I asked if everything else was alright at the factory; it was, and then I hung up. I sat down and had supper, and after supper, I phoned over to my brother-in-law, Mr. Ursenback, to find out if he would be at home that evening, I desired to call on him, but he said he had another engagement, so I decided to stay home, and I did stay home reading either a newspaper or the Metropolitan magazine that night. About eight o'clock I saw Minola pass out on her way home. That evening, my parents in law, Mr. and Mrs. Emil Selig, had company, and among those present were Mr. and Mrs. Morris Goldstein, Mr. and Mrs. M. Marcus, Mrs. A. E. Marcus and Mrs. Ike Strauss; Mr. Ike Strauss came in much later, something after ten o'clock, I believe. I sat reading in the hall until about a quarter to ten; when I lighted the gas water heater preparatory to taking a bath, and then continued reading in the hall; at 10:30 I turned out the gas, went into the dining room, bade them all good night, and went upstairs to take my bath, a few minutes later, my wife followed me upstairs.

(Here the jury took a recess.)

I believe I was taking a bath when you went out,—on Saturday night; and after finishing my bath, I laid out my linen to be used next day, my wife changed the buttons from my old shirt to the shirt I was to wear the following morning, and I retired about eleven o'clock. The next day, Sunday, April 27th, I was awakened at something before seven o'clock, by the telephone ringing. I got out of bed,—was tight asleep, it awaked me,—but I got out of bed, put on a bath robe and went down to answer the telephone, and a man's voice spoke to me over the phone and said—I afterwards found out this man that spoke to me was City Detective Starnes—said "Is this Mr. Frank, superintendent of the National Pencil Company?" I says "Yes, sir," he says, "I want you to come down to the factory right away," I says, "What's the trouble, has there been a fire?" He says, "No, a tragedy, I want you to come down right away;" I says, "All right," he says, "I'll send an automobile for you," I says, "all right," and hung up and went upstairs to dress. I was in the midst of dressing to go with the people who

should come for me in the automobile, when the automobile drove up, the bell rang and my wife went down stairs to answer the door. She had on,—just had a night dress with a robe over it. I followed my wife—I wasn't completely dressed at that time,—didn't have my trousers or shirt on, and as soon as I could get together,—get my trousers and shirt on,—I went down stairs—followed my wife in a minute or two. I asked them what the trouble was, and the man who I afterwards found out was detective Black, hung his head and didn't say anything. Now, at this point, these two witnesses, Mr. Rogers and Mr. Black differ with me on the place where the conversation occurred,—I say, to the best of my recollection, it occurred right there in the house in front of my wife; they say it occurred just as I left the house in the automobile; but be that as it may, this is the conversation: They asked me did I know Mary Phagan, and I told them I didn't, they then said to me, didn't a little girl with long hair hanging down her back come up to your office yesterday sometime for her money,—a little girl who works in the tipping plant?" I says, "Yes, I do remember such a girl coming up to my office, that worked in the tipping room, but I didn't know her name was Mary Phagan." "Well, we want you to come down right away with us to the factory;" and I finished dressing, and as they had said they would bring me right away back, I didn't have breakfast, but went right on with them in the automobile, made the trip to the undertaking establishment very quickly—I mean, they made the trip down town very quickly, and stopped at the corner of Mitchell and Pryor Streets, told me they were going to take me to the undertaker's first, that they wanted me to see the body and see if I could identify the little girl. I went with them to the undertaking establishment, and one of the two men asked the attendant to show us the way into where the body was, and the attendant went down a long, dark passageway with Mr. Rogers following, then I came, and Black brought up the rear; we walked down this long passageway until we got to a place that was apparently the door to a small room,—very dark in there, the attendant went in and suddenly switched on the electric light, and I saw the body of the little girl. Mr. Rogers walked in the room and stood to my right, inside of the room, I stood right in the door, leaning up against the right facing of the door, and Mr. Black was to the left, leaning on the left facing, but a little to my rear, and the attendant, whose name I have since learned was Mr. Gheesling, was on the opposite side of the little cooling table to where I stood—in other words, the table was between him and me; he removed the sheet which was covering the body, and took the head in his hands, turned it over, put his finger exactly where the wound in the left side of the head was located,—put his finger right on it; I noticed the hands and arms of the little girl were very dirty,—blue and ground with dirt and cinders, the nostrils and mouth—the mouth being open,—nostrils and mouth just full of saw-dust and swollen, and there was a deep scratch over the left eye on the forehead; about the neck there was twine,—a piece of cord similar to that which is used at the pencil factory and also a piece of white rag. After looking at the

body, I identified that little girl as the one that had been up shortly after noon the day previous and got her money from me. We then left the undertaking establishment, got in the automobile and rode over to the pencil factory. Just as we arrived opposite the pencil factory, I saw Mr. Darley going into the front door of the pencil factory with another man, whose name I didn't know; we went up to the second floor, the office floor, I went into the inner office, hung up my hat, and in the inner office I saw the night watchman, Newt Lee, in the custody of an officer, who I think was detective Starnes, the man who had phoned me. I then unlocked the safe and took out the pay-roll book and found that it was true that a little girl by the name of Mary Phagan did work in the metal plant, and that she was due to draw \$1.20, the pay-roll book showed that, and as the detective had told me that someone had identified the body of that little girl as that of Mary Phagan, there could be no question but what it was one and the same girl. The detectives told me then they wanted to take me down in the basement and show me exactly where the girl's body was found, and the other paraphernalia that they found strewn about; and I went to the elevator box,—the switch box, so that I could turn on the current, and found it open. In reference to that switch box being open or shut—it was open on that occasion, however,—I had given instructions to the factory to keep it open, and those instructions were given because a member of the fire department had gone through all that part of the city, and the National Pencil Company, among others, and told us that no switch box, no box in which an electric switch was situated, could be locked up, but had to be open, so it could be easily accessible in case of fire, so they wouldn't run any risk of electrocuting anybody, or if they wanted to move quickly, they could throw it on and start the elevator,—you couldn't lock it up, the firemen wouldn't know where the key was. However, I turned on the switch, started the motor, which runs the elevator, going, then Mr. Darley and a half dozen more of us and the detectives got on the elevator; I got on the elevator and I started to pull the rope to start the elevator to going, and it seemed to be caught, and I couldn't move it, I couldn't move it with a straight pull, and couldn't get it loose, so I jumped out, we all got off, and I asked Mr. Darley to try his hand,—he's a great deal larger man and a great deal stronger man than I was—so he was successful in getting it loose—it seemed like the chain which runs down in the basement had slipped a cog and gotten out of gear and needed somebody to force it back; however, Mr. Darley was successful in getting it loose, and it started up, and I got on and the detectives got on and I caught hold of the rope and it worked alright.

In the basement, the officers showed us just about where the body was found, just beyond the partition of the Clark Woodenware Company, and in behind the door to the dust bin, they showed us where they found the hat and slipper on the trash pile, and they showed us where the back door, where the door to the rear was opened about 18 inches. After looking about the base-

ment, we all went back upstairs and Mr. Darley and myself got some cords and some nails and a hammer and went down the basement again to lock up the back door, so that we could seal the factory from the back and nobody would enter. After returning upstairs, Mr. Darley and myself accompanied Chief Lanford on a tour of inspection through the three upper floors of the factory, to the second floor, to the third floor and to the fourth floor, we looked into each bin, and each partition, and each dressing room and each work room, and even passed through the metal room and looked into that very dressing room that has figured so prominently in this trial, and neither Mr. Darley nor myself noticed anything peculiar on that floor, nor did Sergeant Lanford, Chief of the Atlanta detectives, notice anything peculiar. We then returned to the front, and took out of the clock the slip on which Newt Lee had punched the evening previous, and that clock slip, of course, was dated April 28th (Defendant's Exhibit 1).

I removed the clock slip from the clock, and in the center of the sheet, between the top and bottom, I remember the No. 133 and the number 134, I wrote on it "Taken out 8:26 A. M." (Defendant's Exhibit 1), and two lines under it, with a casual look at that slip, you can't see it.

I can see it. When looking casually at that slip (Defendant's Exhibit 1), you see nothing, and by the way, this sheet has been identified, it is the one to which reference has been made so many times, and if you will look at it, you will see the date, April 28th, which we put on there on the evening of Saturday, April 26th, but if you will look opposite those numbers 133 and 134 (Defendant's Exhibit 1), and look very carefully, you can see where there has been erased from it what I put on there that morning in pencil to identify it, the words "taken out 8-26," and two lines, which it seems has been erased, but they couldn't erase it carefully enough, they even erased some of the printed line which runs across that sheet. This is the sheet that I took out on Sunday morning, and looked at the clock to notice what time it was, and I laid it up against the dial of the clock, the glass face of the clock, and wrote down there the time which the clock then registered. I told them the sheet was just like you see it there, and I brought it to the office and Chief Lanford put it in his pocket; I then went into the office and got another time slip and dated it April 28th, similar to this one which was taken out, and which one it would replace, and I put it back into the time clock to be used by the night watchman that night and by the help when they came to work on Monday morning. After taking this slip out, Mr. Darley and myself casually looked over the slip to see if there were any errors, and we noticed over there that no successive numbers had been skipped, that is, the numbers on that slip are arranged successively, one, two, and three, and the time alongside of each one, and there was no single line skipped, but we didn't notice the actual time shown by the punch, we only noticed that the successive punches were made at the time which the punches themselves showed. After putting a new

slip in the clock, we all went out of the factory and went downstairs and locked the door, and I was going to go down to the office, to police headquarters, because the officers said they wanted to show me some notes which they said were found near the body and the padlock and staple which they showed me had been withdrawn, and which they said had been taken down to the station the first time they had Newt Lee down there.

Now, gentlemen, I have heard a great deal, and so have you, in this trial, about nervousness, about how nervous I was that morning. Gentlemen, I was nervous, I was very nervous, I was completely unstrung, I will admit it; imagine, awakened out of my sound sleep, and a morning run down in the cool of the morning in an automobile driven at top speed, without any food or breakfast, rushing into a dark passageway, coming into a darkened room, and then suddenly an electric light flashed on, and to see the sight that was presented by that poor little child; why, it was a sight that was enough to drive a man to distraction; that was a sight that would have made a stone melt; and then it is suspicious, because a man who is ordinary flesh and blood should show signs of nervousness. Just imagine that little girl, in the first blush of young womanhood, had had her life so cruelly snuffed out, might a man not be nervous who looked at such a sight? Of course I was nervous; any man would be nervous if he was a man. We went with the officers in the automobile, Mr. Rogers was at the driving wheel, and Mr. Darley sat next to him, I sat on Mr. Darley's lap, and in the back was Newt Lee and two officers. We rode to headquarters very quickly and on arrival there Mr. Darley and I went up to Chief Lanford's office where I sat and talked and answered every one of their questions freely and frankly, and discussed the matter in general with them, trying to aid and to help them in any way that I could. It seemed that, that morning the notes were not readily accessible, or for some other reason I didn't get to see them, so I told them on leaving there that I would come back that afternoon, which I ultimately did; after staying there a few minutes, Mr. Darley and myself left, and inasmuch as Mr. Darley hadn't seen the body of the little girl, we went over to Bloomfield's on Pryor Street and Mitchell, and when we went into the establishment, they told us somebody was busy with the body at that time and we couldn't see it, and we started to leave, when we met a certain party with whom we made arrangements to watch the building, because Newt Lee was in custody at that time. Mr. Darley and I then went over to Montag Brothers to see if any of the Montags had come down town that morning, we arrived at their place, and found the same was locked, and that nobody was down there. We walked from Montag's place on Nelson Street down to Mitchell and Forsyth Streets, where I bade Mr. Darley good-bye, and I walked down Mitchell Street to Pryor, where I caught a Georgia Avenue car and rode to the house of Mr. Sig Montag, our General Manager, corner of Glenn and Pryor Streets, and called on Mr. Montag and discussed with him at length and in detail what I had seen that morning and what the detectives had to say. After my conver-

sation with him, I returned to my home at about a quarter to eleven, my home was 68 E. Georgia Avenue; I washed up and had my breakfast in company with my wife, in the dining room, and while I was eating breakfast, I told my wife of the experience I had had that morning. After I finished my breakfast, I left the house and went around to the home of Mr. Wolfsheimer, and at Mrs. Wolfsheimer's house we found quite a company of people, and the conversation turned largely on what I had seen that morning; also, among those who were present, were Mrs. L. G. Cohen, Mrs. M. G. Michael, Mrs. Carl Wolfsheimer, Julian Michael, Philip Michael, Miss Helen Michael, Miss Virginia Silverman, Miss May Lou Liebman, Julian Loeb and Herman Loeb. After staying there about an hour with my wife, I went in her company to visit the home of my brother-in-law, A. E. Marcus, whose home is situated on Washington Street opposite the Orphans' Home; on our arrival there, the nurse Lucy told us that no one was at home, and we could find them probably at the home of Mrs. Ursenbach; we then went over to the Ursenbach house, which is situated on the corner of Washington and Pulliam Streets, and visited at that place, and saw Mr. and Mrs. A. E. Marcus, Mr. and Mrs. Chas. Ursenbach, Harold Marcus, Mr. and Mrs. Ben Wiseberg. Of course, the conversation was about the little girl that had been killed in the Pencil Factory basement that morning, of which they had heard, and we discussed it generally, although it was at that time as much a puzzle to me as it was apparently to everybody else. After staying here until about one o'clock or a little after, I returned with my wife to my home at 68 E. Georgia Avenue, where we took our lunch together with my parents-in-law, with Minola McKnight serving. After dinner, read a little while, and finally caught the ten minutes of three Georgia Avenue car going down town. I got off at the corner of Pryor and Mitchell Streets, and went into the undertaker Bloomfield's, where I saw a large crowd of people nearby on the outside; on entering I found quite a number of people who were working at the Pencil Factory, among whom were Mr. Schiff, Herbert Schiff, N. V. Darley, Wade Campbell, Alonzo Mann, Mr. Stelker, and Mr. Zyganke. I chatted with them a few minutes, and I noticed that the people who were going in to see the body were standing in line and moving in, and that others from the factory were going in and I thought I would go in too and pay my respects, and I went and stood in line, and went into the room again and staid a few minutes in the mortuary chamber; the little girl had been cleaned up, her hair had all been cleaned and smoothed out, and there was a nice white sheet over the rest of her body. I returned to the front of the undertaking establishment, and stood chatting with Herbert Schiff and Mr. Darley until the party with whom we had made arrangements came up, and we gave them the keys with instructions as to watching the plant that night. Then Mr. Darley and Mr. Schiff and myself went down to police headquarters and went up into Chief Lanford's office, and the three of us stood talking there, answering all sorts of questions that not only chief Lanford, but the other detectives would shoot at us, and finally Mr. Darley said he would like to talk to Newt Lee; then he went

into another room, and I presume they brought Newt Lee up from the cell, so he could talk to him. After Newt Lee was gone, the detectives showed us the two notes and the pad back with still a few unused leaves to it, and the pencil that they claimed they had found down in the basement near the body. Of course, Mr. Schiff and myself looked at those notes and tried to decipher them, but they were written exceedingly dim, and were very rambling and incoherent, and neither of us could recognize the handwriting, nor get any sense out of them at all. One of these notes (State's Exhibit Y) was written on a sheet of pencil pad paper, the same kind as that of this sheet which still remained on the pad back; the other (State's Exhibit Z) was written on a sheet of yellow paper, apparently a yellow sheet from the regulation order pad or order book of the National Pencil Company; this sheet was a yellow sheet with black ruling on it, and certain black printing at the top. These are the two notes (State's Exhibit Y and Z) (indicating papers). At the top of these notes where it showed the series and date, and you can see it has either been worn out or rubbed out (Defendant's Exhibit Z), but the date was originally on there, and down below here is the serial number; now, both of those notes were written as though they had been written through a piece of carbon paper and the date said Jan. 8th, 1911; the order number is so faint or erased here that I can't even see what that is, but there is no trace of a date on this one at all, but it was there distinctly visible when Mr. Schiff and myself looked at it. We continued answering any questions that the detectives wished to put to us looking to a possible solution of the mystery, when Mr. Darley came in and said if they didn't want him any further, he would go off, that he had an appointment. A few minutes thereafter, Mr. Schiff and myself left police headquarters, and went down Decatur Street to Peachtree Street, and down Peachtree Street over the viaduct to Jacobs' Alabama and Whitehall St. store, and went in, and each of us had a drink, and I bought a cigar for each of us at the cigar counter. Mr. Schiff had an appointment to meet some friends of his at the Union Depot that afternoon, and it was a little too early, so we took a walk around by the Pencil Factory, walking up Alabama to Forsyth Street and down Forsyth Street on the side opposite from the factory, to the corner of Hunter and Forsyth, where we noticed the morbid crowd that had collected out in front of the factory; we stood there about a minute or two and then continued walking, and then went up East Hunter Street back to Whitehall Street, and back Whitehall to the corner of Whitehall and Alabama, where Mr. Schiff waited until I caught an Alabama Street or Georgia Avenue car and returned to my home. I returned to my home about a quarter to four, and found there was no one in, as my wife had told me that if she wasn't at home, she would probably be at the residence of Mr. Ersenberg, I proceeded over there, coming up Washington Street in the direction of the Orphans' Home, and on Washington Street, between Georgia Avenue and the next street down, which I believe is Bass street, I met Arthur Haas and Ed Montag and Marcus Loeb, who stopped me and asked about things they had heard about the little girl being dead in the Pencil Factory,

and I stopped and discussed it with them, and I was about to leave them. When Henry Bauer came along in his automobile and stopped where I was and he asked me what I knew about it, and I had to stop and talk with him; and I finally got loose from him and went over to the home of Mr. Ursenbach on the corner of Pulliam and Washington Terrace, and when I arrived there, I found Mr. and Mrs. A. D. Marcus, Mr. and Mrs. Charlie Ursenbach, and my wife, and a little later Mr. and Mrs. Sig Selig came in. Here again the subject of conversation was what I had seen that morning and what the detectives had told me, and what I had told them and how the little girl looked, and all about it, as far as I knew. I staid there until about 5 o'clock, when Mr. Ike Haas, the Vice-President of the Pencil Factory, telephoned me to come over to his house, and I thereupon went over there, and on arriving at Mr. Haas' home, which is situated on Washington Street right across the way from the Orphans' Home, I talked to him about what I had seen that morning, and what I could deduce from the facts that were known and what the detectives had told me. I staid there until about 6 o'clock. On arrival at Mr. Haas', I saw there his wife, Mrs. Haas, his son Edgar Haas, and a cousin of my wife's, Montefiore Selig. My wife had left word with Mrs. Haas that I should call for her at the residence of Mr. Marcus, which is next door, or just a few doors away, and I went by and called for my wife at six o'clock and a few minutes before seven my wife and I left the residence of Mr. Marcus and started down Washington Street towards Georgia Avenue on our way home. On our way home, we met our brother-in-law, Mr. and Mrs. Chas. Ursenbach, going to the house from which we had just left. We reached home about seven or a little after for supper. After supper, I started to read the paper; between 8 and 8:30, I phoned up to my brother-in-law, Alex Marcus, and asked him if he would come down, but he said he thought he would not that evening, on account of the rain. I continued reading there in the hall that night or evening. There was company at the house of my father and mother-in-law, among the company being the following people, to the best of my recollection, Mr. and Mrs. Paul Lippman, Mr. and Mrs. Ike Strauss and Mr. and Mrs. Carl Wolfsheimer. About ten o'clock, all the company left, and I went upstairs with my wife and retired about ten o'clock.

The next morning, I arose about seven o'clock, and washed and shaved and dressed, and while I was so occupied, the door bell rang, and my wife again answered the door, and there were two detectives down there, one was John Black, and the other, I believe, Mr. Haslett, Haslett of the city detectives; I finished dressing and went downstairs, and they told me they wanted me to step down to headquarters with them, and I told them I would, but I stopped and got my breakfast, finished dressing and got my breakfast before I went with them. We walked from my home on Georgia Avenue down to Washington Street down to police headquarters, walking the whole way. On the way down, I asked detective Haslett what the trouble down at the station house was, and he said: "Well, Newt Lee has been saying something, and

Chief Lanford wanted to ask you a few questions about it;" and I said: "What did Newt Lee say?" "Well, Chief Lanford will tell you when you get down there." Well, I didn't say anything more to him, went right along with him, and when I got down to police headquarters, I sat in one of the outer offices that the detectives use, it wasn't the office of Chief Lanford, he hadn't come down yet, that was about between 8 and 8:30 when I got down there. Well, I waited around the office possibly an hour, chatting and talking to the officers that came in and spoke to me, but I still didn't see anything of Chief Lanford; and bye and bye, probably after an hour, half past nine perhaps, Sig Montag and Herbert Haas, a couple of my friends, came up and spoke to me; I was conversing with them, and possibly at 10 o'clock I saw Mr. Luther Rosser come up, and he said: "Hello Boys, what's the trouble?" And Mr. Haas went up to him and spoke to him, and they were talking together and a few minutes later Chief Lanford, who had in the mean time arrived and who seemed to be very busy running in and out answering telephone calls, came in and says: "Come here," and beckoned to me; and I went with him and went into his room, in his office, and while I was in there, to the best of my recollection, anyhow it is my impression now, that this very time slip (Defendant's Exhibit 1), on which at that time that "taken out at 8:26," with the two lines under it, had not been erased, was shown to me, and in looking over it and studying it carefully, I found where the interval of an hour had occurred three times during the time that Newt Lee had been punching on that Saturday night, April 26th. When I had first looked at it, I only noticed that every line had a punch mark on it, but I didn't notice what time the punch marks themselves were on; this time I studied the slip carefully, it was the same slip I had taken out of the clock, Chief Lanford or one of the officers handed it to me at police headquarters, which I absolutely identified with the writing which was on it, which you can readily see if you look now, even though it has been erased. There seemed to be some altercation about Mr. Rosser coming in that room, and I heard Mr. Rosser say: "I am going into that room, that man is my client;" that was the first intimation I had that Mr. Rosser was going to look after my interests in this matter. Chief Beavers stated that he wanted me to give him a statement, and he said: "Mr. Frank, will you give us a statement?" And I said: "Certainly, I will give them a statement, I considered it only right that anybody that was at that factory that day should give the police a statement, telling who he had seen, where he had gone and what he had done; and I gave them a statement freely and unreservedly, while I had no idea that I had to make a statement at that time, I did give it to the very best of my ability, freely, and answered every question that was put to me. Mr. February was sitting on the opposite side of the table from where I was sitting, Chief Lanford was sitting at a desk, and Mr. Rosser was sitting quite a distance away, probably 25 feet, sitting in the front window with his back to us. After I had given the statement, several of the officers came into the room, among them being Chief Beavers, and Chief Beavers and Chief Lanford and Mr. Rosser were ap-

parently having a sort of conversation, and I overheard Mr. Rosser say: "Why, it is preposterous, a man who would have done such a deed must be full of scratches and marks and his clothing must be bloody." I imagine Mr. Rosser must have had an inkling that they were suspicious of me, and as soon as I heard that, I turned and jumped up and showed them my underclothing and my top shirt and my body, I bared it to them all that came within the range of their vision, I had everything open to them, and all they had to do was to look and see it. After that, Mr. Rosser insisted that two of the detectives, Mr. Black and another detective, accompany Mr. Haas, Mr. Herbert Haas, and myself to my home and look over my soiled clothing for the past week, which I anticipated had not been given to the wash woman. They complied with this request; Mr. Black and another detective and Mr. Haas and myself went over to the corner of Hunter and Washington Streets, and caught the Washington Street car and rode to Georgia Avenue and went to my home, and on this car my mother-in-law was sitting, returning to her home from town. On reaching 68 East Georgia Avenue, I found there my wife's grandmother, Mrs. Cohen, and my father-in-law, Mr. Selig. The detectives immediately went upstairs to my room with Mr. Haas and myself, and I took the laundry bag in which my soiled laundry is always kept and emptied it out on the bed, and they examined each and every article of clothing that I had discarded that past week, and I again opened the clothing which I was then wearing, and which was the brown suit which I have here, this brown suit (Defendant's Exhibit 49) is the same suit I wore that Saturday, April 26th, and Monday April 28th, and I have worn that suit continuously since then until the weather became so hot, and it has neither been pressed nor cleaned since then, and I show it to you for your examination. The detectives were evidently perfectly well satisfied with what they had seen there, and of course they left without any further remarks with Mr. Haas. I went downstairs and conversed with my folks down there until dinner time, which was served to my father-in-law and my mother-in-law and my wife and myself by Minola McKnight. About that time, Mr. and Mrs. Wolfsheimer came in and conversed with us, Mr. Wolfsheimer telling me that he would take me down town that afternoon in his automobile. After dinner, I telephoned down to the office and telephoned to Mr. Schiff, and told him to get Mr. Montag's permission for the Pencil Company to put on a detective, preferably a Pinkerton detective, to work with and assist the city detectives in ferreting out the crime, as an evidence of the interest in this matter which the National Pencil Company was taking, I thought it was no more than we ought to do, and I also told Mr. Schiff I would be downtown between half past two and three. After conversing with my folks, I went around the corner to Mr. Wolfsheimer's house and got in his automobile, and he took me downtown to his place of business, which is situated on Whitehall Street near Mitchell, and I got out of the automobile there and walked over to the Forsyth Street plant of the Pencil Factory, and on going into the office, I saw the following men there: Mr. Herbert Schiff, Mr. Wade Campbell, Mr. Darley,—Mr. Hol-

loway was out in his place in the hall, and Mr. Stelker and Mr. Quinn and Mr. Ziganke, these foreman were sitting around there because we had shut down there, as they told me, due to the fact that the plant was wholly demoralized, the girls were running into hysterics, they couldn't stick at their work, they were crying and going on over what had happened there. I spoke to the boys who were there in the office about the happenings of that morning, of course, at more or less length. Then Mr. Quinn said he would like to take me back to the metal department on the office floor where the newspapers had said that Mr. Barrett of the metal department had claimed he had found blood spots, and where he had found some hair. Mr. Quinn took me to the little lathe back in the metal department, and explained to me that Mr. Barrett had told him just the same as he said here, that those strands of hair were so few in number that he didn't see them until he turned the handle and they wound around his fingers, and moreover that the position of the handle of the tool which that handle actuates on that tool, that small lathe, was in the same relative position to the work in the lathe as when they left it on Friday evening previous to that Monday. They then took me over to the place in front of the dressing room where it was claimed the blood spots were found. Now, I examined those spots, I didn't examine them standing up, I didn't depend on the light from the windows, but I stooped right down to those spots, and I took a strong electric flash lamp that we had around there and looked at them and examined them carefully, and I made a certain conclusion after that examination. Now, gentlemen, if there is any one thing in and about a factory, after my seven years of practical experience in factories, that I do know, it is the care and condition of factory floors. Now, take that metal plant, for instance, that plant, as you know, is a place where we reform and shape and spin sheet brass, and of course, of necessity, we use a great deal of lubricant there; now, the lubricant that is used on this eyelet machine, these large machines that change the sheet metal from a ribbon into a shape, we use that form of lubricant which is known as haskoline compound; now, the main ingredients of that compound are, for practical purposes, soap and oil, and in use, it is diluted to a great extent with water so it can flow easily onto the tools or onto the metal, so that the tools that they use it on won't get brittle or smeared up, and that haskoline compound is carried to these little machines in the metal room, right almost up to that dressing room, and that haskoline remains on them and sticks to them, and you are apt to find that haskoline compound on the floor there anywhere around in that metal room near any of those machines, and when it is spilled on the floor, it is not scoured up, but it is just swept up with a broom. Moreover, a point that has not been brought out, so far as I know, right opposite that dressing room is kept the scrap brass, the scrap barrels in which the scrap metal from the eyelet machines is put, and that is full of that haskoline compound, that metal being put into the barrel of course, with the fluid on it, it flows to the bottom and is apt to get out of the bottom of that barrel onto the floor. But, getting back to the floor of the metal room, there is a constant spilling of lubricants, and, as I say, it is com-

posed largely of soap and oil, and that floor, by actual experiment, is covered to a thickness varying from a quarter to a half inch, that is, you can scrape away that much before you get down to the original color of the wood; moreover, on top of that grease-soaked floor, there is dirt more or less, and then somebody comes along with a water sprinkler and sprinkles it to sweep it up, and they go over the top of that, it don't sink into the floor, and the result is there is coat after coat of grease and dirt on that floor. Now, with reference to those spots that are claimed to be blood that Mr. Barrett found, I don't claim they are not blood, they may have been, they are right close to the ladies dressing room, and we have had accidents there, and by the way, in reference to those accidents, the accidents of which we have had records, are not the only accidents that have happened there; for instance, a person cuts a finger; that is an accident, we give first aid to the injured in the office, and we don't have any report on that, the only reports we have are of those accidents that incapacitates the health, where they demand the money for the time that they have lost due to the accident, and we will have our Employers' Liability Insurance Company to pay the employees, but where people just cut their fingers and they go back to work, we don't make any record of that, and we have people cutting their fingers there very often, and when they cut their fingers, their line of travel is right by that place where Mr. Barrett found those spots, right to the office. Now, we use paint and varnish around there, a great deal of it, and while I don't say that this is not blood, it may be, but it could also have been paint, I have seen the girls drop bottles of paint or varnish and have them break there on the floor, I have seen that happen right close to that spot, but the main point about it is this, gentlemen: when I got down and looked at it, you could have scratched away from the top of those dark stains an accumulation of dirt that was not the accumulation of a day or two days or three days or three weeks, but it was at least three months, from off the top of those spots, without touching the spot itself. Moreover, that white stuff was unquestionably, in my opinion, haskoline compound, and it was dry and it had to be put on, because it showed all evidences of having been swept, so it had to be put on the wood in a liquid state; if that had been fresh red paint, or if that had been fresh red blood, and that haskoline compound, that soap in it, which is a great solvent, should have been put on there in a liquid state, it would not have showed up white, as it showed up then, but it would have showed up either pink or red, and where the spot of blood was, or whatever it was, that stuff was white, and not pink or red.

I returned after making this examination from which I noticed two or three or four chips had been knocked up, the boys told me, by the police that morning; I returned to my office and gathered up what papers I had to take over to Montag Brothers, and I took over the financial report which I had made out the Saturday afternoon previous, and I talked it over with Mr. Sig Montag. I had a good long conversation with Mr. Montag with reference to the occurrences that morning and we decided that since the papers had

stated that I was being detained at headquarters, it would be best to let my uncle, who was ill, and who is an elderly man, being over 70 years of age, and who was on the point of taking a trip to Europe, and I didn't want him to be unnecessarily alarmed by seeing in the papers that I was detained, and I wrote a telegram to Mr. Adolph Montag informing him that I was no longer in custody, that I was all right, and that he could communicate that to my uncle. That was so that my uncle should not get hold of an Atlanta paper and see that I was in custody and be unnecessarily alarmed.

I returned from Montag Brothers to the Pencil Factory, being accompanied by one of the traveling men, Mr. Hein, Mr. Sol Hein, and on my arrival at the factory I went up into the office and distributed the various papers all over the factory to be acted on the next day. In a few minutes Mr. Harry Scott of the Pinkerton detectives came in and I took him aside into my office, my private office, and spoke to him in the presence of Mr. N. V. Darley and Mr. Herbert Schiff. I told him that I expected that he had seen what had happened at the Pencil Factory by reading the newspapers and knew all the details. He said he didn't read the newspapers and didn't know the details, so I sat down and gave him all the details that I could, and in addition I told him something which Mr. Darley had that afternoon communicated to me, viz.: that Mrs. White had told him that on going into the factory at about 12 o'clock noon on Saturday April 26th, she had seen some negro down by the elevator shaft. Mr. Darley had told me this and I just told this to Mr. Scott. After I told Mr. Scott all that I could, I took him around the building, took him first back to the metal room and showed him the place where the hair had been found, looked at the machinery and at the lathe, looked at the table on which the lathe stands, and the lathe bed and the floor underneath the lathe, and there wasn't a spot, much less a blood spot underneath. I showed him the other spot in front of the dressing room, and I took him to the fourth floor and showed him where I had seen White and Denham a little before one the first time and about three the second time. Then I took him down into the basement and made a thorough search of the basement, and that included an examination of the elevator well which was at the bottom of the elevator shaft, and I noticed Mr. Scott was foraging around down there and he picked up two or three or may be four articles and put them in his pocket, and one of them I specially noticed was a piece of cord exactly like that which had been found around the little girl's neck. We then back and I showed him where the officer said the slipper had been found, the hat had been found and the little girl's body was located. I showed him, in fact, everything that the officers had showed us. Then I opened the back door and we made a thorough search of the alleyway and went up and down the alleyway and then went down that alleyway to Hunter Street and down Hunter to Forsyth and up Forsyth in front of the Pencil Factory. In front of the Pencil Factory I had quite a little talk with Mr. Scott as to the rate of the Pinkerton Detective Agency. He told me what they were and I had Mr. Schiff to telephone to

Mr. Montag to find out if those rates were satisfactory. He phoned back the answer that he would engage them for a few days at any rate. Mr. Scott then said: "Well, I don't need anything more," and he says "The Pinkertons in this case, according to their usual custom in ferreting out the perpetrator of this crime will work hand in hand with the city officers." I said: "All right, that suits me." And he went on his way. About that time my father-in-law joined the group over in front of the factory and after talking for some time my father-in-law and I left and we arrived home about 6:30 I should judge, and found there my mother-in-law and my wife and Minola McKnight, and we had supper. After supper my two brothers-in-law and their wives came over to visit with us and they stayed until about 10 o'clock, after which my wife and I retired. On Tuesday morning I arose sometime between seven and seven-thirty, leisurely dressed and took my breakfast and caught the 8:10 car coming towards town, the Georgia Avenue car, and when I went to get on that car I met a young man by the name of Dickler and I remember paying the fare for both of us. When I arrived at the Pencil Factory about 8:30, I immediately entered upon my routine work sending the various orders to the various places in the factory where they were due to go, and about 9:30 I went on my usual trip over to Montag Brothers to see the General Manager. After staying over there a short while I returned in company with another one of their traveling men, Mr. Jordan. At the corner of Forsyth and Hunter Street I met up with a cousin of my wife's, a Mr. Selig, and we had a drink at Cruiskshank's soda fount at the corner of Hunter and Forsyth. Then I went up into the factory and separated the papers I had brought back with me from Montag Brothers, putting them in the proper places, and sending the proper papers to the different places. I was working along in the regular routine of my work, in the factory and about the office, and a little later detectives Scott and Black came up to the factory and said: "Mr. Frank, we want you to go down to headquarters with us," and I went with them. We went down to headquarters and I have been incarcerated ever since. We went down to headquarters in an automobile and they took me up to Chief Lanford's office. I sat up there and answered any questions that he desired, and I had been sitting there some time when detective Scott and detective Black came back with a bundle under their arm. They showed me a little piece of material of some shirt, and asked me if I had a shirt of that material. I looked at it and told them I didn't think I ever had a shirt of that description. In the meantime they brought in Newt Lee, the night watchman, brought him up from a cell and showed him the same sample. He looked at it and immediately recognized it; he said he had a shirt like that, but he didn't remember having worn it for two years, if I remember correctly, that is what he said. Detectives Scott and Black then opened the package they had and disclosed the full shirt (State's Exhibit F) of that material that had all the appearance of being freshly stained with blood, and had a very distinct odor. Newt Lee was taken back to the cell. After a time Chief Lanford came over to me and began an examination of my face and of my head and my hands

and my arms. I suppose he was trying to hunt to see if he could find any scratches. I stayed in there until about 12 o'clock when Mr. Rosser came in and spoke to the detectives, or to Chief Beavers. After talking with Chief Beavers he came over to me and said that Chief Beavers thought it better that I should stay down there. He says: "He thinks it better that you be detained at headquarters, but if you desire, you don't need to be locked up in a cell, you can engage a supernumerary policeman who will guard you and give you the freedom of the building." I immediately acquiesced, supposing that I couldn't do anything else, and Mr. Rosser left. Now, after this time, it was almost about this time they took me from upstairs down to the District Sergeant's desk and detective Starnes—John N. Starnes, I think his name is, came in and dictated from the original notes that were found near the body, dictated to me to get a sample of my handwriting. Have you got those photographs there? (Photographs handed to the defendant). I wrote this note (State's Exhibit K) at the dictation of Mr. Starnes, which was given to me word by word, and of course I wrote it slowly. When a word was spelled differently they usually stopped—take this word "buy" for instance, the detective told me how that was spelled so they could see my exact letters, and compare with the original note. Now I had no hesitation in giving him a specimen of my handwriting. Now, this photograph (State's Exhibit K), is a reproduction of the note. You see, J. N. Starnes in the corner here, that is detective Starnes, and then is dated here, I put that there myself so I would be able to recognize it again, in case they tried any erasures or anything like that. It is a photographic reproduction of something that was written in pencil, as near as one can judge, a photographic reproduction of the note that I wrote. Detective Starnes then took me down to the desk sergeant where they searched me and entered my name on the book under a charge of suspicion. Then they took me back into a small room and I sat there for awhile while my father-in-law was arranging for a supernumerary police to guard me for the night. They took me then to a room on the top of the building and I sat in the room there and either read magazines or newspapers and talked to my friends who came to see me until—I was about to retire at midnight. I had the cover of my cot turned back and I was going to bed when detective Scott and detective Black, at midnight, Tuesday, April 29th, came in and said: "Mr. Frank, we would like to talk to you a little bit. Come in and talk to us." I says: "Sure, I will be only too glad to." I went with them to a little room on the top floor of the headquarters. In that room was detective Scott and detective Black and myself. They stressed the possibility of couples having been let into the factory at night by the night watchman, Newt Lee. I told them that I didn't know anything about it, that if I had, I certainly would have put a stop to it long ago. They said: "Mr. Frank, you have never talked alone with Newt Lee. You are his boss and he respects you. See what you can do with him. We can't get anything more out of him, see if you can." I says: "All right, I understand what you mean; I will do my best," because I was only too willing to help.

Black says: "Now put it strong to him, put it strong to him, and tell him to cough up and tell all he knows. Tell him that you are here and that he is here and that he better open up and tell all he knows about happenings at the Pencil Factory that Saturday night, or you will both go to hell." Those were the detective's exact words. I told Mr. Black I caught his meaning, and in a few minutes afterwards Detective Starnes brought up Newt Lee from the cell room. They put Newt Lee into a room and handcuffed him to a chair. I spoke to him at some length in there, but I couldn't get anything additional out of him. He said he knew nothing about couples coming in there at night, and remembering the instructions Mr. Black had given me I said: "Now, Newt, you are here and I am here, and you had better open up and tell all you-know, and tell the truth and tell the full truth, because you will get us both into lots of trouble if you don't tell all you know," and he answered me like an old negro: "Before God, Mr. Frank, I am telling you the truth and I have told you all I know." And the conversation ended right there. Within a minute or two afterwards the detectives came back into the room, that is, detective Scott and detective Black, and then began questioning Newt Lee, and then it was that I had my first initiation into the third degree of the Atlanta police department. The way that fellow Black cursed at that poor old negro, Newt Lee, was something awful. He shrieked at him, he hollered at him, he cursed him, and did everything but beat him. Then they took Newt Lee down to a cell and I went to my cot in the outer room.

— Now before closing my statement, I wish to touch upon a couple of insinuations and accusations other than the one on the bill of indictment, that have been leveled against me so far during the trial. The first is this, the fact that I would not talk to the detectives; that I would not see Jim Conley. Well, let's look into the facts a few minutes and see whether there was any reason for that, or if there be any truth in that statement.

On Sunday morning, I was taken down to the undertaker's establishment, to the factory, and I went to headquarters; I went to headquarters the second time, going there willingly without anybody coming for me. On each occasion I answered them frankly and unreservedly, giving them the benefit of the best of my knowledge, answering all and any of their questions, and discussing the matter generally with them. On Monday they came for me again. I went down and answered any and all of their questions and gave them a statement which they took down in writing, because I thought it was right and I was only too glad to do it. I answered them and told them all that I know, answering all questions. Tuesday I was down at police station again, and answered every question and discussed the matter freely and openly with them, not only with the police, but with the reporters who were around there; talked to anybody who wanted to talk with me about it, and I have even talked with them at midnight when I was just about to go to bed. Mid-

night was the time they chose to talk to me, but even at such an outlandish hour I was still willing to help them, and at their instigation I spoke to Newt Lee alone, but what was the result? They commenced and they grilled that poor negro and put words into his mouth that I never said, and twisted not alone the English, but distorted my meaning. I just decided then and there that if that was the line of conduct they were going to pursue I would wash my hands of them. I didn't want to have anything to do with them. On the afternoon of May 1st, I was taken to the Fulton County Tower. On May 3rd detectives Black and Scott came up to my cell in the tower and wanted to speak to me alone without any of my friends around. I said all right, I wanted to hear what they had to say that time. Then Black tore off something like this: "Mr. Frank, we are suspicious of that man Darley. We are watching him; we have been shadowing him. Now open up and tell us what you know about him." I said: "Gentlemen, you have come to the wrong man, because Mr. Darley is the soul of honor and is as true as steel. He would not do a crime like that, he couldn't do it." And Black chirped up: "Come on, Scott, nothing doing," and off they go. That showed me how much reliance could be placed in either the city detectives or our own Pinkerton detectives, and I treated such conduct with silence and it was for this reason, gentlemen, that I didn't see Conley, surrounded with a bevy of city detectives and Mr. Scott, because I knew that there would not be an action so trifling, that there was not an action so natural but that they would distort and twist it to be used against me, and that there was not a word that I could utter that they would not deform and twist and distort to be used against me, but I told them through my friend Mr. Klein, that if they got the permission of Mr. Rosser to come, I would speak to them, would speak to Conley and face him or anything they wanted—if they got that permission or brought Mr. Rosser. Mr. Rosser was on that day up at Tallulah Falls trying a case. Now, that is the reason, gentlemen, that I have kept my silence, not because I didn't want to, but because I didn't want to have things twisted.

Then that other implication, the one of knowing that Conley could write, and I didn't tell the authorities.

Let's look into that. On May 1st I was taken to the tower. On the same date, as I understand it, the negro Conley was arrested. I didn't know anybody had any suspicions about him. His name was not in the papers. He was an unknown quantity. The police were not looking out for him; they were looking out for me. They didn't want him, and I had no inkling that he ever said he couldn't write. I was sitting in that cell in the Fulton County jail—it was along about April 12th, April 12th or 14th—that Mr. Leo Gottheimer, a salesman for the National Pencil Company, came running over, and says "Leo, the Pinkerton detectives have suspicions of Conley. He keeps saying he can't write; these fellows over at the factory know well enough that he can write, can't he?" I said: "Sure he can write." "We can

prove it. The nigger says he can't write and we feel that he can write." I said: "I know he can write. I have received many notes from him asking me to loan him money. I have received too many notes from him not to know that he can not write. In other words, I have received notes signed with his name, purporting to have been written by him, though I have never seen him to this date use a pencil." I thought awhile and then I says: "Now, I tell you; if you will look into a drawer in the safe you will find the card of a jeweler from whom Conley bought a watch on the installment. Now, perhaps if you go to that jeweler you may find some sort of a receipt that Conley had to give and be able to prove that Conley can write." Well, Gottheimer took that information back to the Pinkertons; they did just as I said; they got the contract with Conley's name on it, got back evidently to Scott and then he told the negro to write. Gentlemen, the man who found out or paved the way to find out that Jim Conley could write is sitting right here in this chair. That is the truth about it.

Then that other insinuation, an insinuation that is dastardly that it is beyond the appreciation of a human being, that is, that my wife didn't visit me; now the truth of the matter is this, that on April 29th, the date I was taken in custody at police headquarters, my wife was there to see me, she was downstairs on the first floor; I was up on the top floor. She was there almost in hysterics, having been brought there by her two brothers-in-law, and her father. Rabbi Marx was with me at the time. I consulted with him as to the advisability of allowing my dear wife to come up to the top floor to see me in those surroundings with city detectives, reporters and snapshotters; I thought I would save her that humiliation and that harsh sight, because I expected any day to be turned loose and be returned once more to her side at home. Gentlemen, we did all we could do to restrain her in the first days when I was down at the jail from coming on alone down to the jail, but she was perfectly willing to even be locked up with me and share my incarceration.

Gentlemen, I know nothing whatever of the death of little Mary Phagan. I had no part in causing her death nor do I know how she came to her death after she took her money and left my office. I never even saw Conley in the factory or anywhere else on that date, April 26th, 1913.

The statement of the witness Dalton is utterly false as far as coming to my office and being introduced to me by the woman Daisy Hopkins is concerned. If Dalton was ever in the factory building with any woman, I didn't know it. I never saw Dalton in my life to know him until this crime.

In reply to the statement of Miss Irene Jackson, she is wholly mistaken in supposing that I ever went to a lady's dressing room for the purpose of making improper gaze into the girls' room. I have no recollection of occasions of which she speaks but I do not know that that ladies' dressing room on

the fourth floor is a mere room in which the girls change their outer clothing. There was no bath or toilet in that room, and it had windows opening onto the street. There was no lock on the door, and I know I never went into that room at any hour when the girls were dressing. These girls were supposed to be at their work at 7 o'clock. Occasionally I have had reports that the girls were flirting from this dressing room through the windows with men. It is also true that sometimes the girls would loiter in this room when they ought to have been doing their work. It is possible that on some occasions I looked into this room to see if the girls were doing their duty and were not using this room as a place for loitering and for flirting. These girls were not supposed to be dressing in that room after 7 o'clock and I know that I never looked into that room at any hour when I had any reason to suppose that there were girls dressing therein.

The statement of the negro Conley is a tissue of lies from first to last. I know nothing whatever of the cause of the death of Mary Phagan and Conley's statement as to his coming up and helping me dispose of the body, or that I had anything to do with her or to do with him that day is a monstrous lie.

The story as to women coming into the factory with me for immoral purposes is a base lie and the few occasions that he claims to have seen me in indecent positions with women is a lie so vile that I have no language with which to fitly denounce it.

I have no rich relatives in Brooklyn, N. Y. My father is an invalid. My father and mother together are people of very limited means, who have barely enough upon which to live. My father is not able to work. I have no relative who has any means at all, except Mr. M. Frank who lives in Atlanta, Ga. Nobody has raised a fund to pay the fees of my attorneys. These fees have been paid by the sacrifice in part of the small property which my parents possess.

Gentlemen, some newspaper men have called me "the silent man in the tower," and I kept my silence and my counsel advisedly, until the proper time and place. The time is now; the place is here; and I have told you the truth, the whole truth.

MISS EMILY MAYFIELD, Sworn for the Defendant.

I worked at the pencil factory last year during the summer of 1912. I have never been in the dressing room when Mr. Frank would come in and look at anybody that was undressing.

CROSS EXAMINATION.

I work at Jacobs' Pharmacy. My sister used to work at the pencil factory. I don't remember any occasion when Mr. Frank came in the dressing room door while Miss Irene Jackson and her sister were there.

MISSES ANNIE OSBORNE, REBECCA CARSON, MAUDE WRIGHT, and MRS. ELLA THOMAS, All sworn for the Defendant, testified that they were employees of the National Pencil Company; that Mr. Frank's general character was good; that Conley's general character for truth and veracity was bad and that they would not believe him on oath.

MISSES MOLLIE BLAIR, ETHEL STEWART, CORA COWAN, B. D. SMITH, LIZZIE WORD, BESSIE WHITE, GRACE ATHERTON, and MRS. BARNES, all sworn for the Defendant, testified that they were employees of the National Pencil Company, and work on the fourth floor of the factory; that the general character of Leo. M. Frank was good; that they have never gone with him at any time or place for any immoral purpose, and that they have never heard of his doing anything wrong.

MISSES CORINTHIA HALL, ANNIE HOWELL, LILLIE M. GOODMAN, VELMA HAYES, JENNIE MAYFIELD, IDA HOLMES, WILLIE HATCHETT, MARY HATCHETT, MINNIE SMITH, MARJORIE McCORD, LENA McMURTY, MRS. W. R. JOHNSON, MRS. S. A. WILSON, MRS. GEORGIA DENHAM, MRS. O. JONES, MISS ZILLA SPIVEY, CHARLES LEE, N. V. DARLEY, F. ZIGANKI, and A. C. HOLLOWAY, MINNIE FOSTER, all sworn for the Defendant, testified that they were employees of the National Pencil Company and knew Leo M. Frank, and that his general character was good.

D. I. MacINTYRE, B. WILDAUER, MRS. DAN KLEIN, ALEX DITTLER, DR. J. E. SOMMERFIELD, F. G. SCHIFF, AL. GUTHMAN, JOSEPH GERSHON, P. D. McCARLEY, MRS. M. W. MEYER, MRS. DAVID MARX, MRS. A. I. HARRIS, M. S. RICE, L. H. MOSS, MRS. L. H. MOSS, MRS. JOSEPH BROWN, E. E. FITZPATRICK, EMIL DITTLER, WM. BAUER, MISS HELEN LOEB, AL. FOX, MRS. MARTIN MAY, JULIAN V. BOEHM, MRS. MOLLIE ROSENBERG, M. H. SILVERMAN, MRS. L. STERNE, CHAS. ADLER, MRS. R. A. SONN, MISS RAY KLEIN, A. J. JONES, L. EINSTEIN, J. BERNARD, J. FOX, MARCUS LOEB, FRED HEILBRON, MILTON KLEIN, NATHAN COPLAN, MRS. J. E. SOMMERFIELD, all sworn for the Defendant, testified that they were residents of the city of Atlanta, and have known Leo M. Frank ever since he has lived in Atlanta; that his general character is good.

MRS. M. W. CARSON, MARY PIRK, MRS. DORA SMALL, MISS JULIA FUSS, R. P. BUTLER, JOE STELKER, all sworn for the defendant, testified that they were employees of the National Pencil Company; that they knew Leo M. Frank and that his general character is good.

EVIDENCE IN REBUTTAL FOR STATE.

J. R. FLOYD, R. M. GODDARD, A. L. GODDARD, N. J. BALLARD, HENRY CARR, J. S. RICE, LEM SMITH, all sworn for the State, testified that they knew Daisy Hopkins; that her general character for truth and veracity was bad and that they would not believe her on oath. J. R. Floyd testified that he heard Daisy Hopkins talk about Frank and said there was a cot in the basement.

J. T. HEARN, sworn for the State.

I have known C. B. Dalton from 1890 to 1904. At first his general character was bad, but the last I knowed of him, it was good. I would believe him on oath.

CROSS EXAMINATION.

I heard of his being indicted for stealing and selling liquor, but the last year he was in Walton county he joined the church and I never heard a word against him after that.

R. V. JOHNSON, sworn for the State.

I have known C. B. Dalton for about 20 years. His character for truth and veracity is good, and I would believe him on oath.

CROSS EXAMINATION.

I didn't hear he was indicted for liquor selling before he left my county. He was in good standing when he left the church. I knew he was in the chaingang for stealing about 18 or 20 years ago.

W. M. COOK, W. J. ELDER, A. B. HOUSTON, J. T. BORN, W. M. WRIGHT, C. B. MCGINNIS, F. P. HEFNER, W. C. HALE, LEON BOYCE, M. G. CALDWELL, A. W. HUNT, W. C. PATRICK, all sworn for the State, testified that they knew C. B. Dalton; that his general character for truth and veracity was good, and that they would believe him on oath.

MISS MYRTIE CATO, MAGGIE GRIFFIN, MRS. C. D. DONEGAN, MRS. H. R. JOHNSON, MISS MARIE CARST, MISS NELLIE PETTIS, MARY DAVIS, MRS. MARY E. WALLACE, ESTELLE WINKLE, CARRIE SMITH, all sworn for the defendant, testified that they were formerly em-

ployed at the National Pencil Company and worked at the factory for a period varying from three days to three and a half years; that Leo M. Frank's character for lasciviousness was bad.

MISS MAMIE KITCHENS, sworn for the State in rebuttal.

I have worked at the National Pencil Company two years. I am on the fourth floor. I have not been called by the defense. Miss Jones and Miss Howard have also not been called by the defense to testify. I was in the dressing room with Miss Irene Jackson when she was undressed. Mr. Frank opened the door, stuck his head inside. He did not knock. He just stood there and laughed. Miss Jackson said, "Well, we are dressing, blame it," and then he shut the door.

CROSS EXAMINATION.

Yes, he asked us if we didn't have any work to do. It was during business hours. We didn't have any work to do. We were going to leave. I have never met Mr. Frank anywhere, or any time for any immoral purposes.

MISS RUTH ROBINSON, sworn for the State in rebuttal.

I have seen Leo M. Frank talking to Mary Phagan. He was talking to her about her work, not very often. He would just tell her, while she was at work, about her work. He would stand just close enough to her to tell her about her work. He would show her how to put rubbers in the pencils. He would just take up the pencil and show her how to do it. That's all I saw him do. I heard him speak to her; he called her Mary. That was last summer.

MISS DEWEY HEWELL, sworn for the State in rebuttal.

I stay in the Home of the Good Shepherd in Cincinnati. I worked at the pencil factory four months. I quit in March, 1913. I have seen Mr. Frank talk to Mary Phagan two or three times a day in the metal department. I have seen him hold his hand on her shoulder. He called her Mary. He would stand pretty close to her. He would lean over in her face.

CROSS EXAMINATION.

All the rest of the girls were there when he talked to her. I don't know what he was talking to her about.

MISS REBECCA CARSON, recalled by the State in rebuttal.

I have never gone into the dressing room on the fourth floor with Leo M. Frank.

MISS MYRTICE CATO, MISS MAGGIE GRIFFIN, both sworn for the State, testified that they had seen Miss Rebecca Carson go into the ladies dressing room on the fourth floor with Leo M. Frank two or three times during working hours; that there were other ladies working on the fourth floor at the time this happened.

J. E. DUFFY, sworn for the State in rebuttal.

I worked at the National Pencil Company. I was hurt there in the metal department. I was cut on my forefingers on the left hand. That is the cut right around there (Indicating). It never cut off any of my fingers. I went to the office to have it dressed. It was bleeding pretty freely. A few drops of blood dropped on the floor at the machine where I was hurt. The blood did not drop anywhere else except at that machine. None of it dropped near the ladies dressing room, or the water cooler. I had a large piece of cotton wrapped around my finger. When I was first cut I just slapped a piece of cotton waste on my hand.

CROSS EXAMINATION.

I never saw any blood anywhere except at the machine. I went from the office to the Atlanta Hospital to have my finger attended to.

W. E. TURNER, sworn for the State in rebuttal.

I worked at the National Pencil Company during March of this year. I saw Leo Frank talking to Mary Phagan on the second floor, about the middle of March. It was just before dinner. There was nobody else in the room then. She was going to work and he stopped to talk to her. She told him she had to go to work. He told her that he was the superintendent of the factory, and that he wanted to talk to her, and she said she had to go to work. She backed off and he went on towards her talking to her. The last thing I heard him say was he wanted to talk to her. That is all I saw or heard.

CROSS EXAMINATION.

That was just before dinner. The girls were up there getting ready for dinner. Mary was going in the direction where she worked, and Mr. Frank was going the other way. I don't know whether any of the girls were still at work or not. I didn't look for them. Some of the girls came in there while this was going on and told me where to put the pencils. Lemmie Quinn's office is right there. I don't know whether the girls saw him talking to Mary or not, they were in there. It was just before the whistle blew at noon. Mr. Frank told her he wanted to speak to her and she said she had to go to work, and the girls came in there while this conversation was going on. I can't describe Mary Phagan. I don't know any of the other little girls

in there. I don't remember who called her Mary Phagan, a young man on the fourth floor told me her name was Mary Phagan. I don't know who he was. I didn't know anybody in the factory. I can't describe any of the girls. I don't know a single one in the factory.

W. P. MERK, sworn for the State in rebuttal.

I have been a motorman for about three years, in the employ of the Georgia Railway & Electric Company. I know Daisy Hopkins. I have met her at the corner of Whitehall and Alabama St. between 2:30 and 3:30 on a Saturday. She said she was going to pencil factory. I made an engagement with her to go to her room to see her that Saturday. I was in a room with her at the corner of Walker and Peters St. about 8:30 o'clock. She told me she had been to the pencil factory that afternoon. Her general character for truth and veracity is bad. I would not believe her on oath.

GEORGE GORDON, sworn for the State in rebuttal.

I am a practicing lawyer. I was at police station part of the time when Minola McKnight was making her statement. I was outside of the door most of the time. I went down there with habeas corpus proceedings to have her sign the affidavit and when I got there the detectives informed me that she was in the room, and I sat down and waited outside for her two hours, and people went in and out of the door, and after I had waited there I saw the stenographer of the recorder's court going into the room and I decided I had better make a demand to go into the room, which I did, and I was then allowed to go into the room and I found Mr. February reading over to her some stenographic statement he had taken. There were two other men from Beck & Gregg Hardware store and Pat Campbell and Mr. Starnes, and Albert McKnight. After that was read Mr. February went out to write it off on the typewriter and while he was out Mr. Starnes said, "Now this must be kept very quiet and nobody be told anything about this." I thought it was agreed that we would say nothing about it. I was surprised when I saw it in the newspapers two or three days afterwards. I said to Starnes: "There is no reason why you should hold this woman, you should let her go." He said he would do nothing without consulting Mr. Dorsey and he suggested that I had better go to Mr. Dorsey's office. I went to his office and he called up Mr. Starnes and then I went back to the police station and told Starnes to call Mr. Dorsey and I presume that Mr. Dorsey told him to let her go. Anyway he said she could go. You (Mr. Dorsey) said you would let her go also. That morning you had said you would not unless I took out a habeas corpus. In the morning after Chief Beavers told me he would not let her go on bond and unless you (Mr. Dorsey) would let her go, I went to your office and told you that she was being held illegally and you admitted it to me and I said we would give bond in any sum that you might ask. You said

you would not let her go because you would get in bad with the detectives, and you advised me to take out a habeas corpus, which I did. The detectives said they couldn't let her go without your consent. You said you didn't have anything to do with locking her up. As to whether Minola McKnight did not sign this paper freely and voluntarily (State's exhibit J), it was signed in my absence while I was at police station. When I came back this paper was lying on the table signed. That paper is substantially the notes that Mr. February read over to her. As they read it over to her, she said it was about that way. Yes, you agreed with me that you had no right to lock her up. I don't know that you said you didn't do it. I don't remember that we discussed that. You told me that you would not direct her to be let loose, because you would get in bad with the detectives. I had told you that the detectives told me they would not release her unless you said so. I took out a habeas corpus immediately afterwards and went down there to get her released, and she was released.

CROSS EXAMINATION.

I heard that they had had her in Mr. Dorsey's office and she went away screaming and was locked up. I knew that Mr. Dorsey was letting this be done. She was locked in a cell at the police station when I saw her. They admitted that they did not have any warrant for her arrest. Beavers said he would not let her out on bond unless Mr. Dorsey said so. He said the charge against her was suspicion. They put her in a cell and kept her until four o'clock the next day before they let her go. When I went down to see her in the cell, she was crying and going on and almost hysterical. When I asked Mr. Dorsey to let her go out on bond, he said he wouldn't do it because he would get in bad with the detectives, but that if I would let her stay down there with Starnes and Campbell for a day, he would let her loose without any bond, and I said I wouldn't do it. I said that I considered it a very reprehensible thing to lock up somebody because they knew something, and he said, "Well, it is sometimes necessary to get information," and I said, "Certainly our liberty is more necessary than any information, and I consider it a trampling on our Anglo Saxon liberties." They did not tell me that they already had a statement that she had made, and which she declared to be the truth.

RE-DIRECT EXAMINATION.

You (Mr. Dorsey) did not tell me that you had no right to lock anybody up. I told you that, and you agreed to it, but you would not let her go. I told you that Chief Beavers said he would do what you said and then I asked you to give me an order. You said you wouldn't give me an order. When I told Starnes that I thought I ought to be in that room while Minola was making the statement, he knocked on the door, and it was unlocked on the inside and they let me in. They let me into the room at once after I had been sitting there two hours. I was present when she made the statement

about the payment of the cook. I don't remember what questions I asked her at that time. I was her attorney. I didn't go down there to examine her; I went there to get her out. Starnes and Campbell were in and out of the room during the time. Mr. Starnes stayed on the outside of the door part of the time. I don't know who was in the room and who was not while I was outside.

ALBERT McKNIGHT, sworn for the State in rebuttal.

This sideboard (defendant's exhibit 63) sets more this way than it was at the time I was there.

CROSS EXAMINATION.

I don't know if the sideboard was changed, but it wasn't setting like that is in the corner. I didn't see the sideboard at all, but I don't like the angle of this plat.

R. L. CRAVEN, sworn for the State in rebuttal.

I am connected with the Beck and Gregg Hardware Co. Albert McKnight also works for the same company. He asked me to go down and see if I could get Minola McKnight out when she was arrested. I went there for that purpose. I was present when she signed that affidavit (State's exhibit J.) I went out with Mr. Pickett to Minola McKnight's home the latter part of May. Albert McKnight was there. On the 3rd day of June, we were down at the station house and they brought Minola McKnight in and we questioned her first as to the statements Albert had given me; at first she would not talk, she said she didn't know anything about it. I told her that Albert made the statement that he was there Saturday when Mr. Frank came home, and he said Mr. Frank came in the dining room and stayed about ten minutes and went to the sideboard and caught a car in about ten minutes after he first arrived there, and I went on and told her that Albert had said that Minola had overheard Mrs. Frank tell Mrs. Selig that Mr. Frank didn't rest well and he came home drinking and made Mrs. Frank get out of bed and sleep on a rug by the side of the bed and wanted her to give him his pistol to shoot his head off and that he had murdered somebody, or something like that. Minola at first hesitated, but finally she told everything that was in that affidavit. When she did that Mr. Starnes, Mr. Campbell, Mr. February, Albert McKnight, Mr. Pickett, and Mr. Gordon were there. When we were questioning her, I don't remember whether anybody but Mr. Pickett and myself and Albert McKnight were there.

CROSS EXAMINATION.

We went down there about 11:30 o'clock. I didn't know that she had been in jail twelve hours then. I suppose she was in jail because they needed

her as a witness. I was in Mr. Dorsey's office only one time about this matter, the same morning I started out to see if I could get her and I went to see Mr. Dorsey about getting her out. Her husband wanted her out of jail and I went to see Mr. Dorsey about getting her out. At first she denied it. I questioned her for something like two hours. I didn't know she had already made a statement about the truth of the transaction. Mr. Dorsey didn't read it to me. He said she was hysterical and wouldn't talk at all. I went down to get her to make some kind of a statement; I wanted her to tell the truth in the matter. I wanted to see whether her husband was telling the truth or whether she was telling a falsehood. Yes, she finally made a statement that agreed with her husband, and I left after awhile. As to why I didn't stay and get her out, because I didn't want to. I went after we got her statement. No, I didn't get her out of jail. I did not look after her any further than that. I don't think Mr. Dorsey told me to question her. He wanted me to go out to see her. He said Mr. Starnes and Mr. Campbell would be up there and they would let us know about it, and we went up there and Mr. Starnes and Mr. Campbell brought her in. They let us see her alright. I did not ask Campbell or Starnes to turn her out. I didn't ask anybody to turn her out. I never made any suggestion to anybody about turning her out. Nobody cursed, mistreated or threatened this woman while I was there. I don't know what took place before I got there.

E. H. PICKETT, sworn for the State in rebuttal.

I work at Beck & Gregg Hdw. Co. I was present when that paper was signed (State's exhibit J) by Minola McKnight. Albert McKnight, Starnes, Campbell, Mr. Craven, Mr. Gordon was present when she made that statement. We questioned her about the statement Albert had made and she denied it all at first. She said she had been cautioned not to talk about this affair by Mrs. Frank or Mrs. Selig. She stated that Albert had lied in what he had told us. She finally began to weaken on one or two points and admitted that she had been paid a little more money than was ordinarily due her. There was a good many things in that statement that she did not tell us, though, at first. She didn't tell us all of that when she went at it. She seemed hysterical at the beginning. We told her that we weren't there to get her into trouble, but came down there to get her out, and then she agreed to talk to us but would not talk to the detectives. The detectives then retired from the room. Albert told her that she knew she told him those things. She denied it, but finally acknowledged that she said a few of those things, and among the things I remember is that she was cautioned not to repeat anything that she heard. We asked her a thousand questions perhaps. I don't know how many. I called the detectives and told them we had gotten all the admissions we could. We didn't have any stenographer and Mr. Craven began writing it out, and Mr. Craven had written only a small portion when the stenographer came. She did not make all of that statement in the first talk

she had with us. She didn't say anything with reference to Mrs. Frank having stated anything to her mother on Sunday morning. The affidavit does not contain anything that she did not state there that day. Before she made that affidavit, she said he did eat dinner that day. She finally said he didn't eat any. At first she said he remained at home at dinner time about half an hour or more. She finally said he only remained about ten minutes. At first she said Albert McKnight was not there that day. She finally said he was there. She said she was instructed not to talk at first. At first she said her wages hadn't been changed, finally said her wages had been raised by the Seligs. As to what, if anything, she said about a hat being given her by Mrs. Selig, the only statement she made about the hat at all was when she made the affidavit. We didn't know anything about the hat before. Nobody threatened her when she was there. When the first questioning was going on Campbell and Starnes were not in there. They came in when we called them and told them we were ready. Her attorney, Mr. Gordon, came in with the detectives.

CROSS EXAMINATION.

As to why we didn't take her statement when she denied saying all those things, because we didn't believe them. We were down there about three hours. We went down there to try and get Minola McKnight out, if we could. We asked Mr. Dorsey to get her out. He said he would let us stand her bond, and he referred us to the detectives to make arrangements. As to why we didn't get her out then, we wanted a statement from her if we could get it. No, I didn't know that whenever the detectives got the story they wanted, they would let her out. As to my going to get her out and then grilling her for three hours, I didn't tell her I was going to get her out; I went down there to get her out, but she left there before I did. She went out of the room. The detectives treated her very nice. They let her go after she made the statement. I knew they were holding her because she did not make a statement confirming her husband. It was not my object to make her statement agree with her husband's statement, but it was my duty as a good citizen to make her tell the truth.

DR. S. C. BENEDICT, sworn for the State in rebuttal.

I am president of the State Board of Health. I was a member of the Board when Dr. Westmoreland preferred charges against Dr. Harris. Those minutes (State's exhibit N) are correct. I desire to say that we do not wish to open up that question again. Dr. Westmoreland's charges are not recorded here. I don't think they were put on the minutes. The reply to the charges were put in the minutes and the action of the Board. The minutes would show what action the Board took.

CROSS EXAMINATION.

Dr. Harris' reply is not entered on the minutes. The reply of the Board to the charges is on the minutes.

J. H. HENDRICKS, sworn for the State in rebuttal.

I am a motorman for the Georgia Railway & Electric Company. On April 26 I was running a street car on the Marietta line to the Stock Yards on Decatur St. I couldn't say what time we got to town on April 26, about noon. I have no cause to remember that day. The English Avenue car, with Matthews and Hollis has gotten to town prior to April 26, ahead of time. I couldn't say how much ahead of time. I have seen them come in two or three minutes ahead of time; that day they came about 12:06. Hollis would usually leave Broad and Marietta St. on my car. I couldn't swear positively what time I got to Broad and Marietta St. on April 26. I couldn't swear what time Hollis and Matthews got there that day. I don't know anything about that. Often they get there ahead of time. Sometimes they are punished for it.

J. C. McEWING, sworn for the State in rebuttal.

I am a street car motorman. I ran on Marietta and Decatur St. April 26. My car was due in town at ten minutes after the hour on April 26. Hollis and Matthews' car was due there 7 minutes after the hour. Hendricks car was due there 5 minutes after the hour. The English Avenue frequently cut off the White City car due in town at 12:05. The White City car is due there before the English Avenue. It is due 5 minutes after the hour and the Cooper Street is due 7 minutes after. The English Avenue would have to be ahead of time to cut off the Cooper St. car. That happens quite often. I have come in ahead of time very often. I have known the English Avenue car to be 4 or 5 minutes ahead of time.

CROSS EXAMINATION.

I don't know when that happened or who ran the car. I don't know whether they ran on schedule time on April 26, or not. When one car is cut off, one might be ahead of time, and one might be behind time. It's reasonable to suppose that the five minutes after car ought to come in ahead of the one due seven minutes after. If it was behind it would be cut off, just as easy as the other one would be cut off by being ahead.

M. E. McCOY, sworn for the State, in rebuttal.

I knew Mary Phagan. I saw her on April 26, in front of Cooledge's place at 12 Forsyth St. She was going towards pencil company, south on Forsyth St. on right hand side. It was near twelve o'clock. I left the corner of Wal-

ton and Forsyth St. exactly twelve o'clock and came straight on down there. It took me three or four minutes to go there.

CROSS EXAMINATION.

I know what time it was because I looked at my watch. First time I told it was a week ago last Saturday, when I told an officer. I didn't tell it because I didn't want to have anything to do with it. I didn't consider it as a matter of importance until I saw the statement of the motorman of the car she came in on, and I knew that was wrong. She was dressed in blue, a low, chunky girl. Her hair was not very dark. She had on a blue hat.

GEORGE KENDLEY, sworn for the State in rebuttal.

I am with the Georgia Railway & Power Co. I saw Mary Phagan about noon on April 26. She was going to the pencil factory from Marietta St. When I saw her she stepped off of the viaduct.

CROSS EXAMINATION.

I was on the front end of the Hapeville car when I saw her. It is due in town at 12 o'clock. I don't know if it was on time that day. I told several people about seeing her the next day. If Mary Phagan left home at 10 minutes to 12, she ought to have got to town about 10 minutes after 12, somewhere in that neighborhood. She could not have gotten in much earlier. The time that I saw her is simply an estimate. That was the time my car was due in town. I remember seeing her by reading of the tragedy the next day. I didn't testify at the Coroner's inquest because nobody came to ask me. No, I have not abused and villified Frank since this tragedy. No, I have not made myself a nuisance on the cars by talking of him. I know Mr. Brent. I didn't tell him that Mr. Frank's children said he was guilty. Mr. Brent asked me what I thought about it several times on the car. He has always been the aggressor. As to whether I abused and villified him in the presence of Miss Haas and other passengers, there has been so much talk that I don't know what has been said. I don't think I said if he was released I would join a party to lynch him. Somebody said if he got out there might be some trouble. I don't remember saying that I would join a party to help lynch him if he got out. I talked to Mr. Leach about it. I don't remember what I told him. I told him I saw her over there about 12 o'clock. That was the time the car was due in town. I know I saw her before 12:05. My car was on schedule time. I couldn't swear it was exactly on the minute.

HENRY HOFFMAN, sworn for the State in rebuttal.

I am inspector of the street car company. Matthews is under me a certain part of the day. On April 26 he was under me from 11:30 to 12:07. His car was due at Broad and Marietta at 12:07. There is no such schedule as

12:07 1-2. I have been on his car when he cut off the Fair St. car. Fair St. car is due at 12:05. I have compared watches with him. They vary from 20 to 40 seconds. We are supposed to carry the right time. I have called Matthews attention to running ahead of schedule once or twice. They come in ahead of time on relief time for supper and dinner.

CROSS EXAMINATION.

I don't know anything about his coming on April 26th. We found out he was ahead of time way along last March. He was a minute and a half ahead. I have caught him as much as three minutes ahead of time last spring, on the trip due in town 12:07. I didn't report him, I just talked to him. I have known him to be ahead of time twice in five years while he was under my supervision.

N. KELLY, sworn for the State in rebuttal.

I am a motorman of the Georgia Railway & Power Co. On April 26, I was standing at the corner of Forsyth and Marietta St. about three minutes after 12. I was going to catch the College Park car home about 12:10. I saw the English Avenue car of Matthews and Mr. Hollis arrive at Forsyth and Marietta about 12:03. I knew Mary Phagan. She was not on that car. She might have gotten off there, but she didn't come around. I got on that car at Broad and Marietta and went around Hunter St. She was not on there.

CROSS EXAMINATION.

I didn't say anything about this because I didn't want to get mixed up in it. I told Mr. Starnes about it this morning. I have never said anything about it before. That car was due in town at 12:07. The Fair St. car was behind it.

W. B. OWENS, sworn for the State in rebuttal.

I rode on the White City line of the Georgia Railway & Electric Co. It is due at 12:05. Two minutes ahead of the English Avenue car. We got to town on April 26, at 12:05. I don't remember seeing the English Avenue car that day. I have known that car to come in a minute ahead of us, sometimes two minutes ahead. That was after April 26. I don't recall whether it occurred before April 26.

LOUIS INGRAM, sworn for the State in rebuttal.

I am a conductor on the English Avenue line. I came to town on that car on April 26. I don't know what time we came to town. I have seen that car come in ahead of time several times, sometimes as much as four minutes

ahead. I know Matthews, the motorman. I have ridden in with him when he was ahead of time several times.

CROSS EXAMINATION.

It is against the rules to come in ahead of time, and also to come in behind time. They punish you for either one.

W. M. MATTHEWS, sworn for the State in rebuttal.

I have talked with this man Dobbs (W. C.) but I don't know what I talked about. I have never told him or anybody that I saw Mary Phagan get off the car with George Epps at the corner of Marietta and Broad. It has been two years since I have been tried for an offense in this court.

CROSS EXAMINATION.

I was acquitted by the jury. I had to kill a man on my car who assaulted me.

W. C. DOBBS, sworn for the State in rebuttal.

Motorman Matthews told me two or three days after the murder that Mary Phagan and George Epps got on his car together and left at Marietta and Broad St.

CROSS EXAMINATION.

Sergeant Dobbs is my father.

W. W. ROGERS, sworn for the State in rebuttal.

On Sunday morning after the murder, I tried to go up the stairs leading from the basement up to the next floor. The door was fastened down. The staircase was very dusty, like it had been some little time since it had been swept. There was a little mound of shavings right where the chute came down on the basement floor. The bin was about a foot and a half from the chute.

SERGEANT L. S. DOBBS, sworn for the State in rebuttal.

I saw Mr. Rogers on Sunday try to get in that back door leading up from basement in rear of factory. There were cobwebs and dust there. The door was closed.

O. TILLANDER, sworn for the State in rebuttal.

Mr. Graham and I went to the pencil factory on April 26, about 20 minutes to 12. We went in from the street and looked around and I found a

negro coming from a dark alley way, and I asked him for the office and he told me to go to the second floor and turn to the right. I saw Conley this morning. I am not positive that he is the man. He looked to be about the same size. When I went to the office the stenographer was in the outer office. Mr. Frank was in the inner office sitting at his desk. I went there to get my step-son's money.

E. K. GRAHAM, sworn for the State in rebuttal.

I was at the pencil factory April 26, with Mr. Tillander, about 20 minutes to 12. We met a negro on the ground floor. Mr. Tillander asked him where the office was, and he told him to go up the steps. I don't know whether it was Jim Conley or not. He was about the same size, but he was a little brighter than Conley. If he was drunk I couldn't notice it. I wouldn't have noticed it anyway.

CROSS EXAMINATION.

Mr. Frank and his stenographer were upstairs. He was at his desk. I didn't see any lady when I came out.

J. W. COLEMAN, sworn for the State in rebuttal.

I remember a conversation I had with detective McWorth. He exhibited an envelope to me with a figure "5" on the right of it.

CROSS EXAMINATION.

This does not seem to be the envelope he showed me. (Defendant's exhibit 47). The figure "5" was on it. I don't see it now. I told him at the time that Mary was due \$1.20, and that "5" on the right would not suit for that.

J. M. GANTT, sworn for the State in rebuttal.

I have seen Leo Frank make up the financial sheet. It would take him an hour and a half after I gave him the data.

IVY JONES (c), sworn for the State in rebuttal.

I saw Jim Conley at the corner of Hunter and Forsyth St. on April 26. He came in the saloon while I was there, between one and two o'clock. He was not drunk when I saw him. The saloon is on the opposite corner from the factory. We went on towards Conley's home. I left him at the corner of Hunter and Davis St. a little after two o'clock.

HARRY SCOTT, sworn for the State in rebuttal.

I picked up cord in the basement when I went through there with Mr. Frank. Lee's shirt had no color on it, excepting that of blood. I got the information as to Conley's being able to write from McWorth when I returned to Atlanta. As to the conversation Black and I had, with Mr. Frank about Darley, Mr. Frank said Darley was the soul of honor and that we had the wrong man; that there was no use in inquiring about Darley and he knew Darley could not be responsible for such an act. I told him that we had good information to the effect that Darley had been associating with other girls in the factory; that he was a married man and had a family. Mr. Frank didn't seem to know anything about that. He said it was a peculiar thing for a man in Mr. Darley's position to be associating with factory employees, if he was doing it.

CROSS EXAMINATION.

We left after about two hours interview.

L. T. KENDRICK, sworn for the State in rebuttal.

I was night watchman at the pencil factory for something like two years. I punched the clocks for a whole night's work in two or three minutes. The clock at the factory needed setting about every 24 hours. It varied from three to five minutes. That is the clock slip I punched (State Exhibit P). I don't think you could have heard the elevator on the top floor if the machinery was running or any one was knocking on any of the floors. The back stairway was very dusty and showed that they had not been used lately after the murder. I have seen Jim Conley at the factory Saturday afternoons when I went there to get my money.

CROSS EXAMINATION.

I generally got to the factory about a quarter of two to two-thirty. The clock was usually corrected every morning. The clock would run slow sometimes and sometimes fast.

VERA EPPS, sworn for the State in rebuttal.

My brother George was in the house when Mr. Minar was asking us about the last time we saw Mary Phagan. I don't know if he heard the questions asked. George didn't tell him that he didn't see Mary that Saturday. I told him I had seen Mary Phagan Thursday.

C. J. MAYNARD, sworn for the State in rebuttal.

I have seen Burtus Dalton go in the factory with a woman in June or July, 1912. She weighed about 125 pounds. It was between 1:30 and 2 o'clock in the afternoon on a Saturday.

CROSS EXAMINATION.

I was ten feet from the woman. I didn't notice her very particularly. I did not speak to them.

W. T. HOLLIS, sworn for the State in rebuttal.

Mr. Reed rides out with me every morning. I don't remember talking to J. D. Reed on Monday April 29, and telling him that George Epps and Mary Phagan were on my car together. I didn't tell that to anybody. I say like I have always said, that if he was on the car I did not see him.

J. D. REED, sworn for the State in rebuttal.

Mr. Hollis told me on Monday, April 28, that Epps had gotten on the car and taken his seat next to Mary, and that the two talked to each other all the way as though they were little sweethearts.

J. N. STARNES, sworn for the State in rebuttal.

There were no spots around the scuttle hole where the ladder is immediately after the murder. Campbell and I arrested Minola McKnight, to get a statement from her. We turned her over to the patrol wagon and we never saw her any more until the following day, when we called Mr. Craven and Mr. Pickett to come down and interview her. We stayed on the outside while she was on the inside with Craven and Pickett. They called us back and I said to her, "Minola, the truth is all we want, and if this is not the truth, don't you state it. And she started to put the statement down. Mr. Gordon, her attorney, was on the outside, and I told him we could go inside without his making any demand on me, and he went in with me, and Mr. February had already taken down part of the statement and I stopped him and made him read over what he had already taken down, and after she had finished the statement, Attorney Gordon went to Mr. Dorsey's office and then he came back to the police station. After he returned the affidavit was read over in the presence of Mr. Pickett, Craven, Campbell, Albert McKnight, and Attorney Gordon and she signed it in our presence. You (Mr. Dorsey) had nothing to do with holding her. You told me over the phone that you couldn't say what I could do, but that I could do what I pleased about it.

CROSS EXAMINATION.

No, I did not lock her up because she didn't give us the right kind of statement; as to the authority I had to lock her up, it was reasonable and right that she should be locked up. I did that for the best interest of the case I was working on. No, I didn't have any warrant for her arrest. She was brought to Mr. Dorsey's office by a bailiff by a subpoena. I took her away

from Dorsey's office and put her in a patrol wagon. I expect Mr. Dorsey knew we were going to lock her up, but he did not tell us to do it. No, he didn't disapprove of it. I didn't know anything about her having made a previous statement to Mr. Dorsey. I think Mr. Dorsey said she had made such a statement. I saw her the next day in the station house. She didn't scream after leaving Dorsey's office until she reached the sidewalk. And then she commenced hollering and carrying on that she was going to jail; that she didn't know anything about it, or something like that. No, I had no warrant for her arrest. She had committed no crime. I held her to get the truth. Mr. Dorsey told me I could turn her loose as I pleased. That was after she made the statement. I told him as to what had occurred and that her attorney, Gordon, was coming up there to see him. I told Col. Gordon that if it was agreeable with Col. Dorsey, that Minola could go as far as we were concerned. Well, Mr. Dorsey had more or less to do with the case that I was working on and I wanted to act on his advice and consent. He called me on the telephone and told me that if the chief thought it best or if we thought it best after conferring, to just let her go.

DR. CLARENCE JOHNSON, sworn for the State in rebuttal:

I am a specialist on diseases of the stomach and intestines. I am a physiologist. A physiologist makes his searches on the living body; the pathologist makes his on a dead body. If you give any one who has drunk a chocolate milk at about eight o'clock in the morning, cabbage at 12 o'clock and 30 or 40 minutes thereafter you take the cabbage out and it is shown to be dark like chocolate and milk, that much contents of any kind vomited up three and a half hours afterwards would show an abnormal stomach. It doesn't show a normal digestion. If a little girl who eats a dinner of cabbage and bread at 11:30 is found the next morning dead at 3 a. m., with a rope around her neck, indented and the flesh sticking up, bruised on the eye, blood on the back of her head, the tongue sticking out, blue skin, every indication that she came to her death from strangulation, her head down, rigor mortis had been on her twenty hours, the blood had settled in her where the gravity would naturally take it in the face, she is embalmed, formaldehyde is used and injected in the various cavities of the body, including the stomach, a pathologist takes her stomach a week or ten days after, finds cabbage of that size (State's exhibit G) in the stomach, finds starch granules undigested, and finds in the stomach that the pylorus is still closed, that there is nothing in the first six feet of the small intestines; that there is every indication that digestion had been progressing favorably, and finds thirty-two degrees hydrochloric acid, and if the pathologist is capable and finds that there was only combined hydrochloric acid and that there was no abnormal condition of the stomach the six feet of the intestines was empty, I would say that the digestion of bread and cabbage was stopped within an hour after they were eaten. That would not be a wild guess in my opinion.

CROSS EXAMINATION.

The bruises on the head, the evidence of strangulation and other injuries about the head are other possible factors which must be taken into consideration. Anything which disturbs the circulation of the blood, or hinders the action of the nerves controlling the stomach, especially the secretion, prevents the development of the characteristics found in normal digestion one hour after a meal. I mean by mechanical condition of the stomach, no change in the size or thickness, or opening into the intestines, or size or thickness of intestines. The test should be made with absolute accuracy with these acids. The color test is generally accepted. A man's eye has to be absolutely correct to make the color test. The degree of acidity in a normal stomach varies from 30 to 45 degrees, according to the stomach and what is in it. The formaldehyde would make no change on the physical property on the pancreatic juice found in the small intestine after death. There would be hardly any change on its chemical property. When it comes in contact with the formaldehyde it is supposed to be preserved. It has some neutralizing effect on the alkali present. That decomposes in time after death, unless hindered by some preservative. The hydrochloric acids in the stomach also disappear if the stomach has disintegrated and the preservative has disappeared. It disappears like the other fluids and tissues of the body unless hindered by some preservative agent. Sometimes digestion is delayed a good deal even in a normal stomach by insufficient mastication, too much diluting of the juices, or anything that hinders the operation of the mechanical effect. Insufficient mastication is one of the commonest causes, also the taking of too much liquid. Fatigue occasioned by extensive walking would hinder it. If the walking was not too extensive to produce fatigue, it would help digestion in a normal stomach. Insufficient mastication is the worst cause of delayed digestion. My estimate was that the cabbage was found an hour after the process of digestion had begun. I did not undertake to say when the digestion began. You can't tell by looking at food in a bottle how much the failure to masticate it delayed digestion in hours and minutes. It would be just an estimate. The physical appearance of that cabbage (Defendant's Exhibit 88) shows indigestion by the layer, character and size, and area of separation between, and the character and arrangement of the layers below. The mere fact that it was vomited up would be proof positive that no scientific opinion could be made about it. To make a scientific test I would have to test the mechanism of the stomach, the time it was in there and the degree and presence of the different acids. The chocolate milk would not naturally stay in a normal stomach five or six hours. The cabbage would stay in a normal empty stomach where there was a tomato also three or four hours. I never made any test of Mary Phagan's stomach and examined the contents of it.

RE-DIRECT EXAMINATION.

160 cubic cc. of liquid in the stomach taken out nine days afterwards would be a little in excess of what I would consider normal under the conditions already named.

DR. GEORGE M. NILES, sworn for the State in rebuttal.

I confine my work to diseases of digestion. Every healthy stomach has a certain definite and orderly relation to every other healthy stomach. Assuming a young lady between thirteen and fourteen years of age at 11:30 April 26, 1913, eats a meal of cabbage and bread, that the next morning about three o'clock her dead body is found. That there are indentations in her neck where a cord had been around her throat, indicating that she died of strangulation her nails blue, her face blue, a slight injury on the back of the head, a contused bruise on one of her eyes, the body is found with the face down, rigor mortis had been on from sixteen to twenty hours, that the blood in the body has settled in the part where gravity would naturally carry it, that the body is embalmed immediately with a fluid consisting chiefly of formaldehyde, which is injected in the veins and cavities of the body; that she is disinterred nine days thereafter; that cabbage of this texture (State's exhibit G) is found in her stomach; that the position of the stomach is normal; that no inflammation of the stomach is found by microscopic investigation; that no mucus is found, and that the glands found under this microscope are found to be normal, that there is no obstruction to the flow of the contents of the stomach to the small intestine; that the pylorus is closed; that there is every indication that digestion was progressing favorably; that in the gastric juices there is found starch granules that are shown by the color test to have been undigested, and that in that stomach you also find thirty-two degrees of hydrochloric acid, no maltose, no dextrin, no free hydrochloric acid (there would be more or less free hydrochloric acid in the course of an hour or more in the orderly progress of digestion of a healthy stomach where the contents are carbohydrates), I would say that indicated that digestion had been progressing less than an hour. The starch digestion should have progressed beyond the state erythro-dextrin in course of an hour. There should have been enough free acid to have stimulated the pylorus to relax to a certain extent, and there should have been some contents in the duodenum. I am assuming, of course, that it is a healthy stomach and that the digestion was not disturbed by any psychic cause which would disturb the mind or any severe physical exercise. I am not going so much on the physical appearance of the cabbage. Any severe physical exercise or mental stress has quite an influence on digestion. Death does not change the composition of the gastric juices when combined with hydrochloric acid for quite awhile. The gastric juices combined with the hydrochloric acid are an antiseptic or preservative. There is a wide variation in diseased stomachs as to digestion.

CROSS EXAMINATION

There are idiosyncracies in a normal stomach, but where they are too marked I would not consider that a normal stomach. I wouldn't say that there is a mechanical rule where you can measure the digestive power of every stomach for every kind of food. There is a set time for every stomach to digest every kind of food within fairly regular limits, that is, a healthy stomach. There is a fairly mixed standard. There is no great amount of variation between healthy stomachs. I can't answer for how long it takes cabbage to digest. I have taken cabbage out of a cancerous stomach that had been in there twenty-four hours, but there was no obstruction. The longest time that I have taken cabbage out of a fairly normal stomach was between four and five hours. That was where it was in the stomach along with another meal. I found the cabbage among the remains of the meal four or five hours after it had been eaten. Mastication is a very important function of digestion. Failure to masticate delays the starch digestion. Starch and cabbage are both carbohydrates. I would say that if cabbage went into a healthy stomach not well masticated, the starch digestion would not get on so well, but the stomach would get busy at once. Of course, it would not be prepared as well. The digestion would be delayed, of course. That cabbage is not as well digested as it should have been (State's exhibit G), but the very fact of your anticipating a good meal, smelling it, starts your saliva going and forms the first stage of digestion, and digestion is begun right there in the mouth, even if you haven't chewed it a single time. Any deviation from good mastication retards digestion. I couldn't presume to say how long that cabbage lay in Mary Phagan's stomach. I believe if it had been a live, healthy stomach and the process of digestion was going on orderly, it would be pulverized in four or five hours. It would be more broken up and triturerated than it is. I wouldn't consider that a wild guess. I think it would have been fairly well pulverized in three hours. Chewing amounts to a great deal, but there should be an amount of saliva in her stomach even if she hadn't masticated it thoroughly. Chewing is a temperamental matter to a great extent. One man chews his meal quicker than another. If it isn't chewed at all, the stomach gets busy and helps out all it can and digests it after awhile. It takes more effort, of course, but not necessarily more time. What the teeth fail to do the stomach does to a great extent. The stomach has an extra amount of work if it is not masticated. You can't tell by looking at the cabbage how long it had been undergoing the process of digestion. If that was a healthy stomach with combined acid of 32 degrees, and nothing happened either physical or mental to interfere with digestion, those laboratory findings indicated that digestion had been progressing less than an hour. I never made an autopsy or examination of the contents of Mary Phagan's stomach.

RE-DIRECT EXAMINATION.

The first stage of digestion is starch digestion. This progresses in the stomach until the contents become acid in all its parts. Then the starch diges-

tion stops until the contents get out in the intestines and become alkaline in reaction; then the starch digestion is continued on beyond. The alfactories act as a stimulant to the salivary glands.

DR. JOHN FUNK, sworn for the State in rebuttal.

I am professor of pathology and bacteriologist.—I was shown by Dr. Harris sections from the vaginal wall of Mary Phagan, sections taken near the skin surface. I didn't see sections from the stomach or the contents. These sections showed that the epithelium wall was torn off at points immediately beneath that covering in the tissues below, and there was infiltrated pressure of blood. They were, you might say, engorged, and the white-blood cells in those blood vessels were more numerous than you will find in a normal blood vessel. The blood vessels at some distance from the torn point were not so engorged to the same extent as those blood vessels immediately in the vicinity of the hemorrhage. Those blood vessels were larger than they should be under normal circumstances, as compared with the blood vessels in the vicinity of the tear. You couldn't tell about any discoloration, but there was blood there. It is reasonable to suppose that there was swelling there because of the infiltrated pressure of the blood in the tissues. Those conditions must have been produced prior to death, because the blood could not invade the tissues after death. If a young lady, between thirteen and fourteen years old eats at eleven thirty a. m. a normal meal of bread and cabbage on a Saturday and at three a. m. Sunday morning she is found with a cord around her neck, the skin indented, the nails and flesh cyanotic, the tongue out and swollen, blue nails, everything indicating that she had been strangled to death, that rigor mortis had set in, and according to the best authorities had probably progressed from sixteen to twenty hours, and she was laying face down when found, and gravity had forced the blood into that part of the body next to the ground, that it had discolored her features, that immediately thereafter, between ten and two o'clock she was embalmed with a fluid containing usual amount of formaldehyde, this being injected into the veins in the large cavities, she is interred thereafter and in about a week or ten days she is disinterred, and you find in her stomach cabbage like that (State's Exhibit G) and you find granules of starch undigested, and those starch granules are developed by the usual color tests, and you also find in that stomach thirty-two degrees of combined hydrochloric acid, the pylorus closed, and the duodenum, and six feet of the small intestines empty, no free hydrochloric acid being present at all, nor dextrin, or erythro-dextrin being found in any degree, and the uterus was somewhat enlarged, and the walls of the vagina show dilation and swelling, I would say that under those conditions that the epithelium was torn off before death, because of the changes in the blood vessels and tissues below the epithelium covering, and because of the presence of blood. I would not express an opinion as to how long cabbage had been in the stomach, from the appearance of the cabbage itself, taking into consideration the combined hydro-

choloric acid of thirty-two degrees, the emptiness of the small intestine, the presence of starch granules, and the absence of free hydrochloric acid, one can't say positively, but it is reasonable to assume that the digestion had progressed probably an hour, maybe a little more, maybe a little less.

CROSS EXAMINATION.

Dr. Dorsey asked me to examine the sections of the vaginal wall last Saturday. The sections I examined were about a quarter of an inch wide and three-quarters of an inch long. It was about nine twenty-five thousandths of an inch thick, that is, much thinner than tissue paper. I examined thirty or forty little strips. That was after this trial began. I was not present at the autopsy. As soon as a tissue receives an injury, it reacts in a very short time. The reaction shows up in the changes of the blood vessels. You can tell by the appearance of the blood vessels whether the injury was before death or not, and you can give an approximate idea as to the length of time before death. I do not know from what body the sections were taken. I know that it was from a human vagina.

THE STATE CLOSES.

EVIDENCE FOR DEFENDANT IN SUR-REBUTTAL.

T. Y. BRENT, sworn for the Defendant in sur-rebuttal.

I have heard George Kendley on several occasions express himself very bitterly towards Leo Frank. He said he felt in this case just as he did about a couple of negroes hung down in Decatur; that he didn't know whether they had been guilty or not, but somebody had to be hung for killing those street car men and it was just as good to hang one nigger as another, and that Frank was nothing but an old Jew and they ought to take him out and hang him anyhow.

CROSS EXAMINATION.

I have been employed by the defense to assist in subpoenaing witnesses. I took the part of Jim Conley in the experiment conducted by Dr. Wm. Owens at the factory on Sunday.

M. E. STAHL, sworn for the Defendant, in sur-rebuttal.

I have heard George Kendley, the conductor, express his feelings toward Leo Frank. I was standing on the rear platform, and he said that Frank was as guilty as a snake, and should be hung, and that if the court didn't convict him that he would be one of five or seven that would get him.

MISS C. S. HAAS, sworn for the Defendant, in sur-rebuttal.

I heard Kendley two weeks ago talk about the Frank case so loud that the entire street car heard it. He said that circumstantial evidence was the best kind of evidence to convict a man on and if there was any doubt, the State should be given the benefit of it, and that 90 per cent. of the best people in the city, including himself, thought that Frank was guilty and ought to hang.

N. SINKOVITZ, sworn for the Defendant, in sur-rebuttal.

I am a pawnbroker. I know M. E. McCoy. He has pawned his watch to me lately. The last time was January 11, 1913. It was in my place of business on the 26th of April, 1913. He paid up his loan on August 16, last Saturday, during this trial. This is the same watch I have been handling for him during the last two years.

CROSS EXAMINATION.

My records here show that he took it out Saturday.

S. L. ASHER, sworn for the Defendant in sur-rebuttal.

About two weeks ago I was coming to town between 5 and 10 minutes to 1 on the car and there was a man who was talking very loud about the Frank case, and all of a sudden he said: "They ought to take that damn Jew out and hang him anyway." I took his number down to report him.

CROSS EXAMINATION.

I have not had a chance to report since it happened.

ADDITIONAL STATEMENT MADE BY DEFENDANT, LEO M. FRANK.

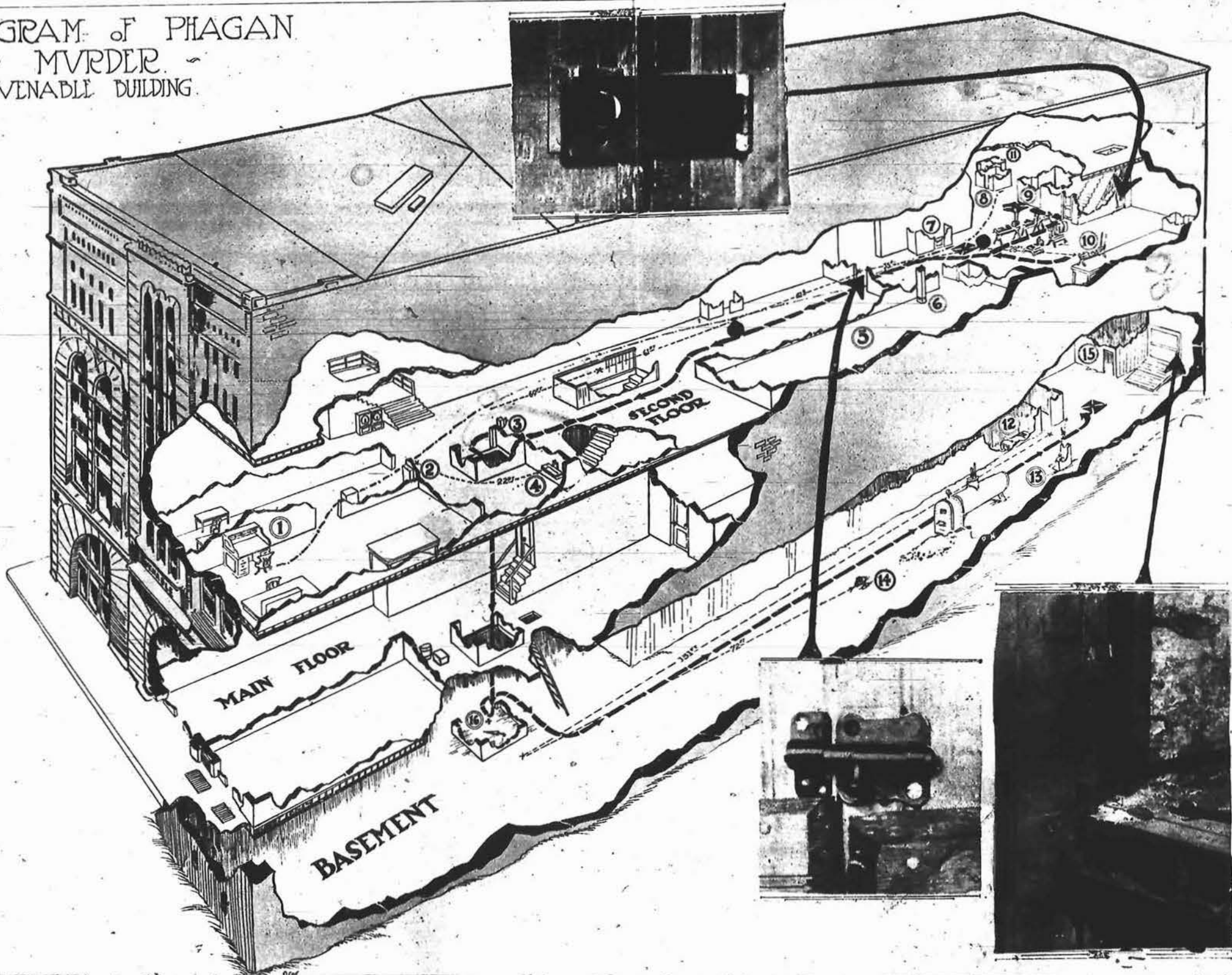
In reply to the statement of the boy that he saw me talking to Mary Phagan when she backed away from me, that is absolutely false, that never occurred. In reply to the two girls, Robinson and Hewell, that they saw me talking to Mary Phagan and that I called her "Mary," I wish to say that they are mistaken. It is very possible that I have talked to the little girl in going through the factory and examining the work, but I never knew her name, either to call her "Mary Phagan," "Miss Phagan," or "Mary."

In reference to the statements of the two women who say that they saw me going into the dressing room with Miss Rebecca Carson, I wish to state that that is utterly false. It is a slander on the young lady, and I wish to state that as far as my knowledge of Miss Rebecca Carson goes, she is a lady of unblemished character.

DEFENDANT CLOSES.

STATE'S EXHIBIT A.
Diagram of National Pencil Company Factory.

DIAGRAM OF PIAGAN
MURDER.
VENABLE BUILDING.



STATE'S EXHIBIT B.

Frank's statement made before N. A. Lanford, Chief of Detectives, on Monday morning, April 28, 1913, this statement being unsigned:

"I am general superintendent and director of the National Pencil Company. In Atlanta I have held that position since August 10, 1908. My place of business is at 37 to 41 S. Forsyth St. We have about 107 employees in that plant, male and female. I guess there are a few more girls than boys. Saturday, April 26th, was a holiday with our company and the factory was shut down. There were several people who came in during the morning. The office boy and the stenographer were in the office with me until noon. They left about 12 or a little after. We have a day watchman there. He left shortly before 12 o'clock. After the office boy and the stenographer left, this little girl, Mary Phagan, came in, but at the time I didn't know that was her name. She came in between 12:05 and 12:10, maybe 12:07, to get her pay envelope, her salary. I paid her and she went out of the office. I was in the inner office at my desk, the furthest office to the left from the main office. It was impossible to see the direction she went in when she left. My impression was that she just walked away. I didn't pay any particular attention. I didn't keep the door locked downstairs that morning because the mail was coming in. I locked it at 1:10 when I went to dinner. Arthur White and Harry Denham were also in the building. They were working on the machinery, doing repair work, working on the top floor of the building, which is the fourth floor, towards the rear or about the middle of the building, but a little more to the rear. They were tightening up the belts; they are not machinists; one is a foreman in one department and the other is an assistant in another, and Denham was assisting White, and Mrs. White, the wife of Arthur White, was also in the building. She left about 1 o'clock. I went up there and told them I was going to dinner and they had to get out, and they said they had not finished and I said, 'How long will it take?' and they said until some time in the afternoon, and then I said, 'Mrs. White, you will have to go, for I am going to lock these boys in here.' Anyone from the inside can open the outside door, but not the inside door, which I locked. You can go in the basement from the front through the trap door. No, sir, they could get up the steps if I was out. I locked the outer door and the inner door. I got back at 3 o'clock, and maybe two or three minutes before, and I went to the office and took off my coat and then went upstairs to tell those boys I was back, and I couldn't find them at first, they were back in the dipping room in the rear, and I said, 'Are you ready,' and they said, 'We are just ready,' and I said, 'All right, ring out when you go down to let me know when you go out,' and they rang out, and Arthur White come in the office and said, 'Mr. Frank, loan me \$2.00,' and I said, 'What's the matter; we just paid off,' and he said, 'My wife robbed me,' and I give him \$2.00 and he walked away, and the two of them walked out. I locked the outer door behind them. When I am in there is no need of locking the inner door. There was only one person

I was looking for to come in, and that was the night watchman. He got there at 20 minutes to four. I had previously arranged for him to get there. On Friday night I told him, after he got his money. I give him the keys and I said, 'You had better come around early to-morrow because I may go to the ball game,' and he come early because of that fact; I told him to come early and he came 20 minutes to 4. I figured that I could leave about 1 o'clock and would not come back, but it was so cold I didn't want to risk catching cold and I come back to the factory as I usually do. He come in and I said 'Newt, you are early,' and he said, 'Yes, sir,' and he had a bag of bananas with him and he offered me a banana; I didn't see them but he offered me one and I guess he had them. We have told him once he gets in that building never to go out; I told him he could go out; he got there so early and I was going to be there. He come back about 4 minutes to six; the reason I know that I was putting the clock slips in and the clock was right in front of me. I said, 'I will be ready in a minute,' and he went downstairs and I come to the office and put on my coat and hat and followed him and went out. When I went out, talking to Newt Lee was J. M. Gantt, a man I had fired about two weeks previous. Newt told me he wanted to go up to get a pair of shoes he left while he was working there, and Gantt said to me, 'Newt don't want me to go up,' and he said, 'You can go with me, Mr. Frank,' and I said 'That's all right, go with him, Newt,' and I went on home, and I got home about 6:25. Nothing else happened; that's all I know. I don't know what time Gantt came down after he went up. I saw him go in and I locked the door after him, but I didn't try them. I telephoned Newt. I tried to telephone him when I got home; he punches the clock at half hour intervals, and the clock and the phone is in the office, and I didn't get an answer and at 7 o'clock I called him and asked him if Gantt got his shoes and he said yes, he got them, and I said is everything all right and he said yes, and the next thing I knew they called me at 7:30 the next morning. I don't know that our watchman has been in the habit of letting people in the factory at any time. I have never heard of it. I never had any trouble with the watchman about it. As to whether any of our employees go there at night, Gantt did when he was working there; he had a key and sometimes he would have some work left over. I never have seen him go out until I go out. I go out and come back, but he has come back before I left, but that is part of his duty. I took a bath Saturday night at my home. I changed my clothes. The clothes that I changed are at home, and this is the suit of clothes I was wearing Saturday. After I left the shop I went to Jacob's Pharmacy and bought a box of candy for my wife and got home about 6:25."

STATE'S EXHIBIT C.

Piece of cord found around Mary Phagan's neck, about size of a heavy twine, with a knot in it.

STATE'S EXHIBIT D.

Rag that was found around Mary Phagan's neck, with blood on it. White piece of cloth, soiled. Looked as if it was a piece torn off from petticoat.

STATE'S EXHIBIT E.

Four or five chips of wood, with red splotches on them, chipped up from the second floor of the National Pencil Company factory in front of ladies' dressing room.

STATE'S EXHIBIT F.

Shirt found by detectives in trash barrel at Newt Lee's home. Shirt was very bloody; blood was on both sides of shirt and high up on arm-pits on the inside.

STATE'S EXHIBIT G.

Jar containing cabbage extracted from the stomach of Mary Phagan by Dr. Harris. Cabbage was not disintegrated, but was in a whole piece.

STATE'S EXHIBIT H.

Scratch pad that Conley wrote on. Ordinary white scratch pad.

STATE'S EXHIBIT I.

Portion of the signed statement of E. F. Holloway given to Solicitor H. M. Dorsey:

"I don't know C. B. Dalton. I do know Daisy Hopkins. She worked at the factory not less than eight or ten months. I never did see any man go in the factory with Daisy Hopkins after the employees had gone on a Saturday. If they ever came there, they came after I left. I never did know of Daisy Hopkins or other girls going up in the factory on Saturday afternoon with any men.

"This power box that runs the elevator is kept locked all the time. I keep it locked. The key is kept in the office. I locked it Saturday. I put the key back in the office. I always lock it and unlock it. I didn't go to the factory on Sunday. The key was hanging on the same nail on Monday."

STATE'S EXHIBIT J.

Affidavit executed by Minola McKnight for Solicitor Dorsey, as follows:
"State of Georgia,
County of Fulton.

Personally appeared before me, a notary public in and for the above state and county, Minola McKnight, who lives in the rear of 351 Pulliam St., Atlanta, Ga., who being duly sworn deposes and says:

"On Saturday morning, April 26, 1913, Mr. Frank left home about eight o'clock, and Albert, my husband, was there Saturday, too. Albert got there I guess about a quarter after one and he was there when Mr. Frank come for dinner, which was about half-past one, but Mr. Frank did not eat any dinner, and he left in about ten minutes after he got there. Mr. Frank come back to the house at seven o'clock that night, and Albert was there when he got there. Albert had gone home that evening but he come back. I don't know what time he got there, but he come sometime before Mr. Frank did, and Mr. Frank eat supper about seven o'clock, and when I left there that night about eight o'clock, I left Mr. Frank there.

Sunday morning I got there about eight o'clock, and there was an automobile standing in front of the house and I didn't pay any attention to it. I saw a man in the automobile get a bucket of water and pour into it. Mr. Frank's wife was downstairs and Mr. and Mrs. Selig were upstairs. Albert was there Sunday morning, but I don't remember what time he got there. I called them down to breakfast about half past eight and I found out that Mr. Frank was gone. Mr. and Mrs. Selig eat breakfast, but Mrs. Frank didn't eat until Mr. Frank come back and then they eat breakfast together. I didn't hear them say anything at the breakfast table. After dinner I understood them to say that a girl and Mr. Frank were caught at the office Saturday. I don't know who said it, Miss Lucile (Mrs. Frank) and Mr. and Mrs. Selig and Mr. Frank were standing there talking, after dinner when they said it; I understood them to say it was a Jew girl.

"On Tuesday, Mr. Frank says to me, 'It is mighty bad Minola, I might have to go to jail about this girl, and I don't know anything about it.'

"Sunday, Miss Lucile said to Mrs. Selig that Mr. Frank didn't rest so good Saturday night; she said he was drunk and wouldn't let her sleep with him, and she said she slept on the floor on the rug by the bed because Mr. Frank was drinking. Miss Lucile said Sunday that Mr. Frank told her Saturday night that he was in trouble, and that he didn't know the reason why he would murder, and he told his wife to get his pistol and let him kill himself. I heard Miss Lucile say that to Mrs. Selig, and it got away with Mrs. Selig mighty bad; she didn't know what to think. I haven't heard Miss Lucile say whether she believed it or not. I don't know why Mrs. Frank didn't come to see her husband, but it was a pretty good while before she would come to see him, maybe two weeks. She would tell me, 'Wasn't it mighty bad that he was locked up,' she would say, 'Minola, I don't know what I am going to do.'

"When I left home to go to the solicitor general's office, they told me to mind how I talked. They pay me \$3.50 a week, but last week they paid me \$4.00, and one week she paid me \$6.50. Up to the time of the murder I was getting \$3.50 a week and the week right after the murder I don't remember how much she paid me, and the next week they paid me \$3.50, and the next week they paid me \$6.50, and the next week they paid me \$4.00 and the next week they paid me \$4.00. One week, I don't remember which one, Mrs.

STATE'S EXHIBIT K.

Specimen of Frank's handwriting made by Frank for the detectives at the police station.

... said he would
... me laid down play
... the night in high did
... but that long tall
black negro did buy
himself

Man that negro fire
down here did that when
I went to make water and
he pushed me down a hole
a long tall negro black that
had it

(J.N.8) 4/29/13

Selig gave me \$5, but it wasn't for my work, and they didn't tell me what it was for, she just said, 'Here is \$5, Minola.' I understood that it was a tip for me to keep quiet. They would tell me to mind how I talked and Miss Lucile gave me a hat."

Q. "Is that the reason you didn't tell the solicitor yesterday all about this, that Miss Lucile and the others had told you not to say anything about what happened at home there?"

A. "Yes, sir."

Q. "Is that true?"

A. "Yes, sir."

Q. "And that's the reason you would rather have been locked up last night than tell?"

A. "Yes, sir."

Q. "Has Mr. Pickett or Mr. Cravens or Mr. Campbell or myself influenced you in any way or threatened you in any way to make this statement?"

A. "No, sir."

Q. "You make it of your own free will and accord in their presence and in the presence of Mr. Gordon, your attorney?"

A. "Yes, sir."

— (Signed) MINOLA McKNIGHT.

Sworn to and subscribed before me, this 3rd day of June, 1913.

(Signed) G. C. FEBRUARY,
Notary public, Fulton County, Ga.

STATE'S EXHIBIT L.

A small whip handle found by detective McWorth at the pencil factory.

STATE'S EXHIBIT M.

Clothes worn by Mary Phagan consisting of hat, hair ribbons (2), dress, corset with hose supporters attached, one broken, corset cover, knit undervest, underskirt, drawers (right leg torn and soiled with blood), pair of silk garters, pair of hose, pair of low shoes, handkerchief, parasol.

STATE'S EXHIBIT N.

Copy of the Minutes of the State Board of Health, found on pages 144-145 thereof, reading as follows:

"The President then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt

with being too enormous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris's side of the controversy was heard.

"The Secretary not having been present at what transpired following this was not in a position to take note as to the proceeding, but was informed by members on adjournment that it was their wish that he should still continue as Secretary and Director of the laboratories.

"The President then made a short statement in support of his protest against the Secretary, and reiterated some of the charges made at the previous meeting, and in addition, made objection against the Secretary's action in sending out antitoxin No. 64, which had been shown by tests made in Washington to be of less potency than it was originally labeled, and also condemning the Secretary for replacing Dr. Paullin and personally taking up the investigation of the malarial epidemic around the pond of the Central Georgia Power Company. The President then stated that he would publish the charges against the Secretary if the Board did not take such action regarding them as he thought right and proper. At the conclusion of the President's address, a talk was made by Dr. Doughty, in which he took exception to the former's attitude, and insisted that every member of the board wished to do what was best for the State Board of Health and the people of Georgia, and that every one connected with the Board of Health should be willing to bow to the decision of this body. He deprecated strongly the idea of giving to the press charges, the publication of which could do no good, and which could only result in harm.

"On the President and Secretary being recalled an hour later the President pro tem, Dr. Benedict, read the following resolution, which had been unanimously adopted by the Board on motion of Dr. Harbin, seconded by Dr. Brown, the resolution having been drawn by a committee appointed by the Board, consisting of Drs. Benedict, Taylor and Doughty.

"That the committee appointed to frame a resolution expressing the opinion of the Board with regard to the charges preferred against the Secretary by the President of the Board in a report to the Governor, and upon which they are called upon to act, beg to report as follows:

"Resolved, That the members of the Board present, after carefully considering the charges and all evidence in its possession, unanimously agree that while there have been certain slight irregularities in the conduct of some departments of the laboratories of the State Board of Health, which should be corrected; these irregularities have not been so important in character or result as to call for or warrant the discontinuance of Dr. Harris as Secretary and Director of laboratories as demanded by the President. The Board further directs that a copy of this resolution be transmitted to the Governor.'"

STATE'S EXHIBIT O.

Telegram sent by Leo M. Frank:

"Atlanta, Ga., April 28, 1913.

"Mr. Adolph Montag,
Care Imperial Hotel, New York.

"You may have read in Atlanta papers of factory girl found dead Sunday morning in cellar of pencil factory. Police will eventually solve it. Assure my uncle I am all right in case he asks. Our company has case well in hand.
LEO M. FRANK."

STATE'S EXHIBIT-P.

Time slip punched for Solicitor Dorsey by L. T. Kendrick:

1	5.01
2	5.30
3	6.00
4	6.29
5	6.58
6	7.38
7	8.01
8	8.29
9	9.00
10	9.30
11	10.00
12	10.30
13	10.58
14	
15	11.59
16	12.30
17	12.59
18	1.29
19	2.00
20	2.31
21	3.00
22	3.30
23	3.59
24	4.30
25	5.00
26	
27	
28	
29	
30	

STATE'S EXHIBIT Q.

Miss Hattie Hall's testimony before coroner's inquest, as follows:

"He (Mr. Frank) came to Montag's before I went to his office. I went to his office after he went back, somewhere between 10:30 and 11. I didn't notice the clock. As to whether I got any financial sheet on Monday, or not, I remember the previous Saturday I was at the pencil factory and I helped him make up the financial sheet. I filled in part of it. I suppose by that he must have got it up. I transferred some of the things to that sheet. Mr. Frank made up most of the work and I transferred some of the things to that sheet. I really don't remember whether it was morning or afternoon. It was morning. I don't work on Saturday afternoons. I don't remember that I was in the inner office with him at any time except when I was taking the letters. He was pretty quiet in there. I suppose he was at work."

STATE'S EXHIBIT R.

Accident report to the Insurance Company relative to Duffy's injury.
Claim Division, Branch Office, The Travelers Insurance Company, 608-609
Fourth National Bank Building, Atlanta, Ga.

Immediate Report of Accident.

Employee of National Pencil Company.
Address, 37-41 S. Forsyth St. City, Atlanta. State, Georgia.
Date and hour of accident, Oct. 4th, 1912, 9:30 m.
Date of this report, Oct. 4th, 1912.

Injured Person { Name, J. E. Duffy. Address, 237 E. Fair St.
Age, 21. Occupation, Running eyelet machine.
Weekly wages, \$6.60. Married or Single? Married.
General duties, Running machine.

The Machine, Appliance, or Thing Immediately Causing Accident { What was it? A piece of brass on machine.
In whose control at the time? His own self.
Was it sound and in good working order? Yes.

Place of Accident { Room or Dept. No. 18A. No. Street City or town

Contributing Causes { Carelessness of injured person? No. Violation or
negligence of fellow workman? No. Rules? No.

The Accident { Description. Said party was putting a roll of brass
on his machine. This brass is very sharp, and
same cut into flesh, nearly to the bone.
Name and addresses of witnesses: L. A. Irwin, fore-
man; Charlie Lee, machinist.

The Injury { Nature and extent? Very painful cut to the bone,
not serious if this brass does not cause poison to
set in.
Was surgical aid rendered? Yes. When? At once.
By whom? Dr. Hancock. Where? Atlanta Hospital.

Notice received by employer 10-4-12.

H. G. SCHIFF, Employer.

STATE'S EXHIBIT S.

Portion of the affidavit made by Lemmie Quinn for Solicitor Dorsey as follows:

"The doors that lead up to the back stairs, after work hours are locked, but this door at the back of my department, the lock had been broken off and we placed a bar across it. The idea of that was to keep employees from the fourth floor going down from that department and ringing out and getting their money before it was ready. Customarily it was closed. That was the purpose. There is no exit from the office floor to the street floor, except the front, there is a stairway leading from the office floor to the floor above. The back stairway is ordinarily closed with that bar, which makes it impossible for anybody to come from the upstairs down to the office floor. A man on the office floor could lift the bar and walk out, but I should not think that a man could come down to the office floor from above at all.

"I went uptown when I left home between 12 and 12:20. I got to the pool room about 12:30. . . He (Frank) said he didn't know that he would mention it, but he would mention it to his lawyers and see if they thought it was favorable to mention it. That must have been Wednesday of last week."

STATE'S EXHIBIT T.

Court papers with reference to the police records of Jim Conley, being seven in number.

Jas. Connally, Disorderly Conduct, fined \$1.75 7/22/1904—Paid

Jas. Connally, same, fined \$15.75, 10/15/07—Paid

Jim Connally, same, fined \$1.75, 7/18/05 G. G. B.

James Connally, same, fined \$10.75, 12/11/1907, G. G. B.

James Connally, same, fined \$3.75, 11/14/1906—Paid

Jimmie Connally, same, fined \$3.75, 3/5/1906 Paid

James Connally, same, sentenced 30 days 9/10/1912

STATE'S EXHIBIT U.

Pay envelope found by Barrett under his machine on the second floor of the factory. Ordinary pay envelope used by factory officers in paying off employees.

STATE'S EXHIBIT V.

Portion of the testimony of Emil Selig before coroner's inquest as follows:

"As to who else was present, my wife and his wife. They went to the opera before, probably, dinner was over, before he and I left. I stayed in the house. There was no one else there when he got there except me and my wife and him and his wife. The servant was there also. I am speaking about dinner time. I laid down a little while after dinner. I am sure about that. It was directly after dinner was over. Mr. Frank was in the hall. I think he laid down himself. My room is upstairs over the dining room. The telephone is in the dining room. Mr. Frank stayed quite a little while at dinner. I don't know exactly how long he stayed. No, he didn't leave before I got up. Yes, I took a nap. He came a little after one and we ate dinner and I laid down and took a considerable nap."

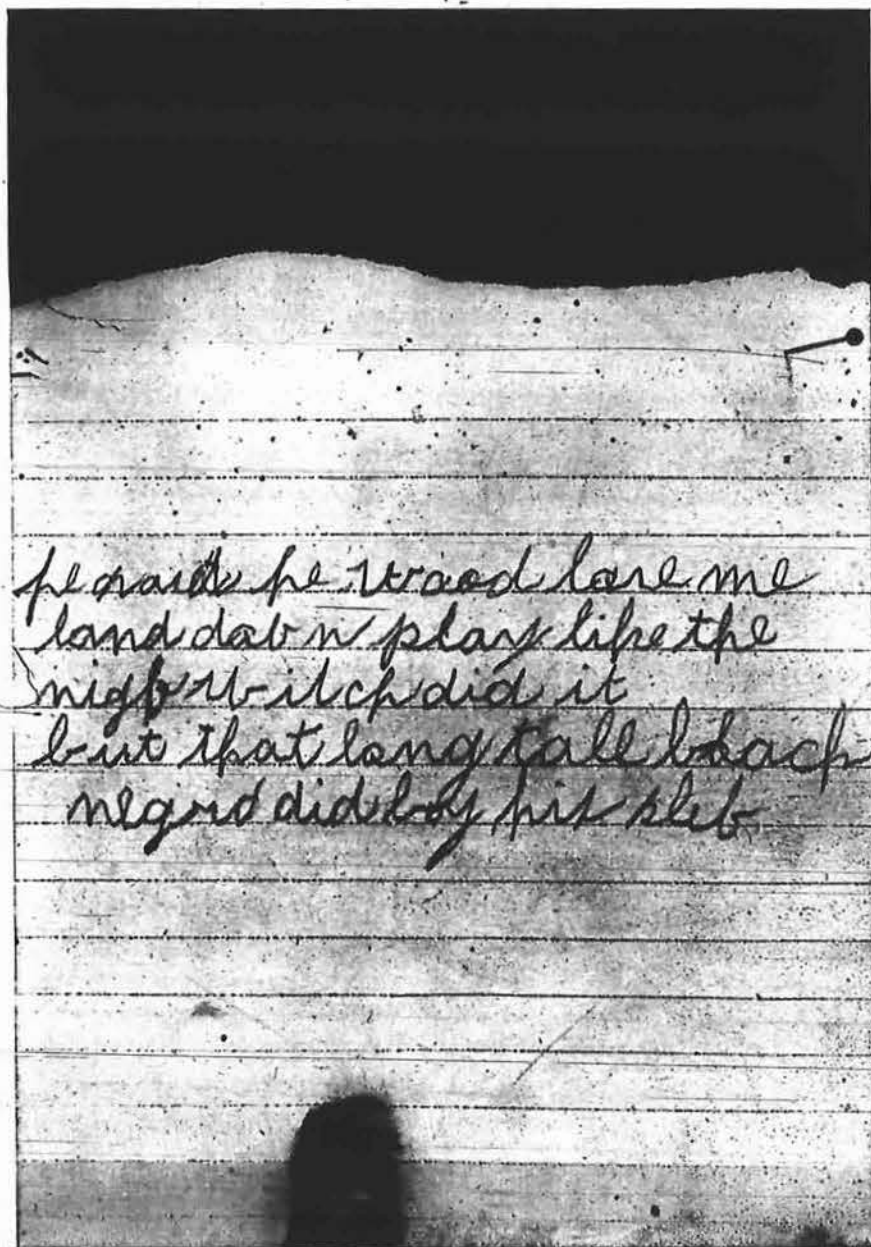
STATE'S EXHIBIT W.

Portion of testimony of Mrs. Josephine Selig before the coroner's inquest, as follows:

"As to what he (Mr. Frank) said about this affair, I don't know if he made any reference to it. She (Mrs. Frank) had told me. I don't remember that he said anything at all about this crime. He probably spoke of it in a general way. He is superintendent of the pencil factory. I think I would have remembered such a remark if he had made it. He said that there was a little girl found dead in the pencil factory that day. I didn't ask what her name was. I don't know that I asked any question at all, because I never really thought that it had any bearing on anything that I was interested in. It was not of interest to me. Naturally he would be concerned about it. I think he did seem unconcerned about it. I don't think he seemed to attach any great importance to it. I don't think he had anything to say about getting anybody to see what was the matter, or see who did it. I don't know what was the occasion of the first remark that Mr. Frank made about the thing. I suppose he had been there only a few minutes. Yes, he spoke about it before dinner. He mentioned the fact that a woman had been found down there. He mentioned that just casually. He didn't remark about the youth of the child or about the brutality of the crime, or describe any of the wounds, or wonder who was suspected, or give any theory as to how it happened. I don't think he expressed any anxiety or curiosity, or advance any theory as to how the thing had happened. He read the paper. There was no article about that in the paper. I can not say that he dwelt on any article. Yes, he read the paper just as steadily and studiously as the night before. I don't think he made any difference at all. He did not seem to be a bit impressed on account of the thing having happened in the pencil factory."

STATE'S EXHIBIT V.

Note found by policemen in sawdust beside body of Mary Phagan, written on white paper.

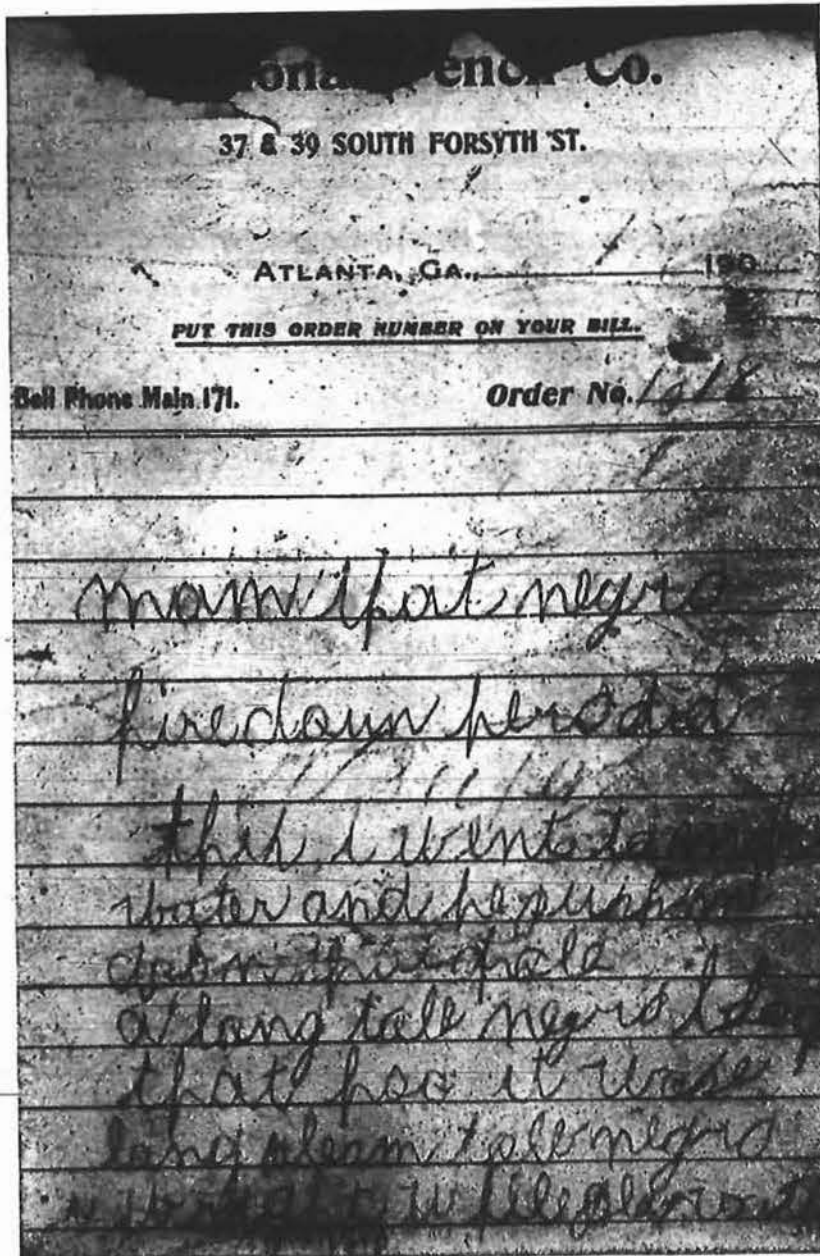


He said he would love me
laid down play like the
night witch did it
but that long tall black
negro did boy hisself.

(He said he would love me, laid down play like the night witch did it but that long tall black negro did boy hisself.)

STATE'S EXHIBIT Z.

Note found by policemen in sawdust by side of the body of Mary Phagan,
written on yellow paper.



(Mam that negro fire down here did this when i went to make water and
he push me down a hole a long tall negro black that did (had) it. i right
while play with me.)

DEFENDANT'S EXHIBIT 1.

Time slip, dated April 26, taken out of clock by Frank.

101	.....601	138	.....
102	.....632	139	.....
103	.....700	140	.....
104	.....732	141	.....
105	.....800	142	.....
106	.....831	143	.....
107	.....906	144	.....
108	.....932	145	.....
109	.....1029	146	.....
110	.....1104	147	.....
111	.....1200	148	.....
112	.....107	149	.....
113	.....135	150	.....
114	.....203	151	.....
115	.....301	152	.....
116	.....330	153	.....
117	.....	154	.....
118	.....	155	.....
119	.....	156	.....
120	.....	157	.....
121	.....	158	.....
122	.....	159	.....
123	.....	160	.....
124	.....	161	.....
125	.....	162	.....
126	.....	163	.....
127	.....	164	.....
128	.....	165	.....
129	.....	166	.....
130	.....	167	.....
131	.....	168	.....
132	.....	169	.....
133	.....(Erasure made here)	170	.....
134	.....	171	.....
135	.....	172	.....
136	.....	173	.....
137	.....	174	.....
138	.....	175	.....

176	.....	189	.....
177	.....	190	.....
178	.....	191	.....
179	.....	192	.....
180	.....	193	.....
181	.....	194	.....
182	.....	195	.....
183	.....	196	.....
184	.....	197	.....
185	.....	198	.....
186	.....	199	.....
187	.....	200	.....
188	.....	

Date April 28, 1913.

Solicitor Dorsey stated in open court that he had made the erasure noted on this time slip, supposing it to have been put there by the detectives, the words erased being "Taken out 8:26 a. m."

DEFENDANT'S EXHIBIT 3.

Data sheet, being part of financial sheet.

		PRODUCTIONS: WEEK-ENDING 4/24/13	
Gross Production	2765½	Lead deliveries	
Net Production	2719½	940/2- 1045 -852/7- 964	
Repacked good	10	940/3- 260 852/6- 794	
Repacked cheap	36	930/2- 724	
Value repacked	\$70.00	Slats delivered, Gr.:	
Rubber inserted	720	Good	
Rubber cheap	667½	Cheap	
Rubber good	706½	Jobs Gr.	791
Lead good	747	Jobs value	386.75
Lead cheap	1955	Jobs average	.50
Lead large	1	Payroll, Forsyth St.	1,060.05
Lead copy	16½	Payroll, Bell St.	114.75
Boxes	3771	Payroll, Mch. Shop	70.00
Assortment boxes	279	Shipments, Gr.	4374
Skeletons	642	Shipments	\$5,438.78
Tips delivered good	512	Orders received Gr.	1904
Tips delivered cheap	830-1342	Orders received	\$3,320.31
Protectors, ends	½		
Wrappers	2535		
Cartons	88		

DEFENDANT'S EXHIBIT 2.
Financial sheet of April 24, 1913, made out by Leo M. Frank.

Prayth St Plant

**FINANCIAL REPORT
NATIONAL PENCIL COMPANY
ATLANTA, GA.**

Week Ending *Apr 24 1913*

Compiled by *L.M.F.*

EXPENDITURES				VALUE OF PRODUCT—PENCILS PACKED				
EXPENSE				Remarks	Amount—Gross	KIND	@ Per Gross	PRICE
LABOR								
Direct	897	55		<i>29%</i>	441	<i>Jobs av</i>	.50/10	396 75
Indirect	155	00	1052 55		86	10%	.60	51 60
BURDEN					451	20 ex	.80	363 20
Rent	65	65			39	40 ex	.85	50 15
Light-Heat-Power-Water	85	00			5	120 ex	1.30	6 50
Insurance	60	00			53 1/2	35 ex	1.25	66 88
Sales Department	150	00	350 65		372	55 ex	1.40	520 80
REPAIR SUNDRIES			130 00		104	155 ex	1.50	156 00
INVESTMENT <i>Mech Shop</i>			70 00		105	910 ex	2.25	236 25
			1623 20		140 1/2	210 ex	2.50	357 20
					52 1/2	660 ex	2.00	105 00
					15	Card Lead #5	2.25	33 75
					72 1/2	430 ex	2.50	31 25
					8	Type	3.60	28 80
MATERIAL—COSTS					25	400-410 ex	1.50	187 50
Basis—Gross <i>2765 1/2</i> Net <i>2719 1/2</i>					6	Lead #5	1.80	10 80
Slats <i>2719 1/2</i> Gr. at <i>22</i> cts			598 29		8 1/2	" 1920 ex	2.50	21 25
Rubber					159	950 ex	2.50	397 50
<i>720</i> Gr. at <i>6 1/2</i> cts			46 80		44	470 ex	3.00	132 00
<i>667 1/2</i> " " <i>9</i> " "			60 07		87 1/2	570 ex	2.50	218 75
<i>706 1/2</i> " " <i>114</i> " "			98 91	205 78	1/2	725 ex	3.25	1 63
Tips					6	210 X N. TIP	2.00	12 00
<i>1374</i> Gr. at <i>10</i> cts <i>Wath</i>			137 40		38 1/2	420 ex	2.75	105 88
<i>1/2</i> " " <i>12</i> " " <i>Metal ends</i>			137 46		28 1/2	630 ex	2.20	62 70
Lead								358 44
<i>747</i> Gr. at <i>15</i> cts			112 05					70 00
<i>1955</i> " " <i>10</i> " "			195 50					3484 44
<i>1</i> " " <i>25</i> " " <i>950/1</i>			25					418 13
<i>16 1/2</i> " " <i>60</i> " " <i>Copay</i>			9 90	317 70				Net Value 3066 31
Supplies at <i>5</i> cts. per gr.			135 97					
Boxes <i>3771</i> at <i>2</i> cts.			75 42		3175.75			
Asst. Boxes <i>279</i> at <i>10</i> cts.			27 90		3066.31			
Wrappers <i>2535</i> at <i>1</i> cts. per gr.			25 35		109.44	Deficit		
Skeletons <i>642</i> at <i>2</i> cts.			12 84					
<i>Cartons 88 @ .8 ct</i>			15 84					
<i>Payroll Bell Sta 164.75</i>			15 84					
<i>Slats held</i>			1552 55					
<i>Paper Sold 1342 92</i>			1623 20					
Total Expenditures			3175 75					

REMARKS

Shipments { \$ 5438.78
4374 92

9/20/2 - 1045 92
9/30/2 - 224
9/40/3 - 266
9/50/4 - 964
9/52/6 - 792

DEFENDANT'S EXHIBIT 4a—(Cont'd)

NATIONAL PENCIL CO.

Atlanta, Ga.

Daily Report.

Wednesday

Dept. Packing	Dept. No. 13
86-510 Packard No. 2	5
274-T.O. Bell Lee Drug Co.	8
199-910 N. Emblem	24
271-950 Genius	25
90-210 Cadillac No. 2	31½
71-630 Worth 2752	28½

122

Date 4/23/13

Signed EULA

NATIONAL PENCIL CO.

Atlanta, Ga.

Daily Report.

Wednesday

Dept. Packing	Dept. No. 13
264-55 Oxford	98½
120 Broadway	5
34-45 Trumps	16
No. 110 Asst Smith Paper	25
	Cr 144
939-20 G. Wash	78
688-40 J. Monroe	3

81

144

122

347

Date 4/23/13

Signed EULA

DEFENDANT'S EXHIBIT 4aa.

Repack—

Apr. 25, 1913—Repack from Apr. 17, to Apr. 24

18 gross 22.50 -35x

18 gross 22.50 37x

10 gross 25.00 930x O. K. (Signed) EULA

46

70.00

DEFENDANT'S EXHIBIT 4a—(Continued).

NATIONAL PENCIL CO.
Atlanta, Ga.
Daily Report.

	Friday
Dept. Packing	Dept. No. 13
725 N. Copying	1/2
91-210 Cadillac No. 3	35
87-510 Packard No. 3	2
199-910 Nat. Emblem	60 1/2
62-660 University School	52 1/2
117-450 Luxury No. 2 N. T.	1
326-210 Khedive No. 2	2 1/2
No. 1920 Ass't Nat. Flyer	2 1/2
	156 1/2
Date 4/18/13	Signed EULA

NATIONAL PENCIL CO.
Atlanta, Ga.
Daily Report.

	Saturday
Dept. Packing	Dept. No. 13
271-950 Genius	9 1/2
91-210 Cadillac No. 3	3 1/2
199-910 N. Emblem	3
116-210 Bowers Prog No. 2	6
760 Thesis Writing No. 2	1
	23
	Good
264-55 Oxford	66
378-155 Mystic	99 1/2
	165 1/2
939-20 G. Wash.	69
315-10 P. Cedar	53
Good	23
	310 1/2
Date 4/19/13	Signed EULA

NATIONAL PENCIL CO.
Atlanta, Ga.
Daily Report.

	Monday
Dept. Packing	Dept. No. 13
397-430 Sitting Bull	12 1/2
86-510 Packard No. 2	34 1/2
91-210 Cadillac No. 3	6
116-210 Bowers Prog	29 1/2
120-210 Khedive No. 2 N. T.	6
271-950 Genius	32 1/2
97-420 Surety No. 2	9 1/2
No. 1920 Ass't N. Flyer	6
	136 1/2
Date 4/21/13	Signed EULA

NATIONAL PENCIL CO.
Atlanta, Ga.
Daily Report.

	Tuesday
Dept. Packing	Dept. No. 13
939-20 G. Wash	94
688-40 J. Monroe	11
	105
R. I.	
Med.	89
Good	119
	313
Date 4/21/13	Signed EULA

DEFENDANT'S EXHIBIT 4a—(Cont'd)

NATIONAL PENCIL CO. Atlanta, Ga. Daily Report.		NATIONAL PENCIL CO. Atlanta, Ga. Daily Report.	
Thursday.		Thursday.	
Dept. Packing	Dept. No. 13	Dept. Packing	Dept. No. 13
90-210 Cadillac No. 2	61½	939-20 G. Wash. 7	34
91-210 Cadillac No. 3	2	688-40 J. Monroe	20
116-210 Bowers Prog	15½		
271-950 Genius	71		54
274-470 Thoroughbred	43	R. I.	54
No. 15 Ass't Princely Cards	15	Med.	136
		Good	153
	153		
34-45 Trumps	36		343
Ass't No. 48 S: Bargain Hse Sp	50	Date 4/24/13	Signed EULA
Ass't No. 53 Southwestern			
No. 115	50		
	136		
Date 4/24/13	Signed EULA		

DEFENDANT'S EXHIBIT 4b.

Job department reports, being part of data for financial sheet.

NATIONAL PENCIL CO. Atlanta, Ga. Daily Report.		NATIONAL PENCIL CO. Atlanta, Ga. Daily Report.	
Dept. Job.	Dept. No. 22	Dept. Job.	Dept. No. 22
504 Pol sec	59	504 Pol sec	12
090 " "	20	3's " 3's	69
506 " "	10	74 " sec	111
3's " 3's	12	111 " "	25
90 " sec	10	112 " "	3
095 " 3's	133	90 " "	3
7x " sec	30	506 " "	8
		70 " "	16
	274	75 " "	3
			250
Date 4/21/13	Signed FANNIE A.	Date 4/23/13	Signed F. L. A.

DEFENDANT'S EXHIBIT 4b—(Cont'd)

NATIONAL PENCIL CO.

Atlanta, Ga.

Daily Report.

Dept. Job.	Dept. No.	22
111 Pol see		19
74 " "		28
090 " "		13
506 " "		11
3's " 3's		97
75 " see		10
70 " "		22
504 " "		16
		216

Date 4/24/13

Signed FANNIE A

NATIONAL PENCIL CO.

Atlanta, Ga.

Daily Report.

Dept. Job.	Dept. No.	22
90 Pol see		3
114 " "		1
095 " 3's		47
		51
		216
		267

Date 4/24/13

Signed FANNIE A

DEFENDANT'S EXHIBIT 4c.

Daily report of lead deliveries from lead plant, part of data for financial sheet.

1 Box 3992	910/No. 2	127 Gross
2 " 3993	"	247 "
2 " 3994	-	254 "
2 " 3995	-	254 "
2 " 3996	2	163

9 Box		1045 gross
-------	--	------------

3 Box 3863	940/No. 3	260 "
2 " 3910	940/No. 3	197
3 " 3911		335
3 " 3912		292

19 Box		2192 Gross
--------	--	------------

2 Box 3976	852/7	260 "
4 " 3978	852/7	347
4 " 3979	"	347

29 Box		3787 Gross
--------	--	------------

4 Box 3980	852/7	352 "
4 " 3981		352

704 gross

(Signed) G. WEINKAUF.

Apr/21, 1913

DEFENDANT'S EXHIBIT 4d.

Report of tip deliveries from tip plant, being part of data for financial sheet.

Weekly report of Metal Dept., No. 18, April 24, 1913.

Large Eyelet Mach.	404	Tips delivered—	
Small Eyelet Mach.	440	No. 6	830
Trimming Mach.	644	No. 10	448
Knurling Mach.	835	No. 12—Re-dipped	35
		No. 17	64

1,377

(Signed) L. A. QUINN.

DEFENDANT'S EXHIBIT 5.

Average (of orders) sheet, being a complete record (beginning with the week ending Jan. 16, 1913) of the number of orders received each week, classified as to price under different headings, said number being totaled at the end of each week and the average price ascertained. The following is a record only of orders for the factory month of April, 1913:

WEEK-ENDING 4/3/13.

	60 cts.	R. I.	100 thru 140	150 thru 195	200 thru 295	300 and over
Friday 28	159	413	307	117	453	105½
Saturday 29	3	28	30	2	6	5
Monday 31	5	258	81	7½	126	35
Tuesday 1	10	17	47	14	78	15½
Wednesday 2	12	165	132½	7	122	30½
Thursday 3	24	154	621	6½	70	15
Total gross	213	1035	1218½	154	855	206½
Price per gross .....	.60	.80	1.25	1.75	2.50	3.00
Total value	127.80	828.00	1,523.13	269.51	2,137.50	619.50

\$5,505.43

3682 gr.

1.50 av.

DEFENDANT'S EXHIBIT 5—(Continued).

WEEK ENDING 4/10/13.

	60 cts.	R. I.	100 thru 140	150 thru 195	200 thru 295	300 and over
Friday 4	33	162	280	572	53	51½
Saturday 5	31	19	38½	12	47	16
Monday 7	106	101	188	118	154½	86
Tuesday 8	10	30	48	10	67	74
Wednesday 9	5	..	2	8	4	2
Thursday 10	15	156	232	28	90	67½
Total gross	200	468	788½	696	325½	286½
Price per gross .....	.60	.80	1.25	1.75	2.50	3.00
Total value	120.00	374.40	985.62	128.00	833.75	889.50
	\$4,428.27		2774½		1.60 av.	

WEEK ENDING 4/17/13.

	60 cts.	R. I.	100 thru 140	150 thru 195	200 thru 295	300 and over
Friday 11 .....	..	..	..	..	..	..
Saturday 12 .....	..	..	..	..	250	5
Monday 14	6	104	9	5	26	10
Tuesday 15	5	11	30	8	26	1
Wednesday 16	10	10	7	4	14	6
Thursday 17	55	173	276	217½	365	198½
Total gross	76	298	322	234½	681	220½
Price per gross .....	.60	.80	1.25	1.75	2.50	3.00
Total value	45.60	238.40	8,412.50	410.38	1,702.58	661.50
	1852 gr.		\$3,460.88		\$1.89 av.	

WEEK ENDING 4/24/13.

	60 cts.	R. I.	100 thru 140	150 thru 195	200 thru 295	300 and over
Friday 18	9	103	65	9½	122	95
Saturday 19 .....	..	26	81	13	52½	16
Monday 21	53	118	79½	20	83	17
Tuesday 22	28	205	115	101	9½	153½
Wednesday 23	15	5	28	5	16½	..
Thursday 24	10	29	11	..	110	100
Total gross	115	486	379½	148½	393½	381½
Price per gross .....	.60	.80	1.25	1.75	2.50	3.00
Total value	69.00	388.80	474.38	259.88	983.75	1,144.50
	\$3,920.31		1904 gr.		\$1.74 av.	

DEFENDANT'S EXHIBIT 6.

Value of shipments for week ending April 24, being part of data for financial sheet.

			11.35
			38.37
			27.00
			23.40
			40.00
	18th		124.80
			14.20
			38.82
			23.39
			17.50
			14.66
			27.00
			10.90
			8.90
			107.50
			14.86
	19th		14.92
			73.04
			43.90
			21.25
			135.10
			51.63
			69.55
			24.34
			114.00
			29.39
			17.84
	21st		15.07
			75.99
			13.70
			740.55
			33.25
			12.38
			12.00
			16.67
	22nd		10.00
			13.70
			138.30
			1267.28
Shipments Week Ending 4/24/13			
Apr. 18	400.75		
" 19	482.00		
" 21	1146.06		
" 22	1457.95		
" 23	706.63		
" 24	1245.57		
	<u>5438.78</u>		

DEFENDANT'S EXHIBIT 7—Continued.

Three pencil sheets (the last two lines of which are in Frank's handwriting), part of data for financial sheet.

FACTORY RECORD

NATIONAL PENCIL COMPANY, Atlanta, Ga.

PENCIL STOCK

Week Ending

April 17, 1913

DATE	3 Copy	Copy N P	740x	760x	770x	780x	790x	400x	400x SPL	410x	420x	420x SPL	440	450 N T	460	460x SPL	470x	480x	220x SPL	Show Cases	1000	1001	750x	Chataqua	460x SPL	Cedeco	WORTH 910-2753	WORTH 120x-1501	A B Uramus	270x SPL	510x SPL	WORTH 910x SPL	210x N Tip	420-3501	WORTH	725x Copy	Uramus N.T.	210x Wheeler N.T.	Surety Packed flat	WORTH 630x Spl-2752	TOTAL			
PENCILS PACKED	April 11																	20																									425	
	12			1														10							3																		224½	
	14	19														4½								24		6½	52																323	
	15																						72					17½	43	29	19												479½	
	16															22½													8	78½		56½	29									359		
	17																											2	59½					25	29½							1040		
	TOTAL	19														67		30						96	3	6½	52	17½	53	167	19	56½	29	25	29½							2851		
PENCILS SHIPPED	April 18													1															2													274½		
	19																																										310½	
	21																												34½								6	9½					660	
	22																												46									29				313		
	23																												5											28½	347½			
	24																43																									860		
	TOTAL													1		43													87½						½	6	38½	28½				2765½		
	In Stock End Last Week																																											
	Made This Week																																											
	TOTAL Shipped This Week																																											
	In Stock End This Week																																											

DEFENDANT'S EXHIBIT 7a.

Resume of the three sheets.

4-24-13 Production Wk. End	Fri. 18	Sat. 19	Mon. 21	Tues. 22	Wed. 23	Thur. 24
Cheap (10 Ex)	17	70	86	86	86	86
Rubber Inserted	76	145	273	378	459	513
Jobs			274	274	274	791
116, 117 Jobs						
Medium	25	190½	296	385	529½	664½
Good	156½	179½	318	435	557	710
Totals	274½	585	1245	1558	1905½	2765½
Daily Totals	274½	310½	660	313	374½	860

DEFENDANT'S EXHIBIT 6—(Continued).

23rd	183.70
	13.04
	23.95
	29.45
	29.18
	28.80
	260.00
	20.00
	23.04
	18.49
	14.13
	30.00
	27.70
5.13	

24th	204.32
	644.40
	145.00
	63.33
	28.00
	27.75
	13.48
	119.29

DEFENDANT'S EXHIBIT 8.

Eight carbon copies of eight letters, all dated April 26, 1913, and addressed to:

Schroder & Lombard Engraving Co., 18 Franklin St., N. Y.

Henry Diston & Sons, Philadelphia, Pa.

J. G. McCrory Co., 621 Broadway, N. Y.

Southern Bargain House, Richmond, Va.

American Zylacq Co., Inc., 8 Livingston St., Newark, N. J.

A. J. Sossner, 154 Duane St., N. Y.

The Pullman Co., Chicago, Ill.

Schroder & Lombard, 18 Franklin St., N. Y.

and signed "National Pencil Company, by, Supt." On each letter are the initials "LMF:HH."

Each letter acknowledges receipt of letter received from the firm addressed and whose names are set forth above (which original letters from said firms are attached to the respective carbon copy which it purports to answer), and have to do with matters of business connected with the National Pencil Company.

DEFENDANT'S EXHIBIT 9.

A large book containing all of the financial sheets of the National Pencil Company, beginning with the week ending November 25, 1909, and ending with the week ending April 24, 1913. Each of these sheets purport to cover the financial operations of the National Pencil Company for the respective week named thereon, and in form is identical with the sheet of April 24, 1913, set forth herein as "Defendant's Exhibit 2."

DEFENDANT'S EXHIBIT 10.

- A small receipt book containing the following receipts:
- April 19, 1913. Received of National Pencil Co. 15 cents—kerosene. (Signed) Nute Lee, F.
 - April 21, 1913. Received of National Pencil Co. 75 cents—type (Signed) A. Mann, F.
 - April 21, 1913. Received of National Pencil Co. two dollars—dray. (Signed) Truman McCrary.
 - April 21, 1913. Received of National Pencil Co. \$2.50—cases. (Signed) John Glass.
 - April 21, 1913. Received of National Pencil Co. 35 cents—express, Warner. (Signed) So. Express Co., F.
 - April 21, 1913. Received of National Pencil Co. 50 cents—postage stamps. (Signed) A. Mann, F.
 - April 21, 1913. Received of National Pencil Co. 3 cents—parcel post. (Signed) A. Mann, F.
 - April 22, 1913. Received of National Pencil Co. \$2.00, rent two weeks typewriter. (Signed) Underwood Typewriter Co., F.
 - April 22, 1913. Received of National Pencil Co. \$1.25—cases. (Signed) Dan Reid, F.
 - April 22, 1913. Received of National Pencil Co. \$1.70—dray. (Signed) Truman McCrary.
 - April 22, 1913. Received of National Pencil Co. 45 cents—supplies. (Signed) Mr. Schneegass.
 - April 22, 1913. Received of National Pencil Co. \$3.50—cases. (Signed) John Glass, F.
 - April 23, 1913. Received of National Pencil Co. \$1.75—cases. (Signed) Dan Reid, F.
 - April 23, 1913. Received of National Pencil Co. 85 cents—inv. 2-1-13. (Signed) King Hdw. Co., Green.
 - April 23, 1913. Received of National Pencil Co. \$1.50—dray. (Signed) Truman McCrary.
 - April 24, 1913. Received of National Pencil Co. 50 cents—postage stamps. (Signed) A. Mann, F.
 - April 24, 1913. Received of National Pencil Co. \$11.50—tinsmith job. (Signed) Paul Armbrust, R. F. D. No. 3, Atlanta, Ga.

DEFENDANT'S EXHIBIT 10—(Continued).

- April 24, 1913. Received of National Pencil Co. 13 cents—parcel post.
(Signed) A. Mann, F.
- April 24, 1913. Received of National Pencil Co. 5 cents—thread. (Signed)
A. Mann, F.
- April 24, 1913. Received of National Pencil Co. \$1.00—dray. (Signed)
Truman McCrary.
- April 25, 1913. Received of National Pencil Co. 10 cents—carfare.
(Signed) A. Mann, F.
- April 26, 1913. Received of National Pencil Co. \$2.00—dray. (Signed)
Truman McCrary.
- April 26, 1913. Received of National Pencil Co. 75 cents—express.
(Signed) So. Express Co., F.
- April 26, 1913. Received of National Pencil Co. \$4.00 time for office work.
(Signed) Herbert Wright, F.

DEFENDANT'S EXHIBIT 11.

Comparison sheet, 1912-1913, being part of data for financial sheet:

Comparison 1912-13.

	(45 hrs.) 1912.	Week Ending Apr. 24/13.
		1913
Payroll	\$ 1,036.15	\$1,052.55
Machine Shop	47.75	70.00
Expense	1,584.55	1,623.20
Material Cost	1,271.46	1,552.55
Total Expenditures	2,856.01	3,175.75
Net Value Productions	2,431.22	3,066.31
Apparent Results—Deficit	424.79	Def. 109.44
Value shipments	3,323.22	5,438.78
	2,509 Gr.	4,374 Gr.
Productions: Net	2,132½	2,719½
Good	457½	700
Medium	829	629½
Cheap	546	599
Jobs	300	791
Per cent. Jobs	14%	29%

Remarks:

19120 55 hrs. work.

DEFENDANT'S EXHIBIT 12.

Page 56 of House Order Book of National Pencil Company

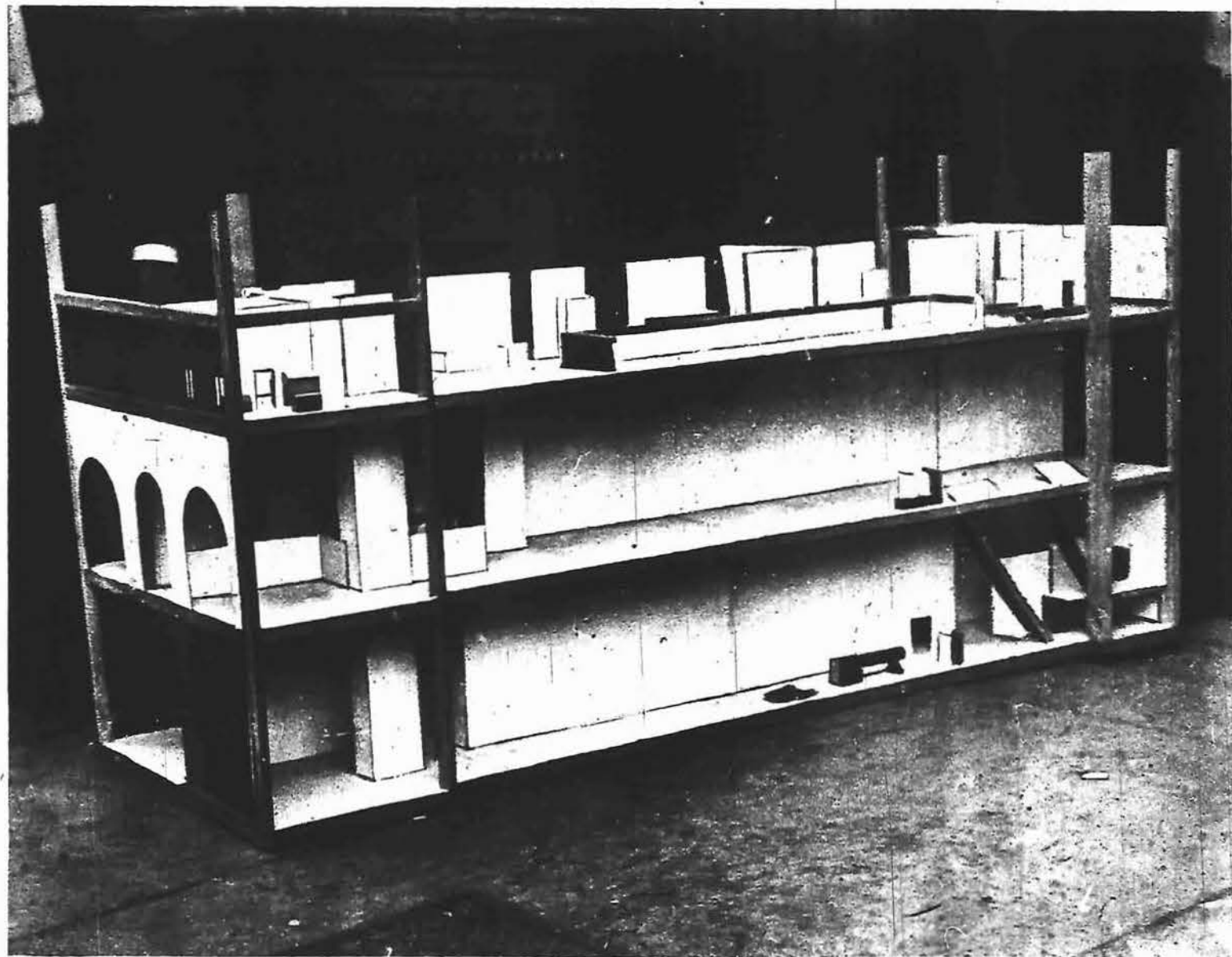
Page 57

Salesman	Ship to	Kind	Order No.	City-State	Date Rec'd	How ship	Shipped
7187—D. P.	F. W. W. Co. No. 57	Regular	4/24/13	St. Joe, Mo.	4/26/13	At once	4/28/13
7188—D. P.	F. W. W. Co. No. 68	Regular	4/23/13	Terre Haute, Ind.	4/26/13	At once	4/28/13
7189—D. P.	F. W. W. Co. No. 253	Regular	4/22/13	Logansport, Ind.	4/26/13	At once	4/28/13
7190—D. P.	F. W. W. Co. No. 585	Regular	4/22/13	DeKalb, Ill.	4/26/13	At once	4/28/13
7191—D. P.	F. W. W. Co. No. 25	Regular	4/24/13	Wilkesbarre, Pa.	4/26/13	At once	4/28/13
7192—D. P.	F. W. W. Co. No. 262	Regular	4/24/13	Saratoga Springs, N. Y.	4/26/13	At once	4/28/13
7193—Mail, U. S.	Soo 5 and 10c Store	Regular	C4355	Sault Ste. Marie, Mich.	4/26/13	At once	7/9/13
7194—H. G.	Bentell Bros. Co.	Regular	4/23/13	Dubuque, Iowa	4/26/13	At once	5/6/13
7195—Factory	Montag Bros.	Regular	4/26/13	Atlanta, Ga.	4/26/13	At once	6/9/13
7196—Jno. Lawrie	John Mangus Co.	Regular	134	Chicago, Ill.	4/26/13	At once	4/28/13
7197—G. H.	R. E. Kindell Co.	Special	4/24/13	Cincinnati, Ohio	4/26/13	At once	

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DEFENDANT'S EXHIBIT 13.

Model of the National Pencil Company made by T. H. Willett.



1231106

DEFENDANT'S EXHIBITS 14 TO 24, INCLUSIVE.

Eleven original orders addressed to the National Pencil Co., Atlanta, Ga., signed by the following firms:

F. W. Woolworth Co., Store No. 57, St. Joseph, Mo.
F. W. Woolworth Co., Store No. 68, Terre Haute, Ind.
F. W. Woolworth Co., Store No. 253, Logansport, Ind.
F. W. Woolworth Co., Store No. 585, DeKalb, Ill.
F. W. Woolworth Co., Store No. 25, Wilkesbarre, Pa.
F. W. Woolworth Co., Store No. 262, Saratoga Springs, N. Y.
Soo 5 and 10 Cent Store, Sault Ste. Marie, Mich.
Beutell Bros. Co., Dubuque, Iowa.
Montag Bros., Atlanta, Ga.
John Magnus Co., Chicago, Ill.
R. E. Kindell & Co., Cincinnati, O.

Said orders request the National Pencil Company to ship to said respective firms, at once, certain merchandise (pencils) noted therein. Each of said orders describes the quantity of pencils desired, the style number and a complete description of the kind of pencils wanted, name, color, shape, etc. On each order respectively is stamped the National Pencil Company's number as follows: "House No. 7187; House No. 7188; House No. 7189; House No. 7190; House No. 7191; House No. 7192; House No. 7193; House No. 7194; House No. 7195; House No. 7196; House No. 7197; House No. 7198; House No. 7199." There is also stamped on each of said orders the following: "Acknowledged, April 26, 1913, by H. H.," and also "Shipped complete, April 28, 1913," with the exception of the order of R. E. Kindell & Company, House No. 7197, which is marked on the face of it "Cancelled June 17, 1913," the letter of R. E. Kindell & Company cancelling said order being attached thereto.

PAGE

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BLANK

PAGE

DEFENDANT'S EXHIBIT 25.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No.
7187

Date April 26 1913

Salesman } D.P.
Bill to }

Order No. 4/24/13

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to F.W.W.Co. No. 57 At 617 Felix Str.

Ship When at once St. Joseph,

Remarks: _____ Mo.

Sales No.	Amount	Name or Remarks	April	28,	1913
45x	4	#4	4		
220x	1/2	#4	1/2		
280x	1/2	#4	1/2		
440x	1/2	#5	1/2		
720x	1/2	W.P.			
630x	1/2		1/2		
910	1/2		1/2		
902	1/2		1/2		
430	1/2		1/2		
240	1/2		1/2		
		O.K. HGS		Complete	
Date Complete Shipment		April 28, 1913			
		Shipped Complete April 28, 1913 2700			

DEFENDANT'S EXHIBIT 26.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7188 Date April 26, 1913 1913
 Salesman } D.P. Order No. 4/23/13
 Bill to }

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to F.W.W. Co. #68 At Terre Haute,
 Ship When at once

Remarks: Ind.

Sales No.	Amount	Name or Remarks	April	28,	1913
37	1			1	
35	3			3	
45	2			2	
120	2			2	
155	3			3	
920	1			1	
910	1			1	
		Complete			
		O.K.			
		HGS			
		Date Complete Shipment			
		Apr. 28, 1913			
		Shipped Complete			
		Apr. 28, 1913			
		2701			

DEFENDANT'S EXHIBIT 27.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7189 Date April 26, 1913 191
 Salesman } D.P. Order No. 4/22/13
 Bill to }

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to F.W.W.CO. #25 At Logansport

Ship When At once

Remarks: c/o Penna Ry Ind.

Sales No.	Amount	Name or Remarks	April 28, 1913	Complete
10	4		4	
37	1		1	
35	1		1	
20	2	30 Sub.Pls.	2	
45	1		1	
140	1		1	
155	1		1	
660	1		1	
630	1		1	
910	1		1	
1002	1		1	
1003	1		1	
430	1/2		1/2	
240	1/2		1/2	
		O.K. HGS		Complete
Date				
Complete				
Shipment				
April 28, 1913				
		Shipped Complete		
		April 28, 1913		
		2703		

DEFENDANT'S EXHIBIT 28.

* Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7190 Date Apr. 26, 1913
 Salesman } D.P. Order No. 4/22/13
 Bill to }

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to F.W.W.Co. #585 At 347 E. Main St.
 Ship When at once DeKalb, Ill.

Remarks:

Sales No.	Amount	Name or Remarks	April 28, 1913	
10	4		4	
20	2	30 Sub Pts.	2	
37	2		2	
35	2		2	
45	2		2	
120	2		2	
		OK		Complete
		HGS		
		Date		
		Complete		
		Shipment		
		Apr. 28, 1913		
		SHIPPED COMPLETE		
		APR. 28, 1913		
		2764		

DEFENDANT'S EXHIBIT 30.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7192 Date Apr. 26, 1913 191
 Salesman } D.P. Order No. 4/24/13
 Bill to }

**NATIONAL PENCIL CO., ATLANTA, GA.
 MANUFACTURERS**

Ship to F.W.W. Co. #262 At Saratoga Springs, N.Y.
 Ship When at once
 Remarks: c/o D. & H. Ry. 416-18 Broadway

Sales No.	Amount	Name or Remarks	4/28		
10	5		5		
20	5	30 Sub Pts.	5		
37	1		1		
35	1		1		
45	1		1		
120	1		1		
140	1		1		
155	1		1		
770	1	#3	1		
660	1		1		
630	1		1		
920	1	930 Sub.	1		
910	1		1		
950	1		1		
430	1		1		
220	1	#3	1		
220	1	#4	1		
640	1		1		
1002	1/2		1/2		
1003	1		1		
280	1/2	#2	1/2		
280	1/2	#3	1/2		
480	1/2		1/2		
440	1/2		1/2		
720	1/2	W P		OK	OS
				HGS	Complete
		SHIPPED COMPLETE			
		APR. 28, 1913			
		2699			

DEFENDANT'S EXHIBIT-31.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7193 Date April 26, 1913 1913
 Salesman } Mail Order No. C4355
 Bill to }

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to Soo 5 & 10c Store At Sault Ste. Marie,
 Ship When August 1st Mich.

Remarks:

Sales No.	Amount	Name or Remarks			
10	10				
35-37	5	Asstd			
45	5				
910	5				
640	5				
1002	2				
1003	2				
		Best Route to Chicago			
		then by water			

DEFENDANT'S EXHIBIT 32.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7194 Date Apr. 26, 1913 191
Salesman } H.G. Order No. 4/23/13
Bill to }

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to Buetell Bros. Co. At 819-859 Clay Str.
Ship When at once Dubuque, Iowa

Remarks:

Sales No.	Amount	Name or Remarks	May 6, 1913		
480	5		5		
210	5		5		
55	25		25		
20	20		20		
30	25		25		
		OK			
		HGS			Complete
		(Shipping Clerk			
		Include all B'O's with this)			
Date					
Complete					
Shipment					
May 6, 1913					
		SHIPPED COMPLETE			
		May 6, 1913			
		2733			

DEFENDANT'S EXHIBIT 33.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7195 Date April 26, 1913 191
 Salesman } Faoty Order No. 4/26/13
 Bill to }

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to Montag Bros. At Atlanta,
 Ship When At once Ga.

Remarks:

Sales No.	Amount	Name or Remarks	May 26, 1913		
135x	50	Blks. sub. 35 gro.Pts.	50		
1900	10	added 4/29			8
1920	10	Transferred			5
1540	10	"	10		
1910	10	"	10		
40x	50	added 5/6/13		50	
420x	2	" " "		2	
420x	10	" 5/26/13			10
		O.K.			
		HGS			
				OK	
				HGS	
		FWLE			B
		May 6, 1913			
		May 26, 1913			

DEFENDANT'S EXHIBIT 35.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No. 7197 Date Apr. 26, 1913 191

Salesman | H.G. Order No. 4/24/13
Bill to |

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to R.E. Kindell & Co. At 312 Plum St.

Ship When at once Cincinnati,

Remarks: Ohio

Sales No.	Amount	Name or Remarks			
160x	\$p.50	F.O. 154	5	1/2	
		No stamp			
		Hold			
		CANCELLED			
		6/17/13			

DEFENDANT'S EXHIBIT 34.

Requisition sheet in handwriting of Leo. M. Frank, as follows:

House No.
7196

Date April 26, 1913 191

Salesman } Jno Lawrie & Sons
Bill to }

Order No. 134

NATIONAL PENCIL CO., ATLANTA, GA.
MANUFACTURERS

Ship to John Magnus Co. At 1055 W. 35th St.

Ship When at once

Remarks: Chicago, Ill.

Sales No.	Amount	Name or Remarks	April 28, 1913	25		
155x	25					
		O.K.				
		HGS				
		Careful selection of goods.				
		Complete				
Date						
Complete						
Shipment						
April 28, 1913						
		Shipped Complete				
		April 28, 1913				
		2698				

DEFENDANT'S EXHIBIT 36.**Statement of James Conley Made to John R. Black and H. Scott at Police Barracks, Atlanta, Ga., Sunday, May 18, 1913.**

My full name is James Conley. I reside 172 Rhodes Street with Lorine Jones, who claims to be from Marietta, Ga. This woman is not my wife, and I have been living with her a little over two years. I have been having intercourse with Lorine Jones. I have been employed as elevator man and roustabout at the National Pencil Co. factory in Atlanta for the past two years. Before going to the pencil factory, I was employed by Dr. L. Palmer at Broad and Mitchell Streets, Atlanta, as a buggy driver. I worked for him for about one year. Previous to that time I worked for the Orr Stationery Co., Atlanta, as driver of wagon. Previous to that time I worked for Adam Woodward, as a stable hand for a year and three months. Previous to that time I worked for Mr. Copes wood yard, Atlanta, for five years. I am now 27 years of age, single.

On Saturday, April 26, 1913, I arose between 9 a.m. and 9:30 a. m. and ate my breakfast. At 10:30 I left the house, 172 Rhodes Street, and went to Peters Street and visited a number of saloons between Fair and Peters and Haynes and Peters Street. I purchased a half pint of rye whiskey from a negro who was walking along Peters Street about 11:00 a. m., I paying 40 cents for this whiskey. I visited the Butt-In saloon and went back to the pool tables and saw three colored men shooting dice, and I joined them and won 90 cents from them. I then purchased some beer, paying 15 cents. I then walked up the street and visited Early's beer saloon, purchased two beers and wine, paying ten cents for same. This was all the money I spent on Peters Street, and I arrived home at 2:30 p. m. and I found L. Jones there and she asked me if I had any money. I replied yes, and gave her \$3.50 (one dollar in greenback, and the rest silver money). I drew \$3.75 from the pencil factory on Friday, April 25, between 6:00 and 6:30. I spent 15 cents for meats on Friday night. Before receiving the \$3.75 I did not have any money in my pocket. At 3:30 p. m. or 4:00 p. m., Saturday, April 26, I purchased 15 cents worth of beer and then returned to the house, and sent the little girl out to get ten cents worth of stove wood and five cents worth of pan sausage. I remained at home all Saturday night and at 12 o'clock noon, Sunday, April 27, I walked up on Mitchell street and got a cigarette, remaining there until 12:45 p. m., and returned home, remaining until 6:30 p. m., when I went to my mother's house, 92 Tattnell Street, and got my lunch, and then returned home and I remained at home until Monday, April 28th. On April 28th I reported for work at the pencil factory at 7:05 a. m.

(Signed) — JAMES CONLEY.

DEFENDANT'S EXHIBIT 37.**Statement of James Conley of May 24, 1913.**STATE OF GEORGIA,
COUNTY OF FULTON.

Personally appeared before me, the undersigned, a Notary Public, in and for the above State and County, James Conley, who being sworn on oath says:

On Friday evening before the holiday, about four minutes to one o'clock, Mr. Frank come up the aisle and asked me to come to his office. That was the aisle on the fourth floor where I was working, and when I went down to the office he asked me could I write and I told him yes I could write a little bit, and he gave me a scratch pad and told me what to put on it, and told me to put on there "dear mother," "a long, tall, black negro did this by himself," and he told me to write it two or three times on there. I wrote it on a white scratch pad, single ruled. He went to his desk and pulled out another scratch pad, a brownish looking scratch pad, and looked at my writing and wrote on that himself, but when I went to his office he asked me if I wanted a cigarette, and I told him yes, but they didn't allow any smoking in the factory, and he pulled out a box of cigarettes that cost 15 cents a box, and in that box he had \$2.50, two paper dollars and two quarters, and I taken one of the cigarettes and handed him the box and I told him he had some money in the box, and he said that was all right I was welcome to that for I was a good working negro around there, and then he asked me where Gordon Bailey (Snowball they call him) was, and I told him on the elevator, and he asked me if I knew the night watchman and I told him no sir, I didn't know him, and he asked me if I ever saw him in the basement and I told him no sir, I never did see him down there, but he could ask the fireman and maybe he could tell him more about that than I could, and then Mr. Frank was laughing and jollying and going on in the office, and I asked him not to take out any money for that watch man I owed, for I didn't have any to spare, and he told me he wouldn't, but he would see to me getting some money a little bit later. He told me he had some wealthy people in Brooklyn, and then he held his head up and looking out of the corner of his eyes and said "Why should I hang?" and that's all I remember him saying to me. When I asked him not to take out any money for the watch, he said you ought not to buy any watch, for that big fat wife of mine wants me to buy her an automobile but he wouldn't do it; I never did see his wife. On Tuesday morning after the holiday on Saturday, before Mr. Frank got in jail, he come up the aisle where I was sweeping and held his

head over to me and whispered to me to be a good boy and that was all he said to me.

(Signed) JAMES CONLEY.

Sworn to and subscribed before me this 24th day of May, 1913.

(Signed) G. C. FEBRUARY,
Notary Public, Fulton County, Georgia.

(Seal)

DEFENDANT'S EXHIBIT 38.

Statement of Jim Conley, May 28, 1913.

STATE OF GEORGIA,
COUNTY OF FULTON.

Personally appeared before me, a Notary Public, in and for the above State and County, James Conley, who being duly sworn, on oath says:

I make this statement, my second statement, in regard to the murder of Mary Phagan at the National Pencil Factory. In my first statement I made the statement that I went to the pencil factory on Friday, April 25, 1913, and went to Frank's office at four minutes to one, which is a mistake. I made this statement in regard to Friday in order that I might not be accused of knowing anything of this murder, for I thought that if I put myself there on Saturday, they might accuse me of having a hand in it, and I now make my second and last statement regarding the matter freely and voluntarily, after thinking over the situation, and I have made up my mind to tell the whole truth, and I make it freely and voluntarily, without the promise of any reward or from force or fear of punishment in any way.

I got up Saturday morning, April 26th, between 9 and half past 9. I was at home, 172 Rhodes Street. There is a clock on the Atlanta University and I looked at that clock after I put on my clothes; I went to the door and poured some water out of the wash pan and then I looked at the clock on the Atlanta University, but I forgot what time it was exactly, but I remember it was between nine and half past nine. Then I washed my face and I eat some steak and some liver and bread and drank a cup of tea, and then I sat down in a chair a little while, about ten minutes, I guess, and then I told my wife to give me back the three dollars and I would get some paper money to keep her from losing it, to pay her rent with, and she gave it to me, and I told her I was going to Peters Street, and I went to Peters Street, and stopped at the beer saloon near the corner of Peters and Haynes Street and I bought two beers there for myself and give another fellow a beer, I don't know what his name was, but they call him Bob. I don't know where he works, but he had a whip over his shoulder. I stayed in that saloon 3 or 4 minutes, just long enough to drink that beer, and then I walks up to the Butt-In Saloon and walks back to the pool table, and there were four fellows

back there shooting dice, five with me, one was named Joe Bobs, and one was named Bob Williams, and I won 90 cents. I don't know how long we were shooting for we were shooting on the sly, unbeknownst to the bar tender. I guess we were shooting about ten minutes, and then I come to the bar and bought a glass of beer there at the Butt-In Saloon, and then I went to Early's beer saloon on Peters St. and I bought a glass of beer there and I walked back to the toilet and stood there and made a cigarette and then bought another glass of beer, and I come out and bought a half pint of whiskey and I drank some of the whiskey, and then I started to the Capitol City Laundry and on my way there I met Mr. Frank, at the corner of Forsyth and Nelson Streets going to Montags, and he told me to wait a few minutes, and he asked me where I was going, and I told him I was going to the Capitol City laundry to see my mother, and he didn't say nothing, only he said to wait a minute until he come back, that he was going to see the Montags, and I stood there until he come back, he was gone about 20 minutes, I guess. He come back and told me to come to the factory, that he wanted to see me, and I went to the factory with him, walking behind him, and he stopped at the Curtis Drug Store at Forsyth and Mitchell Streets and he got a drink, and I waited on the outside until he come out, and then he told me to come on and I went to the factory with him. He had a box with him, which he carried with him to the Montag's; it has an opener to it, and after we got to the factory, Mr. Frank took the box and put it there at the trash barrel, which was just to the right of the steps as you go in, he put a box there for me to sit on. There was some great big boxes back further. He told me to sit down there until I heard him whistle. He just took his foot and pushed a box over there for me to sit on. Then he told me not to let Mr. Darley see me, and after Mr. Frank went up the steps, in a few minutes here comes a young lady downstairs, that was Miss Mattie. I think she had on a dark red suit and a rain cloak and a parasol in her hand, but I didn't notice her hat. Then here comes Mr. Darley down, and he had on a gray suit of clothes, didn't have any hat on his head, and he stopped Miss Mattie at the front door, and when he stopped her I saw Miss Mattie with a handkerchief wiping her eyes, it seemed to me like she had been crying, and then I heard Mr. Darley say to her, "Don't worry, I will see that you get that next week," and they stood there and talked awhile, but I could not hear anything else they said, then she went on out the door and Mr. Darley came back up the steps, and Mr. Darley stayed up there a good while, then he come down and left and I did not see him anymore. Then here comes Mr. Holloway down, about five minutes after Mr. Darley had gone; Mr. Holloway went out on the sidewalk and stood there three or five minutes and then he come and went back up the steps, and then here come another colored fellow, a pegged-legged one, and he went up the steps, he had some bills in his hands, and Mr. Holloway come back down with the pegged-legged one and went out on the sidewalk and looked at the fellow's wagon, but what he said to him I don't know. It was a wagon that had sides to it and I didn't see the name on it. It wasn't a regular dray, I

don't think, it looked like it might have come from that plate glass company on Alabama street. Then Mr. Holloway went back upstairs and it wasn't long before Mr. Holloway come back down and was gone for good. I don't know how long, but I guess he stayed upstairs long enough to put on his coat and hat. I saw Mr. Holloway turn up to his right towards Hunter Street, then there comes another lady into the factory, and she had on a green looking dress, she works on the fourth floor, and she walked with her head down, sort of stoop shouldered, she works for Arthur White. She stayed up there 7 or 8 minutes and then she come back down with her money in her hand, and she stood just a little opposite me and tore the envelope open right there and took her money out and counted it, and she shut her hand up and went out the door and she turned towards Hunter Street, and about 15 or 20 minutes after there, there wasn't any passing at all, and I sat there on the box with my head against the trash barrel. I stretched my feet out and put my fiat in my lap, but I couldn't say whether I went to sleep or not, and the next thing that attracted my attention, Mr. Frank whistled for me twice, just like this (indicating), and when he whistled I went on up the stairs and the double doors on the stairway were closed and I opened them and they shut themselves, and Mr. Frank was standing at the top of the steps and he said, "You heard me, did you?" and I said "Yes, sir," and Mr. Frank grabbed me by my arm and he was squeezing my arm so tight his hand was trembling. He had his glasses on, and he had me just like he was walking down the street with a lady, and like he didn't want me to look behind me at all, and I thought it was because he had me so tight that made him tremble, and he carried me through the first office and into his private office, and then he come back in there, and he didn't say nothing, he grabbed up a box of sulphur matches, and he went back in the outer office, the door was open between his office and the outer office, and then he saw two ladies coming and he said to me, "Gee, here comes Miss Emma Clark and Miss Corinthia Hall" and he come back in there to me, he was walking fast and seemed to be excited, and he said to me, "Come right in here, Jim," and he motioned to the wardrobe and I was a little slow about it and Mr. Frank grabbed me and gave me a shove and put me in the wardrobe and he shut the doors and told me to stay there until after they had gone, and I just heard Miss Emma say "Good morning, Mr. Frank, are you alone?" and Mr. Frank said "Yes," and I couldn't hear them say nothing else, but I didn't know it was Miss Corinthia Hall until Mr. Frank spoke and said it was, but I heard Miss Emma's voice; they didn't stay there long, until they were gone. I didn't hear them. The next move was Mr. Frank come and let me out of the wardrobe. I don't remember Miss Hall and Miss Clarke using the telephone, if they did I didn't hear them and I didn't see them myself. I stayed in the wardrobe a pretty good while, for the whiskey and beer I had drank got me to sweating. I couldn't hear them talking, only I heard Miss Emma say, "Good morning," if they had been talking loud I could have heard them, but if they were talking low I couldn't. If they went upstairs, Mr. Frank must have kept right

behind them, to see that they didn't take off anything. Then after awhile Mr. Frank he come into the office and he pulled out one of those round chairs from under the desk. The first thing, he let me out of the wardrobe and I said, "I got too hot in there," and he said "Yes, I see you are sweating." When he opened the door I was fixing to step out, and his eyes were looking larger than they usually look, and he jerked the door open and I was right there in front of the door, and then Mr. Frank said to me to sit down in a chair, in the one that turns all the way around, and when I sat down he told me to get up and shut the door; that was the door between his office and the stenographer's office, and I got up and shut it, and he said, "Jim, can you write." He was sitting down facing me and he brushed back his hair and I said "Yes, sir, I can write a little bit, Mr. Frank," and then he give me a pencil that he got off the top of his desk, and there was nothing on it, he turned a sheet over for me to write, and then he told me what to put there, he told me to put on there "dear mother, a long tall black negro did this by hisself," and when I went to put down "negro" I put it "n-e-g-r-o-s" and he said don't put no "s" there, he said that means negros and he said now rub the "s" off and I rubbed the "s" out, and he said, "It means just one person like yourself," and he told me to write it again and I written it, and he looked at it and slapped me on the back and said "That's all right, old boy," and he said "write it again," and I written it for him three times. Then Mr. Frank reared back in his chair and asked me if I wanted a smoke and I told him "Yes, sir," and he taken out a cigarette for himself and handed me the box and he sort of turned around when he handed me the box and I taken out a cigarette and he handed me the box of matches, and I taken out a cigarette and lit it and saw some money in the box and I handed the box of cigarettes back and he told me that was all right to keep them, and I told him he had some money in the box and he said that was all right, I could have that. I taken it and stuck it in my pocket and then Mr. Frank looked around at me and held up his head towards the top of the house and said "Why should I hang, I have wealthy people in Brooklyn." I didn't know what he was talking about, I didn't have any idea in the world what he was talking about, and he was winking and rubbing his hands together and touching me on the shank with his foot and took a deep breath, he said "Why should I hang?" and shook his head and rubbed his hands together. Then he asked me where was Snowball (Gordon Bailey), and I told him I didn't know sir, and he asked me did I know the night watchman, and I told him no sir, I didn't know the night watchman personally, I just knew him by passing him, and he asked me if I had seen him in the basement at any time and I told him no sir, that he would have to ask the fireman about that, for he was down in the basement more than any of us was, and when I told Mr. Frank that he stuck one finger in his mouth and said "S-s-sh, that's all right," and then Mr. Frank told me he was going to take that note I had written and send it off in a letter to his people when he wrote, and recommend me to them, because I was a good working negro around there, and he liked me,

and when Mr. Frank said that I said "Don't take out another dollar for that watchman," and he said "All right, I won't," and he said, "I don't see why you want to buy a watch, because that big fat wife of mine wanted me to buy her an automobile but I won't do it." I didn't say nothing about that for it didn't concern me, and didn't seem to concern the subject he was talking about at first, and then Mr. Frank told me when he wrote that letter he would not forget about me and he said "Well, I will see you later about this," and I said "All right, sir," and then he reached in his pocket and pulled out his watch and said, "It is nearly time for me to be going to dinner," but I didn't look at the watch. Then I asked Mr. Frank if that was all he wanted with me right now, and he said yes, and then I asked him again, "Do you mean I can have what's in the box sure enough, Mr. Frank," and he said "Yes," but all the time though he was talking and jollying and going on with me, and I began to think it was something, for a white man to be playing with a negro, and during the time he cast his eyes up to the top of the house and said, "Why should I hang, I have wealthy people in Brooklyn." I never did know where Mr. Frank's home was, I thought this was his home all the time. Then Mr. Frank said "I will see you Monday, if I live and nothing happens, James," and I said "Well, is that all you want for good, Mr. Frank?" and he said "Yes," and I saw him go to his desk and take out a brownish-looking scratch pad. The one I wrote on was white and was single ruled and I saw him take out a brownish-looking one from his desk and he took his pencil and made a mark on it. I took it to be an "M," but he shut the tablet up and looked at me and told me that was all he wanted with me, and he come all the way to the top of the steps and he come three or four steps down to where he could see me until I hit the sidewalk, it seems as if he was watching me to see if I would take anything as I went out, but there was nothing to take unless I took a great big box, but when I passed those two doors on the steps there, Mr. Frank told me to leave one of them open, and I taken a little piece of iron they have there, and pushed it against the door to keep it from shutting and went on out in the street, and I pulled the front doors to as I went out, and I went to the beer saloon across the street and opened the cigarette box and it had two paper dollars in there and two silver quarters, and I laughed and said "Good luck has done struck me," and I bought a ten-cent double header and then went back to Peters street, and hadn't none of the boys got there that I run with and I walks up there to the moving picture show and looked at the pictures and they didn't seem to be any good, and I come back down Peters Street looking for that fellow I got the half pint whiskey from, but I couldn't find him, and I struck out for home, and when I got home it was about half past two o'clock, and I took the bucket and went to Joe Carr's at Mangum and Magnolia Street, and got fifteen cents worth of beer in it and come back home and sent the little girl to get a dime's worth of stove wood and a nickle's-worth of pan sausage, and I eat half the pan sausage up raw, and I give my old lady \$3.50, and the other little change I kept it, and I layed down across the bed and there is where

I stayed until about half past eight that night, and I got up and set in front of the fire a little while and got to swimming at the head, and then here comes her sister, and after she left I went to bed and I didn't leave home no more until twelve o'clock Sunday, in the day time, and I walked up Mitchell Street and stayed up there until a quarter to one, and I come on back home. I was feeling bad, and I layed down across the bed and stayed there until 6 o'clock or 6:30 that night, and I walked up to my mother's at 92 Tattnall Street, and they gave me a lunch up there and I brought it on back home and I stayed there and eat it up and stayed at home until 10 minutes to 7 the next morning, and when I got to the corner of Forsyth and Mitchell Street, the W. & A. blowed for 7 o'clock, and then I went running on to the factory, and it was four or five minutes after 7 o'clock, the clock may have been a little fast, and when I got there I went upstairs to the dressing room and in comes Gordon Bailey, and here comes Joe Williams, and then Mr. Wade Campbell, the lead inspector, and he comes in there and says "Wasn't it bad about that girl being killed," and we asked him "which girl" and it seemed like he said "Mary Puckett," and we asked him whereabouts and he said "in the basement," and we asked him if it was a white or colored girl," and he said "It was a white girl," and we told him "Yes it was," and we asked him how she got killed, and he said he didn't know, and then he come on out the door first and I come right behind him with the sprinkler in my hand, and then he went to the toilet and I went right behind him and got a sprinkler full of water and I stayed down the aisle until about 9 o'clock, and I went and got my raw stuff on the third floor and brought it up to the fourth floor and unloaded it, and then I said I would go to the basement and see who that was that got killed, and when I got there there was such a crowd of white people there I couldn't go back there, and then the fireman sent me to get him a nickle's worth of onions and a loaf of bread, and then here comes Gordon and he give me a nickle and the fireman give me a nickle and told me to get them a dime's worth of beer and I got it and we all drank it. I went back upstairs and stayed up there until about 15 minutes to 10, and the whistle blowed for the factory to shut down, and I heard Mr. Joe Stelker say the factory was going to close and to come back to-morrow, and I went and changed shoes and pulled off the pants and put on my hat and come down at 10 minutes to 10, and didn't go back any more until Tuesday morning, and went to work at Tuesday morning and got through with my work and went down stairs about half past 9 and there was such a crowd down there I didn't stay long, and I come back up the aisle and went taking up some trash and about half past 10 or 11 o'clock, Mr. Frank come back up the aisle and leaned over to me and said "Jim be a good boy" and I said "Yes, sir, I am, Mr. Frank," and when I heard from Mr. Frank again he was arrested.

I come to work Wednesday morning and started down to the basement and there was such a crowd down there I couldn't get to use the toilet, and I goes back upstairs and finished my work and works all that day, and Thursday

morning I come to work and got caught up by 10 o'clock, and I went downstairs and the fireman and another colored fellow was down there and I asked the fireman where it was that they say the young lady got killed at, and he told me right around there, and I took a little piece of paper and went around there to see if I could see, but I couldn't see where anybody had been laying at, and I come on back and found he was throwing some stuff into the furnace, and I went on upstairs and stayed there until 25 minutes to 12, and the detectives were giving us all subpoenas and I got my subpoena and went back upstairs and stayed up there until 5 minutes to 12, and I come down and went out in the streets and heard the whistle when it blowed for 12 o'clock, and I went back and started to cleaning up at half past twelve, and got through cleaning at half past one. Then I went down to wash my shirt so I could have a clean one to wear to court, for I had been wearing this one for three weeks and when I got back there and pulled off my shirt and washed it, then there comes Mr. Quinn and I asked him where was the dry house and he showed me where it was, and he told me, he said "Jim, there ain't no steam in there now," and I said to myself I will have to hang this on the steam pipe to get it dry, and by me hanging it on there I got a little rust on it, and some of them saw me back there washing my shirt and called up the detectives and when the detectives come up there I had done put on my shirt and they asked me where was the shirt I was washing and I told them this here was the shirt, and they said yes, because it was not good dry, and then told me to come and go with them, and I did. They brought me down here and found there was no blood on the shirt, and gave me my shirt back, and that's all I know.

(Signed) JAMES CONLEY.

Sworn to and subscribed before me this the 28th day of May, 1913.

G. C. FEBRUARY,

Notary Public, Fulton County, Georgia.

DEFENDANT'S EXHIBIT 39.

Conley's Statement of May 29, 1913.

Atlanta, Ga., May 29, 1913.

On Saturday, April 26, 1913, when I come back to the pencil factory with Mr. Frank I waited for him downstairs like he told me, and when he whistled for me I went upstairs and he asked me if I wanted to make some money right quick and I told him "Yes, sir," and he told me that he had picked up a girl back there and had let her fall and that her head hit against something, he didn't know what it was, and for me to move her, and I hollered and told him the girl was dead, and he told me to pick her up and bring her to the elevator and I told him I didn't have nothing to pick her up with and he told me to go and look by the cotton box there and get a piece of cloth, and I got a big wide piece of cloth and come back there to the men's toilet where she was, and I tied her up, and I taken her and brought her up there to a little dressing

room, carrying her on my right shoulder, and she got too heavy for me and she slipped off my shoulder and fell on the floor right there at the dressing room and I hollered for Mr. Frank to come there and help me, that she was too heavy for me, and Mr. Frank come down there and told me to pick her up, damn fool, and he run down there to me and he was excited, and he picked her up by the feet, her head and feet were sticking out of the cloth and then we brought her on to the elevator, Mr. Frank carrying her by the feet and me by the shoulders, and we brought her to the elevator and then Mr. Frank says, "Wait, let me get the key," and he went into the office and got the key and come back and unlocked the elevator door and started the elevator down. Mr. Frank turned it on himself and we went on down to the basement and Mr. Frank helped me to take it off the elevator and he told me to take it back there to the sawdust pile, and I picked it up and put it on my shoulder again, and Mr. Frank, he went up the ladder and watched the trap door to see if anybody was coming, and I taken her back there and taken the cloth from around her and taken her hat and shoe which I had picked up upstairs right where her body was lying, and brought them down and untied the cloth and brought them back and threwed them on the trashpile in front of the furnace, and Mr. Frank was standing at the trap door at the head of the ladder. He didn't tell me where to put the things. I layed her body down with her head towards the elevator, lying on her stomach and the left side of her face was on the ground and the right side of her face was up, and both arms were laying down with her body, by the side of her body. Mr. Frank joined me back on the first floor. I stepped on the elevator and he stepped on the elevator when it got to where he was, and he said "Gee, that was a tiresome job," and I told him his job was not as tiresome as mine was, because I had to tote it all the way from where she was lying to the dressing room, and in the basement from the elevator to where I left her. Then Mr. Frank hops off the elevator before it gets even with the second floor and he makes a stumble and he hits the floor and catches with both hands, and he went on around to the sink to wash his hands, and I went and cut off the motor, and I stood and waited for Mr. Frank to come from around there washing his hands, and then we went on into the office, and Mr. Frank he couldn't hardly keep still, he was all the time moving about from one office to the other, then he come back into the stenographer's office and come back and he told me "Here comes Emma Clark and Corinthia Hall," I understood him to say, and he come back and told me to come here and he opened the wardrobe and told me to get in there, and I was so slow about going he told me to hurry up, damn it, and Mr. Frank, whoever that was come in the office, they didn't stay so very long, till Mr. Frank was gone about 7 or 8 minutes, and I was still in the wardrobe and he never had come to let me out, and Mr. Frank come back and I said, "Goodness alive, you kept me in there a mighty long time," and he said, "Yes, I see I did, you are sweating," and then me and Mr. Frank set down in a chair. Mr. Frank then took out a cigarette and he gave me the box and asked me did I want to smoke and I told him yes, sir, and I taken the

box and taken out a cigarette and he handed me a box of matches and I handed him the matches back, and I handed him the cigarette box and he told me that was all right, I could keep that, and I told him he had some money in it and he told me that was all right, I could keep that, and Mr. Frank then asked me to write a few lines on that paper, a white scratch pad he had there, and he told me what to put on there, and I asked him what he was going to do with it and he told me to just go ahead and write, and then after I got through writing Mr. Frank looked at it and said it was all right, and Mr. Frank looked up at the top of the house and said, "Why should I hang, I have wealthy people in Brooklyn," and I asked him what about me, and he told me that was all right about me, for me to keep my mouth shut and he would make everything all right, and then I asked him where was the money he said he was going to give me and Mr. Frank said, "Here, here is two hundred dollars," and he handed me a big roll of greenback money and I didn't count it; I stood there a little while looking at it in my hand, and I told Mr. Frank not to take another dollar for that watch man I owed and he said he wouldn't and the rest is just like I have told it before.

The reason I have not told this before is I thought Mr. Frank would get out and help me out, but it seems that he is not going to get out and I have decided to tell the whole truth about this matter.

While I was looking at the money in my hands, Mr. Frank said: "Let me have that and I will make it all right with you Monday if I live and nothing happens," and he took the money back and I asked him if that was the way he done and he said he would give it back Monday.

(Signed) JAMES CONLEY.

Sworn to and subscribed before me this 29th day of May, 1913.

(Signed) G. C. FEBRUARY,
Notary Public, Fulton County, Ga.

DEFENDANT'S EXHIBIT 40.

Cash book of the National Pencil Company, page 197 of which contains the following entries, in Frank's handwriting:

Page 196			Page 197	
Cash.			Cash.	
1913		Dr.	1913	Cr.
To balance	39.85		By kerosene	.15
4/22 To check	15.00		" type	.75
4/24	15.00		" dray	6.70
			" cases	10.50
			" express	1.10
			" postage	1.00
			" parcel post	.16
			" 2 wks rent typewriter	2.00
			" supplies, Scheegass	.45
			" King Hdw. Co.	.85
			" tinsmith	11.50
			" thread	.05
			" carfare	.10
			" Herbert Wright	4.00
			Omitted from payroll	39.31
			Balance to fund	30.54
				69.85

DEFENDANT'S EXHIBIT 41.

Cash book items made out by Frank to balance cash book.

Kerosene .15	.15
Type .75	.75
Dray 2.00	
1.70	
1.00	
2.00	
6.70	6.70
Cases 2.50	
1.25	
3.50	
1.75	
1.50	
10.50	10.50
Express .35 & .75	1.10
Postage .50 & .50	1.00
Parcel post .03 & .13	.16
Rent typewriter, 2 wks	2.00
Supplies .45-Sch.	.45
King Hdw. Co. .85	.85
Tinsmith 11.50	11.50
Thread .05	.05
Carfare .10	.10
Herbert Wright 4.00	4.00
	39.31
39.85	
30.00	
69.85	
30.31	
30.54	

Cash box \$4.34 short

O K. F. 3/26/13

DEFENDANT'S EXHIBIT 42.

Letter written by Leo M. Frank to Mr. Moses Frank. The letter was not typewritten but was in long hand and folded to a size to fit ordinary size envelope, and was as follows:

Atlanta, Ga., April 26, 1913.

Dear Uncle:

I trust that this finds you and dear Tante well after arriving safely in New York. I hope that you found all the dear ones well in Brooklyn and I await a letter from you telling me how you find things there. Lucile and I are well.

It is too short a time since you left for anything startling to have developed down here. The opera has Atlanta in its grip, but that ends to-day. I've heard a rumor that opera will not be given again in a hurry here.

To-day was "Yondef" here, and the thin gray line of veterans, smaller each year, braved the rather chilly weather to do honor to their fallen comrades.

Enclosed you will find last week's report. The shipments still keep up well, tho' the result is not what one would wish. There is nothing new in the factory, etc., to report. Enclosed please find the price list you desired.

The next letter from me, you should get on board ship. After that I will write to the address you gave me in Frankfurt.

With much love to you both, in which Lucile joins me, I am

Your affectionate nephew,

(Signed) LEO M. FRANK.

DEFENDANT'S EXHIBIT 43.

Weekly report forwarded to Moses Frank by Leo M. Frank, enclosed in Leo M. Frank's letter to Moses Frank, as set forth in exhibit "42," said report being in Frank's handwriting, same being folded to same size as envelope set forth as Exhibit 44.

FINANCIAL.

Week ending April 24, 1913.

Production: Net	2719½	
Good	700	Gr.
Medium	629½	Gr.
Cheap	599	Gr.
Jobs	791	Gr.
		29%

Net Value Prod'n	\$3066.31
Total Expenditures	3175.75
Result—Deficit	109.44

Shipments
\$5438.78
4374 gr.

Orders received
\$3320.31 Value
1904 Gross
O. K. F

DEFENDANT'S EXHIBIT 44.

Envelope in which Leo M. Frank's letter (Exhibit 42) to Moses Frank and weekly report (Exhibit 43) were enclosed, the address on said envelope being in Leo M. Frank's handwriting.

L.M. Frank
c/o NATIONAL PENCIL CO.
ATLANTA, GA.

Atlanta, Ga.
Apr26
8-PM
1913

: Cancelled
: Stamp
:
:
:
:.....:

Mr. M. Frank,
c/o Hotel McAlpin,
Greely Square,
New York, N.Y.

DEFENDANT'S EXHIBIT 45.

Weekly report sent by Leo M. Frank to Oscar Pappenheimer and received by the latter on April 28, 1913, said report being in the handwriting of Frank.

FINANCIAL.

Week ending April 24, 1913.
 Production: Net 2719½ Gr.
 Good 700 Gr.
 Medium 629½ Gr.
 Cheap 599 Gr.
 Jobs 791 Gr.
 29%

Net Value Prod'n \$3066.31
 Total Expenditures 3175.75

Result—Deficit 109.44

Shipments
 \$5438.78
 4374 gr.

Orders received
 \$3320.31 Value
 1904 Gross
 O. K. F

DEFENDANT'S EXHIBIT 46.

Weekly financial reports of the business of the National Pencil Company sent by Leo M. Frank to Oscar Pappenheimer for each week beginning January 18, 1912, and ending with the week ending April 24, 1913, each of said reports being identical in form with the defendant's Exhibit "45" and being in the handwriting of Leo M. Frank.

DEFENDANT'S EXHIBIT 47.

Pay envelope found by detective McWorth. It is an ordinary pay envelope used by the Pencil Company with the number "186" written thereon, with the first initials of a name on it, an "M" and a "P."

DEFENDANT'S EXHIBIT 48.

Club found by detective McWorth at the factory. The club is round, about three feet long and three inches in diameter, weighs approximately three pounds and has several red blotches thereon.

DEFENDANT'S EXHIBIT 49.

Brown suit of clothes worn by Leo M. Frank on April 26, 1913. Consists of coat, pants, and vest. Suit does not appear to be new, but is clean and unspotted.

DEFENDANT'S EXHIBIT 50.

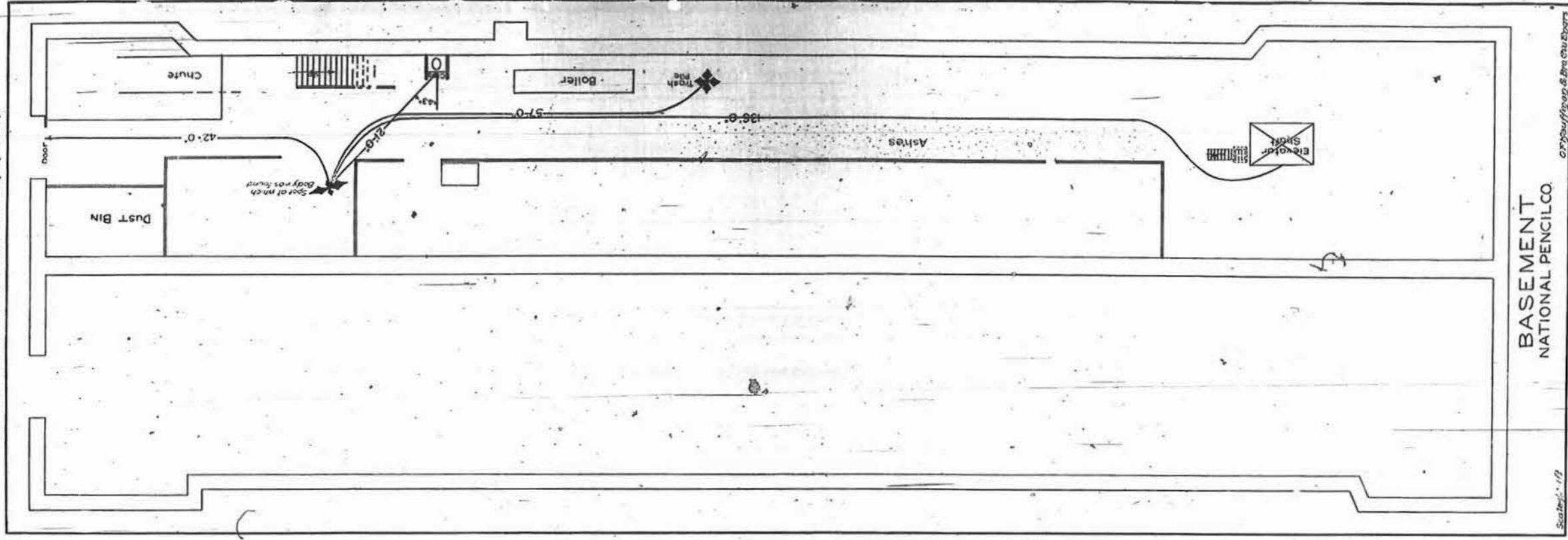
Bank book showing account of Leo M. Frank with Atlanta National Bank. Shows balance on April 1, 1913, of \$111.13, and a deposit of \$15 on April 18. It further shows that the sum of \$109.85 had been drawn out on checks (Defendant's Exhibit 51), leaving a balance to the credit of depositor of \$16.28.

DEFENDANT'S EXHIBIT 51.

Twelve cancelled checks drawn on the Atlanta National Bank, signed by Leo M. Frank as follows:

No.	Date	Amount	Payee	Endorsements
450-4/1/13		\$20.00	Mrs. L. M. Frank	Mrs. L. M. Frank Chamberlain-Johnson-DuBose Co.
451-4/1/13		1.50	Westview Floral Co.	Westview Floral Co.
452-4/1/13		12.34	Haas & Co.	Haas & Co.
453-A-4/9/13		32.50	Rivers Realty Co.	Rivers Realty Co. American Natl. Bank
453-B-4/9/13		8.00	Mrs. E. Selig	Mrs. E. Selig S. S. Echols Co. Travelers Bank & Tr. Co.
454-4/6/13		4.75	S. M. Truitt & Son	S. M. Truitt & Son
455-4/21/13		7.50	Alex Dittler, Sec'y	Alex Dittler, Sec'y Dittler Bros. Fourth Natl. Bank
456-4/2/13		6.26	Guthman Ldry Co.	Guthman Laundry & D. Cl. Co.
457-4/2/13		2.00	Maier & Berkele	Maier & Berkele
458-4/9/13		5.00	Self	Leo M. Frank
459-4/15/13		5.00	Self	Leo M. Frank
460-4/24/13		5.00	Self	Leo M. Frank

DEFENDANT'S EXHIBIT 61.
 Plan of the Basement of the National Pencil Company factory.

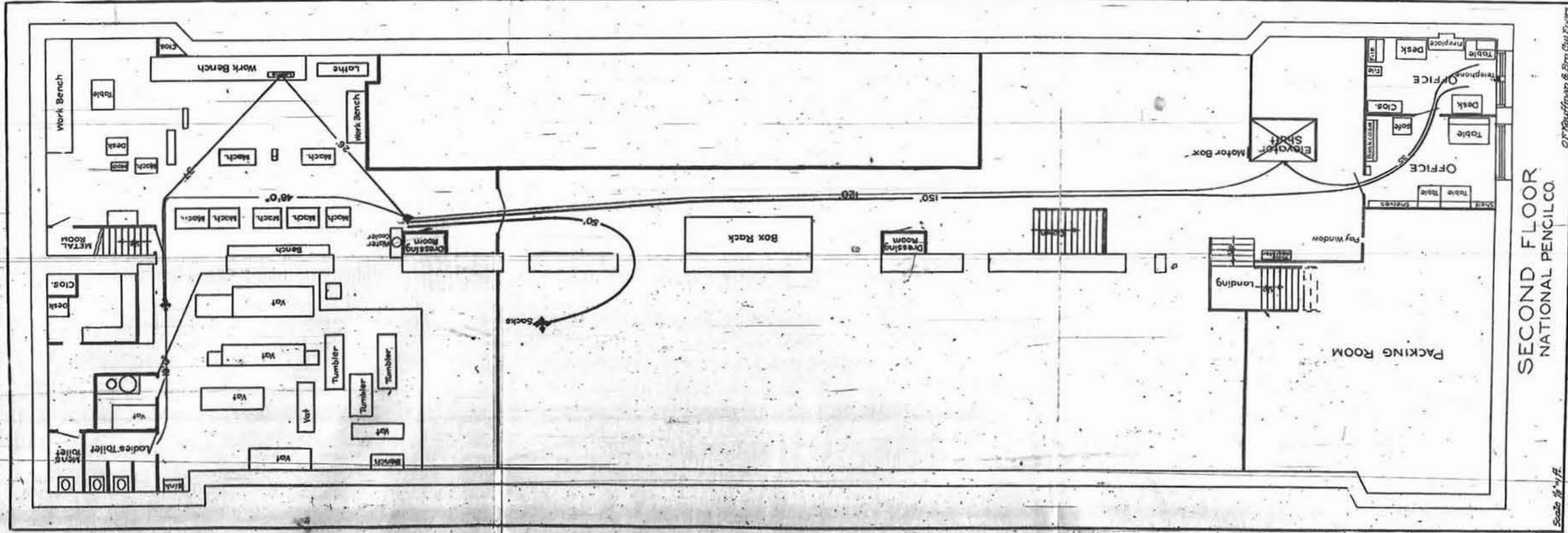


BASEMENT
 NATIONAL PENCIL CO.

Scale: 1/4" = 1'-0"

C. P. Huffner & Bro. Civ. Engrs.

DEFENDANT'S EXHIBIT 61—Continued.
 Plan of the Second Floor of the National Pencil Company factory.



SECOND FLOOR
 NATIONAL PENCIL CO.

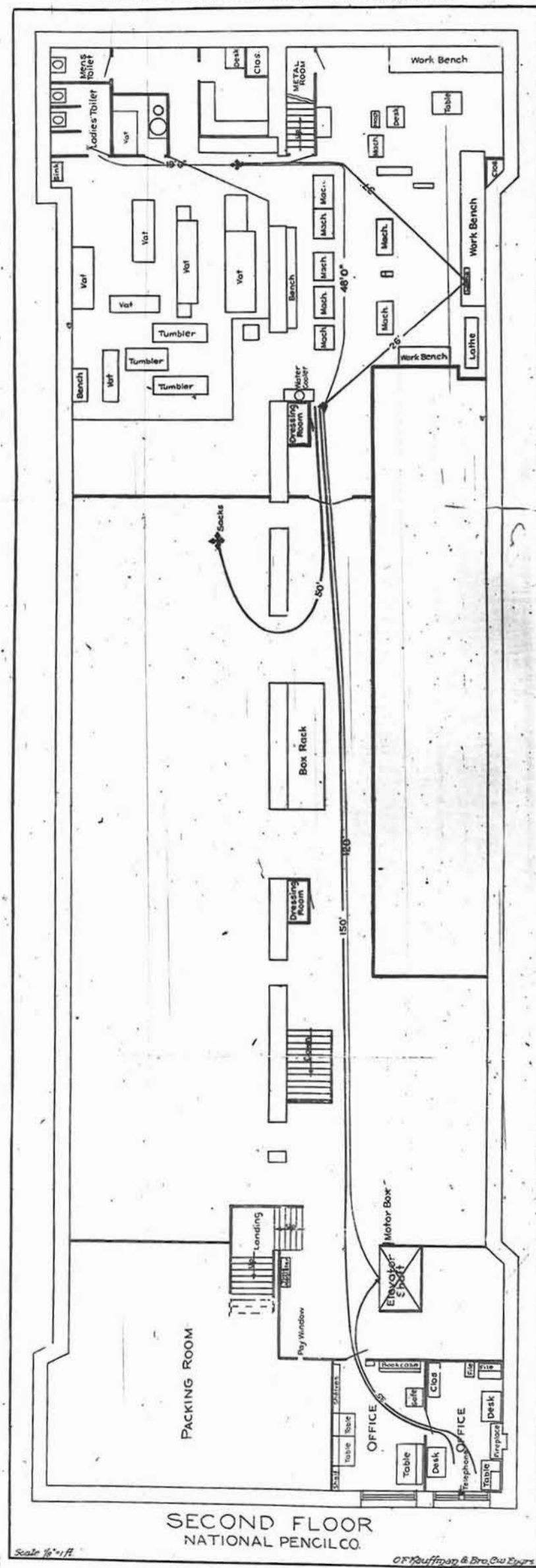
Scale: 1/4" = 1'-0"

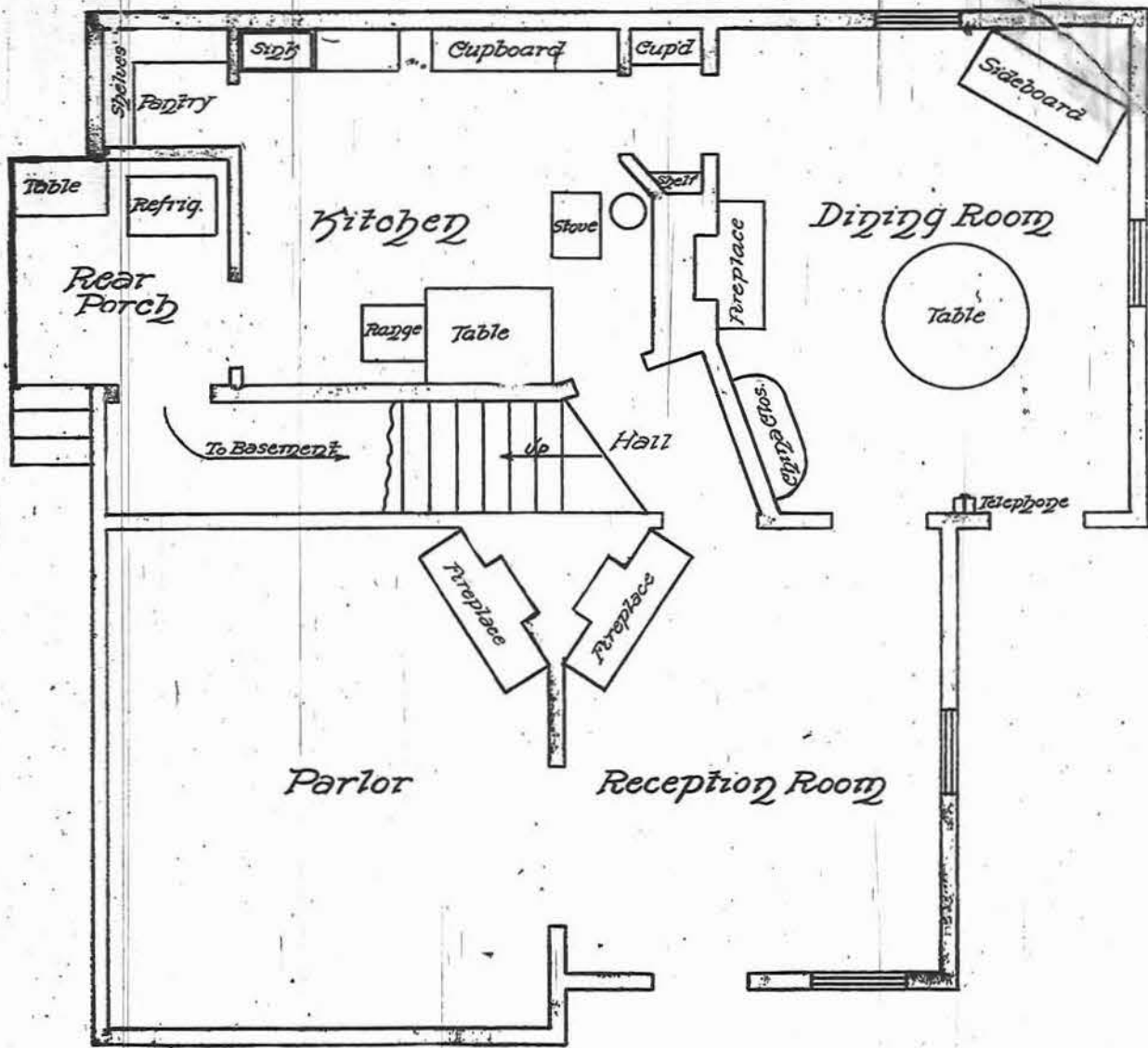
C. P. Huffner & Bro. Civ. Engrs.

DEFENDANT'S EXHIBIT 61—Continued.
 Plat of the First Floor of the National Pencil Company factory.



DEFENDANT'S EXHIBIT 61—Continued.
 Plat of the Second Floor of the National Pencil Company factory.





First floor plan of the Selig residence.

DEFENDANT'S EXHIBIT 52.

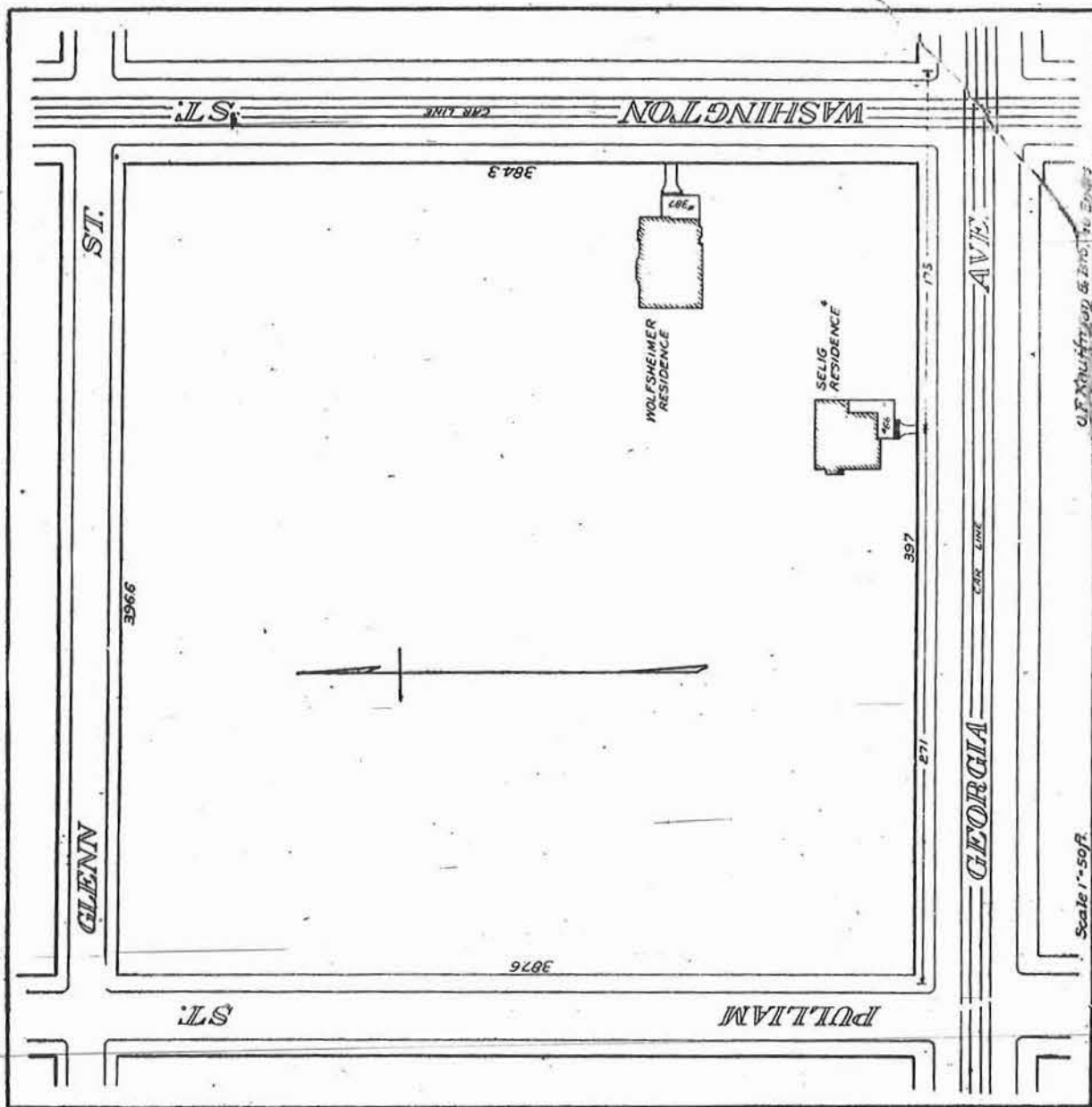
2011355

001360

300-

DEFENDANT'S EXHIBIT 53.

Plat of Washington Street and Georgia Avenue, showing the relative positions with respect to each other of the Selig residence at 68 E. Georgia Avenue and the Wolfsheimer residence at 387 Washington Street.



In Poor Condition

DEFENDANT'S EXHIBIT 62.

Picture of the Selig home taken from the outside of the back door of the kitchen. It shows the entire kitchen and also the door leading into the dining room. It shows nothing else in the dining room.

DEFENDANT'S EXHIBIT 63.

Picture of Selig home taken standing directly inside the back door of kitchen. Shows practically same view as last picture but shows no view at all of the dining room.

DEFENDANT'S EXHIBIT 64.

Picture of the safe with open door standing in outer office of the National Pencil Company.

DEFENDANT'S EXHIBIT 65.

Picture of the outer office of the National Pencil Company factory, showing the safe with the door wide open. Picture shows safe door shutting off any view into the inner office and shows no view of anything in the inner office.

DEFENDANT'S EXHIBIT 66.

Picture taken on the outside of the outer office looking toward the inner office with the safe door open. It shows no view at all into the inner office.

DEFENDANT'S EXHIBIT 67.

Picture showing the pay window in the office of the National Pencil Company factory.

DEFENDANT'S EXHIBIT 68.

Picture showing foot of elevator shaft in the basement of the National Pencil Company factory. Shows rubbish and trash in elevator shaft and barrels adjacent thereto.

DEFENDANT'S EXHIBIT 69.

Picture of basement of National Pencil Co. factory, looking from the elevator shaft to the back door.

DEFENDANT'S EXHIBIT 70.

Picture of the corner in the basement where body was found, around the left corner behind the partition shown on the picture.

DEFENDANT'S EXHIBIT 71.

Picture showing passage way leading to the back door in the basement of the factory. Picture shows boxes piled up on each side of the passage way to the height of the ceiling.

DEFENDANT'S EXHIBIT 72.

Picture showing entrance to the factory from the street. Shows the partition on the right immediately entering the factory, behind which is the elevator. The steps leading to the second floor of the factory are shown in the background.

DEFENDANT'S EXHIBIT 73.

Picture showing elevator shaft and trap door on the ground floor of the factory. Shows steps leading to the second floor on the left of the picture.

DEFENDANT'S EXHIBIT 74.

Picture of metal room, showing place where Conley claims to have found body.

DEFENDANT'S EXHIBIT 75.

Picture showing place where cotton sacks were kept.

DEFENDANT'S EXHIBIT 76.

Picture of the plating room.

DEFENDANT'S EXHIBIT 77.

Picture of the metal room, showing where the floor was chipped up by the detectives in front of dressing room.

DEFENDANT'S EXHIBIT 78.

Picture showing lathe where Barrett claims to have found hair.

DEFENDANT'S EXHIBIT 79.

Picture showing view from third floor looking down steps to second floor. Picture shows man walking on second floor from the metal room toward the elevator.

DEFENDANT'S EXHIBIT 80.

Picture showing elevator box on the office floor.

DEFENDANT'S EXHIBIT 81.

Picture showing elevator wheel at the top of the fourth floor.

DEFENDANT'S EXHIBITS 82, 83, 84.

Pictures showing view of the metal room on the second floor. Pictures show doors of the metal room to be partly made of transparent glass.

DEFENDANT'S EXHIBITS 85 AND 86.

Pictures of the metal room closet with the door open and closed.

DEFENDANT'S EXHIBIT 87.

Blue print from which the model of the factory (Defendant's Exhibit 13) was made.

DEFENDANT'S EXHIBIT 88a, b, c, d, e.

Five jars containing contents of stomach taken from different parties who had eaten cabbage and bread.

DEFENDANT'S EXHIBIT 89.

Extract from the minutes of Walton superior court showing three indictments for larceny from the house against C. B. Dalton, at the April Term, 1894, of said court. Pleas of guilty in each indictment and a fine of \$50 and twelve months in the chain gang sentence in each case. Also indictment of C. B. Dalton, at the February term, 1899, of Walton superior court for stealing bale of cotton. Plea of not guilty, and verdict of jury finding defendant guilty, recommending punishment as for misdemeanor. Fine of \$20.00 and six months in chain gang.

DEFENDANT'S EXHIBIT 90.

Testimony of Newt Lee before the coroner's inquest as follows:

"He (Mr. Gantt) says, 'I would like to have them (shoes) because I got to go to work Monday.' I says 'I can't let you in there unless Mr. Frank says so.' He says, 'Is Mr. Frank there?' I says, 'Yes, if you want me I will go up and ask him.' By that time Mr. Frank comes down and runs right into Mr. Gantt, standing in the front door and he looked like he was frightened. I saw Mr. Frank was frightened, but I taken it this way, he and Mr. Gantt had fell out and he discharged Mr. Gantt and I thought that he thought by him hanging around there that he was waiting for him and had come to do him some harm. Mr. Gantt said 'I got some old shoes up there and I would like to get them.' Mr. Frank looked at him and said, 'What sort were they,' and he said they were tans. I says, 'I think I sees a boy sweep them up in the trash.' He says 'I have some black ones up there, too.' 'Well,' I says, 'I don't know anything about any black shoes.' Then Mr. Gantt says 'I can go up

there and see if I can find them,' then he drops his head and looked right at me. Then Mr. Frank says, 'Newt, you carry him up there, go with him around and stay with him while he is up there,' and so we went in and went on up there and found the shoes like he says and then he asked me for some paper to wrap them up and I gave him some paper, and then I got him some twine. . . .

"I don't know when I ever seen him change that (time slip) before. He's put the tape in once before; it was one night. I never paid no attention to how long it took him. It didn't take him five minutes. I couldn't tell whether it took him a minute or not. On Saturday night, it took him a pretty good little bit, because he spoke about it. He says, 'It's kind of hard to get in.' "

DEFENDANT'S EXHIBIT 91.

Harry Scott's testimony before coroner's inquest as follows:

"He just told me that he had been down at the police barracks Monday morning and he talked to John Black, and 'John Black seemed to suspect me of the crime,' and he then repeated to me his movements on the day of the murder, that is on Saturday he reported at the office, I believe he said, at around eight o'clock in the morning, stayed there up until ten o'clock, then he went to Montag Brothers; Mr. Darley accompanied him down the street a little ways, and he continued on to Montag Bros. by himself, and returned to the factory, I believe, at 10:30; that Arthur White and Harry Denham were employed on the 4th floor of the factory, working during the morning hours, and about 12:10 this little girl, Mary Phagan, came into the office to draw her salary which he gave her (\$1.20). The denominations, which he thought, were two half dollars and two dimes, and that Mary Phagan, left his private office where he paid her off, and went into the bookkeeper's office, and when she got near the door, she returned to him, and said, 'Has the metal come yet?' And Mr. Frank replied, 'No.' Then he stated that Mary Phagan went on out, and it was about 12:50 that he went upstairs to the 4th floor, where Denham and White were working and saw Mrs. White up there talking to her husband. He made the remark that he intended closing and locking the doors, and asked Mrs. White if she would leave, and also asked them up there how near they were through their work. They told him they didn't think they could finish up right soon at that time, and he came on downstairs, and told them he was going to lock the doors when he went out. He stated that he left the factory about 1:10 p. m., went home to his dinner, returned to the factory then about 3 o'clock, and White and Denham were still on the 4th floor. He did not meet anyone going out or coming in. About 3:10 both White and Denham left the building; that Newt Lee reported to him about four o'clock, as he had instructed him to do on the day previous, that it was his intention to go to the ball game that afternoon, and when Newt Lee came there, he told him that it would not be necessary for him to work just at that particular

hour, that he could go out on the street and enjoy himself for a few hours, and return about six o'clock. Frank stayed in the building from four to six and Newt Lee returned at 6 o'clock, went on duty and Frank left the building at about 6:15. On his way out he saw Newt Lee sitting on a packing box outside the door of the factory talking to a man by the name of Gantt. Lee told Frank what Gantt was staying there for, and after considering allowed Gantt to come upstairs for a pair of shoes, that is, go up inside of the factory, but he instructed Newt Lee to stay with Gantt while he was up inside of the factory, until he left, which he said that Lee did. Frank then continued on to his home, and said that he became worried about Gantt's presence in the building, knowing that he had discharged him for some kind of fault. He continued to worry about Gantt's presence in the building and therefore called up Newt Lee on the telephone at 7:30, as he knew it was that time for Lee to punch the clock at that hour, and he would hear the telephone ringing inside of the office while he was there at the clock; although I am not sure. I think he said he made an effort to get Lee at seven o'clock and failed and finally got him at 7:30. When he called Lee on the telephone, he inquired if Gantt had left the building. Lee replied, 'Yes;' Frank then asked him if everything else was all right, to which Lee replied, 'Yes,' and he hung up the receiver and at about 9 that night he retired to go to bed; and I believe now that that's the extent of my interview with Mr. Frank.

"Yes, I am working in the interest of the National Pencil Co. to ferret out who is responsible for the murder. Mr. Black and I requested Mr. Frank that he go into this private room with Lee, and endeavor to get any information that he might be withholding from either of us or the detective department, and told Mr. Frank to impress upon Lee the importance of telling the whole truth in the matter, and do whatever he could to persuade Lee to tell the absolute truth in the matter. Mr. Frank said he understood, and we sent him in to talk to Lee. I have no way of knowing what Frank said; they were both together privately in the room there, and we had no way of knowing except what Lee told us afterwards."

DEFENDANT'S EXHIBIT 92.

Harry Scott's report to the Pinkerton Agency, as follows:

"Mr. Frank stated that on Saturday, April 26th, 1913, the factory of the National Pencil Company was closed down, and that only two of the employees reported for work the entire day, and these men were Harry Denham and J. A. White, who are employed on the 4th floor of the building. Mr. Frank stated that he was in the office up until about 1 p. m., and that at 12:10 p. m., a girl employee of the factory, named Mary Phagan, called at the office of Mr. Frank for her wages, and she received \$1.20, either in one-dollar bill and two dimes, or two half dollars and two dimes. Mr. Frank personally handed this girl her wages, after which the Phagan girl left Mr. Frank's office and walked

towards the door of the office adjoining Mr. Frank's office, which door leads into the factory. Miss Phagan turned to Mr. Frank and asked him if the metal had arrived yet, to which Mr. Frank replied 'No,' and the girl then went on away out of the factory, as far as Mr. Frank knows, as he did not see anything of her during the afternoon. About 12 o'clock, noon, Mrs. J. A. White entered the factory and went to the top floor where her husband, J. A. White was working, and at 12:45 p. m., Mr. Frank went to the 4th floor and in the presence of Mrs. White told Denham and White that he was going to lock the doors, and Mrs. White then left the factory, but White and Denham informed Mr. Frank that they had not finished their work and Mr. Frank then told them to remain until they had gotten through. Mr. Frank left the factory about 1 p. m. Saturday, while White and Denham were still on the top floor. Mr. Frank then went to his home, to his dinner, returning to the factory at 3 p. m., and he saw that White and Denham were about through with their work, and both of them left the factory at about 3:09 p. m. As far as Mr. Frank knows he was the only person left in the factory after that hour. On Friday, Mr. Frank had instructed his negro night watchman, Newt Lee, to report at the factory on Saturday at 4:00 p. m. on account of it being a holiday, and none of the employees working. At 4 p. m. the negro Newt Lee arrived at the factory, reporting for work to Mr. Frank, who told him that it was not necessary for him to go to work at that time, but that he could go out in the street and have a good time until about 6 p. m., and that in the meantime Mr. Frank would stay at the factory. The negro left the factory, returning again at 6 p. m., and at 6:05 p. m. Mr. Frank left the factory for his home and on his way out of the factory by the Forsyth Street door he saw the negro night watchman, Newt Lee, talking to a bookkeeper named John M. Gantt, who had recently been discharged by Mr. Frank. It developed that Gantt was asking the negro watchman, Newt Lee, to allow him to go to the second floor of the factory and secure a pair of shoes that he had left there, as he wanted to go to his home in Marietta, Georgia, and do some plowing and the negro, Newt Lee, then asked Mr. Frank if he would allow Gantt to enter the building. Mr. Frank knowing that he had discharged Gantt for thievery, hesitated about allowing Gantt to enter the building, but finally told the night watchman to let Gantt in, but to stay with him until he secured the shoes, and then see that Gantt left the building without taking anything that belonged to him. About 7:30 p. m. Mr. Frank states he called up the factory, as he knew that Newt Lee, the night watchman, was about to punch the clock at the hour and could hear the telephone bell ringing inside the office, and Newt Lee answered the telephone. Mr. Frank states that he inquired of Lee if Gantt had left the building, to which he replied in the affirmative. Mr. Frank then asked Lee if everything else was all right, to which Lee replied 'Yes.' Mr. Frank states that this was the extent of his telephone conversation with Lee."

DEFENDANT'S EXHIBIT 93.

Testimony of Policeman Anderson before Coroner's inquest, as follows:

"The watchman told me where he was standing. He came out of the closet to fasten or button up his pants, and had his lantern sitting down right in front of him, where he had left it when he went into the closet. While he was standing up there he saw that woman. He saw it from the closet, about twenty-five feet, to where the object was. I could not see that far with the lantern that he had. With the lantern that he had I could see about ten or twelve feet, something like that."

DEFENDANT'S EXHIBIT 94.

Court proceedings under which Jim Conley was released from Fulton County jail upon petition of Solicitor Hugh M. Dorsey:

The State,

vs.

Leo M. Frank.

No.

In Fulton Superior Court, May Term, 1913.

Indictment for Murder.

The petition of Hugh M. Dorsey, Solicitor General of the Atlanta Circuit, including Fulton County, respectfully shows:

1.

James Connally is a material witness for the State in the above stated case.

2.

Petitioner is apprehensive that said Connally may not be forthcoming as a witness at the trial of the above named defendant, unless detained in custody.

3.

Said Connally has been detained since May 1st, 1913, by the police authorities of the City of Atlanta, and is now in the custody of said officers, being detained by them as a witness. Since said Connally was taken into custody by said officers, Leo M. Frank has been indicted upon a charge of murder.

4.

Petitioner represents that the testimony of said Connally may be, and likely will be very material in said cause.

Wherefore, petitioner prays that said James Connally be committed to the jail of Fulton County, Georgia, there to be detained as a witness until said

case above stated shall be terminated, or until said Connally shall be otherwise released by proper order of Court.

This May 29, 1913.

(Signed), Hugh M. Dorsey,
Sol. Gen. Atlanta Circuit.

Georgia, Fulton County.

Comes now Hugh M. Dorsey, who being duly sworn, deposes and says the allegations in the above petition are true so far as they come within his knowledge, and so far as derived from the information of others he believes them to be true.

(Signed), Hugh M. Dorsey.

Attested, May 29, 1913.

John H. Jones, (Signed)

N. P. Fulton Co., Ga.

The above and foregoing petition read and considered.

Let the said James Connally be taken into custody by the Sheriff of said County of Fulton, and be confined in the common jail of said County, until discharged by further order of this court.

Let the said Connally be served with a copy of this order and the petition on which it is based. Bond for the release of said Connally may be assessed in a reasonable sum upon proper application to the Court and after reasonable notice in writing to the Solicitor General of the Circuit. It appearing to me that he does not object to this order, but consents to same.
This May 29, 1913.

(Signed) L. S. Roan,
Judge S. C. Stone Mountain Circuit,
Presiding.

The State,

vs.

Leo M. Frank.

No. 9410

Indictment in Fulton Superior Court.

Murder. May Term, 1913.

It appearing to the Court that James Connally has heretofore been committed to the common jail of Fulton County to be held as a witness in the above stated case, and to be released only on a proper order of Court;

And it further appearing that the ends of justice require that said James Connally be released temporarily to the Chief of Police of the City of Atlanta;

It is therefore ordered that Sheriff C. W. Mangum, of Fulton County, Georgia, deliver the said James Connally to said Chief of Police, James L. Beavers, or his lawful deputy, to be received back into custody at said jail when de-

livered back by said Chief of Police, the attorney for James Connally consenting and not objecting to this order, and being present.
This May 31, 1913.

(Signed), L. S. Roan,
Judge S. C. Stone Mountain Circuit,
Presiding.

This is consented to by me
(Signed) William M. Smith
Attorney for James Connally.

Georgia, Fulton County.

To Hon. L. S. Roan, Judge of the Stone Mountain Circuit,
Presiding in the Superior Court, Criminal Division:—

The petition of Hugh M. Dorsey, Solicitor General of the
Atlanta Circuit, respectfully shows:—

1.

On May 29, 1913, this court, on petition of the above named Solicitor General,—representing that James Connally was a material witness for the State in the case of THE STATE vs. LEO M. FRANK, under indictment for murder, and that said James Connally would probably not be forthcoming to respond to a subpoena in said case,—ordered said James Connally held until further order of court as a witness in the above stated case, and to be confined in the county jail and subsequently upon petitioner's request made at the instance of said Connally and his attorney, said Connally was allowed held by the police authorities of the City of Atlanta.

2.

Petitioner is satisfied that the necessity for holding said James Connally under the orders heretofore granted on the aforesaid petition as a witness in said case no longer exist.

3.

Wherefore, petitioner prays that the orders heretofore granted in said cause be revoked, and that said James Connally be discharged from custody under said orders.

(Signed) Hugh M. Dorsey,
Sol. Gen. Atlanta Circuit.

Georgia, Fulton County.

Read and considered, it is ordered that this petition and order be filed and duly served upon other claimed suspects in connection with the Phagan murder, and confined in common jail of said County, to wit, Leo M. Frank and Newt Lee, both either personally or by serving their attorneys, and any other citizen of said County who may receive this notice by publication or other-

wise, may show cause before me, Friday, the 13th day of June, at 10 o'clock A. M., at my chambers in Thrower Building, Atlanta, Ga. Notice to be served by the sheriff or one of his deputies by leaving copy of this petition and order, at once.

June 11, 1913.

(Signed) L. S. Roan.

Service acknowledged and further service waived. The confinement of said James Connally in the Police station was at my request and at the request of my client James Connally and I agree for said Connally to remain in custody of the police authorities until the trial of Leo M. Frank or until the indictment of said Connally. I agree to his confinement because he is a material witness for the State and I desire his confinement at the police station, because of repeated attempts on the part of visitors at the jail to torture and intimidate said James Connally and to safeguard said James Connally from perjured admissions, supposed to have been made by him. I waive his presence at the time of this trial.

This June 11, 1913.

(Signed) Wm. M. Smith,
Attorney for James Connally.

Georgia, Fulton County.

Comes Newt Lee, by his attorney, Bernard L. Chappell, and in pursuance of an order made by L. S. Roan, Judge of the Superior Court, Criminal Division of said County, on the 11th day of June, 1913, hereby acknowledges service of said order as referred to the said Newt Lee, who is being held in the Fulton County common jail upon the order of Paul Donehoo, coroner of said county as a suspect in the Mary Phagan murder case.

June 12, 1913.

(Signed) Bernard L. Chappell,
Attorney for Newt Lee.

Georgia, Fulton County.

I have this day served L. Z. Rosser, Atty. for Leo M. Frank, personally with a copy of the within order.

This June 12, 1913.

(Signed) T. A. Burdett,
Deputy Sheriff.

Georgia, Fulton County.

State of Georgia,

vs.

Leo M. Frank.

No. Fulton Superior Court.
Criminal Division, Indictment for Murder.

And now comes James Conley, and in answer to the rule nisi issued in the above case, shows to the court as follows:

1. Respondent admits that he is now held in custody under orders of this Court, at the police prison of the City of Atlanta, having been originally held

in the prison of Fulton County, also under order of this Court, the cause of said commitment by this Court of respondent, being the allegation that Respondent is a material witness in the above case, in behalf of the State, and it is desired to insure the presence of Respondent at the trial of the above case.

2. Respondent admits that he is now at the City police prison at his own request and instance, and through the advice and counsel of his attorney.

3. Respondent shows to the court that the City police prison is so arranged and so officered, that Respondent is absolutely safe as to his physical welfare from any attack that might be made upon him; that he is so confined that his cell is a solitary one, there being no one else even located in the cell block with him; that the key to this cell block and the cell of Respondent is always in the possession of a sworn uniformed officer of the law; that under the instructions of Chief of Police Beavers, said sworn officers are not allowed to permit any one to approach this Respondent or come into his cell block, except the attorney of Respondent and such persons as this Respondent may agree to see and talk with; that Respondent so confined is protected from any physical harm and is protected from the possibility of legal harm by others who might seek to damage Respondent by false claims as to statements alleged to be made by Respondent;

4. Respondent nor his counsel have made no request for the release of Respondent or his transfer to any other place of confinement.

5. Respondent is willing to remain indefinitely as a prisoner in solitary confinement, under any reasonable rules this court may direct, subject to any further order or direction of this Court.

6. Respondent admits that he is a material witness in behalf of the State of Georgia in this case, and admits that in the exercise of sound discretion it is proper that Respondent be held until the final trial of this or any other case growing out of the unfortunate death of Miss Mary Phagan, but this Respondent denies that in the exercise of sound judicial discretion, it is necessary for this Court to order Respondent held at any particular prison.

7. Respondent denies that this Court has legal right in the exercise of sound judicial discretion to order this Respondent held as a witness in behalf of the State, when it is shown to this Court, as it is shown beyond peradventure of a doubt, that there is no possibility for this Respondent not to be present and subject to call as a witness in behalf of the State, since he is held in complete and perfect imprisonment, and there being no possible theory that the ends of justice will be thwarted, and all of these facts being without the slightest possible question, there is no reason for any order of this Court, committing Respondent.

8. Respondent is advised and believes that the Counsel for the Defendant in this case has been within the last few days studying the law very thoroughly bearing on the question of holding of this Respondent as a material witness in behalf of the State, at any other place than the County Prison, and also immediately finds move on foot to have Respondent returned to the County prison, and this Respondent is advised by his Counsel that it is the belief of his Counsel that the idea of transfer back to the County Prison has under it, plans laid by persons unfriendly to the interests of this Respondent and friendly to the interests of the Defendant in this case.

9. Respondent denies that the law vests in this Court, the right of committal as a witness in behalf of either side, under the facts and circumstances of this or any other case.

10. Respondent shows that the conditions at the County Jail are such that the interests of justice as far as this Respondent is concerned can not be well safeguarded and the interest of Respondent and the interest of justice are greatly threatened by the return of this Respondent to the County Jail.

11. Respondent shows that through no fault of the County Sheriff, a sufficient inside force of guards has not been provided by the County authorities, only one man being paid by the County to guard twenty cell blocks distributed in twenty wings and over five floors; that it is a physical impossibility for this one man to keep up or even know what is transpiring on five different floors or twenty separate immense wall and steel blocks, distributed through a large building; that with this inadequate force, which this respondent is advised the Sheriff of this County has complained about, it is an absolute impossibility for the best sheriff in the world or the best trained deputies to know exactly what is going on at any and all times or any reasonable part of the time; that the keys to practically all of the cell blocks are carried by "convicted criminals," known as "trusties," who turn in and out parties entering or leaving cell blocks, and while they have general instructions covering their duties, it is an impossibility for the inside deputy to know whether each is discharging his duty properly at all times; that the food is prepared and distributed in the County prison itself and practically by "convicted criminals" whose disregard for law and principle is written upon the criminal records of this State; that owing to this condition men have been known to saw through solid steel bars and cages and escape to freedom; that it would be easy for anyone to reach or harm Respondent or to poison him through his food; that the "trusty turnkeys" who are convicts can easily swear as to admissions against the interest of this Respondent, even though such admissions might not be made; that the friends of the defendant in this case are allowed to pour constantly into the jail at all hours of the day and up to a late hour of the

night, and are in close touch with many of these "trusty turnkeys," and "trusty attaches" of the jail; that while a prisoner at the County Prison before his transfer to the City Prison, a goodly number of people were admitted to the cell block to talk with Respondent, whose presence was not requested or desired; that among these visitors was one whom this Respondent has every reason to believe was working in the interest of the Defendant; that this party presented Respondent with sandwiches which this Respondent did not eat, that this same party also offered to present Respondent with whiskey; that Respondent was threatened with physical harm while in the County prison to the extent of the possibility of taking his life; that he was denounced as a liar, relative to his testimony in this case; and this Respondent is sure without the knowledge or through the neglect of the Sheriff or any of his men, but directly attributable to the construction physically of the county prison and the inadequate force allowed the Sheriff to oversee and care for it; that Respondent is advised and believes that one of the parties friendly to the Defendant is already priming himself to swear that Respondent made certain admissions while he was in the County prison, which this Respondent did not make, and which testimony will be false, but will be given, if given to help the defendant and damage this Respondent.

12. That this Respondent was imprisoned while in the County Prison directly over the cell block in which said Defendant is detained and was lodged among the most desperate criminals, one even being under sentence of death, and willing no doubt to swear or do anything necessary to help or prolong his life, that these desperate criminals, with whom this Respondent was lodged, had this Respondent completely at their mercy and could swear that he admitted things most damaging, and which would be false and untrue and known by them to be false and untrue.

13. That Respondent is advised and believes that the Sheriff of this County has publicly proclaimed that the Defendant looks him in the eye like an innocent man; that the Sheriff has given said Defendant an entire cell block and has isolated him completely except from his friends; that the Sheriff has expressed himself as not desiring that nigger returned to the County Prison, meaning Respondent; that the Sheriff appears to feel that the requests made by Respondent are meant as a reflection upon the Sheriff, but same was not so intended to be construed, nor was same so represented to the Court at the time of the transfer, nor was any such allegation made before the Court, at the time of the passage of the second order transferring Respondent back to the City Prison, nor does Respondent believe that same was in mind of the Court at the time of the passage of the order or influenced the Court; but that the inadequate force allowed the Sheriff and the construction of the Jail rendered this request by Respondent necessary, and same was made to this Court, with no statement of facts, other than it was requested

by Respondent and in the judgment of the representatives of the State there was necessity for the same.

Wherefore this Respondent agrees, to the passage of an order revoking former orders in this case, and waves his presence at the Court, upon a hearing of same.

(Signed) Wm. M. Smith,
Attorney for James Conley.

Georgia, Fulton County.

Personally appeared before me, the undersigned attesting officer, James Conley, who after being duly sworn deposes and swears that the facts set out in the above and foregoing response so far as they come within his own knowledge are true and where derived from the information of others he believes them to be true.

(Signed) James Conley.

Sworn to and subscribed before me
this June 13, 1913.
C. C. Tedder,
Notary Public, Fulton County, Ga.

IN RE:

Application of Hugh M. Dorsey, Solicitor-General to release James Conley from Legal Custody.

In answer to the petition and order in the above stated cause, served upon us, as attorneys for Leo Frank, we herewith answer and show cause as follows:

1. If the intention of the Solicitor General is to discharge this negro from custody because (a) he is in fact not a material witness against Frank or (b) although he is a material witness, his integrity and character are such that he ought to have his liberty and be trusted to obey the subpoena of this court, then, considered as a witness only, he ought to be discharged and indeed he should not have been imprisoned at all. But in such case to enact the farce in the court's presence of releasing the negro and immediately return him to his wet-nurses, at the Police Station, would resemble child's play.

2. But if the Solicitor believes that one of a number of contradictory statements made by this negro may, if properly preserved, be made valuable in the prosecution of Frank, and that the negro may destroy its value if left free to talk, and in order to stop his mouth it is necessary that the detectives should keep him in charge, then we think we have the right to protest against any order of a court of justice that winks at such a purpose.

3. We are constrained to the conclusion that it is not the purpose for any reason to release this negro, but, by obtaining the order here sought, continue the present, illegal confinement.

4. But Frank is himself deeply interested in this proceeding. That the consent of the Solicitor and the will of the negro is all that is required to reverse the will of the law, is erroneous. The State has the right in the interest of justice to put a witness in custody, but where in custody and in whose custody is of the highest importance. The law has given such custody to the Sheriff and wisely so. The Sheriff is not a prosecutor; the jail itself is not usually a place of punishment, but a temporary place of detention. The Sheriff is supposed to stand impartially between the State and his prisoners, and may be trusted neither to cajole, threaten, nor suppress any testimony by third degree methods. The law never meant to place a witness, who, for lack of character, needs confinement under the control of a partisan prosecutor.

5. That the detectives should wish to keep Conley in custody and entertain him at the city's expense, is not at all surprising. They have already extracted from him extravagant, unthinkable confessions, three or four in number. To these statements they have given the widest publicity, and to the credibility of the last one they have staked their reputations and hope of place.

Upon the constancy and stability of this witness, they have staked their all. They would be less than human if they did not bend all their power and ingenuity in holding him to his present statement, adding to and taking therefrom only such things as will aid its credibility.

Can any fair-minded man believe that Lanford is a fair man to be the custodian of this ignorant negro? What chance would he have to retract any lies he may have told, or if in a repentant mood, he should wish to tell the truth? This negro in the city prison, in the power of Lanford, apart from all questions of truth, would be just as dangerous as Lanford would wish him to be. No one knows that better than Lanford, and no one would feel it as acutely as will this negro.

How well Lanford knows it, can be seen from his interview in the Atlanta Georgian of June 12th. In that interview he demonstrated that he thinks he has full, unrestricted ownership of this negro. He graciously expresses his willingness for this negro to go before the Grand Jury upon such terms as he suggests. Neither the negro, nor the negro's lawyer, nor the Grand Jury is considered. Nor was this court to be consulted—his will and not the order of this court was to determine when and under what circumstances the negro should leave the Police Station.

If Lanford vaunts in the face of jury and court, his power over this negro, what must be his bearing when he deals privately with the negro himself?

What chance has he to abstract a lie or add a truth to the foolish statement which Lanford approves and wishes to maintain? If this man will, when he is holding this negro under your Honor's order, declare such ownership over this negro's person and movements, to what length would he go if the court releases its power over him and turns him over to Lanford's unrestricted power?

6. It is just to Frank, as well as in the interest of public justice, that this negro should be detained by unbiased, fair men, whose reputations and positions are not at stake. The law recognizes this right and has put that duty upon the Sheriff. Will there be less fairness and less decency in the county jail than in the police station? When did Lanford become a wiser, fairer, better man than the Sheriff of this County?

7. Apart from this negro's position as a witness, his detention in the custody of the detectives would be a public calamity. Many unbiased people believe this negro is the murderer of little Mary Phagan. The facts of the case, apart from his own confession, point most strongly to him as the guilty man:

(a) On the day of the murder he was drunk and concealed himself in a position where he could readily commit the murder.

(b) On Monday morning he was unduly excited, so much so as to arouse the suspicions of the employees.

(c) When the police were in the building, he was caught hiding in an obscure part of the factory where he had no business.

(d) When questioned about this conduct, he said he would give a large sum to be a white man. When asked why, he said he could then get safely past the police.

(e) He, for a long time persistently denied that he could write and did not admit that he could until longer denial was useless.

(f) He was caught washing a shirt, a thing he had never done before, and when caught, gave a foolish excuse.

(g) He denied all participation in, or knowledge of the crime until he was driven by the charge that he wrote the notes found near the body.

(h) On May 18, he made a signed statement outlining his actions on April 26, making no mention of the murder.

(i) On May 24, he made an affidavit. He said that on April 25th, before the murder on April 26th, he wrote the notes at the request of Frank, for which Frank gave him cigarettes and \$2.50 and added statements about Frank's people in Brooklyn and an inquiry by Frank as to why he should hang.

(j) On the 28th of May, Conley made a long affidavit, full of contradictions and absurdities, beginning it as follows:

"I make this statement, my second statement in regard to the murder of Mary Phagan at the National Pencil Company factory. In my first statement, I made the statement that I went to the pencil factory on Friday, April 25th, and went in Frank's office at five minutes to one, which is a mistake. I make this statement in regard to Friday in order that I might not be accused of knowing anything of this murder, for I thought if I put myself there on Saturday they might accuse me of having a hand in it, and I now make MY SECOND AND LAST STATEMENT regarding the matter freely and voluntarily, after thinking over the situation, and I have made up my mind to tell the whole truth and I make it freely and voluntarily without the promise of any reward or from force or fear of punishment in any way."

(k) After this beginning he sets out with variations the writing of the notes on Saturday instead of on Friday, and in a long rabbling statement his movements at home and on Peters Street on Saturday and on Monday at the factory, most of which is wholly disconnected with the murder.

(l) On May 29th, 1913, although he had already sworn that he made "his true, full and last statement," he made another statement in which he purported to aid Frank in concealing the body of Mary Phagan. This statement is full of contradictions and wholly irreconcilable with itself and with the known facts surrounding the murder.

(m) He closes this remarkable affidavit in the following words: "The reason I have not told this before is that I thought Mr. Frank would get out and help me out, but it seems that he is not going to get out, and I decided to tell the whole truth about the matter."

8. These incoherent, jibbering statements will, it is believed, impress the Grand Jury if the negro Conley's case is submitted to it.

9. The Grand Jury can be trusted to scan these queer statements in the light of all the surrounding facts and circumstances and taken in connection with all the other facts implicating Conley, they proclaim his guilt beyond all reasonable doubt.

10. The detectives, obsessed as they are with the assumption that Conley is a tool and not a murderer, are unfit to keep him in their sole and unlimited power. Under their protecting care, Conley, instead of being left to tell the truth, will at length deceive himself into the belief that instead of being a murderer he is an unfortunate victim.

11. That Conley and his counsel wish it, is the best reason why it should not be done. As long as he sticks to a story pleasing to the detectives, or

builds up that story as additions may be needed, he is assured that the detectives will save him as far as possible from court and Grand Jury, and will, so far as they can, fix upon him no greater crime than that of a misdemeanor.

12. Conley and his counsel are wise. There is for them no other hope than for the detectives to keep Conley and save him from a confession that he committed the crime, giving him immunity, provided he continues to put the guilt on Frank.

Respectfully submitted,
Rosser & Brandon,
Attys. for Leo Frank.

Order granted that said James Conley be discharged as prayed and all orders, as set out in petition cancelled that were signed heretofore by me.
This June 13, 1913.

(Signed) L. S. Roan,
J. S. St. Mt. Ct., Presiding.

The within and foregoing pages are hereby approved as a true, correct and complete brief of the evidence in the case therein (and at the caption thereof), referred to.

Oct. 31, 1913.

(Signed) L. S. ROAN,
J. S. C. St. Mt. Ct.

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STATE OF GEORGIA,
FULTON COUNTY.

BILL OF INDICTMENT.

The Grandjurors selected, chosen and sworn for the County of
Fulton, to wit:

- | | |
|--------------------------|-----------------------|
| 1.- J. H. Beck, Foreman, | |
| 2.- A. D. Adair, Sr., | 13.- A. L. Guthman, |
| 3.- F. P. H. Akers, | 14.- Chas. Heinz, |
| 4.- B. F. Bell, | 15.- H. G. Hubbard, |
| 5.- J. G. Bell, | 16.- R. R. Nash, |
| 6.- Sol Benjamin, | 17.- W. L. Percy, |
| 7.- Wm. E. Besser, | 18.- R. A. Redding, |
| 8.- C. M. Brown, | 19.- R. F. Sams, |
| 9.- C. A. Cowles, | 20.- John D. Wing, |
| 10.- Walker Danson, | 21.- Albert Boylston, |
| 11.- Ge. A. Gershon, | 22.- _____ |
| 12.- S. C. Glass, | 23.- _____ |

In the name and behalf of the citizens of Georgia charge and accuse
Leo M. Frank, of the County and State aforesaid, with the offense of

MURDER,

for that the said Leo M. Frank in the county aforesaid on the 26 th.
day of April, in the year of our Lord Nineteen Hundred and Thirteen,
with force and arms, did unlawfully and with malice aforethought kill
and murder one Mary Phagan by then and there choking her, the said
Mary Phagan, with a cord placed around her neck, contrary to the laws
of said State, the good order, peace and dignity thereof.

Fulton Superior Court, 1913.

Hugh M. Dorsey, Sol. Gen'l.

J. N. Starnes, Prosecutor.

WITNESSES FOR THE STATE.

J. W. Hurt, Dr.

L. S. Dobbs, (Police)

J. H. Starnes, "

R. P. Barrett,

W. W. Rogers,
Harry Scott,
B. B. Haslett,
Grace Hicks,
E. F. Holloway,
N. V. Darley,
H. L. Parry,
J. M. Gannt,
William A. Gheesling.

Copy Bill of Indictment and list of witnesses before
Grandjury, waived before arraignment. Full panel waived.

Rosser and Brandon,
R. R. Arnold,
Herbert Haas,
Deft's Atty
July Term, 1913.

The defendant, Leo M. Frank, waives being formally arraigned
and pleads not guilty.

F. A. Hooper,
E. A. Stephens,
Hugh M. Dorsey, Sol. Gen'l.
Rosser and Brandon,
R. R. Arnold,
Herbert Haas, Deft.'s Attys.

(VERDICT.)

We, the jury, find the defendant guilty.
Date August, 25 th., 1913.
F. E. Winburn, Foreman.

(EXTRAORDINARY MOTION FOR NEW TRIAL

State of Georgia,

Vs.

Leo W. Frank.

() Conviction of Murder, at July
() Term 1913, of Fulton Superior
() Court. Affirmance of judgment by
() Supreme Court; entry of remittur
() at March Term 1914, of Fulton
() Superior Court.

TO THE SUPERIOR COURT OF FULTON COUNTY:

Now comes the defendant, Leo W. Frank, and makes this, his extraordinary motion for new trial, and respectfully shows, as his reason, why this motion was not previously made, that the grounds hereof were not known by this defendant, or any of his counsel, to exist at the time of said trial, or at the time the original motion for new trial was made or heard (with the amendments thereto) and could not, by the exercise of ordinary diligence, have then been discovered, but have been discovered and brought to the attention of this defendant and his attorneys since said original motion for new trial was passed on, and the grounds of said motion are as follows:—reference being here had to the entire record in this case as showing the materiality of the grounds herein set out:

1. Because of the newly discovered evidence obtained by the defendant as to the identity of the alleged hair claimed to have been found by the State's witness, Barrett, at the original trial. Defendant shows that it has come to his knowledge, since the original motion for new trial was denied, and is a fact, that Dr. H. F. Harris, one of the State's expert witnesses, who testified at the trial as to the condition of Mary Phagan's stomach and other matters, at the instance of the Solicitor-General before the trial took the stands of hair which said Barrett claimed to have found in the metal room on the second floor, on Monday following the murder, and examined and compared them with the strands of hair which the said Harris took from the head of Mary Phagan when he performed his autopsy upon her body. The said Harris made a careful microscopic examination of

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the hair so taken from the body of Mary Phagan and the hair so claimed to have been found by the witness Barrett, and, as a result of said microscopic examination, said Harris discovered that the hair bore no resemblance to the hair taken from the body of Mary Phagan, either in color, texture, shape, or other particular. Defendant further shows that it has come to his knowledge since the original motion for new trial was denied, and is a fact, that the said Harris, before the original trial, reported said finding of fact to the Solicitor-General and told the Solicitor-General that the said hair claimed to have been found by said Barrett was not the hair of Mary Phagan. The Solicitor General then told the said Harris that he would let the investigation as to the hair end there, and the said Harris, thereupon, returned to the Solicitor-General some of the strands of hair so claimed to have been found by Barrett. On and during the trial, said Harris was asked what parts of Mary Phagan's body he had examined, and he concealed the fact that he had examined and compared her hair with the hair found in the factory.

This defendant alleges that it is a scientific fact that a careful microscopic examination of human hair is the only positive and certain way of identifying the same as the hair of any particular person, and that an examination by the eye, and especially from memory, is of practically no value.

This defendant shows that the witness Harris offered to permit the brother of the Solicitor-General, Dr. R. T. Dorsey, who was present at the original trial, assisting the Solicitor-General in his examination of expert witnesses, to make an examination of said Hair after Harris reported that it was not Mary Phagan's hair, but that Dr. Dorsey declined to do so.

Defendant further shows that, after the hair was delivered back to the Solicitor General, he claimed to have lost it, and did not produce it at the trial, and neither this defendant, nor any of his counsel, had any opportunity of seeing it or having a microscopic examination made of it to compare it with that taken from Mary Phagan's head, and neither the defendant nor his counsel had any knowledge what soever at the time of the original trial,

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or at the time the motion for new trial was heard, that Harris ^{made} had any such examination or had made any such report, or that the Solicitor General had stated to Harris that he would let the investigation as to the hair end there.

Notwithstanding the foregoing facts, this defendant shows that upon the trial of the case, as appears from the record, reference to which is hereby had, one of the chief facts relied on by the state corroborate the witness James Conley was the alleged finding of said hair by the witness Barrett. The Solicitor General proved by the witness Barrett that, on Monday following the murder, he found several strands of hair on a lathe in the metal room on the second floor, where the negro Conley claims to have found Mary Phagan's body. The Solicitor General proved on the cross examination of the witness Magnolia Kennedy, that the hair alleged to have been found on the lathe resembled the hair of Mary Phagan. The Solicitor General argued that the finding of this hair was one of the circumstances against Frank, that it had been found by Barrett and had been identified by Magnolia Kennedy as the hair of Mary Phagan, and four times in his argument to the jury he alluded to it as a circumstance in the evidence against Frank. The Solicitor General likewise alluded to it in his brief filed with the Supreme Court of Georgia.

Defendant further shows that one of the strong contentions of the state was that Frank had inveigled the little girl into the metal room on the second floor of the factory and there murdered her.

As one of the facts sustaining this theory, the Solicitor contended that the witness Barrett had found on a lathe in the metal room certain hair which he contended was the hair of Mary Phagan. Whether or not the hair was that of Mary Phagan was a matter therefore, of the highest importance and this evidence of Harris, if it had been known, would have concluded the question and shown the hair was not the hair of Mary Phagan.

The defendant here and now offers to show and prove to the court all of the facts herein set forth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the

foregoing facts is material, and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that the said facts were unknown to him and his counsel, having been concealed by the said Harris and the Solicitor-General, and the same have only come to the knowledge of this defendant and his counsel since the motion for new trial was heard and passed upon, and could not have been sooner discovered by the exercise of proper diligence.

2. The defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Jimmie Mayfield, which has come to the knowledge of this defendant, and of his counsel, since the original motion for new trial was denied and which is as follows, that she was an employee of the National Pencil Company and was acquainted with Mary Phagan, and knew the color of her hair, that she knew States witness R. P. Barrett, who had testified at the original trial that he had found hair on a lathe on the second floor, and that on Monday, April 28th, the said Barrett showed her the hair which he claimed he had found on said machine, and she, the said Jimmie Mayfield now states positively that the hair showed to her by the said Barrett, and which the said Barrett stated he had found on said machine, was not the hair of Mary Phagan, and that the same was entirely too light in color, and was not of the same texture as that of Mary Phagan.

Defendant further shows that one of the main facts relied upon by the State to corroborate the witness, James Conley, was the alleged finding of Mary Phagan's hair on said lathe-machine by the witness Barrett. The Solicitor-General proved by the witness Barrett that, on the Monday following the ^umurder, he found several strands of hair on a lathe in the metal room, where the negro Conley claims to have picked up Mary Phagan's body. The Solicitor-General proved on his cross examination of the witness Magnolia Kennedy, that the hair found on the lathe resembled the hair of Mary Phagan. The Solicitor General claimed in his argument that the finding of this hair was one of the circumstances against Frank; that it had been found by Barrett and identified by Magnolia Kennedy and four times in his argument to the jury he alluded to it as a circumstance against Frank.

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The Solicitor General likewise alluded to the finding of this hair in his brief before the Supreme Court of Georgia.

The defendant further shows that it was one of the strong contentions of the state that Mary Phagan had been inveigled by Frank into the metal room on the second floor of the factory and he had there murdered her. The negro Conley in his testimony stated that he found Mary Phagan in the metal room, dead, and that Frank engaged him to conceal her in the basement of the factory. The witness Barrett testified that he found certain hair upon a lathe in the metal room, which the state contended was the hair of Mary Phagan. This newly discovered testimony of Miss Jimmie Wayfield shows that the hair found by Barrett was not the hair of Mary Phagan.

The defendant here and now offers to show and prove to the court all of the facts herein set forth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and that it was impossible to have ascertained same by the exercise of proper diligence, the said Jimmie Wayfield not being a witness on said trial, and the fact that she was in possession of the state of facts herein set forth being unknown to the defendant and his counsel until after the motion for new trial had been heard and passed upon.

3. Defendant further shows that he should be granted a new trial because of the newly discovered evidence of Mrs. Cora Falta which has come to the knowledge of this defendant and of his counsel, since the original motion for new trial was heard and passed on, and which is as follows:

that she was an employe of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her hair; that she also knew R. P. Barrett and Magnolia Kennedy; also employes of the National Pencil Company the said Barrett, ^{having} testified at the original trial that he had found certain hair on a lathe on the second floor, and the said Magnolia Kennedy having testified that the said hair, alleged to have been found on said

lathe looked like Mary Phagan's hair, that on Monday April 28th Magnolia called Cora Falta's attention to said hair which was alleged to have been found by Barrett on the lathe, and the said Cora Falta states positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan's.

Defendant further shows that one of the main facts relied on by the state to corroborate the witness James Conley, was the alleged finding of Mary Phagan's hair on said lathe machine by the witness Barrett. The Solicitor General proved by the witness Barrett that, on the Monday following the murder, he found several strands of hair on a lathe in the metal room, where the negro Conley claims to have picked up Mary Phagan's body. The Solicitor General proved, on his cross examination of the witness Magnolia Kennedy, that the hair found on the lathe resembled the hair of Mary Phagan. The Solicitor General claimed in his argument that the finding of this hair was one of the circumstances against Frank that it had been found by Barrett and identified by Magnolia Kennedy and four times in his argument to the jury he alluded to it as a circumstance against Frank. The Solicitor General likewise alluded to the finding of this hair in his brief before the Supreme Court of Georgia.

Defendant further shows that it was one of the strong contentions of the State that Mary Phagan had been inveigled by Frank into the metal room on the second floor of the factory and he had there murdered her. The negro Conley in his testimony stated that he found Mary Phagan in the metal room, dead, and that Frank engaged him to conceal her in the basement of the factory. The witness Barrett testified that he found certain hair upon a lathe in the metal room, which the state contended was the hair of Mary Phagan. This newly discovered testimony of Cora Falta shows that the hair found by Barrett was not the hair of Mary Phagan.

Defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth, and asks the court to investigate them in this extraordinary motion.

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The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence—the said Cora Falta not being a witness on said trial, and the fact that she was in possession of these state of facts herein set forth being unknown to the defendant and his counsel until after the motion for a new trial had been heard and passed upon.

4. Defendant further shows that he should be granted a new trial because of the newly discovered evidence of Alice Marjory McGord, which has come to the knowledge of this defendant, and of his counsel, since the original motion for new trial was heard and passed on, and which is as follows: That she was an employe of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her hair; that on Monday April 28th, 1913, her attention was called to some hair that was alleged to have been found on a lathe by R. P. Barrett; and the said Alice Marjory McGord states positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan.

Defendant further shows that one of the main facts relied on by the state to corroborate the witness James Conley, was the alleged finding of Mary Phagan's hair on said lathe machine by the witness Barrett. The Solicitor General proved by the witness Barrett that, on the Monday following the murder, he found several strands of hair on a lathe in the metal room, where the negro Conley claims to have picked up Mary Phagan's body. The Solicitor General proved, on his cross examination of the witness Magnolia Kennedy, that the hair found on the lathe resembled the hair of Mary Phagan. The Solicitor General claimed in his argument, that the finding of this hair was one of the circumstances against Frank; that it had been found by Barrett and identified by Magnolia Kennedy, and four times in his

argument to the jury he alluded to it as a circumstance against Frank. The Solicitor General likewise alluded to the finding of this hair in his brief before the Supreme Court of Georgia.

Defendant further shows that it was one of the strong contentions of the state that Mary Phagan had been inveigled by Frank into the metal room on the second floor of the factory and he had there murdered her. The negro Conley in his testimony stated that he found Mary Phagan in the metal room, dead, and that Frank engaged him to conceal her in the basement of the factory. The witness Barrett testified that he found certain hair upon a lathe in the metal room, which the state contended was the hair of Mary Phagan. This newly discovered testimony of Alice Marjory McCord shows that the hair found by Barrett was not the hair of Mary Phagan.

The defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discover of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained them by the exercise of proper diligence, and the same were not brought to the attention of the defendant and his counsel until after the motion for new trial had been passed on.

5. Defendant further shows that he should be granted a new trial because of the newly discovered evidence of One Albert McKnight, which has come to the knowledge of this defendant and of his counsel since the original motion for new trial was denied which is as follows: that Albert McKnight was a witness for the State on the original trial of this case against the defendant, and that the testimony given by him at said trial had been prepared for him by one R. L. Craven, a white man employed by Beck and Gregg Hardware Company, who were the employers of said Albert McKnight; that the story prepared by said Craven and testified to by said Albert McKnight is not true; that the said story was prepared and written for said Albert McKnight by said

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Craven and witnessed by E. H. Pickett and Augus Morrison, Jr., both of whom are white men also in the employ of the Beck & Gregg Hardware Company and these witnesses told McKnight that he would be obliged to stick to the story prepared for him by Craven, as they had witnesses same, and that, in the event he undertook to deny said story, they would send him to the chain gang, and explained to him that the word of three white men would be taken in preference to that of any negro; that the said McKnight states that the story prepared for him by said Craven is not the truth and that the evidence given at the said trial is not the truth; that Craven told McKnight to say that McKnight's wife, Minola McKnight had stated to him that, when defendant came home on April 26th, that he was drunk, and that the said Minola McKnight had seen the defendant with a pistol in his hand and heard him threaten to shoot himself, and that, while drunk that night, the defendant had made his wife sleep on the floor; that these stories were invented by the said Craven, who told him to swear to these facts in order to support the evidence of his wife, Minola McKnight, who had made an affidavit to the same alleged facts.

Defendant further shows that the said Albert McKnight now states that it is true that on April 26th, 1913, he called at the Selig home to see his wife Minola but that he reached said Selig home a little before twelve o'clock, noon, and that he left there when he heard the twelve thrity o'clock whistle blow; that, when he reached the Selig home that day, his wife Minola, was preparing the noon time meal, and that the said Albert McKnight did not see the defendant at all on said date, at any time or place, and that his evidence at the trial of the defendant to the effect that he had seen the defendant was the result of the plan perfected by the said Craven to collect the reward offered for the arrest and conviction of the murderer of Mary Phagan, a part of which reward was promised to the said Albert McKnight by the said Craven as a reward for the false testimony Albert McKnight was to give at the trial; that the said Albert McKnight told Craven that he did not want to tell any lies on defendant, but Craven would tell him that, in

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order to collect the reward, it was necessary for him to go right ahead and do what he (Craven) told him to do, and the said Albert McKnight admits that he was weak enough to follow said Craven's instructions and do what he was told ^{by} him .

Defendant further shows that, on the trial, the defendant claimed an alibi and, as a part of his claim, introduced evidence showing that he left the pencil factory about one o'clock on April 26th, took a street car to his home, where he arrived about one twenty (1:20) took dinner with his family and left home for the factory at about 3 o'clock; that the state relied strongly on the testimony of the said Albert McKnight to break down the defendant's alleged claim of alibi, and that the said McKnight testified at the trial that between one and two o'clock on April 26th, he was at the home of the defendant and that the defendant came in close to one thirty o'clock; that the defendant did not eat any dinner, stayed at home about 5 or 10 minutes and then went out and caught a car.

Defendant further shows that the evidence of Albert McKnight at the trial was also strongly relied on by the Solicitor General as corroborative of the affidavit of Winola McKnight introduced by the state, said affidavit being known as "state's exhibit "J" reference to which is here made, as is fully set forth herein.

Defendant further shows that the state introduced in evidence an affidavit of Winola McKnight, obtained after her arrest and incarceration in the jail of Fulton County, as follows to-wit:

"Sunday Miss Lucile said to Mrs Selig that Frank did not rest so good Saturday night, she said he was drunk and would not let her sleep with him and she said she slept on the floor, on the rug by the bed, because Mr. Frank was drinking. Miss Lucile said Sunday that Mr. Frank told her Saturday night that he was in trouble and that he did not know the reason why he would murder. He told his wife to get his pistol and let him kill himself. I heard Miss Lucile say that to Mrs. Selig and it got away with Mrs. Selig mighty bad. She did not know what to think.

I have not heard Miss Lucile say whether she believed it or not I don't know why Mrs. Frank did not come to see her husband but it was a pretty good while before she would go to see him--maybe two weeks. She would tell me wasn't it might bad he was locked up. She would say 'Minola, I don't know what I'm going to do.'

The defendant shows that this affidavit of Minola McKnight was denied by her upon the stand during the trial and the evidence of her husband Albert McKnight was claimed by the Solicitor to support this affidavit of Minola McKnight.

The newly discovered evidence of the said McKnight denying that his wife told him any such thing as is alleged in the excerpt from the above affidavit is material to this defendant's case and ought to produce a different result upon another trial.

The defendant here and now offers to show and prove to the court all the facts herein set forth, and swears to the existence of these facts as the truth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence and the same are not brought to the attention of the defendant and his counsel, until after the

motion for new trial

had been heard and passon on.

6. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Mrs. J. B. Simmons, which has come to the knowledge of this defendant and of his counsel since the original motion for new trial was heard and passed on, and which is as follows; that the said Mrs Simmons was, on the 26th day of April, 1913, in the City of Atlanta, and was calling at the Atlanta Shoe Company's place of business at No. 25 W. Alabama street at about two twenty (2:20) or two thirty (2:30) o'clock P. M., that, shortly thereafter, she left the Atlanta Shoe Company's place of business, going north on Alabama

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street, and that, when she got in front of the National Pencil Company's factory on Forsyth Street, she heard a girl or woman screaming and crying, saying "please don't", and then she heard the voice shut off suddenly, making a noise or sound much like one holding their hand over the mouth of another person; that, when she heard the cry, she stopped and listened, and says the sound of voice in distress apparently came from the basement of the National Pencil Company's building; that she knows that the sound came from the basement of the pencil company building because there is a grating in front of the building, which is open; the doors of the building facing the street, being all closed, and she noticed an open place beneath the grating which lead into the basement of the building, that, at the time she heard the screaming of the girl or woman, she thought perhaps some man was whipping his wife and, after waiting a short time and hearing no further similar sounds, she decided to go to her home, where she related the circumstances described to her-son-in-law. A. B. Williams and Mrs. Elizabeth Cohen; that she thought no more of the incident or occurrence until the following morning, when the said Williams came into her room and told her that Mary Phagan had been murdered in the National Pencil Company's factory; that her said son-in-law, Williams, then and there insisted that she go before the Solicitor General and give him the benefit of the information she had outlined to him; that, on or about May 5th she was subpoenaed to appear before the Solicitor General; that she answered the subpoena and made and signed a sworn statement in the Solicitor's office, said statement being taken down by Mr. Hugh W. Dorsey, in his own hand writing and which set forth the same facts as hereinbefore related, that the Solicitor-General tried very hard to induce her to swear that the screaming that she heard was at a much later time in the day, and he called her attention to the fact that Frank was not in the factory at the time she heard the screams; and she told the Solicitor General that she would not testify to anything but the truth, even though her testimony did not suit the Solicitor General; that she left her address with the Solicitor and fully expected that she would be subpoenaed to

testify at the trial of Leo W. Frank, but that she never was subpoenaed, the reason whereof she does not understand.

Defendant further shows that it has come to the knowledge of this defendant since the motion for new trial was denied that, on April 26th, 1913, between two thirty (2:30) and three (3) o'clock, P. M., on Whitehall street that the fact that said Solicitor General Dorsey had seen said Frank at about the time just stated, is the reason that he attempted to discredit the statement made to him by Mrs. J. B. Simmons as outlined above.

Defendant further shows that the theory of the State was, and evidence was introduced at the trial for that purpose, that Mary Phagan was killed by Leo W. Frank on the second floor of the Pegcol Company factory between twelve five (12:05) and twelve twenty (12:20) o'clock on April 26th, 1913, and the State's entire case, as presented to the jury, revolved around that theory. The Solicitor General proved by the witness Conley that said Conley assisted Leo W. Frank to move the dead body of Mary Phagan between the hour of four minutes to one and one-thirty (12:56 to 1:30) o'clock from the second floor to the basement the said Mary Phagan being dead already when the said Conley picked her up on the second floor. This evidence of Mrs. Simmons shows the mistake of the State's theory and tends to show that Mary Phagan was in life as late as two-thirty (2:30) P.M. at a time when Frank was away from the factory.

The defendant here and now offers to show and prove to the Court all of the facts herein set forth, as swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the said Mrs. J. B. Simmons not being a witness on said trial, and the fact that she was in possession of the state of facts herein set forth being

unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

7. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Mrs. Ethel Harris Miller and Maier Lefkoff, which has come to the knowledge of the defendant and of his counsel since the original motion for new trial was heard and passed on, and which is as follows: that the said Mrs. Miller is acquainted with the defendant, but the said Lefkoff is not acquainted with him; that, on April 26th, 1913, the said Mrs. Miller, together with Maier Lefkoff, met Mrs. Miller's sister Florence Harris, who works at the department store of J. P. Allen, in front of the said store, which is in the middle of the block of Whitehall street and Alabama Sts., in the City of Atlanta, Ga., at about one o'clock on that day; that they thereupon walked down Whitehall street until they reached the corner of Alabama Street and turned u/ Alabama Street and walked to the corner of Forsyth and Alabama streets, where they caught the Magnolia Street car for their home; that, when they reached the corner of Alabama and Whitehall streets, the said Mrs. Miller saw, standing at the corner, Leo W. Frank, and spoke to him, and the said defendant bowed and spoke to Mrs. Miller, tipping his hat; that it was between one and one ten (1:00 and 1:10) o'clock when the said Mrs. Miller saw defendant at the corner of Whitehall and Alabama streets; that the said Florence Harris and Maier Lefkoff were with Mrs. Miller at the time she saw the defendant standing at the corner of Whitehall and Alabama Streets.

Defendant further shows that the theory of the State was, and evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo W. Frank at the factory of the National Pencil Company between 12:05 and 12:30 on April 26th, 1913, and that between 12:56 and 1:30 o'clock P. M. of that day, the defendant assisted by James Conley moved the dead body of Mary Phagan from the second floor of the factory down to the basement. The Solicitor General proved by the witness James Conley that Leo W. Frank was in the factory of the National Pencil Company the entire time between 12:56 and

1:30 o'clock, on that day, assisting the said Conley to move the body from the second floor to the basement.

The defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

Defendant further submits that the discovery of the foregoing facts is material, and that it is such an extraordinary state of facts as would probably produce a different result on another trial; that said facts were unknown to defendant and his counsel and that it was impossible to have ascertained the same by the exercise of proper diligence, the said Mrs. Ethel Harris Miller and Maier Lefkoff not being witnesses on said trial, and the fact that they were in possession of the facts hereinbefore set forth was unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

8. Defendant further shows he should be granted a new trial upon the newly discovered evidence of Miss Dewey Hewell, which has just come to the knowledge of this defendant and of his counsel, since the original motion for new trial was heard and passed on, and which is as follows; that the said Dewey Hewell was an employee of the National Pencil Company; that she worked for said company for only a few days, and that during the time of her employment there she never met Leo M. Frank to know who he was, and never in her life did she meet Mary Phagan, nor did she ever see Mary Phagan, and that she has never seen the defendant and the said Mary Phagan together; that, at the time of the original trial of the defendant, she was a resident of the home of the Good Shepherd, at Cincinnati, Ohio, and that a Mrs. Bonifield, the police matron, representing the City Police Department of Atlanta, Georgia, came to Cincinnati, and returned her to Atlanta, where she was used as a witness in the above named case, after which she was again returned to the Home of the Good Shepherd at Cincinnati, that, during her confinement in a large room adjoining the office of Solicitor General Dorsey, the said Dewey Hewell met some twelve or fifteen other girls, who, like herself, were to be witnesses against the defendant, among

whom was a girl named Maggie Griffin, who was very enthusiastic about going on the stand herself and testifying against the defendant; that the said Maggie Griffin, coached Dewey Hewell and told her how to testify and what to say when Dewey Hewell went on the stand; that, before she went on the stand to testify, Solicitor General Dorsey came into the room where the said girls were confined and gave them all a lecture and told them that, when they went on the stand, to go right ahead and tell everything they knew and answer his questions right off sharp and quick; that, while the girls before mentioned were crowded in the said room, there was a great deal of talk and gossip going on among them, and many of them said they were afraid to go on the stand and testify to an untruth, and that they were also afraid to go into the court room and testify at all; that the said Maggie Griffin stated several times how she was going to tell everything that the Solicitor wanted to know when she went on the stand, and that, when the said Dewey Hewell made the statement that she was afraid to go on the stand and that she knew nothing about the defendant and knew nothing about Mary Phagan, the said Maggie Griffin volunteered, with enthusiasm, to tell Dewey Hewell what she should say, and the said Maggie Griffin thereupon rehearsed Dewey Hewell many times in regard to the testimony she should give, and Maggie Griffin told Dewey Hewell that she must say that she was acquainted with the defendant, and that she knew his character to be very bad, and that she had seen defendant whispering with Mary Phagan, with his face very close to her, and, further, that she had seen defendant place his hand upon the person of said Mary Phagan; that Dewey Hewell, thereupon told Maggie Griffin that it would be impossible for her to testify to all that the said Maggie Griffin had instructed her to say, and Maggie Griffin said: "We will go over it again so that you wont forget it" and repeated it several times; that the said Dewey Hewell did not even know where Mary Phagan worked in the factory, but that she was made to say that she knew her by the said Maggie Griffin; and whatever Dewey Hewell testified to regarding either the defendant or Mary Phagan was the result of coaching given to her by the said Maggie Griffin, that, during the time of Dewey Hewell's employment at the National

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Pencil Factory, she never heard any employee, male or female, say that defendant was a man of bad character, and had never seen any wrong doing on his part.

Defendant shows that at the trial, the Solicitor General put several witnesses on the stand to testify to the bad character of the defendant, and further that the defendant knew Mary Phagan. The Solicitor General proved by the said Dewey Hewell that she had worked at the pencil factory four months and had seen the defendant talk to Mary Phagan two or three times a day in the metal department and had seen him hold his hand on her shoulder, and that he called her "Mary" and would stand pretty close to her, Frank had stated before the trial (such statement being in evidence), and again on the trial, that he did not know Mary Phagan by name. This little girl, Dewey Hewell was trained, as she now swears, to say that Frank must have known Mary's name, since he called her "Mary", and was further trained falsely to say that she saw Frank with his hands on Mary Phagan. Dewey Hewell's testimony was very hurtful to Frank and must have influenced the jury in their finding especially for the reason that the state insisted that Frank was seeking to be familiar with Mary Phagan and killed her because she resisted said familiarity.

Defendant here and now offers to show and prove to the Court all the facts herein set forth, and swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the fact that said Dewey Hewell was in possession of the facts hereinbefore set forth was unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

9. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Ruth Robertson

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which had come to the knowledge of this defendant and of his counsel since the original motion for new trial was heard and passed, and which is as follows; That the said Ruth Robinson^{ation} was a witness for the State on the original trial, and that on the morning of the day she testified detective Bass Rosser came to her ~~home~~^{house}, and conducted her to Solicitor General Dorsey, which was her first meeting with him; that the meeting took place in a room opposite the place where the trial occurred; that after being introduced to the Solicitor General by detective Bass Rosser, the Solicitor greeted the said Ruth Robinson effusively, and said he was glad she had come down to see him, and was sure she would make a good witness, and would help him out in the Frank case; that the Solicitor talked to her and questioned her in the room for about an hour and a half; that in the beginning of the conversation, the Solicitor asked her to go ahead and tell him all she knew about the defendant and Vary Phagan; that she told him that she knew nothing against or about the defendant, except that she worked for him; and so far as she knew he was a gentleman in every respect; that thereupon the Solicitor insisted that as she had worked at the factory for a considerable time that she must know something against the character of the defendant, and asserted that he was a very bad man; that she repeated that she knew absolutely nothing against or about the defendant's character, but the Solicitor insisted that she did, and persisted in the statement that the defendant was a bad character; that the Solicitor asked her if she had ever been in the defendant's office whereupon she replied she had upon several occasions been thereupon business errands connected with the work performed in the factory; that the Solicitor then asserted that the said Ruth Robinson had been in defendant's office with him alone to keep dates for purposes other than business, to which she replied that it was not true; that the Solicitor finally openly insulted the said Ruth Robinson by affirming that she had had sexual intercourse with defendant in his office, or some room or place in the factory which defendant kept for the purpose of meeting girls and that he insisted that she knew the location of such room, and that she knew of other girls having been to this room

with defendant, that said Ruth Robinson was shocked by the broad insinuation and affirmative statement of the Solicitor General, and she told him that all such statements and allusions were lies and that she had never heard of any such thing ever occurring in the factory or elsewhere, in which defendant and any girl employe of the factory were parties to, and that she had never heard such insulting language by direct speech and innuendo by any of the commonest laborers in and about the National Pencil Factory as was used to her by the Solicitor General when in his private room, that he, being the Solicitor General, and she, being in his office, believed at the time that he possessed some sort of right to accuse and insult her and under this belief that she was obliged to take his insults and listen to his scandalous statements by direct speech and innuendo without openly resenting them further than to deny every single one of them; that the said Ruth Robertson wishes to refer to her evidence as given on the stand at the trial of defendant, as to her answers to questions of the Solicitor wherein she was made to say that she had heard defendant call Mary Phagan by her first name, "Mary"; that upon reflection, she wishes to explain that her answer as above repeated was due entirely to her nervousness because of the badgering that she had been subjected to by the Solicitor, and that as a matter of fact she could not recall one single incident wherein she had ever heard defendant address Mary Phagan by any name, that she could not recall now under calm deliberation that she had ever heard defendant address Mary Phagan by any name as she had never seen him speak with her at any time or place except when instructing her to perform her work better and more rapidly while at her work in the factory; that the said Ruth Robinson ^{referring} back to her first call on the Solicitor, and where he had questioned and talked to her about an hour and a half, at the conclusion of which she was directed to another large room, adjoining where the Solicitor had talked to her. in which there were 12 or 15 other girls and women, all witnesses in the Frank case, and called by the Solicitor according to her understanding, that among these girls she remembers one Carrie Smith, Myrtle Cato, Maggie Griffin and Dewy Howell, that she remained there

until about 12 o'clock when she went to the courthouse and took the witness stand, that before the Solicitor went over to the courthouse he came into the room where the girls above described and she herself were and gave them a lecture and told them all that when they went on the stand to go right ahead and tell everything that they knew and answer his questions right off sharp; that after the lecture the said Ruth Robertson didn't see the Solicitor General again until she went on the witness stand in the court room; that while remaining in the room with the 12 or 15 girls, before she was called to go to the courthouse, the said Ruth Robertson states that there was a great deal of talk and gossip among the girls there, some of whom said they knew nothing against the defendant and that they were timid and were afraid that they would be scared when they went into court; that Maggie Griffin, however, appeared to welcome and relish the idea of going on the witness stand and told several times she was going to tell everything the Solicitor wanted to know when she went on the stand, that the said Dewy Hewell said she did not know anything about the defendant or Mary Phagan; or anything concerning the case and that the said Maggie Griffin volunteered with enthusiasm to tell the said Dewy Hewell what to say and did tell her and rehearsed to her at one side of the room; that the said Ruth Robertson heard Maggie Griffin tell Dewy Hewell that she must say that she knew defendant and knew that he was of bad character, and that she knew Mary Phagan and to tell everything bad she could think of about defendant, and to say that she had seen defendant with his hands on Mary Phagan, and that she had seen him whisper to her and talk to her with his face close to hers; that Maggie Griffin and Dewy Hewell left the large room described two or three times together, and returned together, and the said Ruth Robertson heard Dewy Hewell say repeatedly that she was afraid she would forget all Maggie had told her to say when she went into the courthouse, and Maggie said "We will go over it again, so you won't forget it"; that this was repeated several times, that the said Ruth Robertson recalls hearing Dewy Hewell say pointedly that she did not know where Mary Phagan worked

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and that she did not know here by name, but she was rehearsed to know her by Maggie Griffin in that room, and to say whatever she did say on the witness stand; that the said Ruth Robertson has seen the evidence as reported as being given by Dewey Hewell and recognized in her answers precisely what she had heard Maggie Griffin tell her to say; that the said Ruth Robertson states that she does not believe either of these girls appreciated what it was to swear falsely, as they were giggling and and laughing over the evidence they were to give when they went on the witness stand.

Defendant further shows that at the trial, the Solicitor General put several witnesses on the stand to testify to the bad character of defendant, and further that the defendant knew Mary Phagan. The Solicitor General proved by the Ruth Robertson that she had seen the defendant talk to Mary Phagan and had heard him call her "Mary". This testimony that Frank called Mary Phagan by name was in the trial peculiarly harmful to Frank, because in his statement before the trial and in the trial itself he said he did not know Mary by name.

Defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth and asks the Court to investigate them in this extraordinary motion.

The further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the fact that the said Ruth Robertson was in possession of the facts hereinbefore set forth being unknown to the defendant and his counsel, until the motion for new trial had been heard and passed on.

10. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Mamie Kitchens now Mrs Mamie Edwards which has come to the knowledge of this defendant and of his counsel since the original motion for new

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trial was heard and passed on, and which is as follows: that the said Mamie Kitchens worked at the National Pencil Company, that at no time during her employment at the factory did she ever hear or see defendant act in a familiar manner towards any of the female employees at the factory or at any other place, that never at any time had any girl or woman, or men told her that defendant had attempted to act in a familiar manner with them or ever in any way offered them an insult in any form; that, never at any time had she witnessed any acts in defendant's office on the part of defendant that would lead her to think that defendant was acting in any way unbecoming to a gentlemen, that it is a fact that she has never seen any woman in defendant's office, except a lady stenographer and that she never saw said lady stenographer acting in any way familiar with defendant, or defendant familiar with her; that said Mamie Kitchens says that defendant when passing through the factory was at all times very business like in his actions, conversation and dealings with the employees, and that at no time did she ever see him laughing at joking with any of the employees of the factory; that she was a witness for the State at the trial of defendant and testified that on a certain occasion she was in the ladies dressing room on the fourth floor of the factory, in company with one Ethel Stewart and a Miss Irene Jackson, that she further stated on the stand that Miss Stewart was in the room only a part of the time while she and Miss Jackson were there, and also states that the Solicitor asked her is she was ever in the dressing room in company with a Miss Mayfield and Miss Jackson, when they were partially dressed, when defendant came to the dressing room and looked in, and said Mamie Kitchens replied that she was not in the dressing room with Miss Mayfield but was there with Miss Jackson when she was in a partially dressed condition, and that defendant did look in the dressing room at that time; said Mamie Kitchens also stated that the Solicitor asked her what defendant said to them when he looked into their dressing room, and she testified that defendant said "what's the matter girls?" Haven't you got no work to go?" and that she believed Miss Jackson replied. "No". and then added "we are dressing, blame it?" and at this point,

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defendant shut the door and disappeared; that said Mamie Kitchens, when on the witness stand, only answered such questions as were put to her by the Solicitor General or by Counsel for defendant, but stated now that if she had been permitted to tell the facts in her own way she could have told them exactly as she told them in this her statement, that when defendant opened the dressing room door and looked in and asked the girls referred to if they did not have any work to do, that none of them were in an exposed condition, but that said Mamie Kitchens had removed her outside street skirt, but that her person was fully protected by her underskirt and that while Miss Jackson had removed a part of her clothing, just what part, said Mamie Kitchens did not remember, the person of Miss Jackson was not in any way exposed; that detective Bass Rosser called at said Mamie Kitchen's home during the trial of defendant and interviewed her, and asked her a great many embarrassing questions as to what she knew against the character of defendant, and that she stated she knew nothing that would in any way reflect on defendant or his standing as a gentleman, and further told him that so far as her personal knowledge of defendant was concerned and so far as she had observed, he had always conducted himself as a gentleman.

Defendant further shows that the Solicitor General endeavored at the trial, to prove to the jury that the defendant was in the habit of looking in on the girls as they were undressed in the ladies dressing room, and on cross examination of Irene Jackson showed that she and said Emily Mayfield were undressing once when defendant came to the door; that defendant came to the door, pushed it open, looked in, smiled and walked out; that the defendant, had, on another instance walked in the dressing room on Miss Mamie Kitchens while the said Irene Jackson and the said Mamie Kitchens were in there The Solicitor General further proved by the said Mamie Kitchens that she was in the dressing room with the said Irene Jackson when she was undressed and that the defendant opened the door and stuck his head inside; that he did not knock, but just stood there and laughed.

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Defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial and that said facts were unknown to the defendant and his counsel and it was impossible to have ascertained the same by the exercise of proper diligence, the facts that the said Mamie Kitchens was in possession of the facts hereinbefore set forth being unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

11. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Marie Karst which has come to the knowledge of this defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows: that the said Marie Karst was a witness for the state on the original trial and was brought into the case by City detective Bass Rosser, that she was subpoenaed to the office of the solicitor general in the Kiser Building twice before the trial and questioned very closely by the solicitor general; that the solicitor told her to say that the defendant's general character was bad and that he wanted her to answer his questions right off sharp and quick; that when the solicitor was prompting her and questioning her in his office he did not at any time use the word "lasciviousness" but when she appeared on the witness stand and was questioned he used that word and asked her if defendant's character for lasciviousness was good or bad; that she answered "bad" in the face of the fact that she did not know the meaning of the word lasciviousness, it never having been explained to her at that time, that since that time the meaning of the word has been explained to her and that since she understands the meaning she positively denies that defendant's character or reputation, so

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far as she knew or knows is bad for lasciviousness; that she has never heard of the defendant acting in any unbecoming manner toward anyone; that she has at no time seen any woman in the defendant's office and never heard any girl or woman say that they had ever seen any woman in defendant's office or had seen the defendant act unbecoming to ladies, that the defendant always made the girls at the factory attend strictly to business and that when she testified his character was bad at the original trial, she intended to convey the meaning that he was not generally liked by the employees on account of his strictness with them in his dealings with them regarding their work.

Defendant further shows that at the trial the solicitor general in order to prove the bad character of the defendant, put the said Marie Karst on the stand and she testified that she knew the defendant and that his character for lasciviousness was bad.

Defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result at another trial and that said facts were unknown to the defendant and his counsel and that it was impossible to have ascertained the same by the exercise of proper diligence, the fact that the said Marie Karst was in possession of the facts hereinbefore set forth being unknown to the defendant and his counsel until after the motion for new trial was heard and passed on.

12. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Samuel A. Pardee and W. V. Green which has come to the knowledge of defendant and of his counsel since the original motion for new trial was heard and passed on and which is a fact that the said Samuel A. Pardee knows the defendant by sight, having seen defendant at his place of business several times but that the said W. V. Green does not; that on April 26, 1913, the said Samuel A. Pardee, in company with the said W. V. Green, was at the local store of the Cotton States Belting and Supply Company at Number 9 South

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Broad street during the morning and up to one O'clock in the afternoon; that at one o'clock they left the local store of said Cotton States Belting and Supply company at No. 9 South Broad street and walked to Jacobs' Pharmacy corner, at Whitehall and Alabama Streets, arriving there between 1:03 and 1:05; that the said Samuel A. Pardee saw defendant leaning against the power pole of the Georgia Railway and Power Company; that he recalls the defendant had a newspaper in his hand and as said Pardee passed defendant he waved his hand at him and defendant answered the salutation by waving the paper.

Defendant further shows that the theory of the state was and evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo W. Frank, at the factory of the National Pencil Company between 12:05 and 12:30 on April 26th, 1913, and that between 12:56 and 1:30 o'clock P. M. of that day the said defendant assisted by James Conley moved the dead body of Mary Phagan from the second floor of the factory down to the basement. The solicitor general proved by the witness James Conley that Leo W. Frank was in the factory of the National Pencil company the entire time between 12:56 and 1:30 o'clock on that day assisting the said Conley to move the body from the second floor to the basement.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

Defendant further submits that the discovery of the foregoing facts is material, and that it is such an extraordinary state of facts as would probably produce a different result on another trial, that said facts were unknown to defendant and to his counsel, and that it was impossible to have ascertained the same by the exercise of proper diligence, the said Samuel A. Pardee and W. V. Green not being witnesses on said trial and the fact that they were in possession of the facts hereinbefore set forth was unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

13. Defendant further show that he should be granted a new trial upon the newly discovered evidence of Mary Rich, which has come to

the knowledge of defendant and of his counsel since the original motion for new trial was heard and passed on, and which is as follows: that the said Mary Rich knows Jim Conley, and that On April 26th, 1913, at about 2:15 P. M. she saw Jim Conley come out of the alley immediately in the rear of the National Pencil Company's factory; that the said Jim Conley bought a 20 cent dinner of Mary Rich, who runs a restaurant on wheels facing said alley, that after purchasing said dinner he carried same in his hand and went back to the aforesaid alley in the direction of the Pencil factory, and that the said Mary Rich saw no more of the said Jim Conley during that day.

Defendant further shows that one Mrs. J. B. Simmons was passing the factory of the National Pencil company on the 26th day of April 1913 at about 3:20 or 3:30 o'clock P. M. and heard screams of a girl or woman emanating from the basement of the factory, which is more fully set forth in ground 6 hereof and to which full reference is here prayed.

Defendant further shows that the theory of the state was and evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo M. Frank on the second floor of the Pencil Company's factory between 12:05 and 12:30 on April 26th, 1913, and the state's entire case as presented to the jury revolved around that theory. The Solicitor General attempted to prove by the witness Conley that said Conley assisted Leo M. Frank to move the dead body of Mary Phagan between the hour of 4 minutes to 1 and 1:30 from the second floor to the basement, the said Mary Phagan being dead already when Conley picked her up on the second floor. The witness also testified that he left the front door of the factory about 1:30 P. M. went to a saloon corner Hunter and Forsyth streets, and went from there home,-- thereby denying that he was in the alley in the rear of the factory as testified to by Mary Rich.

Defendant here and now offers to show and prove to the Court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel and it was impossible to have ascertained the same by the exercise of proper diligence, the said Mary Rich not being a witness on said trial, and that she was in possession of the state of facts herein set forth being unknown to defendant and his counsel until after the motion for new trial had been heard and passed on.

14. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of G. Burtis Dalton, which has come to the knowledge of the defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows; that the said Dalton, at the time of the trial of defendant for the murder of Mary Phagan resided at the home of one W. W. Barber, at 470 Whitehall street that the newspaper accounts of said murder was the general topic of conversation at the boarding house where he was living; that during one of the several conversations Dalton made the remark that he had been to the National Pencil company's factory several times and confided this to a fellow named R. L. Wann; that he had immoral relations with a girl in the basement of said National Pencil Company's factory; that the said Dalton thought no more of his remark until one day city detective Campbell and Starnes called at his boarding house and told him that the said Wann had reported to them that Dalton knew some bad things against defendant; that the said Dalton at once told the detectives that the information they had received was false, but that so far as his knowledge of defendant went, that the said defendant was a gentleman in every respect, that thereupon the detectives Campbell and Starnes laughed at the declaration he had made in defense of defendant and treated his statement as a joke and insisted that Dalton should admit that defendant was a man of bad character and that he had seen defendant go into closets and dressing rooms with various women and girls at various times at the National Pencil Company's factory and that

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he, Dalton had joined defendant on several occasions in acts of immoral conduct with women and girls and that he had on various occasions joined defendant and women in the office of defendant, and that on these occasions they would all drink beer and have a so called good time and that Dalton had seen Jim Conley and defendant on various occasions talking earnestly together and that women and girls had told him that defendant had committed both natural and unnatural acts of intercourse with them, and that Dalton had at various times taken women to the basement of the Pencil Factory for immoral purposes, with the knowledge and consent of defendant, and detectives Campbell and Starnes told Dalton that they had called on him to see if he would not support the statement of Jim Conley, that Dalton told the detectives referred to that every suggestion they had made was untrue and proceeded to deny separately and collectively every suggestion made to him by detectives Campbell and Starnes as outlined above, that Dalton told the detectives referred to at that time that he did not know defendant; that he knew nothing against or about the character of defendant and had never seen Mr. Frank go into any closets, dressing rooms or other places with any woman or girls at any time or place, and that he never had joined defendant at any time or place in acts immoral with women and girls and that he never at any time or place saw defendant in conversation with Jim Conley and that no woman ever told him that defendant had committed either natural or unnatural immoral acts with them or attempted to do so or asked to do so, that Dalton told detectives Campbell and Starnes that he, Dalton, had been in the basement of the National Pencil factory with one Daisy Hopkins for immoral purposes but that he told the detectives then that he never went to the factory with Daisy Hopkins with the knowledge or consent of defendant, but told the detectives at the time of the conversation referred to that he went to the basement with the consent and knowledge of Jim Conley, and that the said Conley always received a tip of 25 cents from him for such privilege, and that the said Conley would remain on guard for said Dalton while he was in the basement, with the understanding thoroughly understood between Dalton and Jim Conley

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that the said Conley would warn Dalton if defendant or anyone else should happen to come along and possibly disturb Dalton while he was in the basement and that said Jim Conley would assist Dalton and Daisy Hopkins to get out of the factory without being seen by anyone; that on one occasion said Dalton looked into defendant's office, but that defendant did not see said Dalton as defendant was busy at the time talking to Daisy Hopkins, who had gone to the factory in company with said Dalton, for the purpose of drawing three dollars on her salary account; that Dalton saw in defendant's office at the time referred to, a lady whom he had since learned to be Miss Eula May Flowers, and another woman who dressed like and looked like a factory employe, but that said Dalton saw nothing wrong going on in the office on the occasion referred to, and that there was no evidence that there was or had been any beer drinking or drinking of any kind, and that defendant was sitting at his desk, apparently attending to his business and all other occupants of the office also appeared to be attending to business, and that as soon as Daisy Hopkins had drawn the money from her salary account as referred to above, Dalton and the Hopkins woman at once left the factory together and Dalton never saw defendant any more, that if anyone had gained the impression from the evidence Dalton gave at the trial that he knew or knows anything against the character of the defendant, that he now wants to disabuse their minds of any such false impression and that he wants everyone and everybody to know that he knows absolutely nothing about or against the character of defendant.

Defendant further shows that it was the theory of the state that defendant had been in the habit of using his office and the basement of the National Pencil factory for immoral purposes, and the Solicitor General proved by the witness Jim Conley that defendant had been in the habit of taking girls in his office and in the basement of the factory for immoral purposes. The Solicitor General further proved by the said Dalton that he knew the defendant, and Daisy Hopkins and Jim Conley; that he had visited the Pencil factory three or four or five times, and had been in defendant's office two or three times, and

had been down in the basement; that the defendant knew that he was in the basement, that there would be ladies in defendant's office, sometimes two and sometimes one; that he visited the Pencil factory with Daisy Hopkins; that said Daisy Hopkins introduced said Dalton to defendant in defendant's office before Christmas; that Daisy Hopkins accompanied said Dalton down to the basement where there was an old cot and stretcher; that defendant had coca cola, lemon and lime and beer in his office; that Daisy Hopkins knew defendant and Dalton had seen her talking to him.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth, and asks the court to investigate them in this extraordinary motion. Neither this defendant nor his counsel knew of the existence of Dalton until he was put upon his trial had no knowledge nor could have known that he would make the statements above outlined. They did not know that he would make the statements here made out until after the motion for new trial was over ruled.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the fact that she was in possession of the state of facts herein set forth being unknown to the defendant and his counsel until after the motion for a new trial had been heard and passed on.

14-1/2. Defendant further shows that he should be granted a new trial upon the newly discovered evidence which has come to the knowledge of defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows; that the notes found by the body of Mary Phagan and which it is admitted were written by Jim Conley, were written on waste paper found in the basement of the factory by the body of Mary Phagan; that on the note written on yellow carbon order blank, about 8 lines from the bottom of said sheet is a faint

CONFIDENTIAL

scrawl of the name "H. F. Becker" sought to be erased but which is clearly discernible under the microscope; that also on said note is the date "Sept. 1909", also sought to be erased but also discernible under a powerful microscope, together with the serial number "1018" that said sheet was a duplicate carbon order blank of a requisition sent to the Cotton States Belting and Supply company in September 1909, by the said H. F. Becker. who was master mechanic at the National Pencil Company at that time, and whose business it was to secure and obtain supplies for the Pencil factory, it being his practice to write out the requisition, sign it with his name and send it by an apprentice to the place from where he desired to secure the supplies; that it was the practice and custom of the said Becker to send the original requisition to the place where he secured the supplies and to retain a carbon duplicate copy thereof in his office on the 4th floor of the Pencil factory; that the said duplicate requisitions were contained in pads which remained in his office on the fourth floor of the Pencil factory; that from the time Becker first entered the employ of the Pencil company, until about January 1, 1913, he was allowed to obtain supplies with out obtaining the sanction or authority of anyone else in the factory, his department being conducted entirely independent of other departments, and the requisitions signed by him being sent out and honored without passing through any other office of the factory; that it was his practice to keep his pads of duplicate requisitions in his office, and after having no use for same, to send them down to the basement of the factory with the other trash; that on the 27th day of December 1913, the said Becker left the employ of the Pencil factory, and that within a few weeks thereafter his office on the fourth floor of the factory was cleaned out and the trash, including papers and old pads, were gathered and taken to the basement and placed on the trash pile; that the pad from which the sheet on which Conley wrote his second note was among the pads that were carried down there from Becker's office and dumped into the basement on the trash pile and that Conley picked up said sheet from off the trash pile and wrote the aforesaid note thereon in the basement of the factory.

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SECRET

Defendant further shows that the serial number on said note namely, "1018" corresponds to the serial number of the requisition made on the Cotton States Belting and Supply by said Becker in September 1909, the preceding serial numbers, namely 1016, 1017 being dated September 10, 1909, and serial number 1018 the one immediately following the sheet on which Conley wrote, being dated October 6th, 1909, that the serial numbers of the order pads used at the time the murder was committed were far in excess of said number-----and that at that time there were no order blanks with serial numbers as low as Number 1018 in any part of the factory, excepting in the basement on the trash pile.

Defendant further shows that none of the order pads having the date "190" had been in the defendant's office since January 1, 1911; that since January 1, 1911, all pads that had been used for requisitions were printed with the date "191"; that on April 26th, 1913, there were no "190" order pads in the factory, excepting on the trash pile in the basement.

Defendant further shows that it was the theory of the state that the crime was committed on the second floor of the factory and proved by Conley that the notes found by the body were written by Conley at defendant's dictation in defendant's office on the second floor of the factory, and that the defendant pulled the sheet on which said note was written from a pad lying on his desk in his office on the second floor of the factory.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the said notes having been continually in the possession of the Solicitor General and

and defendant's counsel having no access thereto.

15. Defendant further shows that he should be granted a new trial because of newly discovered evidence of Ivy Jones, which has come to the knowledge of the defendant and his counsel since the original motion for new trial was heard and passed upon

Upon the trial said Jones testified ^{for} the state as follows:

That he saw Jim Conley at the corner of Forsyth and Hunter streets on April 26, 1913, in a saloon between ^{one} and two o'clock on the opposite corner from the factory; that he and Conley went towards Conley's home at the corner of Hunter and Davis streets a little after two o'clock.

This witness will now testify to the following: that on April 26th, 1913, he was employed by Walker Brothers, wholesale grocers in the Louisville and Nashville Terminal Building; that he was released from his work that day at one thirty o'clock P. M. and, after being released, he went at once to the corner of Forsyth and Hunter streets to a saloon at the corner, where he had a glass of beer; that, while he was drinking the beer in the saloon, he did not see anyone he knew, that he did not remain in the saloon but a short time in fact, only long enough to drink a glass of beer, then left the saloon by himself and walked up Forsyth street to Mitchell street and out Mitchell street to Davis Street; that he was not joined on the way by anyone, and did not meet any one he knew until he reached Davis street; and, at Davis street, he met Buddy Perry, a friend of his who worked for the L. W. Rogers Grocery Company; that he did not meet any one else but Buddy Perry; that he and Buddy Perry walked to his home at No. 8 Electric Ave., and thereafter went to a ball game, but not together; that he did not meet any other man he knew while on his way with Buddy Perry from the corner of Davis and Hunter streets; and that he did not meet any other man he knew other than Buddy Perry at his home that day.

The testimony of this witness Jones was introduced by the State, for the purpose of corroborating Conley's testimony that he left the factory at one thirty o'clock and went to the corner of Forsyth and Hunter streets, for the purpose of getting him a

a drink where it is claimed he was met by Iva Jones and that Jones and Conley went towards home of Conley together.

Jones has since testified, and will as the defendant is informed and believes, now testify that he met no one in said saloon nor on his way by the saloon to his home, except Buddy Perry, meeting him at Davis and Hunter Streets

Neither the defendant nor his counsel had any reason to believe that Ivy Jones was telling other than the truth when he testified to seeing Conley in said saloon, and had no possible means of knowing, until the original motion for new trial was overruled, that his testimony was false and that he had not, in fact, met Conley as testified by him.

The defendant submits that the discovery that this witness Jones will now testify as is above stated, is such an extraordinary state of facts as will probably produce a different result on another trial; that the testimony he will now make came to the knowledge of this defendant and his counsel since the motion for new trial was passed upon, and could not have been discovered by the exercise of reasonable and ordinary diligence .

16. Defendant further shows that he should be granted a new trial because of the newly discovered evidence obtained from Miss Helen Ferguson, as follows, to-wit:

On the Saturday preceding the date of the murder she was on the second floor of the factory after some boxes, and Jim Conley now in jail, but who used to work at the factory, said to her: "Yes, take all the boxes you want, Miss Helen"; that she was stooping over at the time Conley addressed her; that he kept getting closer to her, and made a move as though he intended to grab her; that she was verymuch frightened and run away as fast as possible.

This witness testified on the original trial, but did not testify to the facts above outlines, and the defendant, nor his counsel, had no knowledge of any such state of facts; nor did they obtain any information that she had such knowledge until after the motion for new trial had been overruled.

The contention of the defendant, and his counsel is that

the little girl was killed by Jim Conley, and this testimony is material as showing his disposition towards the little girls in the factory.

17. Defendant further shows that he should be granted a new trial because of the following;

J. E. Duffy testified on the trial that he worked at the National Pencil Factory and was hurt in the metal department by a cut on his forefinger on the left hand; that he went to the office to have it dressed, that it was bleeding pretty freely and a few drops of blood dropped on the floor at the machine where he was hurt; but that the blood did not drop anywhere else but at the machine; that none of it dropped near the dressing room or the water cooler.

This defendant is informed that said witness will now testify the truth, which is as follows:

That he was an employee at the factory during a part of 1913 and while at work there, he was injured on the index finger of his left hand; that he worked on a machine on the second floor of the building, in the metal department; that, when he received this injury, there was a vast amount of blood that ran from the wound, a considerable part of which ran on the floor near the machine at which he was at work, and which was directly opposite the one Mary Phagan was employed on; that he saw on various occasions bloody guards-- such as women wear during their periods-- in the dressing room, on the second floor, and right at the corner of the polishing room; that in answer to a subpoena served upon him by one Garner, he met the Solicitor. Mr. Dorsey, in his office, and that Mr. Dorsey asked him a great many questions regarding the injury to his finger, how it happened, where it happened, how much blood there was, and what method he employed to staunch the blood; that he did very little except to answer Mr. Dorsey's questions; that Mr. Dorsey did most of the talking leading the conversation, that, finally, Mr. Dorsey said that Lemmie Quinn and a boy named Charlie had testified in the case to the effect that he had hurt his hand, and had stopped in front of the dressing room, with his hand extended allowing the blood to drop upon the floor; that Mr. Dorsey then said: "Now, Mr.

Duffy, you know that is not true, and you know that you were not in front of the dressing room at all, and that there was no blood that ran upon the floor, and that, as soon as you injured your finger, you promptly went to the office of Mr. Frank and then to the Atlanta Hospital, where Dr. Ballinger waited on you" Mr. Dorsey then asked what it was he used to stop the blood, and that he replied that he stopped it with a piece of waste; that for some reason he both permitted Mr. Dorsey to ask and answer his questions for him; that he could see precisely how Mr. Dorsey wanted him to testify, and he did testify as suggested by Mr. Dorsey; that after mature deliberation and thought, it is plain to him that he was made to express himself on the witness stand in a manner that he would not have done, had he been permitted to have gone on the witness stand and testified to the facts, as he knew and remembered them; that he now says that when he was injured, his hand did bleed and run upon the tin at the machine he was working on, and did run upon the floor, that, during his conversation with Mr. Dorsey, he, in his leading way, insisted that the witness had gone to the office of Mr. Frank as soon as he had injured his hand, and then went to the office of Dr. Ballinger and had it dressed.

The witness now says that it is possible, and quite probable, that blood dropped from his hand while passing in front of the dressing room, and ^{he} is not willing to state that blood did not drop from his hand in front of the dressing room.

Neither the defendant, nor his counsel had any information or knowledge that the witness, Duffy, knew the facts as above outlined, or that he would testify to the same. On the contrary, he had testified at the trial, as above first outlined in this ground, and neither this defendant, nor his counsel, had any knowledge that he would testify otherwise and further, as next above outlined, until after the motion for new trial had been overruled Exhibits hereto attached are here made a part of this motion in support of the above and next above ground.

18. Defendant further shows that he should be granted a new trial because of the following fact, Mrs. W. Jaffe will testify that she is personally acquainted with the defendant and has been for several years; that on the day of the murder, April 26th, 1913

she saw Leo M. Frank at the corner of Whitehall and Alabama streets at Jacobs' corner at 1:05 P. M. Neither the defendant nor his counsel had any information or knowledge that this witness knew the facts as shown outlined or would testify to the same on the trial; they knew nothing thereof until after the motion for new trial was over ruled in this case.

The witness Conley testified that from four minutes to one to 1:30 on the day of the murder, April 26th, 1913, he was present in the Pencil factory with Frank, engaged in disposing of Mary Phagan's body, and the state contended strongly before the jury that the interval between those said two times was employed by Frank and Conley in disposing of the body. This witness Mrs. Jaffe will testify, as is above stated, making it impossible for Frank to have been so engaged at the time mentioned.

Morris Brandon,
L. Z. Rosser,
R. R. Arnold,
Leonard Haas,
Herbert Haas,
Movants Attys.

STATE OF GEORGIA,
Fulton County.

Before the undersigned personally appeared Leo M. Frank, who deposes and says that the facts stated in the above and foregoing motion are just and true as they stand stated.

Leo. M. Frank.

Sworn to & subscribed before me,
this April 15, 1914.

Montefiore Selig,

Notary Public Fulton County, Ga.

Read and considered. It appearing to the court that notice of the above and foregoing extraordinary motion for new trial has been given to the opposite party as provided by law, as set up in section 1091 of the Penal Code, it is considered, ordered and adjudged that this above and foregoing motion for new trial be filed and made part of the record in the case of the State Vs. Leo M. Frank, pending in Fulton Superior Court.

Let the State of Georgia, through the Solicitor General, show cause before me on the 22 day of April 1914, why the above and foregoing motion for new trial should not be granted upon each and all of the grounds therein stated; and in the meantime it is further considered ordered and adjudged that said motion may be amended at any time before the actual hearing that the present sentence heretofore imposed upon Frank be and the same is hereby stayed and superseded until other and further order of this court.

Benj. H. Hill,
Judge S. C. A. C.

Due and legal service of the within motion and order thereon hereby acknowledged, copy received. This 18 day of April, 1914.

E. A. Stephens,
Hugh W. Dorsey,
Sol. Gen'l.

The recitals of fact in each ground of the foregoing motion are hereby approved as true and correct.
May 9th 1914.

Benj. H. Hill,
Judge S. C. A. C.

Filed in office this the 16th day of April, 1914, at 11 A. M.
John H. Jones, D. Clk.

3011421

(1st AMENDED MOTION.)

GEORGIA, FULTON COUNTY.

And now comes the defendant, Leo M. Frank, and amends his extraordinary motion for a new trial, and for amendment says:

(a). Because of the newly discovered evidence, of J. W. Boozer, which in substance is that, while collecting for Patrick & Thompson one of his accounts was against Jim Conley, now in jail, and connected with the Mary Phagan murder.

On April 26th 1913, he was unable to get to the pencil factory by 1:30 o'clock in the afternoon, it being his custom to go to the pencil factory each Saturday by that time and get the dollar, but he did not collect at the factory that day. However on the afternoon of April 26th, 1913, after 4 o'clock in the afternoon, as near as deponent can recollect about 4:15 o'clock and certainly somewhere between 4 and 4:30 o'clock on Saturday afternoon, on April 26th, 1913, the said Boozer came upon and met up with Jim Conley on Peters street near Castleberry street; that he knows Jim Conley well, and that Jim Conley was, on the afternoon of April 26th, 1913, between 4 and 4:30 o'clock on said Peters Street, and said Boozer came upon him; said Jim Conley was standing leaning up against a pole, and then and there Boozer and Conley spoke to each other, and had a brief conversation; that he asked Jim Conley for his weekly payment of a dollar on his watch, and that Conley told him that deponent could get the money from Mr. Frank, and that Conley asked said Boozer whether he had been by the factory for the dollar.

(b). That he did not tell these facts to any one at the time nor immediately after the Mary Phagan murder, but that during the month of July, and to the best of his recollection, he did tell these facts to Solicitor Dorsey, that he did not tell any of lawyers of Leo M. Frank.

(c). That the above stated testimony is material for the reason that Jim Conley was the main witness for the State, testifying that he had an agreement with Leo M. Frank to return to the factory and destroy the corpse of Mary Phagan; but

about 2 o'clock he went to his home, some distance from the factory went to sleep and forgot to come back to the factory; that he remained at home until about 6 o'clock went out a while and then returned and spent the night at home.

(d). That this testimony shows that Jim Conley was on Peters street between 4 and 4:30 o'clock.

(e). That this testimony was not known at the trial, nor until after the overruling of the motion for a new trial, nor until the 7th day of April, 1914, by Leo W. Frank or by either of his counsel.

(f). Neither Leo W. Frank, nor his counsel, had any opportunity to know this, nor had they heard, nor had any reason to suppose that the witness J. W. Boozer, had seen Conley, at the time and place above stated.

(g). This evidence is material and ought, if a new trial be granted, to cause a different verdict to be rendered upon the trial against Leo W. Frank.

R. R. Arnold,
Rosser and Brandon,
Leonard Haas,
Herbert J. Haas.

STATE OF GEORGIA,
FULTON COUNTY.

Before the undersigned, personally appeared Leo W. Frank, who upon oath deposes and says that the facts stated in the above and foregoing amended motion for a new trial are just and true and as stated.

Leo. W. Frank,

Sworn to and subscribed before me,
this the 23 day of April, 1914.

C. W. Burke,
Amendment allowed and ordered filed. April 23, 1914.

B. H. Hill,
Judge S. C. A. C.

Filed in office this the 4th day of May, 1914.

John H. Jones, D. Clk.

001421

(3rd A M E N D M E N T T O M O T I O N .)

GEORGIA, FULTON COUNTY.

Now comes Leo W. Frank and amends his extraordinary motion for new trial:

Further amending said extraordinary motion for new trial movant says that a new trial should be granted him because of the material facts set forth in the affidavit of Mrs. Maud Bailey, said Mrs. Maud Bailey testifying that on April 26th, 1913, she was living at 253 Humphries street in Atlanta, Ga., that at 11 o'clock in the morning or a few minutes after that time, she boarded a Stewart ^{Avenue} Street Car and left the same at Forsyth and Mitchell streets; that her mother Mrs. May Barrett was with her, and after leaving the car, they both walked together to the store of Alverson Brothers located on Forsyth street near Mitchell street, at which time the witness believes was about 11:30 o'clock in the morning. When they reached Alverson's store that witness's mother left her at the store to go to the Pencil factory, promising to come right back; that after waiting at the store for about ten minutes, witness decided to walk towards the Pencil Factory to meet her mother; that at arriving at the factory, the witness, in as much as she did not meet her mother entered the factory and went to the second floor near the time clocks, one of which registered fifteen minutes to twelve and the other showed thirteen minutes to twelve; that when the witness reached a point opposite the time clocks there was present Leo W. Frank, a lady stenographer, Corinthia Hall, Emma Clark Freeman, Arthur White and Mrs Arthur White. That Emma Clark Freeman asked Mr. Frank if she could use the telephone, whereupon Frank told her that she could use the 'phone, and after a short talk on the 'phone, both Mrs. Freeman and Miss Hall left the factory and the witness did not see then any more that day; that just as Mrs Freeman and Miss Hall left the factory and while Arthur White and his wife were standing at the foot of the steps leading up to the third floor from the second floor, where they were in conversation, that the witness's mother came down the steps referred to and when she saw deponent standing near the time clocks the

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mother said: "I thought I left you at Alverson's store," and witness replied that she was tried waiting and told her mother to hurry and got out with her. Witness's mother told her she had to go back to the fourth floor to get a package and would be back as quickly as possible. Witness says she was angry and vexed with her mother for keeping her detained and she and her mother talked for several minutes and when witness and her mother finished talking, witness's mother went up the stairs; Arthur White also went up the same stairway and Mrs White left the factory. Witness says that when she was again left alone, she noticed that the lady that she had supposed to be the stenographer, was gone and she did not see her any more, and witness thinks she must have left the factory while she, witness, was talking with her mother. Witness says that at about ten (10) or twelve (12) minutes after twelve (12) o'clock noon, she saw a young girl come up the stairs and walk into Mr. Frank's office and that she paid very little attention to the girl's face, and that after remaining in Mr. Frank's office some three or four minutes, the girl went out of Mr. Frank's office and passed on down the stairway that led to the first floor. Witness says the girl has on an attractive dress which she thinks was between pink and lavender color and that the dress was short and the girl was evidently young and that she was heavily built; and witness says the girl passed right on down the stairway that led to the first floor, and witness says she did not see the girl again. Witness says that just as the girl left the building, she saw Mr. Frank in the outer room of his office and saw him disappear into his private office where deponent could not and did not see him again. Witness says that in about five minutes after the girl referred to left the factory, deponent's mother came down the stairs and she and witness left the factory. Witness says that when she reached the bottom of the stairs. Lemmie Quinn was going up the stairs very fast and witness said "howdy" to Mr. Quinn and Mr. Quinn nodded but did not speak.

Witness further says that she and her mother then went to Alverson's store to use their phone and call Mr. W. B. Newcomb who works at the Swift Soap works, which was then between twenty five

(25) and thirty (30) minutes after twelve (12) o'clock noon, when she reached the store, the reason for knowing that it was about that time being because the Swift Soap company do not permit their employees to use the 'phone after twelve thirty (12:30) o'clock, and witness knows that she was just in time because she had only a moment or two to talk to Mr. Newcomb.

Witness further says that when she entered the Pencil factory that day, Jim Conley was sitting on a box between the stairway and the elevator on the first floor. Witness says that she would not have noticed Conley but for the fact that he made a noise with his foot against the box upon which he was sitting which attracted her attention and caused her to look up and see him.

Witness says that she has made an affidavit to Mr. Hugh

Dorsey and further says that if Mr. Dorsey had treated her properly and had not abused her and cut off her story and interrupted her continuously, she would have told him exactly the same state of facts that she has outlined and described in this affidavit. Witness says that she wanted to tell Mr. Dorsey all she knew that might throw light on the investigation that he was conducting, but that Mr. Dorsey wanted to get from her evidence of conditions that were not the facts, on account of which she got mad with Mr. Dorsey and with his methods.

Witness further says that it was very evident that Mr. Dorsey became angry with witness, the result being that he took only a short affidavit from her, and witness says that Mr. Dorsey had her so confused at the time that she cannot at this time recall just what Mr. Dorsey put in the affidavit which he took from her; and witness left his office and has not seen him since.

Witness further says that she makes this statement of her own free will and accord and without any promise of reward of any kind from any person.

Movant submits that the foregoing evidence is very material and vital and that the same would probably produce a different result upon another trial of said case. Movant says that upon the

trial of said case, the state insisted that Leo W. Frank carried the deceased, Mary Phagan, back to the metal room in the rear of the factory and killed her, whereas the testimony of this witness shows that the said Mary Phagn went into said Frank's office and came out and that when she came out and went down the steps, that Frank was still in his office. Movant further shows that said testimony completely repudiates the evidence of the negro Jim Conley and corroborates to the fullest extent the testimony of the witness Lemmie Quinn, and shows that it would have been a physical impossibility for Frank to have taken Mary Phgan back to the metal room and killed her at the time the state claimed, to-wit: somewhere between twelve (12) and twelve five (12:05) o'clock. Movant shows that this evidence was never discovered until after his motion for new trial was overruled, that he exercised all diligence to ascertain all the facts in connection with his case and that the witness never disclosed to either movant or his counsel or to anybody on his behalf what she would testify to until the present moment.

Movant further says that a new trial should be granted him because of the testimony of Mrs. May Barrett as set forth in her affidavit made in this case, the said Mrs. May Barrett testifying that the facts stated by Mrs. Maud Bailey, wherever the same related to the said May Barrett, are true, the importance of the testimony of the said Maud Bailey having been hereinbefore set forth in the ground immediately preceding; and the testimony of May Barrett is newly discovered as well as the testimony of Maud Bailey and the same is important and would produce a different result upon another trial.

The testimony above set out constitutes such an extraordinary state of facts and circumstances as would justify and demand a new trial.

Movant further states that he had no information or knowledge that the said Maud Bailey or May Barrett knew or would testify to the before mentioned facts until the date of said affidavit, nor did his counsel know of same. Movant states that he could not have ascertained the same by any possibility, because movant was ignorant of the fact that the said affiants knew and would

testify to the facts above set out, and neither movant not his counsel could have discovered the same by the exercise of due diligence.

Rosser and Brandon,
Leonord Haas,
H. J. Haas,
R. R. Arnold,

Attys. for Movant.

GEORGIA, FULTON COUNTY.

Personally appeared Leo W. Frank, who upon oath deposes and says that the facts in the above and foregoing amehdment for new trial are just and true as they stand.

Leo W. Frank,

Sworn to and subscribed before me,
this 24th, day of April, 1914.

C. W. Burke,
N. P. Fulton Co., Ga.

State of Georgia,
Vs.

In Fulton Superior Court,
Conviction of Murder.

Leo W. Frank.

Extraordinary motion for New Trial
at March Term, 1914.

GEORGIA, FULTON COUNTY.

Personally came before the undersigned attesting officer, Leo W. Frank, who upon oath says that neither at his original trial, nor at the time of making his original motion for new trial, nor at the time the same was overruled, did he have any knowledge of the facts testified to by Mrs. Maude Bailey or Mrs. May Barrett, as set forth in their affidavits made in this case. Affiant, from Tuesday April 29th, 1913, has been in prison, and has been unable to go out and investigate the evidence of his case, and has been compelled to rely upon others to do thw work for him. He exercised all possible diligence, under the circumstances, to ascertain all facts which throw any light upon the truth of the charge against him,

but had no knowledge of the facts testified to in these affidavts.

Leo W. Frank,

Sworn to and subscribed before me,
this 23rd day of April, 1914.

Leopold Haas Jr.

N. P. Fulton County, Ga.

(N. P. Seal.)

This amendment is hereby allowed and ordered filed.

This April 24th, 1914.

Benj. H. Hill,

Judge S. C. A. C.

Filed in office this the 4th day of May, 1914.

John H. Jones, D. Clk.

(O R D E R O F M A Y 9th, 1914.)

The recitals of facts contained in the grounds of the foregoing motion for new trial are hereby approved as true.
This 9th day of May, 1914.

B. H. Hill,

Judge S. C.A. C.

(ORDER STRIKING 2nd AMENDED MOTION)

Upon motion of the defendants counsel the amended motion for new trial based on affidavits of Ragsdale and Barber is herewith stricken from the files of this Court.

This 28th day of April 1914.

Let the original affidavits made by Ragsdale and Barber referred to in the petition be filed in the Clerk's Office.

Benj. H. Hill,

Judge S. C. A. C.

(4th AMENDMENT TO MOTION.)

STATE OF GEORGIA
VS.
LEO M. FRANK.

Fulton Superior Court
Extraordinary Motion for new trial.

And now comes the defendant, Leo M. Frank, and amends his extraordinary motion heretofore made in said case, and for amendment says:

I: A new trial ought to be granted in this case because of the newly discovered evidence of one Annie Maude Carter, which newly discovered evidence is set out and appears in her affidavit, which is hereto attached and marked Exhibit A, said evidence fully appearing in her said affidavit, and said affidavit being made a part and parcel of this motion for new trial. The facts and circumstances in this affidavit set out, which is the newly discovered evidence of Annie Maude Carter were unknown to this movant at the date of his trial and at the date of the overruling of his motion for new trial and was not known to him until this date.

This movant did not know this Annie Maude Carter and had never heard of her until she made the affidavit hereto attached marked Exhibit A.

This movant shows that said evidence is material to the case of this movant for the reason that upon his trial before the jury the main witness against him was James Conley, who testified that he watched during the time that the said movant was in communication with Mary Phagan and that after Mary Phagan had been killed this movant called the said James Conley to the second floor of the factory and engaged him, the said Conley, to aid this movant in the concealment of the body of Mary Phagan.

This newly discovered evidence, Exhibit A hereto attached, shows that the murderer of Mary Phagan was the said James Conley and that this movant was not the murderer of the said Mary Phagan.

The facts and circumstances of said Exhibit A, hereto attached, are such extraordinary facts and circumstances as would

justify and demand a new trial, and if introduced before a jury would produce a verdict of acquittal for this movant. This movant shows that these facts set out in Exhibit A were not known to this movant or to movant's counsel until the date of said affidavit and could not by any possibility have been discovered either by this movant or movant's counsel, for the reasons above set forth.

(Signed) L. Z. Rosser
Morris Brandon
H. J. Haas
Leonard Haas
Reuben R. Arnold
Attorneys for Leo M. Frank.

EXHIBIT "A"

STATE OF GEORGIA, VS. LEO W. FRANK.

Extraordinary motion for a new trial.

In Fulton Superior Court, March Term 1914.

Personally appeared Annie Maude Carter of 88-1/2 West Linden Ave., who on oath says, that about October 7th 1913, I was locked up in the Fulton County jail where I saw Jim Conley. I first met Jim Conley in the Court House in November 1913, at the time I was sentenced to jail. After I was sentenced I was well acquainted with Conley and knew him well for four months straight in jail. I talked daily with him about all his affairs and I asked him if he was guilty or not; and he first told me no, that he was innocent; that God above alone knows who did the murder, and I said if you are not guilty, why should you worry so, and he told me he was so near guilty, he felt lost; that he had lost all hope. During December 1913, we were very good friends in jail, he had all confidence in me, he would tell me his secrets and of course I would listen. He again told me he didn't know any thing about Mary Fagans murder and then I told him if that was so, he ought to prove up his character, so during Christmas week I was talking with him in his cell and he said he would tell me the whole truth about it. I asked him why he waited so long: He said "If I tell you will you marry me" and I told him yes. He then told me that he really did the murder of Mary Phagan, but that it was so plainly shown on Mr. Frank that he let it go that way: That him and Mr. Frank both had connection with the girl, but then he immediately confessed that he lied, when he said that Mr. Frank had connection with the girl; and said that he had done it all alone by himself. He begged me never to say anything about this. He said he first choked her and after she was unconscious he had connection with her, and she being young and never having had anybody, he had to tear her privates. He said he was sitting on a box in the factory when the girl came down, that he told her some

one had called her, that she turned back and he then struck her with his fist, knocking her down and dragged her back where they put rubbers on pencils; That finding Mr. Frank absent, he dropped her through the hole; that he then took her around by the furnace starting to put her in the furnace but his conscience wouldn't let him; that he put her down there to make people believe Newt Lee did it; that afterwards he found a piece of blank paper, tears it in two, picks up a pencil, and puts the paper on the cellar door and writes the notes; that he first took the notes and put them in her bosom, then he took them out and laid them by her side. That he then took a thing they use to open boxes with and pulled the staple out of the back door, and went out the door, going over on Broad street to get a glass of beer, that he went back to the Factory to make people believe that he was innocent, but that the truth must come to light; that we went to save Mr. Frank by saying he helped move the body but that he knew that that wouldn't work. That afterwards he went and got drunk, went home and started to leave town but that he knew that that wouldn't do, so he stayed here to show that he wasn't guilty. He begged me not to say anything about this, that he wanted to serve his twelve months so that he would be free; that if he couldn't get me he would go north and marry some white woman around Cincinnati.

He also told me that he kept the money he found in the purse but gave the purse to a negro child. While I was in his Company he asked me to be with him and I told him no, that that was what got him in jail there. He asked me that twice in my presence. He asked me that several times in letters he wrote me, but I simply sent the letters back to him, not caring to be in his Company anymore. He wrote me that he had a big hard thing waiting for me and that I had a big fat ass, and he wanted to get it down to natural size. I have not got the letters. I give them back to him myself. I have not told this before, because I only got out of jail March 9th, 1914, but I want to tell the whole truth about what he told me while in jail and I am willing to take the witness stand and swear to this at any time. I have not been given any money or anything else to make this

statement and I have not been promised anything and don't ask anything to make this statement. I am simply telling the truth of my own free will.

Detectives Langford, Chewing and Sturdevant took a statement from me today. I did not tell them all that I am telling here because I knew they were trying to get things to favor Conley and I knew he was guilty, and that what I knew wouldn't help him but would break his neck. Chief Langford also asked me if Conley used his mouth on me and I didn't say anything.

As to how I come to make this statement, when I was down at the station house today and the Detectives asked me all those questions, I knew what they were trying to do; that they were trying to help Conley, and so I went right from the station house to Mr. Jake Jacobs on Decatur street and told him everything that had happened, and he then told me that I ought to make a statement about it and that is how I come to make this statement.

Annie Maude Carter.

Sworn to and subscribed to
before me this 23rd, day of April 1914.

J. O. Knight,
Notary Public, Fulton County, Georgia.

(N. P. Seal.)

GEORGIA
FULTON COUNTY.

STATE OF GEORGIA
VS.
LEO M. FRANK.

)
) Fulton Superior Court
)
) Extraordinary motion for new trial.
)

Before the undersigned, personally appeared Leo M. Frank,
who upon oath deposes and says that the facts in the above
and foregoing amendment for new trial are just and true, as
they stand stated.

(Signed) Leo M. Frank

Sworn to and subscribed before me
this 23rd day of April, 1914.

(Signed) G. W. Burke,
Notary Public, Fulton County, Ga.

GEORGIA
FULTON COUNTY.

STATE OF GEORGIA)
VS.)
LEO M. FRANK.)

Fulton Superior Court
Extraordinary motion for new trial.

Personally appeared Leo M. Frank, who upon oath deposes and states that the facts set out and sworn to in Exhibit A hereto attached were unknown to deponent at the time of his trial before the jury in Fulton County, Georgia, and were unknown to this deponent until the date of said Exhibit A; that he did not know the facts and circumstances set out in Exhibit A until the date of said Exhibit A and could not possibly have known the same by the exercise of any manner of diligence.

(Signed) Leo M. Frank.

Sworn to and subscribed before me
this 23rd day of April, 1914.

(Signed) C.W. Burke,
Notary Public, Fulton County, Ga.

9611440

Copy of 4th
Annulment
(Carrie Maud Bantz)

STATE OF GEORGIA

VS.

LEO M. FRANK.

Fulton Superior Court

Extraordinary Motion for New Trial.

GEORGIA
FULTON COUNTY.

Personally appeared R. R. Arnold, Morris Brandon, Herbert J. Haas, Leonard Haas and L. Z. Rosser, who upon oath depose and state that they did not, at the date of the trial, nor until after the Supreme Court had affirmed the case of Leo M. Frank have any knowledge of the facts and circumstances set out in Exhibit A, hereto attached; that these deponents, except Morris Brandon, who did not have active control of the case, and whose firm was represented by L. Z. Rosser, made diligent search to find out all about the connection of James Conley with the murder of Mary Phagan, and these deponents and neither of them had any knowledge of any of the facts and circumstances set out in Exhibit A, hereto attached, at the date of the trial of Leo M. Frank, nor until the date of Exhibit A, hereto attached. These deponents knew nothing about the facts set out in Exhibit A hereto attached, nor could they possibly have known the same by the exercise of any manner of diligence.

(Signed) L.Z. Rosser,
R.R. Arnold
Leonard Haas
Herbert J. Haas
Morris Brandon

Sworn to and subscribed before me
~~Notary Public, Fulton County, Ga.~~
this 23rd day of April, 1914.

(Signed) Leo Strauss,
Notary Public, Fulton County, Ga.

This amendment allowed and ordered filed this April 24th, 1914.

(Signed) B.H. Hill,
Judge S.C.A.C

Filed in office this the 28th day of April, 1914.

F. W. Myers, D. Clk.

(ORDER OF MAY 9th, 1914.)

The recitals of fact contained in the grounds of the foregoing motion for new trial are hereby approved as true.

This 9th day of May, 1914.

B. H. Hill, Judge S. C. A. C.

(5th A M E N D M E N T T O M O T I O N .)

GEORGIA, FULTON COUNTY.

And now comes the movant, the defendant in the above stated cause, Leo W. Frank, and amends his extraordinary motion for new trial, and for cause of amendment says:

1-a. Because of the newly discovered evidence of Georgia Denham which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit A.

The movant hereto, Leo W. Frank, did not, at the date of the original trial nor at the date when his motion for new trial was overruled, know of the facts in said Exhibit A set out; nor did he know that Georgia Denham would make an affidavit as set out and shown by said affidavit; nor did he have any reason to know, nor any means by which he could know, that Georgia Denham knew and would testify to the facts set out in said Exhibit A.

Said testimony, in said Exhibit A set out, is of the highest importance to this movant. Jim Conley one of the main witnesses against this movant, upon movant's trial, testified that he was engaged by Frank to move the body of Mary Phagan from the metal room of the pencil factory down to the basement.

Movant denied, on said trial, that Mary Phagan was killed in the metal room and that Conley, through Movant's instigation carried the body from the metal room to the basement, but contended through his counsel that Conley, himself, was the slayer of the little girl, and that the wounds and bruises upon the little girl's body was made by Conley and not by movant.

The witness Conley admitted the washing of the shirt, as in said affidavit testified to, but alleged that the apparent stains on the shirt were rust stains.

Movant did not know, and had no opportunity to know, that this witness, Georgia Denham, would testify that Conley told her that the stains upon the shirt were blood stains and not

rust stains and that said stain were in fact blood stains. This testimony of Georgia Denham, unknown to the movant as aforesaid, shows that the stains upon the shirt were not rust stains but were blood stains, and strongly enforces and fortifies the position of this movant that Conley was the slayer of Mary Phagan and that, in the slaying, he was stained with Mary Phagan's blood. Movant affirms that this testimony was likewise unknown to his counsel at the date of the original trial and at the date when the motion for new trial was overruled, and the fact that it is so newly discovered until it only came to their attention on the date of the affidavit of said Exhibit A.

Movant further shows that this testimony is material, and presents such an extraordinary set of circumstances as would and should produce a different verdict upon another trial.

1-D. Because of the newly discovered evidence of the witness Annie Naud Carter, which evidence is so newly discovered that it is hereunto set out in an affidavit, which is hereto attached and marked Exhibit C.

Movant shows that, when the body of Mary Phagan was discovered in the basement of the pencil factory, there was discovered, lying near thereto, certain notes, introduced in evidence by the State which the negro Conley testified were written by himself, but at the direction and dictation of this movant.

The witness Conley further testified that he could not read and write good; that he could not read a newspaper through. that he tried and found that he could not; and that there were little letter like "dis and dat" that he could read, but the other things he could not understand.

The State contended that a portion of the words of the notes, especially the word "did" and the word "negro" showed that Conley was not the real author of the notes, but that moavnt was, contending that if the negro had written the notes, he would have used the word "done" instead of "did" and the word "nigger" instead of "negro". It was further contended by the State that the Negro would not, immediately after murdering the girl, scrawl, out with great pains, the notes, and that

the notes themselves showed that they were conceived by a white man.

The letters, newly discovered and hereto set out as a part and parcel of said Exhibit C, hereto attached, show therein the same words, the same spelling, and the same style of composition as appears in the notes found near the child's body; especially does it appear from these newly discovered letters that the negro Conley did use the word "did and did use the word "negro" instead of the words "done and "nigger". Even in the very question of spelling, the notes hereto set out as a part and parcel of said Exhibit C. show the same character of spelling as is shown in the notes found near the little girl's body. Especial attention is called to the spelling of the word "self", which is spelled in the notes found by the little girl's body and which is spelled in the letters hereto attached as a part of said Exhibit C. as "^{self}self". The number of letters hereto attached also negatives the contention of the State and of the witness Conley that he could only write with difficulty, and demonstrates that he could write with facility and that he was a chronic letter writer.

The original notes are set out in the brief of evidence prepared in the motion for new trial, and the originals, themselves, are here to the Court shown.

Neither movant, nor his counsel had any knowledge of the existence of these letters at the time of the trial, nor at the time his motion for new trial was overruled. Indeed at neither of said dates were these letters in existence. The fact that these letters were in existence became known to this movant and his counsel after the case was affirmed by the Supreme Court, and as a result thereof it has been a physical impossibility that these letters should become known to this movant or his counsel until too late to bring them to the attention of the court, except in this extraordinary motion for new trial.

The discovery of these letters is material, and presents such an extraordinary set of facts and circumstances as would justify the grant of a new trial; and movant insists that, with these

letters before the Court and jury, upon another trial, a verdict would and should be rendered in his favor.

These letters are further material by reason of their substance they reek with the vilest filth and show that they were written by one with the most loathsome and perverted nature, whose testimony was absolutely worthless, and whose depraved disposition could be depended upon to murder this little girl.

The substance of these letters corroborates the contention of movant and of his counsel, that the condition in which the girl's underclothes were found is the result of the work of the negro Jim Conley, and of him alone, the underclothes taken from the body of Mary Phagan being in the following condition: The inside seam of the drawers was cut, not with a sudden rip but deliberately, by one who must have taken his own time in doing it. The cut began at the lower right leg, continuing up across the crotch and partially down the left leg. The drawers, themselves, were extremely roomy. This left the little girl fully exposed, with the exception of a knitted undershirt which fitted next to her skin and which adhered closely to the skin. This knitted undershirt was also cut, the cut starting on the left side, extending up about four or five inches, then extending across the shirt to the left side. There was also a cut over one of the breasts of the shirt, which exposed the left breast. The drawers, themselves, show that they were cut and not torn, and, at the crotch, it can be seen where the knife slipped and the material itself was cut.

The contention of the State was not that Frank had deliberately determined to murder the girl; but, having sought familiarity with her, either natural or unnatural, and being refused, he suddenly killed her to protect himself.

The condition of these clothes, as above outlined, shows the murder not to be the act of an excited and unbalanced man, but, the leisure, ferocious conduct of one possessed of an unnatural passion, with time and opportunity to gratify it.

This movant shows that, had the nature of said Conley, as exhibited in these letters, been known to the jury trying him

they would not have convicted this movant upon the testimony of such a vile creature.

Movant insists that these letters, introduced before a jury upon another trial, should and would produce a verdict of acquittal.

1-B. Because of the newly discovered evidence of Cora L. Leffew, which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit E.

Upon the original trial of movant, the State contended that Mary Phagan had been murdered in the metal room of the second floor of the factory and had been carried from that place by movant and Jim Conley down the elevator and placed in the basement. Movant and his counsel contended that Mary Phagan was not killed on the second floor of the pencil factory, but on the street floor thereof, by Jim Conley alone and thrown into the basement.

One Barrett testified, upon the trial that he found six or eight strands of hair upon a lathe in the metal department of the factory, not testifying as to whose hair it was.

One of the witnesses for movant, upon cross examination, testified that the hair found on the lathe by this man Barrett looked like the hair of Mary Phagan.

One of the State's strong contentions in support of its theory that Mary Phagan was killed in the metal department, on the second floor of the factory, was the finding of this hair upon the lathe, which the State contended was the hair of Mary Phagan.

This newly discovered evidence, Exhibit E, shows that the hair found upon this lathe was not the hair of Mary Phagan.

This newly discovered evidence is material, and presents such an extraordinary state of facts as ought to produce a verdict of acquittal upon another trial.

This movant did not know at the date of his trial nor until after the affirmance of his case by the Supreme Court, nor until the date of the affidavit Exhibit E, that said Cora L. Leffew knew or would testify to the facts set out in said Exhibit E. Movant shows that his counsel was likewise without knowledge,

until the date of said affidavit, Exhibit E, that said Cora L. Leffew would testify as in said Exhibit E set out and could not have ascertained such by exercising due diligence.

1-C. Because of the newly discovered evidence of Georgia Denham, which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit D.

Upon the original trial of movant, the State contended that Mary Phagan had been murdered in the metal room of the second floor of the factory and had been carried from that place by mov

and and Jim Conley down the elevator and placed in the basement.

Movant and his counsel contended that Mary Phagan was not killed on the second floor of the pencil factory, but on the street floor thereof, by Jim Conley alone, and thrown into the basement.

One Barrett testified, upon the trial, that he found six or eight strands of hair upon a lathe in the metal department of the factory, not testifying as to whose hair it was.

One of the witnesses for movant, upon cross examination, testified that the hair found on the lathe by this man Barrett looked like the hair of Mary Phagan.

One of the State's strong contentions in support of its theory that Mary Phagan was killed in the metal department on the second floor of the factory, was the finding of this hair upon the lathe, which the State contended was the hair of Mary Phagan.

This newly discovered evidence Exhibit F, shows that the hair found upon this lathe was not the hair of Mary Phagan.

This newly discovered evidence is material, and presents such an extraordinary state of facts as ought to produce a verdict of acquittal upon another trial.

This movant did not know at the date of his trial, nor until after the affirmance of his case by the Supreme Court nor until the date of the affidavit Exhibit F, that said Georgia Denham knew or would testify to the facts set out in said Exhibit F. Movant shows that his counsel was likewise without knowledge, until the date of said affidavit, Exhibit F, that said

Denham would testify as in said affidavit set out, nor could they have ascertained same by exercise of due diligence.

1.-D. Because of the newly discovered evidence of Cora Lavander Laffew, which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit B.

The movant hereto, Leo W. Frank, did not, at the date of the original trial, nor at the date when his motion for new trial was overruled, know of the facts in said Exhibit B set out; nor did he know that said Cora Lavander Laffew would make an affidavit as set out and shown by said affidavit, nor did he have any reason to know, nor any means by which he could know, that Cora Lavander Laffew knew and would testify to the facts set out in said Exhibit B.

Said testimony, in said Exhibit B, set out, is of the highest importance to this movant. Jim Conley, one of the main witnesses against this movant, upon movant's trial, testified that he was engaged by Frank to move the body of Mary Phagan from the metal room of the pencil factory down to the basement.

Movant denied, on said trial, that Mary Phagan was killed in the metal room and that Conley, through movant's instigation, carried the body from the metal room to the basement, but contended through his counsel that Conley himself, was the slayer of the little girl, and that the wounds and bruises upon the little girl's body was made by Conley and not by movant.

The witness Conley admitted the washing of the shirt, as in said affidavit testified to, but alleged that the apparent stains on the shirt were rust stains.

Movant did not know, and had no opportunity to know, that this witness Cora Lavander Laffew would testify that Conley told her that the stains upon the shirt were blood stains and not rust stains, and that said stains were in fact blood stains.

This testimony of Cora Lavander, unknown to the movant as aforesaid, shows that the stains upon the shirt were not rust stains, but blood stains, and strongly enforces and fortifies the position of this movant that Conley was the slayer of Mary Phagan and that, in the slaying, he was stained with Mary Phagan's blood. Movant affirms that this testimony was likewise.

unknown to his counsel at the date of the original trial and at the date when the motion for new trial was overruled, and the fact that it is so newly discovered until it only came to their attention on the date of the affidavit of said Exhibit B and could not have been discovered by exercise of due diligence.

Movant further shows that this testimony is material, and presents such an extraordinary set of circumstances as would and should produce a different verdict upon another trial.

Rosser and Brandon,
R. R. Arnold,
Leonard Haas,
Herbert J. Haas.
Attys. for Deft.

State of Georgia, (). No. Fulton Superior Court
Vs. (). Conviction of Murder, July Term, 1913
Leo M. Frank. (). Extraordinary Motion for New Trial.

G E O R G I A,
FULTON COUNTY.

Before the undersigned, personally appeared Morris Brandon, R. R. Arnold, Leonard Haas, Herbert J. Haas, and L. Z. Rosser, each of whom deposes and says as follows:

That they, nor neither of them, until the date of Exhibits A, B, D, E. attached to the amended extraordinary motion for new trial this day allowed, did not know of the facts set out in said Exhibits A, B, D and E.

Deponents Arnold, Rosser and Herbert J. Haas, who had actual charge of the case, themselves went to the factory and made a personal examination of the employees of the factory, seeking to see each and all of the said employees; and thus, seeking among the employees of the factory, they did not discover and did not know until the date of said Exhibits A, B, D and E, that Georgia DeKham and Cora L. Laffew knew the facts set out in said Exhibits A, B, D and E.

Deponents, nor neither of them, did not know of the existence of the letters attached to the affidavit of Annie Maud Carter, which is attached to the amended extraordinary motion for new trial and marked Exhibit "C", until after the case of Leo M. Frank had been affirmed by the Supreme Court. That deponents did not know of the existence of these letters, nor could they have known of them by the exercise of any diligence.

L. Z. Rosser,
Morris Brandon,
Herbert J. Haas,
Leanord Haas,
R. R. Arnold.

Sworn to and subscribed before me,
this 1st day of May, 1914.

B. H. Hill
Judge S. C. A. C.

EXHIBIT A.

GEORGIA, FULTON COUNTY

State of Georgia,

Fulton Superior Court.

Vs.

Extraordinary Motion for New Trial

Leo M. Frank.

Personally appeared Mrs. Georgia Denham who states that she was employed at the plant of the National Pencil Co., on Forsyth St., Atlanta, Ga. during April and May 1913 that on a certain day which affiant believes was Thursday May 1st, 1913, and which was the day upon which James Conley was arrested in connection with the murder of Mary Phagan affiant saw said Conley in the Metal room of said pencil co., washing a shirt. Affiant saw said shirt plainly and on same there was a large spot which looked to affiant like blood the same to be about the size of a persons hand. The affiant asked said Conley what it was and Conley stated that it was blood that his nose had bleed when he had bumped his head. And the said Conley attempted to demonstrate to the affiant how the blood from his nose had gotten around on top

of the shoulder.

Affiant further states that she related the above facts to the detectives who were then working on the case and that her affidavit was taken by them.

Affiant states that some of her associates are- Miss Mary Pirk. Jennie Mayfield. Annie How.

her
Georgia X Denham
mark

Sworn to and subscribed before me,
this 30th day of April, 1914.

J. O. Knight,
N. P. Fulton County, Ga.
(N. P. Seal.)

Correction made before being sworn,
J. O. Knight.

Witness: _____ Notary Public.

Eula Flowers,
N. V. Darley.

EXHIBIT D.

GEORGIA, FULTON COUNTY.

State of Georgia, Fulton Superior Court.
Vs. Extratordinary Motion for New Trial
Leo M. Frank.

Personally appeared Mrs. Georgia Denham, who on upon oath states that she was present in the metal room at the National Pencil Company's plant on Monday, April 28th, 1913, when some strands of hair were found upon a certain lathe, and which were sought to be identified as the hair of Mary Phagan, deceased. Affiant further states that she was well acquainted with the deceased Mary Phagan, and with the color of her hair, and that the hair above mentioned was not the hair of Mary Phagan; that it was entirely too light in color to have been from the head of the deceased. Mary Phagan. That Mary Phagan's hair of an auburn hue while that found on the lathe was more blonde.

Deponent states that amongst those present at the time were Mrs. Cora Lavander, R. P. Barrett, Cora Falta, Marjorie McCord, Miss Jimmie Mayfield, Deponent states some of her associates are

Miss Mary Pirk, Miss Jimmie Mayfield and Annie How.
Georgia X Denham
her
mark

Sworn to and subscribed before me,
this 30th day of April, 1914.

J. O. Knight,
Notary Public Fulton County, Ga.
(N. P. Seal.)

Corrections made before being sworn.

J. O. Knight,
Notary Public

Witness to signature

J. P. Fyffe,
N. V. Darley.

EXHIBIT E.

GEORGIA, FULTON COUNTY

Fulton Superior Court.

State of Georgia,

Vs.

Extraordinary motion for new trial

Leo M. Frank.

Personally appeared Mrs. Cora Lavander Leffew who upon oath states that she was present in the metal room at the National Pencil Company's plant on Monday, April 28th, 1913, when some strands of hair were found upon a certain lathe, and which were sought to be identified as the hair of Mary Phagan, deceased. Affiant further states that she was well acquainted with the deceased ~~Mary~~ ^{Mary} Phagan, and with the color of her hair, and that the hair above mentioned was not the hair of Mary Phagan; that it was entirely too light in color to have been from the head of the deceased. Affiant further states that amongst those present at the time were Mrs. Georgia Denham, R.P. Barrett, Cora Falta, Marjorie McCord, Miss Jimmie Mayfield.

Affiant further states that her associates are

301431

Mrs. Cora Lavander Leffew.

Sworn to and subscribed before me
this 30th day of April, 1914.

D. I. Mac Intyre, Jr.

Notary Public Fulton County, Ga.

STATE OF GEORGIA,

No. Fulton Superior Court.

Vs.

Conviction of Murder: July Term

Leo M. Frank.

1913. Extraordinary Motion for
New Trial.

:-----:

Georgia, Fulton County.

Before the undersigned, personally appeared Leo M. Frank, who being duly sworn, deposes and says that at the date of his trial and at the date when his motion for new trial was overruled he had no knowledge that the witnesses Georgia Denham and Cora L. Laffew knew the facts, or could, or would testify to the facts set out in Exhibits A, B, D and E attached to the amendment to the motion; that at neither of said dates, and not until the date of the Exhibits A, B, D and E did the defendant know that either of said witnesses had any knowledge of the facts in said exhibits outlined.

Deponent says that he did not know until after his trial before a jury, and after his motion for new trial had been overruled, of the existence of the letters purporting to be written by Jim Conley, attached as Exhibits C to the amended extraordinary motion for new trial this day allowed; and the knowledge of said letters and the existence of said letters, and that Jim Conley was the author thereof, has recently come to his knowledge, and was not known by him until after the affirmance of this case in the Supreme Court.

Leo M. Frank,

Sworn to and subscribed before me,

this 1st day of May, 1914.

J. O. Knight, Notary Public, Fulton County, Ga.
(N. P. Seal.)

State of Georgia, _____

No. Fulton Superior Court. _____

Vs.

Conviction of Murder; July Term, 1913

Leo M. Frank.

Extratorinary Motion for New Trial

GEORGIA, FULTON COUNTY.

Personally appeared before the undersigned Leo M. Frank who, being duly sworn, deposes and says that he is the defendant in the above stated cause, and that the statements contained in the foregoing amendment to his extraordinary motion for new trial are true as they stand stated.

Leo M. Frank.

Sworn to and subscribed before me,
this the 1st day of May, 1914.

J. O. Knight,

Notary Public Fulton County, Ga.

(N. P. Seal.)

The above and foregoing amendment is hereby allowed and ordered filed.

This May 1st, 1914.

B. H. Hill,

Filed in office this the 8th day of May, 1914.

C. H. Brotherton, D. Clk.

(O R D E R O F M a y 9 t h , 1 9 1 4 .)

The recitals of fact contained in the grounds of the foregoing extraordinary motion for new trial are hereby approved as true.
This 9th day of May, 1914.

Benj. H. Hill,
Judge S. C. A. C.

9011457

(6th AMENDMENT TO MOTION.)

GEORGIA, FULTON COUNTY.

Now comes the defendant Leo M. Frank, and hereby amends paragraph 2 of the original motion by striking therefrom the following words: "that she was an employee of the National Pencil Company and was acquainted with Mary Phagan, and knew the color of her hair; that she knew state's witness R. P. Barrett, who had testified at the original trial that he had found hair on a lathe on the second floor, and that on Monday, April 28th, the said Barrett showed her the hair which he claimed he had found on said machine, and she, the said Jimmie Wayfield, now states positively that the hair showed to her by the said Barrett, and which the said Barrett stated he had found on said machine, was not the hair of Mary Phagan and that the same was entirely too light in color, and was not of the same texture as that of Mary Phagan", and place in lieu of the stricken matter the following, to-wit: "that she worked at the National Pencil Company for about eight months and knew Mr. Frank when she saw him; that she was acquainted with Mary Phagan, and knew the color of her hair; that R. P. Barrett was known to her, that on Monday, April 28, 1913, Barrett showed her the hair he said he had found on a lathing machine, and she gave it as her positive opinion that the hair was entirely too light in color to be the hair of Mary Phagan.

2. Movant also moves to strike from paragraph 3 of the original motion the following; "that she was an employee of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her hair; that she also knew R. P. Barrett and Magnolia Kennedy, also employees of the National Pencil Company the said Barrett having testified at the original trial that he had found certain hair on a lathe on the second floor, and the said Magnolia Kennedy having testified that the said hair alleged to have been found on said lathe looked like Mary Phagan's hair; that, on Monday, April 28th, 1913, Magnolia Called Cora Falta's attention to said

said hair which was alleged to have been found by Barrett on the lathe, and the said Cora Falta states positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan, and places in lieu thereof the following; "that she was working at the National Pencil Co., for five years past; that she was acquainted with Mr. Frank and also R. P. Barrett, and knew Mary Phagan quite well and knew the color of her hair, that, on Monday, April 28, 1913, she was in the pencil factory and Magnolia Kennedy called her attention that R. P. Barrett was alleged to have found some hair on a lathing machine; that, at that time, she gave it as her positive opinion that the hair found on the machine was not the hair of Mary Phagan, as it was entirely too light in color to be the hair of Mary Phagan. The said Cora Falta now states that she is most positive that the hair she saw on the machine could not have possibly been Mary Phagan's hair and that the hair on the machine was much lighter in color than the hair of Mary Phagan.

3. The defendant further amends paragraph 4 by striking therefrom the following: "That she was an employee of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her hair; that on Monday, April 28th, 1913, her attention was called to some hair that was alleged to have been found on a lathe by R. P. Barrett; and that the said Alice Marjory McCord states positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan" and places in lieu thereof the following; that on Monday April 28th, 1913, her attention was called to some hair that was on a lathe machine on the second floor of the National Pencil Factory; that she examined said hair very closely; that she knew Mary Phagan during her time of employment at the factory and knew the color of her hair; and she states that, in her opinion, the hair, found on the lathe machine was not that of Mary Phagan, as it was much too light to be the hair of Mary Phagan.

4. The defendant also strikes ground number 6 of the original motion.

5. The defendant further amends by striking ground number 12 of the original motion.

6. The defendant further amends by striking from paragraph 13 the following; "that the said Mary Rich knows knows Jim Conley, and that on April 26th 1913, at about 2:15 P. M., she saw Jim Conley come out of alley immediately in the rear of the National Pencil Company's factory; that the said Jim Conley bought a 20 cent dinner of Mary Rich, who runs a restaurant on wheels facing said alley; that, after purchasing same, he carried same in his hand and went back to the aforesaid alley, in the direction of the Pencil factory, and that the said Mary Rich saw no more of the said Jim Conley during that day" and adding in lieu thereof, that said Mary Rich knows Jim Conley; that on the 26th day of April 1913, Jim Conley bought from her a twenty cent lunch at her lunch stand, which was then located on Hunter Street facing the alley which is in the rear of the National Pencil Company, between Madison Avenue and Foreyth street; and that she never saw anything more of Jim Conley that day.

Rosser and Brandon,
R. R. Arnold
H. J. Haas,
Leonard Haas.

Deft's Attys.

This amendment allowed and ordered filed.

B. H. Hill,
Judge S. C. A. C.

Filed in office this the 9th day of May, 1914.

F. W. Myers, D. Clk.

(O R D E R O F M a y 9 t h , 1 9 1 4 .)

The recitals of fact contained in the grounds of the foregoing motion for new trial are hereby approved as true.

This 9th day of May, 1914.

B. H. Hill,
Judge S. C. A. C.

(RESPONSE TO EXTRAORDINARY MOTION FOR NEW TRIAL.)

STATE OF GEORGIA,	() No. 9410
Vs.	() Superior Court of Fulton County.
Leo M. Frank.	() Conviction of Murder. July Term of
	() Fulton Superior Court; Affirmance of
	() Judgment by Supreme Court; Entry of
	() Remittur March Term, 1914, Fulton
	() Fulton Superior Court.
	() Extraordinary Motion for New Trial by
	() Leo M. Frank.

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The State of Geogia in response to said motionand as

for specific ~~answer~~ ^{plea} to the several grounds, the State of Georgia hereby shows:

GROUND 1.

In response to Ground 1, the State says that the same is not in any view sufficient.

The facts with reference to the hair, as developed on the original trial, are as follows:

R. P. Barrett, sworn for the State, was the machinist in the National Pencil Company's place of business. He swore that on Monday morning after the murder was committed, viz, April 28, 1913, he found blood spots near the ladies' dressing room, where Jim Conley afterwards swore he dropped the body when moving it under Frank's directions. Barrett was asked on examination in chief, as is shown by reference to p. 526, Vol. 2, of the stenographer's record filed in the Superior Court of Fulton County, the questions following, and gave thereto the answers set out, viz,

"Q. Did you or not find any hair anywhere there? A. I found the hair on a bench lathe, on the handle."

"Q. How far was this hair, what kind of a handle was it on? A. It was in the shape of an "L"."

Further on, on p. 527, the following questions were put by the State, and answers given, viz;

"Q. How was the hair caught in there? A. Swinging down like this (indicating) /

"Q. Was Miss Magnolia somebody there? A. As near as I can remember, Miss Magnolia was there."

Counsel for the defense cross-examined said Barrett, and for some reason best known to them, did not ask him whether or not he could identify the hair found by him as that of Mary Phagan, but, as is shown on p. 534, Vol. 2, contented themselves with asking him the questions following, to which they received the answers set out:

"Q. You called Mr. Quinn to see that? A. I called him.

"Q. Were they long strings of hair or were they knotted and matted strands? A. They were around my finger. I pulled

the handle and they got around my finger."

Quinn was a witness for the defendant on the main trial.

Miss Grace Hicks was sworn by the State, and in Vol. 1, p. 337, of the official stenographer's report is found the following questions and answers, viz:

"Q. How did you know that that was Mary Phagan? A. I just knowed by her hair being so long.

"Q. Knew her by her hair? A. Yes sir."

On cross examination counsel for the defendant asked said witness, among others, the following questions, and received the answers following, viz:

"Q. Miss Grace, what sort of hair did little Mary Phagan have? A. Well, she had a kind of sandy color of hair.

"Q. Was it lighter than yours or less light? A. It was darker than mine.

"Q. Darker than your hair? A. Yes sir.

"Q. Much darker? A. Well, it was about two shades darker than mine.

"Q. You would say about two shades; she was still a blond girl, though? A. Yes sir."

So far as the State is able to recall, this is all the evidence introduced by the State in reference to the hair found by Barrett on the lathe.

The defendant introduced as his witness Miss Magnolia Kennedy.

Barrett had already shown in his evidence that Miss Magnolia Kennedy was present, and the State, as is shown on p. 527 of the record, undertook to show by him that the hair was identified by Miss Magnolia Kennedy, and such evidence, on objection of attorneys for the defendant, was excluded.

Counsel for Frank, after putting Miss Magnolia Kennedy up, as will be seen by reference to Vol. 5, p. 2250, did not ask said witness anything about the hair. On cross examination by the Solicitor General, as shown on p. 2252, the following questions were asked and answers given by said witness:

"Q. Did you discover any hair on there anywhere, identify any hair? A. Mr. Barrett called me and showed me that hair at the machine.

"Q. And you identified it, didn't you? A. Yes sir.

"Q. Whose hair was it? A. It looked like Mary's hair.

"Q. Where was it when you saw it? A. It was on the lathing machine."

On p. 2253 of said record, these cross questions were asked and these answers given:

"Q. Now, what was the color of Mary's hair, and what was the color of this hair you found there? A. Mary's hair was a light brown, kind of a sandy color.

"Q. Was this light brown that you found? A. Yes sir."

So far as the State is able to find or recall, this evidence constitutes all of the evidence introduced on the trial of the case with reference to the hair found on the lathe on the office floor of the National Pencil Company. If not, all, this is the important evidence, and there is no evidence in the record contradicting this.

The State ^{submits} ~~attaches hereto and incorporates herewith a copy of~~ affidavit of W. A. Ghesling, the undertaker who had charge of the remains of Mary Phagan, the murdered girl, and who was a witness on the trial in behalf of the State. This affidavit, the State submits, in itself completely answers the contention of the defendant. ~~Said affidavit is as follows:~~

The attorneys for the defendant, under the law, propounded in this case certain questions to Dr. H. F. Harris, sworn by the State on the trial of this case, said Harris not having been asked either by the State or the defendant any question with reference to the hair. Said Harris, before D. O. Smith, Commissioner duly appointed to take his evidence in answer to questions propounded by defendant's attorneys, testified substantially as follows, viz: "I am state health officer and director of laboratories of the State Board of Health. I made two examinations of the body of Mary Phagan. The Solicitor General sent some hair found on a machine and asked me to compare this hair with hair taken from the corpse of Mary Phagan. I examined these specimens under a microscope. I did not make an exhaustive examination, though the examination was sufficient to show that the hair given me was almost certainly that of a female, and was certainly from the head of a Caucasian. The specimen of hair given me by the Solicitor General's assistant, and that obtained from the head of Mary Phagan resembled each other so much that it was impossible for me to say definitely that it was not Mary Phagan's hair. I have recently examined hair taken from the head of several persons, and have found that individual hairs from the same individual differ as much in shape as the hair given me by Mr. Dorsey."

The State will show, in opposition to this ground of the motion, the entire evidence obtained by the State from Dr. H. F. Harris, and the State contends that in no view of the facts developed under the law does this constitute any ground for a new trial being granted.

The contention of the State was, under the evidence adduced as shown by the brief of evidence, that this was the hair of Mary Phagan. The State now insists that the evidence adduced warranted the contention that it was the hair of the deceased, and the State did not ask the question of Dr. H. F. Harris because the State was fully apprised as to the fact that said Harris' evidence could not have any probative effect.

The said Harris was sworn, as the record shows, long after counsel for the defense had cross examined Miss Grace Hicks, as shown by the record, and the State submits that the record itself shows that counsel for the defense are shown by this record to have been lacking in diligence in reference to the subject matter involved in Ground 1.

GROUND 2.

The State contends that the record of questions and answers given under Ground 1 and the other evidence contained in the brief of evidence approved by the court when the motion for a new trial was had, shows that the evidence of Miss Jimmie Mayfield, as referred to in Ground 2, is merely cumulative. In no event should a new trial be granted because of this evidence. Under the record, even if at all material, it is not of sufficient materiality to produce a different result upon another trial of this case, if it should be granted.

Frequently during the trial of the case, Mr. Reuben R. Arnold stated that the defense were putting on the stand and asking certain questions of all the ladies employed in the National Pencil Company's place of business.

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For one illustration of such a statement on the part of Frank's attorney aforesaid, see ~~p. 2984 of the stenographer's report of the evidence, where Mr. Arnold asked Miss Julia Fess, a witness for the defendant, "Well, inasmuch as you worked on that floor, I am going to ask you a question. Have you ever been to Mr. Frank's office after hours, when anything wrong or immoral was done of any sort?"~~

~~For another illustration, see p. 2984 of the report, where the witness, for the defendant, Miss Corinthia Hall, was asked: "Now, I will ask you a question that I am asking every lady who works on the fourth floor. Did you ever meet Mr. Frank at the factory, or at any time or place, for any immoral purpose."~~

For another illustration, see p. 2986, where the witness, Miss Ida Hayes, was asked by Mr. ^{Arnold} ~~Rover~~, "Now I am going to ask you a question that I am asking every lady on the fourth floor. Did you ever at any time or place meet Mr. Frank for any immoral purpose whatever, down in that office or anywhere else?"

The State submits, in view of the fact that Barrett was the State's witness and Grace Hicks was the State's witness, and both had testified earlier in the case and before the defendant introduced his evidence with reference to hair, and inasmuch as it is shown in Ground 2 of the extraordinary motion for a new trial that the witness Miss Jimmie Mayfield was an employee of the National Pencil Company at that time, that the defendant, and his counsel, show an absolute lack of diligence in not making inquiry of Miss Jimmie Mayfield and all other employees in that factory with reference to this hair, and the State insists that had this been a very material question involved, that said counsel would have made diligent inquiry. Counsel for defendant, Frank, were put upon notice, when they sought to show by Barrett that the hair was identified by a witness, viz, Miss Magnolia Kennedy, introduced by the defendant Frank, as to what the State expected to show. The diligence of counsel for the defendant in reference to this hair is well illustrated by the fact that, notwithstanding this evidence of Barrett, who testified in behalf of the

State, that Magnolia Kennedy, the defendant's witness, saw the hair, they failed to ask any question with reference to the identity of this hair, and the State could with much more show of plausibility contend that because counsel for Frank did not ask their witness this question when they knew, or ought to have known by diligent inquiry, that she could probably identify the hair as being that of Mary Phagan, that said attorneys for Frank were suppressing material evidence, than can said attorneys, as they have done in the first ground of this motion, assert that the State was suppressing material evidence, when the State failed to ask Dr. H. F. Harris about said hair, or when the said H. F. Harris refused to volunteer a statement to the effect that he could not tell whether it was her hair or not.

The State contends that the finding of the hair was not relatively very material, there being other and more important facts showing that the murdered girl met her death on the office floor, occupied by Leo M. Frank, viz, the evidence of the blood spots found at the ladies' dressing room, within several feet of where the hair was discovered by Barrett.

GROUND 3.

In answering Ground 3, the State ^{attaches} ~~attaches a copy~~ of an affidavit executed by Mrs. Cora Falta, which in itself amply disproves the contention of the defendant. The statements with reference to diligence in respect to this subject matter, as set forth in response to grounds 1 and 2 in this answer, are also likewise applicable to Ground 3.

GROUND 4.

With reference to this Ground, the same objection is urged against the granting of a new trial, as heretofore referred to.

We submit that if a verdict rendered after a trial lasting approximately thirty days, where evidence was introduced covering, as shown by the stenographer's report, seven large volumes, and 3,647 pages of legal cap paper, a voluminous record, can be upset, - where the same has been rendered by a unanimous verdict of the jury, as shown by the affidavits from all of the jurors as attached to the motion for a new trial made by defendant, Leo M. Frank, and to which said affidavits reference is prayed, where said verdict was approved by the judge who tried said case, and thereafter affirmed by the Supreme Court of Georgia, one of the grounds of the motion for new trial being as to the sufficiency of the evidence, - then verdicts of juries and judgments of courts are not ^{the} binding and conclusive adjudications which they have heretofore been supposed to be, and the trial is little more than a farce.

This witness is at present in the employ of the National Pencil Company.

The volume of the record is shown by the affidavit of Bass Rosser, ~~copy of which is attached hereto.~~

GROUND #5.

5. Replying to paragraph 5 of the extraordinary motion, the State, for answer, submits the following as being a complete answer and reason why no extraordinary motion under the law should be granted on this ground. The State herewith sets out an affidavit obtained of Albert McKnight on the 21st day of April, 1914, and also one obtained on the 16th day of April, 1914, ~~which are as follows~~
to be used

Also the State submits as a complete answer, the affidavit of Angus Morrison, and

Also affidavit of R. L. Craven.

Also the State submits affidavit of E. H. Pickett.

Also the State submits the affidavit of W. W. Boyd taken on April 22nd, 1914.

(22)

The State submits that Albert McKnight has told the absolute truth, and that no new trial could possibly, under the rules of law as ~~laid~~^{laid} down by the Courts, be granted under the showing made in ground 5 of this motion. The State submits that Albert McKnight could not truthfully change the evidence given on the trial, and would not do so, and that he never would have made the false affidavit referred to in ground 5 except for the improper influences shown to have been exerted on him by agents and representatives of the defendant Leo M. Frank.

GROUND 6.

6. Referring to ground 6 with reference to the newly discovered evidence of Mrs. J. B. Simmons, the State shows that this constitutes no satisfactory ground for a new trial, because first, this evidence could not have been produced and would not have ~~been~~ produced a different result in view of the overwhelming and preponderance of the evidence that this girl was dead not later than one-thirty o'clock, and could not have screamed at the time and place referred to by Mrs. Simmons. Second, the said Mrs. Simmons is shown by the following affidavits to be one of the most disreputable and worthless characters that ever disgraced any community. The worthlessness, the lack of character on the part of the said Mrs. J. B. Simmons, is shown by the following affidavits, ~~copies of which are herewith attached.~~

- (James J. Green,)
- (R. S. Ozburn,)
- (Mrs. Willie M. Blacker,)
- (C. H. Brannon,)
- (George H. Phillips,)
- (L. O. Askew,)
- (Isaac Wheeler,)
- (J. F. McGill,)
- (James T. Moser,)
- (Jim Daly,)
- (E. G. Patton,)
- (E. W. Crump,)
- (Thos. Christian,)
- (T. E. Street,)
- (Mrs. J. B. Simmons,)
- (A. B. Williams) (Mrs. Simmons' son-in-law).

The evidence as to the general character of this witness, ~~as to the fact that~~ is sufficient answer to the charge that the State did not introduce her, even if there had not been, as there are other reasons set out.

GROUND 7

The State submits, with reference to Ground 7, that the same is wholly insufficient; the evidence set out as having been given by Mrs. Ethel Harris Miller and ~~she~~ ^{MRS. LEFFHOFF} being merely cumulative evidence; the question of alibi having been mainly relied upon by the defendant, Leo M. Frank, in the trial in which he was convicted of the offense of murder.

The State is informed and believes that these witnesses are non-residents of the City of Atlanta, and nothing is known as to their character, reputation, standing, associations or connections.

The State is informed and believes that the defendant, Leo M. Frank, has stated that he saw Mrs. Ethel Harris Miller on the day in question, and can even remember the character and kind of dress in which she was attired; and if this be true, it is an additional reason why the ground urged should not be the basis for granting the motion for a new trial.

Grounds 8.

The State, answering Ground 8, submits that, under the law, the fact that Dewey Hewell has changed, if such be the fact, her evidence as given on the trial of Leo M. Frank, would not be a ground for granting this extraordinary motion. In addition to the evidence given by Dewey Hewell, showing that Leo M. Frank personally knew Mary Phagan, the deceased, the State introduces the evidence of J. M. Gantt, Book-keeper, who swore that Leo M. Frank remarked to him that he seemed to know Mary pretty well. The State also introduced Ruth Robertson, a witness who swore that Frank personally knew the deceased; also the testimony given by a witness named W. E. Turner. And the State therefore submits that, if Dewey Hewell should testify otherwise on the trial of this case, it could in no wise produce a different result. Turner swore to having seen the defendant insisting on speaking with Mary Phagan at a time when there were no other employees in the room, and intruding his attentions upon the deceased.

In answer to the allegations in Ground 8, the State makes reference further to the affidavit of Miss Carrie Smith, likewise fully set out in Ground 9, ~~a copy of which is as follows~~

Also, the affidavit given by Mrs. Maggie Nash, nee Griffin.

These affidavits establish the falsity of the claims as contained in Ground 8, and show in a measure the tactics pursued by this defendant in his effort to overturn the verdict of guilty.

9.

Answering Ground 9 of the so-called extraordinary motion of the defendant, Leo M. Frank, the State submits, as a full and complete refutation to the said ground, even if it were otherwise sufficient in law to warrant the setting aside of the verdict of guilty, as rendered, the affidavit of Miss Ruth Robertson; a copy of which ~~said affidavit is hereto attached~~. This said affidavit is supported by the affidavit of her father, ^{W. T. Robertson,} ~~a copy of which is as follows~~.

GROUND 9

Also with reference to Ground 9, the State respectfully refers the Court to the affidavit of Mrs. Carrie Smith, and the affidavit of Mrs. Nash, nee Griffin, ~~full set out in this answer~~ ^{read} under Ground 8.

With reference to this Ground 9, as is insisted by the State with reference to all of the grounds contained in this motion, it is submitted that the same does not present extraordinary situations such as are contemplated by the law, and could not possibly, in any view of the case, be reasonably expected to produce a different result to that which has been obtained, namely, the verdict of guilty.

10.

To Ground 10, as a full and complete answer, in view of the law containing with reference to such matters, the State submits that the affidavit of Mrs. Mamie Edmunds, nee Miss Mamie Kitchings, is a full and complete answer to the allegations of Ground 10. ~~Said affidavit of Mrs. Mamie Edmunds, nee Kitchings, is as follows:~~

//

As to Ground 11. The State insists that the same does not constitute an extraordinary situation such as is contemplated shall exist before the Court shall set aside a solemn verdict rendered unanimously by a jury of twelve, where the verdict is approved by the trial judge and affirmed by the Supreme Court. Under the law, even if the witness referred to, namely, Miss Marie Karst, had repudiated her evidence, the Court could not grant the movant this motion. This affidavit of Miss Marie Karst is also supported by the affidavits of Miss Nellie Pettus and Miss Lillie Pettus. As a matter of fact, however, the defendant has wholly and totally misrepresented the facts, as is shown by three affidavits voluntarily signed by Miss Marie Karst. Said affidavits of Miss Karst and the affidavits of Misses Nellie and Lillie Pettus, ~~are as follows:~~

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As to Ground 12: The State submits that, at best, this evidence, if true, is merely cumulative. The plea of alibi constituted, as will be seen by reference to the brief of evidence filed in this case, about the only defense set up by Frank, the defendant, and numerous witnesses were introduced along that line. Among other alibi witnesses testifying to almost the same state of facts to which in this ground it is said Pardee and Green will testify, was Miss Helen Kern. Even the testimony, however, of Miss Kern, and the evidence here referred to, which could be on another trial shown through Pardee and Green, was not in conformity with the statements made by Leo M. Frank, the defendant himself, as will be hereinafter shown. In the brief of evidence on the original trial, Frank is shown to have stated, as will be seen by reference to the State's "Exhibit B,"-- that he was still at the National Pencil Company's place of business as late as 1:10 p.m., when he went to dinner. Frank was shown to be wonderfully accurate with figures, and says, as will be noted by reference to his statement, in which he says that "Mary Phagan came into the factory between 12:05 and 12:10, maybe 12:07;" said statement being contained in the State's "Exhibit B,"; and when he says that he locked the door of the pencil factory at 1:10. This was a matter of vital importance to Frank, and if what he then said was true, then he could not have been at the corner of Whitehall and Alabama Streets, either at the time Miss Kern swore he was, or at 1:03 and 1:04, when Pardee and Green are alleged to say he was. On the trial of the case, the State endeavored to introduce the evidence given by the defendant, Frank, himself before the Coroner's jury, when inquiry was being made by that Court into the question as to how Mary Phagan came to her death. Astute and learned counsel for the defendant, Frank, then and there objected to the introduction of said statement, and the Court, the same being an ordinary proceeding at law, then and there rejected the same. The State now,

on this extraordinary motion, says however, that it is nothing but right and proper that the Court should be informed as to what Frank himself said in the evidence on the hearing before the Coroner, as to where he was at the time Pardee and Green now say they saw him at the corner of Alabama and Whitehall Streets. On page 55 of the stenographer's minutes of the Coroner's inquest, as reported by Harvey L. Barry, Official Reporter of Fulton Superior Court at that time, and as filed, as required by law, in the Clerk's Office of the Superior Court of Fulton County, the following questions were put by Coroner Paul Donehoo, who was examining said Leo M. Frank at that inquest, and the following answers were given, viz: "Q. What time do you say it was when you left the building? A. It might have been a trifle after 1, two or three minutes, four minutes; it was a trifle after 1." On page 59, occur the following questions and answers: "Q. When you went out of the office, 5 minutes after 1 o'clock, tell us where you went, just what direction you took, etc.? A. I went up from the factory to Alabama Street, went up Forsyth to Alabama, down Alabama to Broad and Alabama, and I think I caught a car there. Q. Do you remember the car you caught? A. I think it was a Washington Street car. A. It came first? A. I don't remember which came first."

In connection with this alibi evidence, and in connection with the evidence as given by Leo M. Frank before the Coroner's inquest, and on the trial of the case, the State insists that this evidence quoted immediately above, where Leo M. Frank states at the Coroner's inquest that he caught the car at the corner of Broad and Alabama Streets, is very material, in view of the evidence now given, or said to be obtainable from Pardee and Green, that they saw him at the corner of Whitehall and Alabama. It will also be observed that, when Frank, after having sworn as above indicated on the hearing before the Coroner's Jury, as to where he boarded the car, and what car he boarded,

changed these statements on the trial, and said, as will be seen by reference to page 3201 of the stenographer's report; "I continued on up Forsyth street to Alabama and down Alabama to Whitehall, where I waited a few minutes for a car, and after a few minutes a Georgia Avenue car came along," etc. There was good reason for the change; first, Whitehall street was a more popular thoroughfare; the corner of Whitehall and Alabama Sts., is one of the most congested streets in the City; more people by far catch cars there than do at the corner of Broad and Alabama, where Frank said when he was sworn before the Coroner's jury he caught the car; and he also swore that he caught a different car, namely, the Washington Street car, instead of, as he stated on the trial of the case, the Georgia Ave. car.

The State insists that it would be a futile consumption of time to split hairs about a proposition of this kind, when the said Leo M. Frank is convicted by the records out of his own mouth of having deliberately falsified, either when he was sworn ~~he was~~ and under oath before the Coroner, or when he was under oath on trial for his life before a jury.

The State submits that the late hour at which this cumulative evidence is produced is of itself sufficient reason, as is recognized by all courts, for refusing to set aside this verdict

But the State fortunately for the truth and in the interest of justice has a voluntary repudiation of defendant's claims on the part of said Pardee in the shape of a duly executed affidavit which will be shown and the State alleges that said witness approached L. Z. Rosser Sr., Atty. for Frank and asked said Rosser to let him withdraw the affidavit here introduced by the defense and before the same was read to the Court on this hearing.

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As to Ground 13. The State, in answer to this ground, submits the evidence taken by the defendant before D.O. Smith, Commissioner appointed by this Court, and also attaches hereto affidavits by Mary Rich, which not only absolutely and completely refute the contentions, but which, if true, show the policy and tactics pursued by this defendant, Leo M. Frank and his friends in their desperation to set aside the verdict of guilty; and further show that the motion is not made in good faith. In no view of the facts as here presented, should a new trial be granted. ~~The affidavits as made by said Mary Rich are as follows~~

The defendant has not stated frankly at this time why he is so anxious to procure this evidence from Mary Rich.

Also the State, in response to this ground, submits an affidavit of F. J. Wellborn, ~~a copy of which is as follows:~~

The absolute worthlessness of the evidence of Mrs. J. B. Simmons, as referred to in Ground 13 of the extraordinary motion, has been dully disposed of in replying to the ground dedicated alone to a discussion of the evidence of the said Mrs. Simmons.

Also affidavit of James Conley amply refutes said charge

In reply to Ground 14, the State says that, even if it be true that the said C. Burtis Dalton has changed his evidence as given by him on the trial of the original case, it would not be ground for a new trial. Said Dalton merely sustains Jim Conley. As a matter of fact, Dalton's recitals were denied by one Daisy Hopkins, but Daisy Hopkins was overwhelmingly impeached for general bad character, much more effectively than the defense impeached Dalton for general bad character. But in this connection, the attention of the Court is called to the evidence of Merck, an unimpeached witness for the State, who testified, as will be seen by reference to the brief, to a state of facts positively impeaching Daisy Hopkins, and sustaining Dalton's evidence, and thus sustaining Conley. As a matter of fact, the State does not believe that the said Dalton has recanted the evidence introduced on the trial, and does not believe that the said Leo M. Frank will be able to produce any bona fide evidence to the contrary.

As to Ground 14-1/2. With reference to this ground of the motion, the State submits affidavits of J. M. Gantt

Also affidavits of Phillip Chambers,

As a matter of fact, no one could possibly tell what the number of the order was on the order blank used in this case. The State submits that the number, as developed under a colored photographic lens, is not 1018., as contended by the defendant, but is 1818, as shown by the affidavit of the photographer who took the picture, and the only pictures which have been taken of said note. The affidavit of the photographer will be shown on the hearing substantuating this allegation.

Also, in refutation of this ground, the State submits the affidavit of H. W. Oattis.

The State will show a properly certified copy of the ordinance of the City of Atlanta, under which said Leo N. Frank and the officials of the Pencil Company would have been amenable to prosecution for permitting papers like this to remain in the basement.

As to the 15th Ground. While submitting that the same does not constitute an extraordinary case, even if true, the State says that this ground, among other grounds, in view of the facts as shown by the affidavit of Ivy Jones, which will be set out and shown to the Court, shows the methods being pursued and the lack of good faith on the part of movent, and shows conclusively that the motion for a new trial was not a bona fide motion filed upon newly discovered evidence, but was merely a motion for the purpose of delay. ~~The following is a copy of the~~ affidavit of the said Ivy Jones, which fully disposes of the allegations made by the movent?

As to Ground 16: In answer to Ground 16, the State contends itself with setting out a copy of an original affidavit given by Miss Helen Ferguson.

Under no view of this case, could this state of facts referred to in Ground 16 warrant or justify any Court in granting the defendant a new trial.

As to Ground 17. The State, recognizing that the law is that a new trial could never be granted upon the mere ground that some witness sworn in a case has repudiated the evidence given on the stand, has not made any great effort to locate J. E. Duffy, the witness referred to. The law is that, before a verdict can be set aside, the witness repudiating his evidence must be convicted of the offense of perjury. The State asserts that Duffy has not only not been convicted, but that no effort whatsoever has ever been made to obtain his conviction. If the law of the land is applied to the case of the State against Leo M. Frank, convicted of the offense of murder in this case, as the Judges and Courts have applied it in other cases, this constitutes no ground for setting aside the verdict and granting a new trial, even if it should be true; first, because, as a naked proposition, no matter how material the evidence may have been; and second, because the evidence of J. E. Duffy was only material in impeaching evidence introduced by the defendant through a witness by the name of Lee. The State insists that the evidence of Lee itself, on its face, was ridiculous and absolutely so false that no honest jury could have given credence thereto; and the State insists that in no view of the facts with reference to Duffy's evidence, could Leo M. Frank expect a different result than a verdict of guilty.

Answer Ground 18, the State contents itself with showing the general bad character of the witness referred, to, viz. Mrs. M. Jaffe. This is shown by affidavits of P. H. Orr, and J. L. Moore and Bass Rosser, also the affidavit of P. P. Cooper.

Thus it is, that when each one of the eighteen grounds of this extraordinary motion are considered and measured by the standards set up by the law of the land, each one of them is seen to amount to nothing. And unless nothing added to nothing makes something, a proposition which the State submits is not true, then there is absolutely nothing in this original so-called extraordinary motion.

Respectfully submitted.

E. A. Stephens,

Hugh W. Dorsey,

Solicitor General, Atlanta Judicial Circuit.

Filed in office this the 23rd day of April, 1914.

John H. Jones, D. Clk.

301196

(STATES RESPONSE TO AMENDMENTS 1, 2, 3, & 4.)

State of Georgia,	().	No. 9410.
Vs.	().	Fulton Superior Court.
Leo W. Frank.	().	Extraordinary Motion for New
	().	Trial.

:-----:

GEORGIA, FULTON COUNTY.

State of Georgia, answering the several amendments to the extraordinary motion for a new trial, as filed by movant, Leo W. Frank, and taking them up in the order in which they were presented to the Court, says:

1. As to the amendment claiming that J. W. Boozer, on the afternoon of April 26, 1913, at about 4:15 o'clock met Jim Conley on Peters street near Castleberry street; The State says that, in the first place, the said Boozer is absolutely mistaken as to the date that he saw said Jim Conley. The State submits that said Jim Conley did see said Boozer on several occasions, and probably the day before, and that the defendant, Leo W. Frank, was looking after, for the said Jim Conley, the payment of certain dues, which Jim Conley owed on a certain watch. The said Boozer, the State submits, is not sustained by any other witness, so far as this record shows, in his claim as to seeing Conley at the time and place stated, and is flatly contradicted by said Conley, who is sustained as to his whereabouts by Evey Jones and other witnesses.

But the State submits that at best, even if the affidavit of the said Boozer should be true, that it merely amounts to impeaching evidence, insofar as Jim Conley is concerned, and under the law furnishes no ground for setting aside the verdict of guilty, as rendered against said Frank. This would be true, even if the said Boozer had contradicted the said Conley as to his whereabouts at an hour which would have rendered it impossible for the said Conley to have aided the said Frank in the manner and form as testified to by said Conley on the trial of

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the case of the State Vs. Leo M. Frank. As a matter of fact, the said Conley could have assisted the said Leo M. Frank in the disposition of the body of Mary Phagan, as testified to, and have been seen by the said Boozer. In other words, the testimony of the said Boozer, even if true, a thing that the State denies, is with reference to immaterial matter.

2. State of Georgia, answering the second amendment says that C. B. Ragsdale has repudiated this affidavit, and insists that he was procured to swear to the falsehoods as contained in the allegations as embodied in this amendment, and says that he was paid money to swear as he did. The true history of this transaction is well known to the agents of one William J. Burns, a detective in the employ of Frank or some of Frank's friends, who has been co-operating with the defense in getting up evidence to overturn the verdict of guilty, and the particulars of the transaction, the State alleges, were handled by one Lehon, an agent of the William J. Burns Detective Agency.

In addition to this, the said Ragsdale is absolutely unworthy of belief, being impeached, as the State will show, by the affidavits of many reputable citizens who knew the said Ragsdale, in the county of Cherokee State of Georgia, where he formerly resided, and in the city of Atlanta, Also the State says that one R. L. Barber, who is alleged to corroborate and sustain the story as told by said Ragsdale, is a notoriously worthless character, and the said Barber's general reputation for veracity is impeached by many affidavits, which will be submitted on the hearing.

In addition, the said Barber has absconded and cannot be found and the information given the officers and officials of the State in control of the management of this case is, that the said Barber has absconded for the purpose of evading punishment for the wilful and deliberate lies he has sworn in connection with this transaction, and the state alleges that the said Barber was paid \$100 to make said false affidavit, submitted by the attorneys for the defendant, Leo M. Frank.

These allegations, the State will prove by affidavits to be submitted herewith.

This will illustrate the methods, the State is informed.

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and believes, being pursued and followed in reference to other matters in connection with this extraordinary motion for new trial in behalf of the defendant, Leo. M. Farnk. The State will be able to show that this transaction is in keeping with other similar transactions, viz, the Mincey incident and the Fisher incident, not to mention other transaction in the course of this case of less importance. Hence the State submits that under no circumstances should a new trial be granted by reason of these perjured affidavits.

3. A third amendment embodies a claim on the part of the defendant, set forth through affidavits signed by Mrs. May Barrett and her daughter, Mrs. Maud Bailey.

It will be noted that the contention of the State originally was that Jim Conley was sitting in the area near the elevator down stairs. The State introduced the evidence of Jim Conley to that effect, and showed by Mrs. Arthur White that a negro man was seated exactly where Jim Conley claimed he was seated at about the time the murder was committed. Furthermore, it was shown, by Tillander and Graham, two unimpeached white men, that a negro man was sitting at the place where Conley claims he was sitting, waiting for the defendant, Leo M. Frank. By an abundance of circumstantial evidence, the State was able to show a state of facts which the State submitted corroborated Jim Conley in his evidence, but it remained for the defendant himself to produce in the affidavit of Mrs. Maud Bailey conclusive evidence that the negro Jim Conley was sitting at this particular place, as he contends. This said witness in her affidavit, says: "Deponent further says that when she entered the pencil factory, that day, Jim Conley was sitting on a box between the stairway and the elevator on the first floor.

Deponent says she would not have noticed Conley but for the fact that he made a noise with his foot upon the box upon which he was sitting, which attracted her attention and caused her to look up and see him. "But The State insists that the affidavit of the said Bailey, as to seeing Jim Conley there is unworthy of belief, because the State will show that among the first people sent for and examined fully as to everything that they knew about this transaction was this said Mrs. Maud Bailey, and her

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mother, Mrs. Mary Barrett. If Mrs. Maud Bailey and Mrs. Way Barrett, who was an employee of the pencil factory at the time this thing occurred, really knew what she now would have this court believe that she does know, then she was deliberately making misstatements as to her knowledge, and as the State believes and charges, for the purpose of protecting Leo M. Frank, who saw the importance of keeping the officers ignorant that Jim Conley was where he said he was, and where the State insists he was.

The state submits that the contention of the defendant Leo M. Frank, as disclosed by the affidavits of these two women, is untrue. In addition to having the evidence of statements made to the Solicitor General immediately following the murder, the State submits other affidavits from reputable people, showing that at no time, though the matter was frequently discussed, did either of these women ever give any intimation of knowing any such fact as are now brought forward at the eleventh hour.

4. Answering the 4th amendment in reference to the claim of Annie Maud Carter

First, the State says that Annie Maud Carter is a worthless character, unworthy of belief.

Second, the evidence, even if true, under the law could not be heard on the trial of Leo M. Frank, under repeated rulings of the Supreme Court. The opportunity to defend the case by this kind of evidence would open the door for all kinds of fraud and enable a man with sufficient wealth to have some one confess to the crime, send them away to the uttermost parts of the earth, and then acquit, as is sought to be done in this case, the real culprit and murderer.

Third, when the case of the State of Georgia, Vs. Leo M. Frank, was on trial, evidence was introduced of a paper drawn by William Smith, attorney for Conley, who endeavored to have His Honor Judge Road, previous to the trial, permit him to remain away from the Fulton County Jail. Among other things Conley alleged in his petition that the condition of the county jail was such that he could not be safeguarded, and his interests protected as they could be elsewhere, and in paragraph 11 of

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said paper, which was introduced on the trial of the original case, said Conley said, responding to said rule:

"11. Respondent shows that through no fault of the County Sheriff, a sufficient inside force of guards has been provided by the County Authorities, only one man being paid by the County to guard twenty cell blocks distributed in twenty wings and over five floors; that it is a physical impossibility for this one man to keep up or even know what is transpiring on five different floors, or twenty separate immense wall and steel blocks, distributed through a large building; that with this inadequate force, which this Respondent is advised the Sheriff of this County has complained about, it is an absolute impossibility for the best Sheriff in the world or the best trained deputies to know exactly what is going on at any and all times or any reasonable part of the time; that the keys to practically all of the cell blocks are carried by 'convicted criminals', known as 'trusties', who turn in and out parties entering or leaving cell blocks, and while they have general instructions covering their duties, it is an impossibility for the inside deputy to know whether each is discharging his duty properly at all times; that the food is prepared and distributed in the County prison itself and practically by 'convicted criminals,' whose disregard for law and principle is written upon the criminal records of this State, that owing to this condition men have been known to saw through solid steel bars and cages and escape to freedom; that it would be easy for any one to reach or harm respondent or to poison him through his food, that the 'trusty turn keys' who are convicts can easily swear to admissions against the interest of this respondent, even though such admissions might not be made; that the friends of the Defendant in this case are allowed to pour constantly into the jail at all hours of the day and up to a late hour of the night, and are in close touch with many of these 'trusty turnkeys', and 'trusty attaches' of the jail; that while a prisoner at the County Prison before his transfer to the City Prison, a goodly number of people were admitted to the cell block to talk with Respondent,

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whose presence was not requested or desired; that among those visitors was one whom this Respondent has every reason to believe was working in the interest of the defendant; that this party presented Respondent with sandwiches which this Respondent did not eat, that this same party also offered to present Respondent with whiskey; that Deponent was threatened with physical harm while in the County prison to the extent of the possibility of taking his life; that he was denounced as a liar, relative to his testimony in this case; and this Respondent is sure without the knowledge or through the neglect of the Sheriff or any of his men, but directly attributable to the construction physically of the County Prison and the inadequate force allowed the Sheriff to oversee and care for it, that respondent is advised and believes that one of the parties friendly to the defendant is already priming himself to swear that Respondent made certain admissions while he was in the County prison, which this Respondent did not make, and which testimony will be false, but will be given, if given to help the defendant and damage this Respondent."

In this respect the State submits that the said James Conley was a prophet, because the State will show by affidavits that an effort was made to poison said Jim Conley, and they have, through convicts, men unworthy of belief, so shaped and directed matters as to make it appear that this disreputable woman, Annie Maud Carter, who was convicted of highway robbery, did get such an admission from said Conley, and the State insists that the entire transaction is merely in keeping with the Ragdale incident, and that the whole thing is founded upon falsehood.

Fourth, the said Annie Maud Carter, after making said affidavit, was, as the State insists, it will be able to show, placed in hiding, where not only the State's officers and officials cannot see her or interview her with reference to the matters and things to which she has sworn, but her whereabouts is being kept concealed from her own family, a circumstance which the State submits in and of itself should demand at the hands of

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this court a judgment overruling and denying this application for a new trial, because the State insists that if the transaction referred to in this amendment was worthy of belief, there would be no occasion or necessity for the said Annie Maud Carter to be spirited away and beyond the jurisdiction of the Court, as the State is informed and believes said Annie Maud Carter to be, and rendered inaccessible to the officers.

That the contention of the movant, Leo M. Frank, is false is furthermore shown by a statement on the part of the said Annie Maud Carter, made in the shape of an affidavit, in which it will be shown that she made many contradictory statements to what is alleged by movant to have been the facts.

5. At the time of drawing this answer, the State is not informed as to what notary attested said alleged affidavit of Annie Maud Carter. But the State says that the prosecution read affidavits either witnessed or attested by C. W. Burke, alleged to have been made by Ivey Jones, which the State insists is a forgery, and furthermore, that the State insists that another affidavit witnessed by Burke, viz, the affidavit of Miss Ruth Robison, is a forgery, and in this connection the ~~said~~ ^{State} calls the attention of the court to the fact that one C. W. Burke attested, not only some of the affidavits of the defendant Leo M. Frank, but witnessed the affidavit of Dewey Hewell, who is in Cincinnati, O., and inaccessible, and likewise witnessed the affidavit of C. Burtis Dalton, who is in Florida and inaccessible, and the affidavit of Wary Rich was attested by C. W. Burke.

Wherefore, the State insists that the extraordinary motion be overruled, as under no circumstances could a different result obtain by virtue of any of the various contentions as set up in either the original or the several amendments to the original extraordinary motion for new trial.

Respectfully submitted,
E. A. Stephens,
Hugh M. Dorsey, Sol. Gen'l.

Filed in office this the 1st, day of May, 1914.

John H. Jones, D. Clk.

REPLY TO FIFTH AMENDMENT TO EXTRAORDINARY MOTION FOR NEW TRIAL.

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STATE OF GEORGIA, (). No. 9410.
 Vs. (). Fulton Superior Court.
Leo M. Frank. (). Extraordinary Motion for New
 (). Trial.

:-----:

State of Georgia, responding to the fifth amendment to the extraordinary motion for new trial, as allowed on May 1, 1914, says:

1. With reference to the alleged newly discovered evidence disclosed in affidavit of Georgia Denham, the State says:

The contention of the State was that Conley had assisted Leo M. Frank in removing the body. Even if it should be conceded that the said Conley had blood on his shirt, it would, the State insists, be another fact corroborating the State's contention that said Conley assisted the real murderer of Leo M. Frank in removing said body, and in no event would it be a material fact, if it be a fact, showing that Conley had himself committed the crime.

The State introduced as a witness Holleway, an employee of the National Pencil Company. Said Holleway entrapped and misled the State in several particulars. With reference to said Conley and the shirt worn by the said Conley, the brief of evidence shows that said Holleway swore as follows: "On Monday morning I saw Conley. Instead of being upstairs where he ought to be, sweeping, he was down in the shipping room, watching the detectives, officers and reporters. I caught him washing his shirt. Looked like he tried to hide it from me. I took it up and looked at it carefully and looked like he didn't want me to look at it at all".

The State insists that had there been any blood on said shirt that said Holleway undoubtedly would have seen the same, because he says he looked at the shirt carefully. The brief of

evidence shows that said Holleway was thoroughly in sympathy with the defendant, and hence the State insists that the affidavit of said Georgia Denham is shown by the record, through the mouth of Holleway, who was really in sympathy with the defendant, to be false. As a matter of fact, the state says that there was never any blood on said Conley's shirt. If there had been, said Georgia Denham would have immediately, being herself an employee of the Pencil Company's factory, have made such fact known.

Referring to the contention of the defendant Frank that Georgia Denham knows that the hair found by Barrett on the lathe was not that of Mary Phagan, the State makes the same response as made to the first and other grounds of the original motion in the extraordinary motion. Likewise the same response is made by the State to the contention as disclosed in the affidavit of Cora Lavender Leffeu.

2. With reference to the contention in this fifth amendment that certain notes alleged to have been written by Annie Maud Carter show Conly to be the real murderer, the State says that these letters were never shown to said Jim Conley and the State has not been apprised as to whether said Conley admits or denies that he wrote said notes. The State, however, is content on this proposition to rest with reference to these notes on the statement of Annie Maud Carter herself, as contained in an affidavit introduced by the State, to the effect that whatever letters she did receive from said Conley did not have the vile and filthy language as contained in the notes set up by the movant Frank, and the State insists that said notes are forged and manufactured by means of a conspiracy engineered by a convict in the Fulton County jail at that time, viz, George Wrenn.

3. The movant insists that the cut on the drawers of Mary Phagan, deceased, was "not with a sudden rip but deliberately by one who must have taken his own time in doing it."

The State says that such contentions as this are so utterly absurd that it is unnecessary to make answer thereto. The idea that any man or person, by merely looking at garments, could tell that, is absurd.

The State insists that this fifth amendment does not contain a single extraordinary situation such as is contemplated by law should exist before the solemn adjudication of a court and jury should be set aside. However, the State denies the truth of each and all of the contentions as set out in this fifth amendment, and says that the manner in which the same is shown to have been obtained, together with the length of time elapsing since the murder, all go to show that the claims are false.

Wherefore, the State submits that under no circumstances should a new trial be awarded the said Leo M. Frank.

E. A. Stephens,

Hugh M. Dorsey,

Sol. Gen.

Filed in office this the 8th day of May, 1914.

C. H. Brotherton, D. Clk.

(ORDER OVERPULING EXTRAORDINARY
MOTION.)

After hearing evidence and argument on the application of
Leo W. Frank, his extraordinary Motion for a new trial the
same is hereby overruled and denied.

May 8th, 1914.

Benj. H. Hill,
Judge Superior Court Atlanta Judicial.

STATE OF GEORGIA,
County of Fulton.

I Hereby Certify, That the foregoing pages, hereunto attached, contain a true Transcript of such parts of the record as are specified in the Bill of Exceptions and required, by the order of the Presiding Judge, to be sent to the

Supreme Court in the case of

Leo M. Frank

Plaintiff in Error.

vs.

The State of Georgia

Defendant in Error.

Inasmuch as to send up this record in the time prescribed on account of the length of this & my inability to get the papers in the case.

Witness my signature and the seal of Court affixed
this the 30 day of June 1914

Amos D. Boyles
Clerk Superior Court Fulton County, Georgia,
Ex-Officio Clerk City Court of Atlanta.

File.
No. *Supreme Court*
Atlanta Circuit,
Term, 191

Leo. M. Frink

VERSUS

The State of Ga.

Transcript of Record

Filed in office _____ 191

Clerk.

501506

No. 32
11314
Original Docket
Term, 1914
SUPREME COURT OF GEORGIA

Frank

THE STATE

TRANSCRIPT OF RECORD

JUN 30 1914

W. B. Sullivan, Jr.

11314

901506

AND F. FRANK)
VS.)
STATE OF GEORGIA)
EXTRAORDINARY MOTION FOR NEW TRIAL
FROM CONVICTION OF MURDER
IN SUPERIOR COURT.

BILL OF EXCEPTIONS.

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First Division

KL 81

DOCKET NUMBER

32
March Term, 1914.

V. 11314

STATE OF GEORGIA

EXTRAORDINARY MOTION FOR NEW TRIAL

VS.

CONVICTION OF MURDER

LEO M. FRANK.

JUDGE SUPERIOR COURT

FILE OF EXCEPTIONS

*FILED IN OFFICE, FOR THE
9th JURY, 9:25 A.M.
Charles J. Hayes*

Roscoe J. Brandon
Reuben W. Arden
Herbert J. Bass
Leonard Hays,
Attorneys for Plaintiff in Error.

STATE OF GEORGIA	}	EXTRAORDINARY MOTION FOR NEW TRIAL
vs.	}	FROM CONVICTION OF MURDER
LEO M. FRANK.	}	IN FULTON SUPERIOR COURT.

BILL OF EXCEPTIONS.

Be it remembered that at the March Term, 1914, of Fulton Superior Court there came on to be heard the case of the State of Georgia, vs. Leo M. Frank, the same being an extraordinary motion for new trial on behalf of said Frank from conviction of murder rendered at the July Term, 1913 of Fulton Superior Court.

A motion for new trial had been duly made during the July Term, 1913, and had been thereafter overruled. To the judgment of the Court overruling said motion for new trial exceptions were duly taken to the Supreme Court of Georgia, and on the 17th day of February, 1914, the judgment of the Court below was affirmed by said Supreme Court.

On the 27th day of March, 1914, said Leo M. Frank gave to the opposite party, to-wit: the State of Georgia, through the Solicitor General of the Atlanta Circuit, the notice provided in Section 6092 of the Civil Code of the State of Georgia, and Section 1091 of the Criminal Code of the State of Georgia, approved on August 15, 1910, which notice was in the following words:

"To Hugh M. Dorsey, Esq., Solicitor General:
 Please take notice that twenty days from the date hereof, an extraordinary motion for new trial will be filed with His Honor, Ben J. Hill, Esq., Judge of the Superior Courts of the Atlanta Circuit, Criminal Division, or with one of the other Judges of said Court in behalf of the defendant in the above stated case, Leo M. Frank, Esq., convicted of murder; this notice being given you, as required by the laws of the State of Georgia, in such cases made and provided - Civil Code of 1910, sec. 6902, Criminal Code, sec. 1091.
 Please take notice of the grounds of said extraordinary motion hereto attached pages 1 to 37, both inclusive; all of said grounds being made a part of this notice. Other grounds, including newly discovered evidence, will be added by amendment.
 This March 26, 1914."

Attached to this notice was a copy of the original extraordinary motion for new trial, which is specified as a part of the record in this case.

Twenty days after giving the notice aforesaid, the extraordinary motion for new trial was submitted to the Judge of the Atlanta Circuit, who ordered the same filed, and on the 16th day of April, 1914, said judge issued a rule nisi thereon returnable on th

In Poor Condition

22nd day of April, 1914, which was during the March Term, of the said Atlanta Circuit.

Upon the hearing of said extraordinary motion for new trial, movant filed certain amendments which were duly allowed and which are of record in the case.

Upon the hearing of said extraordinary motion, the following evidence was introduced:

GROUND 1.

J.P.FYFFE, Sworn for the Movant. On April 2, 1914, I had a conversation with Dr. H. F. Harris at the latter's office, in Atlanta, Fulton County, Georgia, concerning an affidavit from the aforesaid Dr. Harris touching his knowledge of certain facts in connection with this case, and I presented to the said Dr. Harris a typewritten copy containing what I understood to be a statement which Dr. Harris would make in connection with the aforesaid facts. The said Dr. Harris, after reading the matter prepared for his signature, declined to sign the same, but with a lead pencil, made certain changes in the phraseology of said statement in order to make it conform to his own ideas, same being Exhibit B hereto attached, and then stated that if the document was recopied in conformity with the alterations made in pencil by him, same being Exhibit A hereto attached, that he would sign the same under oath and that the statements contained therein were true. After making the above declaration to me, the said Dr. Harris read the altered copy aloud to me and at the conclusion added in pencil an additional paragraph stating in connection therewith in substance as follows: "It would not be necessary to add my conclusion from the experiments made in this case under ordinary circumstances, or if I was dealing with gentlemen.

Accordingly I had the affidavit prepared in exact accordance with the pencil memorandum made by Dr. Harris, with the exception of the paragraph last above referred to, which was omitted, and upon April 3rd, 1914, presented the same to Dr. Harris for his signature. Dr. Harris, after reading the copy, declined to sign the same because of the omitted paragraph. He stated that the facts contained in the affidavit which he was asked to

sign were correctly set forth and that the same were true in every particular, but that he would not sign the same without the addition of the paragraph above referred to because the matter was going into the hands of counsel for the defense in this case.

The affidavit presented to the above mentioned Dr. Harris and which he was requested to sign under oath, and which had been prepared in accordance with the penciled memorandum made by the said Dr. Harris and the truth of which he admitted is hereto attached and marked Exhibit "A".

EXHIBIT "A".

"State of Georgia,) Extraordinary Motion for New Trial
vs. (From Conviction of Murder,
Leo M. Frank.) In Fulton Superior Court, March Term, 1913.

Georgia, Fulton County.

Personally came before the undersigned, H.F. Harris, who upon oath says that he is a practicing physician. Affiant further says that he performed the autopsy on the body of Mary Phagan after it was exhumed and that under the directions of Solicitor Dorsey, he obtained some of the girl's hair when the body was examined, to compare with the hair said to have been found on the lathe handle and which was given affiant by one of Mr. Dorsey's assistants.

Affiant states that the specimens of hair taken from the head of the girl, when compared with the specimens given him, appeared somewhat different in color and on microscopic examination, and his impression was that the two specimens of hair were not from the head of the same person.

Affiant states that he reported the foregoing view to the Solicitor General and that the latter told him there would be no necessity for going any further with the hair investigation.

Affiant further states that he never considered the matter in any way material and dismissed it from his mind. He further states that he does not recall that he was asked about the girl's hair when he was upon the witness stand and states further that the samples of hair, with the exception of several microscopic sections, were turned back to the aforesaid assistant of the Solicitor General.

Affiant further states that there was no purpose on his part to conceal the fact that the hair given him appeared different from the hair of Mary Phagan and that he does not think anyone else had such a purpose.

Affiant states that he is quite positive in his assertions that the microscopic test was carefully made. He states that the microscope will show the size and shape of hair and that the hair of different persons differs in these particulars.

Sworn to and subscribed before me
this 3rd day of April, 1914.

Notary Public, Fulton County, Ga."

EXHIBIT "B"

2 "State of Georgia,) Extraordinary Motion for New Trial
vs. (From conviction of murder
Leo M. Frank.) In Fulton Superior Court, March Term, 1913.

2 Georgia, Fulton County.

Personally came before the undersigned, H.F. Harris, who upon oath says that he is a practicing physician. Affiant further says that he performed the autopsy on the body of Mary Phagan, after it was exhumed, and that under the directions

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of Solicitor Dorsey, he obtained some of the girl's hair when the body was examined, to compare with the hair said to have been found on the lathe handle and which was given affiant by one of Mr. Dorsey's assistants.

Affiant states that the specimens of hair taken from the head of the girl, when compared with the specimens given him appeared somewhat different as to color and on microscopic examination, and his impression was that the two specimens of hair were not from the same person.

Affiant states that he reported the foregoing views to the Solicitor General and that the latter told him there would be no necessity for going any further with the hair investigation.

Affiant further states that he never considered the matter in any way material and dismissed it from his mind. He further states that he does not recall that he was asked about the girl's hair when he was upon the witness stand and states further that the samples of hair, with the exception of several of the microscopic sections, were turned back to the aforesaid assistant of the Solicitor General.

Affiant further states that there was no purpose on his part to conceal the fact that the hair given him appeared different from that of Mary Phagan's and that he does not think anyone else had such a purpose.

Affiant states that he is quite positive in his assertions that the microscopic test was carefully made. He states that the microscope will show the size and shape of hair, and that the hair of different persons differs in these particulars.

Affiant further says the two specimens were much alike that it was impossible for him to form any definite and absolute opinion as to whether they were from the head of the same person or not.

Sworn to and subscribed before me
this April 2nd, 1914.

Notary Public, Fulton County, Ga."

H. A. K. STEVENS, Sworn for the Movant. He accompanied J. P. Fyffe to the office of Dr. H. F. Harris in the City of Atlanta, Ga. on April 2nd, 1914; that the said Fyffe presented to the said Harris a typewritten sheet containing certain statements in connection with this case; that the said Dr. Harris declined to sign the same but with a lead pencil made certain alterations at the conclusion of which he stated that if the matter was prepared in that form, he would sign the same; that he afterwards added thereto an additional paragraph in lead pencil which he said was a conclusion which he desired to add to his affidavit.

Witness was present again on April 3rd when the matter was presented to Dr. Harris, with the paragraph last above referred to omitted; that the said Dr. Harris stated that the affidavit prepared and submitted for his signature stated the truth but that he desired that the additional paragraph referred to above be added, and refused to sign the same in its then condition. And when asked why he would not sign the affidavit in its existing

form, even though it be the truth, he stated that he would not do so because it was going into the hands of Messrs. Rosser and Arnold, counsel for Leo M. Frank.

OSCAR PAPPENHEIMER, Sworn for the Movant. He has been a stockholder in the National Pencil Company for a considerable period of time;

Sometime after witness read in the papers that Dr. Harris had exhumed the body of Mary Phagan, he called on Dr. Harris, who lives next door to witness, and with whom witness was on most friendly terms. Being interested in the Company of which Leo M. Frank was superintendent, and being friendly inclined towards Leo M. Frank, witness was interested in the accusations made against Frank. Witness says that the conversation herein referred to, took place in the home of Dr. Harris, and occurred before the trial. Witness, after stating to Dr. Harris the interest he had in the matter as hereinbefore referred to, asked Dr. Harris whether, if consistent with his duty, he could tell witness what he learned as a result of the examination of the body of Mary Phagan. Witness further stated to Dr. Harris that if there was any professional reason why he should not disclose the facts that witness did not want him to do so. In response thereto, Dr. Harris stated to deponent that he felt he was bound not to discuss the matter, and thereupon witness dropped the subject. Conversation on various other subject followed of a purely social nature, for ten or fifteen minutes, whereupon on his own volition, and without further inquiry on witness's part, Dr. Harris voluntarily stated to witness, substantially, as follows: "I may say this much to you, Mr. Pappenheimer, that what I found during the examination was of no importance whatsoever, and need give you no bother."

WILLIAM M. SMITH, Sworn for the Movant. His name is William M. Smith. Several months ago, on or about the time of the trial in the Superior Court of Fulton County of Leo M. Frank, he does not now recall the date, he had occasion to interview the Solicitor General, Hon. Hugh M. Dorsey. Upon inquiry, he finally learned that he was at the office of the State Board of Health,

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in the basement of the Capitol Building. He went there and found Mr. Dorsey there and talked with him for a few minutes. He also saw Dr. Harris and Mr. Dorsey there. After completing his interview of a few minutes with Mr. Dorsey, he became interested in some experiments that were being conducted, a friend and neighbor of his, Dr. Fort, being engaged with Dr. Patillo, also a friend of his, in certain experiments that were then being conducted. A portion of the time, he was engaged in eating some watermelon, his friend, Dr. Patillo had given him. Dr. Harris, Dr. Dorsey and the Solicitor General were most of the time, in a different part of this Department, in the office of Dr. Harris, which is across the entrance hall from the room in which the experiments were being conducted. He was in the office of Dr. Harris but a very short time, and most of the discussion he heard was a scientific one, relative to the digestion of cabbage, and the staying of the processes of digestion, and the causes normal and otherwise affecting digestion. He would not undertake to give the language of anyone, not even the language he used himself upon that occasion. He did hear some discussion as to some hair, which to the best of his recollection, was that Dr. Harris had some of the hair that had been found on the lathe at the factory, possibly all of it, he does not now recall about that however. He does not know whether or not it was mentioned as to how much hair of the hair Dr. Harris had. As well as he can recall, Dr. Harris said he had a number of "sections". He thinks he said "sections", he might be mistaken in this however, but that is his best recollection. The occasion for his making this statement was that he spoke to Dr. Dorsey about a comparison that he (Dr. Harris) had made of the hair taken from the lathe and some hair Dr. Harris had taken from the head of Mary Phagan. He told Dr. Dorsey that he had made a large number of sections and had compared them to try and find out whether or not the two hairs came from the same head, that is the head of Mary Phagan. Dr. Harris told Dr. Dorsey that he had the sections there and that if Dr. Dorsey desired, Dr. Harris is perfectly willing for him to also examine the sections of hair and compare them for himself. Dr. Dorsey stated that he did not care to examine the sections of hair. Dr. Harris stated that the comparison showed the hair not to

be alike, but the details of these variants were not discussed in witness's presence. It was stated, however, that it was the opinion of Dr. Harris from this comparison of hairs that the hair found on the lathe was not Mary Phagan's. His best recollection is that Dr. Harris so expressed himself, but he could not say positively.

HARLEE BRANCH, Sworn for the Movant. I am a reporter on the "Atlanta Journal." On February 20, 1914, I interviewed Dr. H. F. Harris, with reference to his examination of certain hair, said to have been found on a lathe at the National Pencil Factory by one Barrett. Dr. Harris admitted having performed the autopsy on the body of Mary Phagan and stated that under the directions of Solicitor Dorsey he obtained some of the girl's hair when the body was exhumed, in order to compare it with the hair found on the lathe. He stated that the specimens of hair taken from the head, when compared with the specimens found on the lathe, were widely different and were not from the head of the same girl. He stated that he examined both samples of hair under the microscope; that the hair taken from the lathe was not of the same shade, texture or shape as that taken by him from Mary Phagan's head. He stated that he reported this fact to the Solicitor General, and the latter told him that there would be no necessity of going any further with the hair investigation. He further stated that he had never considered the matter as a very material one and dismissed it from his mind; that the samples of hair with the exception of the two microscopic sections were turned back to the Solicitor General and that he (Dr. Harris) now had the latter somewhere in his laboratory. He said that when he notified the Solicitor that the two specimens of hair were not the same, the Solicitor simply remarked that he would let the matter end there. Dr. Harris was quite positive in his assertions that the microscopic test was an accurate one. Dr. Harris said that the microscope would show the shade, texture and shape and that the hair of different persons differed in these particulars. He explained how the shape was examined under the microscope showing that the end sections of the hair were looked at and that it would show if it was circular or any other shape.

OTTO SCHWAB, C. J. ASMUS and GEORGE A. TILLANDER, Sworn

for movant. They are personally acquainted with Oscar Pappenheimer; that some of his associates are T.A. Hammond, Dr. C.E. Buchanan, R.S. Wessells, C.E. Currier, John K. Ottley; that the said Pappenheimer is a person of good moral character and credibility and they would believe him on oath

DR. H. F. HARRIS, Sworn for Movant (Before a Commissioner)

I am State Health Officer/ I made two examinations of the body of Mary Phagan at the request of Solicitor Dorsey. He told me he would send some hair found on a machine in the factory, and a day or so later it was brought to me by one of his assistants. He asked me to compare this hair with that of Mary Phagan's. I examined the hair under a microscope. I did not make an exhaustive examination though it was sufficient to show that the hair given me by Mr. Dorsey was almost certainly that of a female and from the head of a Caucausin. The two specimens of hair resembled each other so much that it was impossible for me to say definitely that it was not Mary Phagan's hair. There appeared to be a slight difference in shade and shape, but no difference in texture. The determination of the color had to be made by the naked eye, as the thin sections used for microscopic work are not suitable for such determination and the amount of hair given me was not sufficiently ~~great~~ ^{examined} in amount for me to make an accurate estimate. I have recently ~~examined~~ ^{examined} hair taken from the head of several persons and have found that individual hairs from the same individual differ as much in shape as the hair given me by Mr. Dorsey's assistant and that of Mary Phagan. Mr. Dorsey did not appear to attach any particular importance to this examination, nor did I at that time think it was of any importance whatever. Some days after having made an examination, the subject was casually mentioned by Mr. Dorsey in a conversation with me, and I told him at that time that it was my impression that the two specimens of hair were different, though I was careful to say that there was no certainty as to this opinion and that I would not swear that they were different. This conversation took place between Mr. Dorsey and me in my office some days after the hair was given me. I made no further report. I told Mr. Dorsey that it was my impression that the two specimens of hair were different. I said to him that the two specimens appeared to differ slightly in shape and possibly in color. I told him that the specimen brought to me was not sufficient in amount to allow me to say very definitely as to its color. I was under the impression that the two specimens of hair were different. We were alone when I made my report to Mr. Dorsey. As to whether or not I suggested that Mr. R. T. Dorsey be allowed to make a test to satisfy himself, the only time that Dr. Dorsey discussed this matter with me was a few days before the trial, Solicitor Dorsey being present and two or three others. In a general sort of way my work was talked over and I may have at that time made some reference to the matter of the hair and may have possibly said to Dr. Dorsey he could examine it if he wished to do so. I have no recollection of what was specifically said by anyone and therefor can not answer as to what Mr. Dorsey said in case the hair was mentioned. I did not say specifically to Mr. Dorsey that the two specimens of hair were dissimilar; I merely informed him that I gained the impression that they were not the same. There was no question of proceeding further with the examination, as the only method likely to reveal anything had been employed, already. I returned the hair to Mr. Dorsey's assistant. I kept that part used for the microscopic examination. I have none left that I can find. I also returned to him the hair taken from Mary Phagan's head. There was not more than a dozen strands of hair delivered to me from Mr. Dorsey's office, if that many. I took several hundred strands of hair from Mary Phagan's head. I made examination of only about half of the total number of hairs given me by Mrs. Dorsey's assistant. The hairs used were cut into short pieces. Several sections of them made of both ends and the middle portions of the hair I made similar microscopic sections from 8 or 10 hairs from Mary Phagan's head. Taking both specimens together, I made somewhere

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from 50 to 100 sections in all. These tests were made shortly after my examination of Mary Phagan's body. I do not recall any conversation with Dr. Dorsey respecting the hair. It is possible these specimens of hair were returned to Mr. Dorsey after the trial.

Professor G. Bachman and Professor J.W. Papez, Sworn for

the Movant. We have made a study of the subject of scalp hair and as to whether hair from the same scalp may be identified as such; ~~that~~ the hair is divided into two parts, the root and the shaft. The root is that part of the hair that is imbedded in the skin; the shaft is that part which projects above the surface of the skin. "In their thickness the hairs show much variation, not only in different races, individuals and regions, but also in the same person and part of the body as on the scalp where fine and coarse hairs may lie side by side. The thickest scalp hairs have a diameter of 162 micra and the finest one of ten micra with all intermediate sizes. In a general way hairs of light color are finer than dark ones. On attaining their full growth without mutilation, hairs do not possess a uniform thickness throughout their length, since they diminish not only towards the tip, where the shaft ends in a point, but also towards the root. . . . In the case of straight hairs the follicle is unbent and the shaft is cylindrical, and therefore circular in cross section; hairs that are wavy or curly spring from follicles more or less bent and are flattened or grooved with corresponding oval, reniform or irregularly triangular outlines when transversely cut." When examined under the microscope, the shaft is seen to consist of a central core and of two layers arranged concentrically around the core. The central core is called the medulla and ~~the~~ consists of polygonal cells lying side by side and end to end. There are from two to four cells in the row side by side. The medulla is absent in small hairs while in large hairs it does not extend to the free end. The medulla is uneven in outline and its appearance varies with the illumination appearing as a dark band with transmitted light and as light one with reflected light. This is due to the presence of air between the shrunken and irregular medullary cells. The layer surrounding the medulla is called the cortex. It forms the greater bulk of the hair shaft. It consists of elongated, spindle shaped cells which are so closely arranged that the individual cells are indistinguishable. Fine fibrils pass between individual cells. The cortex contains the pigment that gives col-

or to the hair. The pigment occurs in two forms. (1) The solution throughout the cortical substance; (2) in granules varying in size arrangement and depth of color. The granules are located within and between the cells of the cortex. The layer surrounding the cortex and forming the external covering of the hair shaft is called the cuticle. It is the thinnest of the three layers, is glassy in appearance, and free from pigment. It consists of a layer exceedingly thin, scale-like cells that overlap one another like the shingles of a roof giving the surface of the hair a serrated appearance. From the foregoing description, it is evident that in a comparative study of scalp hair, the thickness of the hair can not be used as a criterion in the answer of the question, whether hair from the same scalp may be identified as such, inasmuch as hair varies very widely in thickness on the scalp of anyone individual. Hair from the same scalp may be identified as such with the aid of the microscope by the following points of identity: (1) The presence or absence generally of the medulla. Its appearance, whether it is continuous, or segmented, its relative width and the occurrence of air between the medullary cells. (2) The relative amount of the cortical pigment found in a soluble form and in granules. The arrangements, size and depth of color of the pigment granules. Their position in reference to the other layers of the hair. (3) The comparative thickness of the cuticle. That in order to make a comparative study of the scalp hair eighteen specimens of brown hair as similar to each other as can possibly be obtained were procured. Among these, three groups of two specimens were selected, the two specimens in each group appearing alike to the unaided eye. After a careful study under the microscope of the medulla, the cortex and the cuticle, scalp hair looking alike to the unaided eye showed points of difference under the microscope which enabled us to differentiate the specimens of hair from the scalp of one person from the scalp of another person. It is impossible without the aid of the microscope to determine any of the points of difference mentioned herein, and it is therefore impossible to establish with any degree of accuracy the identity of scalp hair without the aid of the microscope. Washing the hair with tar soap does not change the color of the

hair as shown under the microscope, nor is there any change in the texture of the hair and in the amount and distribution of its pigment. The apparent lightening of the hair which occurs after washing and is visible to the naked eye is due to the removal of dust and of the oil which covers the hair and which mats it together in a more or less compact mass, but under the microscope there is no change in the color of each individual hair. Some of our associates are Dr.C.W.Strickler, Dr.W.F.Westmoreland and Dr. J.E.Paullin, Dr.L.Sage Hardin, Dr.J.L.Campbell and Dr.E.G.Jones.

DR. W.F.WESTMORELAND, DR. J. E. PAULLIN, Sworn for the Movant. We know Dr.G.Bachman.His character for truth and veracity is good and we would believe him on oath.

DR.L.SAGE HARDIN, DR.J.L.CAMPBELL, Sworn for the movant. We know Dr. J.W.Papez. His character for truth and veracity is good and we would believe him on oath.

JOHN R. BLACK, Sworn for the Movant. I am a city detective. On Monday, April 28, 1913, I was called to the National Pencil Factory on Forsyth Street, and was shown by one Barrett several strands of human hair on a lathe in the metal room in said factory. I took the hair from said lathe and together with E.A. Stephens, Assistant Solicitor General, took said hair to Dr.H.F. Harris, at the State Capitol and left the hair with said Harris.

S. N. TEITREBAUM, Sworn for the Movant. I am a court reporter, and reported the oral argument made by Solicitor General Hugh M.Dorsey, to the jury in the matter of the State vs.Leo M. Frank, in Fulton Superior Court on August 22nd, 23 and 25th; Said Solicitor General, did, at four different times in his argument before the jury, refer to the hair found on the lathe in the metal room by Barrett, as follows:

"Barrett, Christopher Columbus Barrett, if you will, that discovered the hair that was identified, I believe, by Magnolia Kennedy, Monday morning, as soon as they began work". . ."Barrett, the man who discovered the hair on his machine early in the morning". . . "I say to you that this man Barrett stands an oasis in a mighty desert, standing up for truth. . . that Barrett when he sworn that he found blood there at the place where Conley said he dropped the body, told the truth; and when he said he found that hair on that machine". . . "that Mr.Barrett of the metal department had claimed he had found blood spots and where he had found some hair."

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E. E. CRUSSELLE, Sworn for the Movant. I am a court reporter and reported part of the testimony of Dr. H. F. Harris, at the trial of Leo M. Frank during the month of August, 1913, in Fulton Superior Court; The following testimony is a portion of the testimony of Dr. Harris, which I reported, and which appears on pages 1481 and 1482 of the stenographic record of the testimony in said cause:

Q. Doctor, when did Mr. Dorsey first talk with you about making this autopsy? A. I don't remember.
Q. How long before you made the examination did he talk with you? A. I don't recall.
Q. Do you recall when you made the first examination? A. It was on May 5th, if I remember correctly.
Q. May 5th? The child died on April 26th or 27th - that would be about nine days afterwards? A. Yes sir, if I am correct, in that statement, it was.
Q. Did Mr. Dorsey request you not to make the examination public? A. He did.
Q. Did he request you not to tell it to anybody? A. He did.
Q. And you observed that request? A. Yes.
Q. Did you understand he was making the request as a Solicitor General or as an individual? A. Well, he didn't state there; he just called me up and asked me if I would make the examination. I told him that I was not well, and that I would prefer very much not having anything to do with it. He talked to me a little while, and finally I said 'if you really wish me to do it, ~~just because~~ and you think I can be of any service to you, I will do it, just because I like you.' I felt that way about it; otherwise I would not have had anything to do with it.
Q. What did he tell you to examine? What parts of the body did he tell you to examine? A. He told me he wanted me to examine the case and tell him all I could about it.
Q. What had you in your mind - what were you seeking to determine by the autopsy? What did you understand you were seeking? A. There was some suggestion of poisoning at the time when I went out there, but I saw at once that there was no reason for assuming that. I failed to state on my direct examination that the stomach content was tested for alkaloid poisoning, and there was none present. Of course I dismissed that from my mind. As soon as I saw the girl, I saw that it was a matter of strangulation."

LEONARD HAAS, Sworn for the Movant. I have read the brief filed by Solicitor General Dorsey in the Supreme Court of Georgia in the case of Leo M. Frank vs. State of Georgia. Pages 58 and 59 of said brief contain the following language:

"FIRST: HAIR.

R. P. Barrett (p. 42) was a machinist for the National Pencil Company. He says, 'On Monday morning, April 28th. . . between 6:30 and 7 o'clock. . . I found some hair on the handle of a bench lathe. . . The hair was hanging on the handle, swinging down. Mell Stanford saw the hair. The hair was not there Friday.'

"Counsel for defendant tried to make it appear that the girls sometimes curled their hair about where Barrett found this hair, but as to this Barrett says, 'The gas jet that the girls sometimes used to curl their hair on is about ten feet from the machine where the hair was found. . . I ~~don't~~ know' he says, 'the hair wasn't there on Friday, for I had used that machine up to quitting time, 5:30.'

"Mary Phagen, it will be remembered was not there Friday.

"Darley, at the beginning of his cross-examination, says, 'Barrett showed me some hair on a lever of the lathe. It was 20

or 30 feet from Mary Phagan's machine, on the north side of the room. . They were wound around the lever. I don't think there were over six or eight at the outside.'

"Miss Magnolia Kennedy, a witness for the defendant, corroborated Barrett when she says (p.168) 'On Monday, April 28th, Mr. Barrett called my attention to the hair which he found on the machine. It looked like Mary's hair. . . . Mary's hair was a light brown, kind of sandy color.'

"This hair and blood spots - to be discussed hereafter - were found by Barrett early Monday morning, and before any rewards had been offered.

"The location of the machine where the hair was found can be readily seen by reference to State's Exhibit A, No. 10, (p.371) - and in connection with this State's Exhibit A, we will remark that the photograph here is ~~not~~ from a newspaper cut, we presume, but certainly it is not from the exhibit which the State really had incourt. It does not correspond in several particulars to the one used in court, but the location of the machine on which the hair was found is accurate."

GROUND 2.

MISS JIMMIE MAYFIELD, Sworn for the Movant. I worked at the National Pencil Factory in Atlanta, Georgia, for about eight months and knew Mr. Frank when I saw him. I was acquainted with Mary Phagan and knew the color of her hair. I know Mr. Barrett and on Monday, April 28th, Mr. Barrett showed me the hair he said he had found on a lathe machine. It is my positive opinion that the hair was entirely too light in color to be that of Mary Phagan's.

EULA MAY FLOWERS, RUDOLPH LOEB, H.G. SCHIFF and E. F. HOLLOWAY, Sworn for the Movant. We know personally Miss Jimmie Mayfield. Some of her associates are Mary Pirk, Mrs. G. Denham, Marjorie McGord, Mamie Stephens, Mrs. O. Johns; The said Miss Jimmie Mayfield is a person of good moral character and credibility and ~~they~~^{we} would believe her on oath.

L. A. QUINN, EULA FLOWERS, H. G. SCHIFF, Sworn for the movant. We are acquainted with Miss Jimmie Mayfield. She was well acquainted with Mary Phagan in her lifetime. She could know the color of Mary Phagan's hair and by reason of seeing the hair claimed to have been found by the witness Barrett upon the second floor of the factory, she was in a position to determine whether the hair found by Barrett looked like Mary Phagan's hair, and was thereby enabled to form an opinion as to whether the hair of Mary Phagan and that found by Barrett were identical.

GROUND 3.

MRS. CORA FALTA, sworn for the movant. I have worked

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at the National Pencil Company in the city for almost five years past. I am acquainted with Mr. Leo M. Frank, also Mr. R/P. Barrett and knew Mary Phagan quite well and knew the color of her hair. On Monday, April 28th, I was at the National Pencil Company Factory and Magnolia Kennedy called my attention to the hair on a certain machine that R.P. Barrett was alleged to have found there. At that time I gave it as my positive opinion that the hair on the machine was not that of Mary Phagan, as it was entirely too light in color to be the hair of said Mary Phagan. I now state that I am most positive that the hair I saw on the machine could not have possibly have been Mary Phagan's hair and that the hair on the machine was much lighter in color than was the hair of Mary Phagan.

MARY PIRK, MRS. G. DENHAM, MAY GOODMAN, MAMIE STEPHENS,

Sworn for the movant. We personally know Mrs. Cora Falta/ Some of her associates are Miss Jimmie Mayfield, Mrs. O. Johns, Marjorie McCord, Mary Pirk. Mrs. Falta is a person of good moral character and credibility, and we would believe her on oath.

L.A. QUINN, MARY PIRK, MRS. G. DENHAM and EULA FLOWER,

Sworn for the movant. We are acquainted with Mrs Cora Falta. She was well acquainted with Mary Phagan during her lifetime and she could know the color of Mary Phagan's hair. She was in a position by reason of seeing the hair claimed to have been found by Barrett to determine whether the hair found by Barrett looked like the hair of Mary Phagan and was thereby enabled to form an opinion whether the hair of Mary Phagan and that found by Barrett was identical. *attested by C. W. Burke as Notary*

GROUND 4.

ALICE MARJORIE McCORD, Sworn for the movant. On the morning of Monday, April 28, 1913, my attention was called to some hair that was on a lathe machine on the second floor in the National Pencil Factory, and ~~that~~ I examined said hair very closely. I knew Mary Phagan during her time of employment at the factory and knew the color of her hair, and in my opinion, the hair found on the lathe machine was not that of Mary Phagan, as it was much too

light to be the hair of Mary Phagan.

attested by CW Burke

E.F.HOLLOWAY, L. A. QUINN, GRACE HIX, MARY PIRK, Sworn

for the movant. We are acquainted with Miss Alice Marjorie McCord; that said Alice Marjorie McCord^{was} well acquainted with Mary Phagan during her lifetime. She could not know the color of Mary Phagan's hair and she was in a position by reason of seeing the hair claimed to have been found by the witness Barrett upon the second floor of the factory, to determine whether the hair found by Barrett looked like the hair of Mary Phagan and was, thereby, enabled to form an opinion as to whether the hair of Mary Phagan and that found by Barrett was identical.

attested by CW Burke as Notary Public

E.F.HOLLOWAY, LEONARD JACOBUS, R. P. BUTLER, EULA MAE

FLOWERS, Sworn for the Movant. We know personally Miss Alice Marjorie McCord and some of her associates are Mary Pirk, Mrs. G. Denham, Jimmie Mayfield, Mrs. O. Johns. We know that Miss Alice Marjorie McCord is a person of good moral character and credibility and we would believe her on oath in a court of law.

attested by CW Burke as Notary

GROUND 5.

ALBERT MCKNIGHT, Sworn for the Movant. I was a witness at the trial of the case of the State of Georgia vs. Leo M. Frank, and when placed upon the stand I testified to a story that had been prepared for me by R.L. Craven, a white man, under whose direction he worked at the store of Beck & Gregg. The story prepared for me by said R.L. Craven was written by Mr. Craven and witnessed by Emmett H. Pickett, and Angus Morrison, Jr. and both of whom are white men, and also in the employ of Beck & Gregg Hardware Company at their store. These witnesses told me that I would be obliged to stick to the story prepared by Mr. Craven as they had witnessed same and that in the event I undertook to deny the story they would send me to the chain gang, and explained to me that the word of three white men would be taken in preference to that of any negro. Since the trial of said Leo M. Frank I have always been sorry for the false part I played in it and since I have had time to reflect on the great wrong that I have done I am determined to tell the truth and now say that the story prepared for me by

R.L.Graven is not the truth, and that the evidence I gave at the above named trial was not the truth. It is true that my wife, Minola was employed at the home of Mrs.Selig, where Mr.Leo M.Frank resided, and it is true that on Saturday, April 26th, 1913, I called at the Selig home to see my wife, Minola, but I reached the Selig home on the date in question a little before twelve o'clock noon, and I heard the twelve o'clock whistle blow at the Southern Railway shops after I reached the Selig home and also heard the twelve thirty o'clock whistle blow at the same shops while I was talking with my wife, and when I heard the twelve thirty o'clock whistle blow, I left the Selig home and walked up Georgia Avenue to Pulliam Street, then up Pulliam Street to Bass Street, and then to my own home which was at that time located in the rear of No. 51 Pulliam Street. When I reached the Selig home, on Saturday, April 26, 1913, my wife, Minola, was busy preparing the noontime meal, but she had not served the meal before I left the house. I did not see Mr. Leo M.Frank at all on April 26, 1913, at any time or place, and my evidence at the trial of Mr.Frank was the result of a plan perfected by said R.L.Graven to collect the reward offered for the arrest and conviction of the murderer of Mary Phagan, a part of which reward was promised to me by said R.L.Graven as a reward for the false testimony I gave at the trial. I told Mr. Craven that I did not want to tell any lies on Mr.Frank, but Mr. Craven would tell me that in order to collect the reward, it was necessary for me to go right ahead and do what he, Craven, told me to do, and I was weak enough to follow said Craven's instructions and do as I was told by him. Mr. Craven told me to say that my wife, Minola, had stated to me that when Mr.Frank came home on April 26, 1913, that he was drunk and that she had seen Mr.Frank with a pistol in his hand and heard him threaten to shoot himself, and that while drunk that night, he, Frank, had made his (Frank's) wife sleep on the floor. All these statements were created by said R.L.Graven, and that Mr.Graven told me that it was necessary for me to swear to these facts in order to support the evidence of my wife, who had made an affidavit to the same set of alleged facts. I now say that if I am called upon to testify again regard-

ing this statement, or at the trial of Mr. Frank, I will testify to all stated by me in this affidavit, only because it is the truth, and I further state that I have talked with no one about the case, and my evidence in the case referred to in this affidavit, except C.W. Burke, who has plainly stated to me that he represents the firm of Rosser, Brandon, Slaton & Phillips, in the interest of Mr. Leo M. Frank, and Mr. Burke has made me no promises whatsoever, or held out any offers of reward, and the evidence I give herein is made of my own free will and accord.

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(GROUND/~~STRICKEN~~ UPON MOVANT'S MOTION)

GROUND 7.

MRS. ETHEL HARRIS MILLER, Sworn for the Movant. Prior to my marriage and removal to Chattanooga, in July 1912, I was a resident of Atlanta, Ga. I am personally acquainted with Leo M. Frank and have been since the year 1910, and have known him continuously since that time. I was well acquainted with Leo M. Frank on April 26, 1913. On April 24, 1913, I went to Atlanta to visit my parents, and on Saturday after reaching Atlanta, to-wit on Saturday, April 26, 1913, Memorial Day, I went to the store of J.P. Allen Co. on Whitehall Street to meet my sister, Miss Florence Harris, who was employed at that store. I reached the store at one o'clock, at which time the store was to close for the day, it being a holiday, and at which time my sister was to leave for the day. I and my sister left the J.P. Allen store a few minutes past one o'clock and were joined in front of the store by a friend, Mr. Maier Lefkoff, and all three of us walked together down Whitehall Street to the corner of Whitehall and Alabama Streets, at which point I and my sister turned on Alabama Street, and went to Forsyth St., where we caught our car home. On turning the Jacobs Pharmacy corner at said time, which was just about 10 minutes past one o'clock, on the afternoon of April 26, 1913, I saw and recognized Mr. Leo M. Frank, who was standing on the sidewalk with a bundle of package under one arm; and said Leo M. Frank recognized and spoke to me, tipping his hat. ~~X~~ I did not tell this fact to Mr. Frank's attorneys, nor did I ever remind Mr. Frank of it. It was only con-

considerably after the trial and conviction of Mr. Frank that I acquainted his lawyers with these facts, and I then told either Mr. Leonard Haas, or Mr. Herbert J. Haas, I do not now recall which. The reason that I did not know the importance of my having seen Mr. Frank at this time, I did not know that it would have any bearing upon the case and when I first learned that it would have a bearing on the case I was then reluctant to tell these facts, as I desired to avoid notoriety and publicity; however, after I was made to understand that my having seen Mr. Leo M. Frank at 10 minutes past 1 o'clock in the afternoon on April 26, 1913, was an important point in this case, I communicated these facts to his attorneys, at a time which, as already stated, was considerably after his conviction, the exact date I do not recollect. Some of my associates in Atlanta, Ga. are Dr. and Mrs. B. Wildauer, Mr. J. Saul, Mr. and Mrs. J. J. Saul, and in Chattanooga, Tenn., Rabbi Julian H. Miller, Mr. and Mrs. H. M. Fine and Dr. H. S. Long. I am willing to come to Atlanta and testify as to any of the facts stated in this affidavit, and as to any other facts which may be within my knowledge, and material in the case.

MAIER LEFKOFF, Sworn for the Movant. On April 26, 1913, I accompanied Mrs. Ethel Harris Miller when she went to meet her sister at J. P. Allen's on Whitehall Street, between Alabama and Hunter Streets. We arrived at Allen's about one o'clock, perhaps five minutes after one. We walked from there down Whitehall Street, towards Alabama and turned up Alabama Street. I should say we reached the corner of Alabama and Whitehall Streets, at about ten minutes after one, as we made no steps between Allen's and that point. I do not know Mr. Frank and I do not remember either of the ladies bowing to him at that time.

S. N. FEITELBAUM, Sworn for the Movant. I am a court reporter and reported the oral argument made by Solicitor General H. M. Dorsey to the jury in the matter of the State vs. Leo M. Frank in Fulton Superior Court, on August 22, 23 and 25th; The Solicitor made the following statements:

"All right; but you prove an alibi by that little Gurren girl, do you? She swore that she saw you at Alabama Street and

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Broad at 1:10, and yet here is the paper containing your admission made in the presence of your attorney, Monday morning, April 28th, that you didn't ~~have~~ leave the factory until 1:10. Gentlemen, talk to me about sad spectacles, but of all the sad spectacles that I have witnessed throughout this case, - I don't know who did it, I don't know who's responsible and I hope that I'll go to my grave ~~in ignorance~~ in ignorance of who it was that brought this little Curran girl, the daughter of a man that works for Montag, into this case, to prove this alibi for this red-handed murderer, who killed that little girl to protect his reputation among the people of his own race and religion. Jurors are sworn, and His Honor will charge you, you have got the right to take into consideration the deportment, the manner and bearing, the reasonableness of what any witness swears to, and if any man in this courthouse, any honest man, seeking to get at the truth, looked at that little girl, her manner, her bearing, her attitude, her actions, her connections with Montag, and they not know that she, like that little Bauer boy, had been riding in Montag's automobile, I am at a loss to understand your mental operations. But if Frank locked the factory door at ten minutes past one, if that be true, how in the name of goodness did she ever see him at Alabama and Broad at 1:10? Mark you, she had never seen him but one time; had never seen him but one time, and with the people up there on the street, to see the parade, waiting for her companions, this daughter of an employe of Montag comes into this presence and tells you the unreasonable absurd story, the story that's in contradiction to the story made by Frank, which has been introduced in evidence and will be out with you. She saw that fellow up there at Jacobs'

MRS. MAX MEYER, Sworn for the Movant. I am a sister of Mrs. Ethel Harris Miller, formerly Ethel Harris. On April 26, 1913, Mrs. Miller, together with Maier Lefkoff met me at the department store of J.P. Allen Company, where I worked, in front of said store, in the middle of the block of Whitehall Street between Alabama and Hunter Streets, in the City of Atlanta, at about one o'clock of said day. After meeting in front of said store, Mrs. Miller, Lefkoff and I walked down Whitehall Street until we reached the corner of Alabama Street. We turned up Alabama Street and walked to the corner of Forsyth and Alabama Streets, where we caught the Magnolia Street car for our home. In my opinion we reached the corner of Alabama and Whitehall Streets between one o'clock and 1:10. I am not acquainted with Leo M. Frank and do not recall whether my sister bowed to anyone at that corner or not.

FREDERICK J. PAXON, JAKE E. NEWMAN, Sworn for the Movant. We are personally acquainted with Maier Lefkoff, of Atlanta, Fulton County, Georgia, and said Maier Lefkoff is a person of good moral character and credibility and we would believe him on oath in a court of law.

F. J. PAXON MISS MAY EVENS, Sworn for the Movant. We know personally Mrs. Ethel Harris Miller, of Chattoonga, Tenn.

and some of her associates are Miss Dollie Evans, Atlanta, Ga., Miss Hattie Phillips, Atlanta, Ga. Mrs. Ethel Harris Miller is a person of good moral character and credibility, and we would believe her on oath.

B. W. WILDAUER, Sworn for the Movant. I am personally acquainted with Maier Lefkoff and have known him since his birth. His character for truth and veracity is good. Said Lefkoff's associates are, among others, Joe Weinberg, Ike Eplan, Sam Hirsowitz, Ike Hirsowitz, Joe Hermann, Sam Smullyan and S. B. Edison.

MRS. M. MEYER, Sworn for the Movant. I and my sister, Mrs. Ethel Harris Miller were both residents of Atlanta, Georgia, until recently, and had lived in Atlanta all our lives until I moved to Chicago some two or three months prior to making this affidavit and until my sister, Mrs. Miller moved to Chattanooga about July, 1912. Our associates in Atlanta were to a great extent the same, and I name as some of our associates the following, to-wit: Dr. and Mrs. B. Wildauer, Dr. and Mrs. L. C. Rouglin, Mrs. and Mr. H. Sapl, Mrs. J. J. Saul.

JOS. HERMAN, Sworn for the Movant. I am acquainted with Maier Lefkoff and have known him for fifteen years. His character for truth and veracity is good. I know the said Lefkoff was in the City of Atlanta, State of Georgia on the 26th day of April, 1913, because I was in the company of said Lefkoff sometime during the afternoon of that day.

GROUND 8.

DEWEY HEWELL, Sworn for the Movant. I was an employee of the National Pencil Company. I worked for said Company for only a few days, and during the time of my employment there I never met Leo M. Frank to know who he was and never in my life did I meet Mary Phagan, nor did I ever see Mary Phagan, and I have never seen the defendant and Mary Phagan together. At the time of the original trial of the defendant, I was a resident of the Home of the Good Shepherd, at Cincinnati, Ohio, and M. Mrs. Bonfield, the police matron representing the City Police Department of Atlanta, Georgia, came to Cincinnati and returned me to Atlanta, where I was used as a witness in the above case, after which I was again returned to the Home of the Good Shepherd at Cincinnati. During my confinement in a large room adjoining the office of Solicitor General Dorsey, I met some 12 or 15 other girls, who, like myself, were to be witnesses against the defendant, among whom was a girl named Maggie Griffin, who was very enthusiastic about going on the stand herself and testifying against the defendant. The said Maggie Griffin, coached me and told me how to testify and what to say when I went on the

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stand to testify. Before I went on the stand, Solicitor Dorsey came into the room where the girls were confined and gave us all a lecture and told us that when we went on the stand to go right ahead and tell everything we knew and answer his questions right off sharp and quick. While the girls before mentioned were crowded in said room, there was a great deal of talk and gossip going on among them, and many of them said they were afraid to go on the stand and testify to an untruth, and they were also afraid to go into the court room and testify at all. The said Maggie Griffin stated several times how she was going to tell everything that the Solicitor wanted to know when she went on the stand, and when I made the statement that I was afraid to go on the stand and that I knew nothing about the defendant and knew nothing about Mary Phagan, the said Maggie Griffin volunteered with enthusiasm to tell me what I should say, and the said Maggie Griffin thereupon rehearsed me many times in regard to the testimony I should give, and Maggie Griffin told me that I must ^{say} that I was acquainted with the defendant and that I knew his character to be very bad, and that I had seen defendant whispering with Mary Phagan, with his face very close to her, and further, that I had seen defendant place his hand upon the person of Mary Phagan. I thereupon told Maggie Griffin that it would be impossible for me to testify to all that the said Maggie Griffin had instructed me to say, and Maggie Griffin said: "We will go over it again so that you won't forget it" and repeated it several times. I did not even know where Mary Phagan worked in the factory, but I was made to say that I knew her by said Maggie Griffin, and whatever I testified to regarding either the defendant or Mary Phagan was the result of coaching given to me by the said Maggie Griffin. During the time of my employment at the National Pencil Factory, I never heard any employee, male or female, say that defendant was a man of bad character, and had never seen any wrong doing on his part.

(This affidavit was witnessed by
C. W. Burke)

GROUND 9.

RUTH ROBERTSON, Sworn for the Movant. I was a witness in the case of the People against Leo M. Frank, and on the morning of the day that I testified in the case a police detective whose name I believe to be Bass Rosser, came to my house and conducted me to the office of Solicitor Dorsey. This was my first meeting with Mr. Dorsey. The meeting was in a room in a building that I believe is opposite, or in the vicinity of the building in which the trial was conducted. After being introduced to Mr. Dorsey by the detective, Mr. Dorsey greeted me effusively; he said he was glad to ~~make~~ that I had come down to see him, and that he was sure I would make a good witness and would help him out in the Frank case. He questioned me and talked to me in the room alone for about ~~an~~ half an hour, beginning at about eight thirty o'clock. As I remember it, there was no proceedings in court on that day until later in the forenoon, at nine o'clock, I believe; it was on Wednesday, but the date I do not recall. In the beginning of the conversation with Mr. Dorsey, he asked me to go ahead and tell him all I knew about Mr. Frank and Mary Phagan. I told him I knew nothing, ~~except~~ against or about Mr. Frank, except that I worked for him, and, so far as I knew, he was a gentleman in every respect, or words to that effect. He asked me if I knew Mary Phagan, and I told him I did. He insisted that as I had worked at the National Pencil Company for a considerable time, that I must know something against the character of Mr. Frank and asserted that he was a very bad man. I told him that I knew absolutely nothing against Mr. Frank's character. Mr. Dorsey insisted that I did, and persisted in the statement that he was of bad character. He asked if I had ever been in Mr. Frank's office. I told him that I had on several occasions, always on business errands; that is, errands connected with the work I was performing in the factory. He then asserted that I had been in Mr. Frank's office, with him alone, to keep dates for purposes other than business, to which I replied that it was not true. He finally openly insulted me by affirming that I had had sexual intercourse with Mr. Frank in his office, or some other room or place in the factory which Mr. Frank kept for the purpose of meeting girls, and he insisted that I knew the

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location of such room or place in the factory, and that I knew of other girls that had been to this room with Mr. Frank. I was shocked by the broad insinuation and affirmative statement of Mr. Dorsey, and I told him that all such statements and allusions were lies, and that I had never heard of any such thing ever occurring in the factory, or elsewhere, in which Mr. Frank and any girl employee of the factory were parties to; and I state now after mature deliberation and thought, that I have never heard such insulting language by direct speech and innuendo, by any of the commonest laborers in and about the National Pencil Factory, as was used to me by Solicitor Dorsey when in his private office. He being the Solicitor, and I, being in his office, believed at the time that he possessed some sort of right to thus accuse me and insult me; and, under this belief, I was obliged to take his insults and listen to his scandalous statements, by direct speech and innuendo, without openly resenting them further than to deny every single one of them. I wish to refer to my evidence, as given on the stand at the trial of Mr. Frank, as to my answers to questions of Mr. Dorsey, wherein I was made to say that I had heard Mr. Frank call Mary Phagan by her first name, "Mary". Upon reflection, I wish to explain that my answer, as above repeated, was due entirely to my nervousness because of the badgering that I had been subjected to by Mr. Dorsey; and, as a matter of fact, I cannot recall one single instance wherein I ever heard Mr. Frank address Mary Phagan by any name, and this is the veriest truth. I would not recall, or cannot recall now, under calm deliberation, that I ever heard Mr. Frank address Mary Phagan by any name, as I have never seen him speak with her at any time or place, except when instructing her how to perform her work better and more rapidly while at her work in the factory. Referring back to my first call on Mr. Dorsey, and where he had questioned and talked to me for about a half an hour, at the conclusion of which I was directed to another large room, adjoining I believe where Mr. Dorsey had talked to me, in which there were twelve or fifteen other girls and women- all witnesses in the Frank case, and called by Mr. Dorsey, according to my understanding. Among these girls, I remember one Carrie Smith, Myrtle Gato, Maggie Griffin and Dewey Howell. I remained there

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until about twelve o'clock when I went to the courthouse and took the witness stand. Before Mr. Dorsey went over to the courthouse, he came into the room where the girls above described and I, myself, were, and gave us a lecture and told us all that when we went on the stand to go right ahead and tell everything we knew and answer his questions right off sharp. After the lecture I didn't see Mr. Dorsey again until I went on the witness stand at the courthouse. While remaining in the large room with the twelve or fifteen girls, before I was called to go to the courthouse, there was a great deal of talk and gossip among the girls there, some of them said they knew nothing against Mr. Frank and that they were timid and were afraid that they would be scared when they went into court. Maggie Griffin, however, appeared to welcome and relish the idea of going on the witness stand and told several times how she was going just to tell everything Mr. Dorsey wanted to know, when she went on the stand. Dewey Hewell said she did not know anything about Mr. Frank or Mary Phaga, or anything concerning the case, and Maggie Griffin volunteered, with enthusiasm to tell her what to say and did tell her and rehearsed her a t once side of the room. I heard Maggie Griffin tell Dewey Hewell that she must say she ~~knew~~ knew Mary Phagan, and that she knew Mr. Frank and knew that he was of bad character, and that she should tell everything bad she could think of about him, and to say that she had seen Mr. Frank with his hands on Mary Phagan, and that she had seen him whisper to her or talk to her with his face close to hers. Maggie Griffin and Dewey Hewell left the large room described two or three times together, and returned together and I heard Dewey Hewell say repeatedly that she was afraid she would forget all Maggie had told her to say when she went into the court house, and Maggie said, "We will go over it again, so you wont forget it." This was repeated several times. I recall hearing Dewey Hewell say pointedly that she did not know where Mary Phagan worked and that she did not know her by name; but she was rehearsed to know her by Maggie Griffin, in that room; and to say whatever she did say on the witness stand. I have seen the evidence as reported as being given by Dewey Hewell, and recognise in her answers precisely what I

heard Maggie Griffin tell her to say. I don't believe either one of these girls appreciated what it was to swear falsely, as they were giggling and laughing over the evidence they were to give when they went on the witness stand.

JOS. STELKER, FRED ZIGANKI, EULA FLOWERS, LEONARD JACOBUS, Sworn for the Movant. We are acquainted with Miss Ruth Robertson, and her residence is in the City of Atlanta. She could have knowledge of the facts testified to by her by reason of the fact that she had been employee at the factory, was acquainted with Leo M. Frank and the employees of the pencil factory.

attested by C. W. Burke as Notary.

GROUND 10.

MRS. MAMIE EDMONDS, Sworn for the Movant. I first went to work at the National Pencil Factory in October, 1911, and left there about March 1, 1913. I accepted re-employment with them about two weeks before the trial of Leo M. Frank. I never at any time witnessed any acts in Mr. Frank's office that would lead me to think that he was acting in any way unbecoming to a gentleman. I have never seen any woman in Mr. Frank's office except a stenographer and I never saw Mr. Frank familiar with her. Mr. Frank when passing through the factory was at all times businesslike in his actions and dealings with the employees. I was a witness for the State at the trial of Leo M. Frank and testified that on a certain occasion ^I ~~she~~ was in a ladies dressing room on the fourth floor, in company with one Ethel Stewart and Irene Jackson. Miss Stewart was in the room only part of the time while ~~she~~ I and Miss Jackson were there. The Solicitor asked me if I was ever in the dressing room in company with Miss Mayfield and Miss Jackson when they were partially dressed, when Mr. Frank came to the dressing room and looked in. I replied that I was not in the dressing room with Miss Mayfield, but was there with Miss Jackson when she was in a partially dressed condition and that Mr. Frank did look in the dressing room at that time. The Solicitor asked me what Mr. Frank said when he looked in the dressing room and I replied that he said "What's the matter girls, haven't you got any work?" and Miss Jackson replied, and then added "We are dressing, blame it"

and at this point, I said that Mr. Frank shut the door and disappeared. When I was on the witness stand I only answered such questions as were put to me by the Solicitor General or by counsel for Frank. If I had been permitted to tell the facts in my own way I would have told them exactly as I am telling them now. When Mr. Frank opened the dressing room door and looked in and asked the girls if they did not have any work to do, none of them were in an exposed condition. I had removed my outside street skirt, but my person was fully protected by my underskirt and while Miss Jackson had removed a part of her clothes, her person was not in any way exposed. Detective Bass Rosser called at my home during the trial of Mr. Frank and interviewed me and asked me a great many embarrassing questions as to what I knew against the character of Mr. Frank. I told him that I knew nothing that would reflect on Mr. Frank, and further told him that so far as my knowledge went and so far as I had ~~observed~~ observed, Mr. Frank always conducted himself as a gentleman. I do not think Mr. Frank showed me the proper respect in coming into the dressing room as he did.

DEBERT JONES, TULLIE CALDWELL, OZIE LEADFORD, H. C.

SCHIFF, Sworn for the Movant. We know Memie Kitchens Edmonds, and she could have knowledge of the facts testified by her by reason of the fact that she had been an employee of the factory and was acquainted with Leo M. Frank as an employee there.

attested by C. W. Burke as notary.

GROUND 11.

MARIE KARST, Sworn for the Movant. I worked at the National Pencil Company about eighteen months prior to January, 1912, and knew Leo M. Frank. I was a witness for the State at the trial of Leo M. Frank and testified that his character was bad, and I was not cross examined. If I had been asked as to how I knew Mr. Frank's character was bad, I could only have said because I had heard girls say that they were afraid to have him catch them loafing. No girl or woman ever told me that Mr. Frank had ever in any way insulted them, I never saw any woman in Mr. Frank's office and never heard any other girl or woman say that they never saw any woman in Mr. Frank's office drinking or acting in any way

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unbecoming to a lady. I was brought into the case against Mr. Frank by detective Bass Rosser and was subpoenaed to the office of Mr. Dorsey twice before the trial and questioned very closely by Mr. Dorsey. He told me to say that Mr. Frank's general character was bad and as illustrating to me how he desired me to state that Mr. Frank's character was bad, he said, "I want you to state that his character is bad just as you would state that Mayor Woodward's character was bad, and in the same manner you had heard that Mr. Frank's character was bad. That is the way I want you to testify and I want you to answer my questions right off sharp and quick." When Mr. Dorsey was prompting me and questioning me in his office, he did not at any time use the word "lasciviousness", but when I went on the witness stand he did use the word and asked me if Mr. Frank's character for lasciviousness was good or bad, and I answered "bad" in the face of the fact that I did not know the meaning of the word lasciviousness, and never had it explained to me until today. I deny most emphatically that Mr. Frank's character or reputation is bad for lasciviousness. He always made the girls at the factory attend strictly to business and he was not generally liked by them on account of his strictness with them in his dealings regarding their work.

H. G. SCHIFF, JOS. STELKER, LEONARD JACOBUS, AND L. A. QUINN, Sworn for the movant. We are acquainted with Miss Marie Karst. She could have knowledge of the facts testified to by her by reason of the fact that she had been an employee of the factory and had been ~~known~~ acquainted with Leo M. Frank as an employee of the factory, *attested by C. W. Burke.*

(GROUND 12 STRICKEN UPON MOTION OF MOVANT.)

GROUND 13.

MARY RICH, Sworn for the Movant. I know Jim Conley and at about 2:15 o'clock P. M. Saturday, April 26, 1913, Jim Conley come out of alley in rear of the National Pencil Factory and bought a 20¢ dinner of me, and after getting the dinner in his hand, he went back to the aforesaid alley and I did not see him any more that day. *(This affidavit in pencil, was attested in ink by C. W. Burke as Notary Public.)*

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MARY RICH, SWORN (before Commissioner D.O. Smith) I knew Jim Conley on April 26, 1913. I don't know whether I would know him now or not. Jim said it was ^{our Holiday.} Memorial Day. I saw him after the noon hour, after two o'clock. I asked a man who come along and he said it was 2:30. Jim had gone ~~off~~ ^{and so I can not give the definite time} at that time. I saw him between Madison Ave. and Forsyth St. on Hunter St. where I have been selling lunches for 3 or 4 years. He bought a 20¢ dinner from me and has not paid me yet. I was busy when he left and I don't know where he went. I don't know what direction he came from or went to when he left me. I have not seen him since. Mr. Dorsey is the only man I have talked to about my testimony. No one carried me there to see him. I went by myself. Mr. Dorsey did not try to get me to say it was Labor day instead of Memorial Day. I told him Jim said "It was our Holiday."

D. O. SMITH, Sworn for the Movant. I acted as Commissioner under the court order in the case to take the depositions of Mary Rich. This woman Mary Rich was very loath to begin answering any of the questions asked and it was with great difficulty she could be made to begin answering any of the questions. She stated she only wanted to give her evidence before Solicitor General Dorsey, or in Court, and repeatedly insisted that she did not want to testify except in Mr. Dorsey's presence or in court, as she did not know me or whether I had any right to question her.

GROUND 14

G. BURTIS DALTON, Sworn for the Movant. The newspaper accounts of said murder was the topic of general conversation at the boarding house where I was living, and during one of the several conversations that daily took place there regarding the very sad murder, I made the remark that I had been to the National Pencil factory several times, and this I confided to a fellow boarder named R.L. Mann, also that I had had immoral relations with a girl in the basement of the said National Pencil factory, and I thought no more of my remark until one day when city detectives Campbell and Starnes called at my boarding house and told me that Mr. R.L. Mann had reported to them that I knew some bad things against Leo M. Frank. I at once became indignant and promptly told the detectives that if R.L. Mann or any other person had reported to them that I knew anything bad against Leo M. Frank or against his character, that said informer or informers were

telling a falsehood and I then and there told detectives Campbell and Starnes that so far as my knowledge of Leo M. Frank went or was concerned that the said Leo M. Frank was a gentleman in every respect and way. Detectives Starnes and Campbell laughed at the declaration I made in defense of Leo M. Frank and treated my statement as a joke, and further that they would and did insist that I admit that I knew Mr. Frank to be a man of bad character, and that I had seen Mr. Frank go into closets and dressing rooms with various women and girls at various times at the National Pencil Factory, and that I had joined Mr. Frank on several occasions in acts of immoral conduct with women and girls, and that I had on various occasions joined Mr. Frank and women in the office of Mr. Frank and that on these occasions we would all drink beer and have a so called good time, and that I had seen Jim Conley and Leo M. Frank on various occasions talking earnestly together and that women and girls had told me that Mr. Frank had committed both natural and unnatural acts of intercourse with them, and that I had at various times taken women to the basement of the pencil factory for immoral purposes, with the knowledge and consent of Mr. Frank and that detectives Campbell and Starnes plainly told me that they had ~~asked~~ called on me to see if I would not support the statements of Jim Conley. The suggestions as outlined above and as made to me by detectives Campbell and Starnes caused me to feel indignant and insulted, and I so expressed myself at the time ~~and~~, ~~asked~~ in forcible language to detectives Starnes and Campbell, and I promptly told the detectives referred to that every suggestion they had made was untrue, and I proceeded to deny separately and collectively every suggestion made ^{to} ~~by~~ me by detectives Starnes and Campbell as outlined above in this statement. I told the detectives referred to at that time and now that I do not know Leo M. Frank; I know nothing against or about the character of Mr. Frank, and that I never saw Mr. Frank go into any closets, dressing rooms or other places with any woman or girl at any time or place, and that I never joined Mr. Frank at any time or place in acts immoral with women or girls; and that I never at any time or place saw Mr. Frank in conversation with Jim Conley, and no woman ever told me that Mr. Frank had committed either natural or unnatur-

al immoral acts with them or attempted to do so or asked to do so.
I did tell detectives Campbell and Starnes that I had been in the basement of the National Pencil Factory with one Daisy Hopkins for immoral purposes, but I told the detectives then and I now say that that I never went to the factory with Daisy Hopkins with the knowledge or consent of Leo M. Frank, but I ^{told} ~~said~~ the detectives Campbell and Starnes at the time of the conversation referred to in this statement and I now state that I went to the basement of the factory with the consent and knowledge of Jim Conley only, and said Jim Conley always received a tip of twenty five cents from me for such privilege, and said Jim Conley would permit me and Daisy Hopkins to go in the basement without being seen by anyone, and the said Jim Conley would remain on guard for me while I was in the basement with the understanding thoroughly understood between me and Jim Conley that said Conley would warn me if Mr. Frank or anyone else should happen to come along and possibly disturb me while I was in the basement and the said Jim Conley would assist me and Daisy Hopkins to get out of the factory without being seen by anyone. On one occasion I looked into Mr. Frank's office, but Mr. Frank did not see me, as Mr. Frank was busy at the time talking with Daisy Hopkins, who had gone to the factory in company with me for the purpose of drawing three dollars on her salary account at the factory, and I saw in Mr. Frank's office at the time referred to a lady whom ~~me~~ I have since learned to be Miss Eula Mae Flowers, and another woman who dressed like and looked like a factory employee, but there was nothing wrong going on in the office on the occasion referred to, and there was no evidence that there was or had been any beer drinking or drinking of any kind, and Mr. Frank was sitting at his desk apparently attending to his business, and ~~statements~~ as soon as Daisy Hopkins had drawn the money from her salary account as referred to above I and the Hopkins woman at once left the factory together and I never saw Mr. Frank any more. If anyone gained the impression from the evidence I gave at the trial that I knew or know anything against the character of Leo M. Frank, I now want to disabuse their mind of any such false impression, and I want everyone and everybody to know that I know absolutely nothing about or against the character of Mr. Leo M. Frank.

This affidavit witnessed by C. W. Burke

GROUND 14

H. F. BECKER, Sworn for the Movant. I was master mechanic at the National Pencil Factory in September, 1908, until the last Saturday in December, 1912. During that entire time I signed factory orders for all goods and supplies. I had authority to sign all orders for all goods and supplies I needed. The only other person who had authority to sign orders was Leo M. Frank. The method adopted by me and Mr. Frank in connection with the purchase of supplies was as follows: The orders or requisitions were made on pads and these pads were made so as to contain duplicate sheets. One of the sheets was the original made by me in behalf of the factory and which order would be sent to the concern which would furnish the supplies. A carbon sheet was placed between this original sheet and the second sheet which constituted a carbon copy and which was in all respects a duplicate of the original order so sent out. To all such orders or requisitions that I sent out I was required to affix my name and my name would accordingly appear on the carbon sheet whenever the same was used in connection with the original sheet. The carbon sheet was invariably used by me and my signature was invariably affixed. Each order made out by me was given a number and this number appeared both on the original sheet which went to the supplier of the material and the number also appeared on the carbon copy which was kept. When the supplies so ordered were furnished by the house to whom the order was given, the number of the order was required to appear on the invoice or bill covering said supplies so that the bill would be identified by the order number. This was the system which Mr. Frank and I put into force in the purchase of supplies and was carried out during the entire time I was at the Pencil Company factory. I have examined the exhibit attached to this affidavit. It is a reproduction of the carbon copy used by me while in the employ of the pencil factory. The blurred signature which appears about the center is my genuine signature. The signature however is very much blurred, only the last letters "cker" are fairly legible, as well as the characteristic loop at the end of the name. In my opinion

said letters and loop were made by me, but if the original paper was shown me I could be more certain. At the time I left Atlanta the entire supply of blanks, containing the figure "190" on the date line had been exhausted and a new stock of order blanks containing the figures "191" had already been put in use. Shortly before leaving Atlanta I personally packed up all of the duplicate orders on carbon copies which ~~me~~ I had written and which had already been filled and sent them down to the cellar of the factory to be burned and destroyed. Whether the order to burn or destroy was fully carried out I do not know. In my opinion the exhibit annexed to this affidavit is a photographic reproduction of a copy of an order made out by me prior to my leaving the employ of the National Pencil Factory.

(The Exhibit attached to said affidavit consists of a photographic copy of one of the notes found by the body of Mary Phagan, the same having been designated on the original trial as State's Exhibit Z.)

H. G. SCHIFF, F. ZIGANKE, Sworn for the Movant. We are personally acquainted with H.F. Becker, who severed his connection with the National Pencil Company about December, 1912. We are familiar with the signature of the said Becker. We have examined the photographic copy attached to the affidavit of said Becker and have carefully examined what purports to be a signature across the face of said photograph. The signature appears on said photograph. The said order blank was not in use in the factory in April, 1913. It has long since been out of use. The particular order blank in question, towit 1018 was used long prior to April 1913. At the time Becker severed his connection with the National Pencil Company Schiff gave directions that all of the papers left in Becker's department be carried into the basement of the factory and left there, and it was done as ordered.

HARRY B. MORGAN, HENRY SCHNEIDER, G. GARBLEMAN, GUSTAVUS AZZARA, Sworn for the Movant. We are acquainted with Henry F. Becker. Some of his associates are Wm. Reibold, Richard Zest, Frederick Simpson. His character and reputation are good and he is worthy of belief in any court.

H. G. SCHIFF, R. W. LOEB, EULA FLOWERS, Sworn for the movant. We are personally acquainted with H.F. Becker. He is a

man of good moral character and credibility and we would believe him on oath in a court of law.

H. G. SCHIEF, N. V. DARLEY, Sworn for the Movant. On April 26, 1913, we were connected with the National Pencil Company as assistant superintendent and head foreman respectively. We now act as superintendent and head foreman respectively. We are familiar with the order blanks in said factory and make this affidavit with respect to the four books attached, marked 1, 2, 3 and 4. Book #1 is an ordinary pad such as is in use at the present time at the factory, and was in use on April 26, 1913. It consists of alternate white and yellow sheets, the white sheet being the original and the other sheet being carbon copies, the practice being to insert a piece of carbon sheet between the white and yellow sheet at the time of writing the order. Books 2, 3 and 4 are order pad books similar to book 1 with the exception that they have already been used, whereas book 1 is new and unused, that is to say books 2, 3 and 4 have had orders written in them and torn out. The figures on the date line, commencing "Atlanta, Ga." are figures representing the date of the orders as made. The figures on the line commencing with the "order number" represent the order of the number as made and the writing below is, in each case, the order itself, that is to say a specification of the goods ordered. The initials found on the yellow sheets are those of the persons making the order ^{for} the National Pencil Company. The books 2, 3 and 4 represent a period extending from March 12, 1913 to April 29, 1913.

(Accompanying this affidavit were four books, marked 1, 2, 3, 4, No. 1 being a new, unused book of order blanks, with white and yellow sheets alternating. The date lines on said order blanks are as follows: "Atlanta, Ga. _____, 191" Books Nos. 2, 3 and 4 are used books containing yellow sheets on which are written in carbon, the order number, the name of the concern from whom the goods are ordered, the date, and also the goods ordered. In book #1 the order numbers are from 1446 to 1492 inclusive, the dates of these orders being March 3, 1913 to April 3, 1913. Book No. 2 contains order numbers 1493 to 1541 inclusive, the dates of said orders being from April 4, to April 29th, 1913. Book No. 3 contains order numbers 1542 to 1587 inclusive, the dates being from April 30, 1913, to May 27, 1913. Each order blank has the following initial on it: "L.M.F." Below is a duplicate of one of the orders contained in the above books.

National Pencil Co.

37 AND 39 SOUTH FORSYTH ST.

Ward Truck Co

Atlanta, Ga.,

3/12

191

PUT THIS ORDER NUMBER ON YOUR BILL

Bell Phone Main 171

Rush

Order No

1446

2 balls 3A Drill

1 ball Cheese Cloth

Same as before

[Signature]

GROUND 15.

IVY JONES, Sworn for the Movant. On April 26, 1913, I left my work at 1:30 P.M. and went at once to the corner of Forsyth and Hunter Street into a saloon at that corner, where I had a glass of beer. While in the saloon I did not meet anyone that I knew. I remained there only long enough to drink my glass of beer. I then left the saloon, walked up Forsyth to Mitchell Street, out Mitchell Street to Davis. I was not joined by anyone and did not meet anyone until I reached Davis Street, where I met Budd Perry. I did not meet anyone else except Bud Perry and we walked to my home No. *S* Electric Avenue. We then went to a ball game, but not together. I did not meet any other man I knew while on my way with

Bud Perry, and I did not meet anyone at home that day that I knew other than Bud Perry. *attested by CW Burke as Notary.*

GROUND 16.

HELEN FERGUSON, Sworn for the Movant. I was employed at the National Pencil Company. I knew Mr. Frank very well when I saw him. I also knew Mary Phagan for about a year. I never heard Mr. Frank address Mary Phagan by her name, and I never saw him talking to her in any friendly manner. During my employment at the factory, I never saw Mr. Frank drinking with women in his office. On the Saturday preceding the murder, I was on the second floor of the factory and Jim Conley said to me "Help yourself, take all the boxes you want". I was stooping over at the time Conley addressed me and he kept getting closer to me and made a motion as though he intended to grab hold of me, I was very much frightened, and ran away as fast as possible. I will always believe that the said Jim Conley intended to grab me and I was very much afraid of him.

~~XXXXXXXXXX~~ MRS. CORA L. LEFFEW, Sworn for the Movant. I was present in the metal room at the National Pencil Company's factory on Monday, April 28th, 1913, when some strands of hair were found on a certain lathe and which were sought to be identified as the hair of Mary Phagan. I was well acquainted with Mary Phagan and with the color of her hair. The hair before mentioned was not the hair of Mary Phagan. It was entirely too light in color. Among those present at the time were Mrs. Georgia Denham, R.P. Barrett, Cora Falta, Marjorie McCord and Jimmie Mayfield.

MARJORIE McCORD, MARY PIRK, Sworn for the Movant. We were well acquainted with Cora Lavander Leffew. Her character for truth and veracity is good and we would believe her on oath in a court of law.

GROUND 17.

J. E. DUFFY, Sworn for the Movant. I was a witness in the trial of the case of the State of Georgia vs. Leo M. Frank, charged with the murder of Mary Phagan. I was an employee at the factory of the National Pencil Company during a part of the year

1912, and while at work there I was injured on the index finger of my left hand, being at work at a machine on the second floor of the building in the metal department. When I received this injury there was a vast amount of blood ran on the floor at the end of the machine upon which ~~an~~^I was at work and the machine referred to was directly opposite the one upon which Mary Phagan was employed. I knew Mary Phagan when I saw her and during my employment at the National Pencil Company's factory, I have at various times seen bloody guards such as are used by women during their menstrual periods, discarded in a trash can which was sitting between the machine used by Mary Phagan and the dressing room on the second floor and right at the corner of the polishing room. At Newt Garner's request I called at Mr. Dorsey's office. I did very little talking to Mr. Dorsey, except to answer his questions, and Mr. Dorsey finally told me that Lemmie Quinn and a boy named Charlie had testified in the case to the effect that at the time I hurt my hand that I stopped in front of the dressing room with my hand extended, allowing the blood to drip upon the floor, and Mr. Dorsey said to me, "Now, Mr. Duffy, you know that is not true, and you know that you were not in front of the dressing room at all and that there was no blood that run upon the floor, and that as soon as you injured your finger you promptly staunched it with something." and Mr. Dorsey asked me what it was that I used to stop the blood and I replied that I had applied a piece of waste to the wound. For some reason I permitted Mr. Dorsey to both ask and answer all his questions for me and I could see precisely how Mr. Dorsey wanted me to testify and ~~that~~ I did testify as suggested by Mr. Dorsey. After mature deliberation and thought, it is quite plain to me that I was made to express myself on the witness stand in a manner that I would not have given expression to had I been permitted to have gone on the witness stand and testify to the facts as I knew and remembered them. I now say that when my hand was injured blood did run from my finger on some of the metal and tin, which surrounded the machine which I was working upon, and upon the floor to the end or to the side of the machine referred to. During my conversation with Mr. Dorsey, the Solicitor in his leading way, insisted that I had immediately gone to the office of Mr. Frank ^{as} soon as I had been wounded and

then went directly to the Atlanta Hospital where Dr. Ballinger waited on me. It was very possible, and quite probable ~~and quite~~ that blood dripped from my wounded hand upon the floor as I was passing the aforesaid dressing room, and I am not willing to state that blood did not drip from his hand to the floor in front of the dressing room already referred to. I was paid \$7.60 for two days attendance in court by the Solicitor.

GROUND 18.

MRS. M. JAFFE, Sworn for the Movant. I have known Leo M. Frank for about three and one half years. I knew him first at No. 305 So. Pryor Street where he boarded before his marriage and where I also boarded. Since the time I first met Mr. Frank I have known him continuously and have often seen and talked to him on the streets in Atlanta, and at the place of business of Mr. Jaffe and other places, and I was well acquainted with him on April 26, 1913. On April 26, 1913, I left my husband's place of business at No. 74 Whitehall Street, either at one o'clock P.M. or a few minutes prior thereto, and I came directly therefrom to the drug store of Brown & Allen at the corner of Whitehall and Alabama Streets. Just about five minutes past one o'clock on the afternoon of April 26, 1913, I left this drug store and as I did so I recognized Mr. Leo M. Frank who was standing in front of Jacob's Pharmacy on the opposite corner of Alabama and Whitehall Streets, looking towards Whitehall Street. I did not speak to him at the time inasmuch as he was not looking directly toward me at the time I recognized him, I do not know whether he saw or recognized me or not, but my belief is he did not inasmuch as I and Mr. Frank are well acquainted and he would have spoken to me had he seen me. At the time of the trial in July and August, 1913, I had no knowledge whatever of the fact that my having seen Leo M. Frank at Whitehall and Alabama Streets five minutes past one o'clock on the afternoon of April 26th, 1913, would be material in his case and for that reason I did not tell Leo M. Frank or his attorneys of the fact, and it was not until after the trial of Leo M. Frank that I told his attorneys of the fact, the exact time I told them I am unable to state. I am willing to come to Atlanta and testify

to all of the facts contained in this affidavit, and to any other facts in her knowledge which may be material. Among my associates in Atlanta, Georgia, while I resided there were Mr. and Mrs. Greenblatt, Judge and Mrs. Fred Powers, Dr. and Mrs. B. Wildauer, Mr. and Mrs. J. Saul, Mr. J. Saul, and my physicians, Dr. Manget and Dr. Sommerfield.

F. M. POWERS, J. D. MANGET, Sworn for the Movant. We are acquainted with Mrs. M. Jaffe. Her character and reputation are good and Mrs. Jaffe is worthy of belief and we would believe her on oath.

I. Z. ROSSER, R. R. ARNOLD, MORRIS BRANDON, H. J. HAAS, Sworn for the Movant. We were counsel for Leo M. Frank in the above stated case, in his trial at the July Term, 1913, of the Fulton Superior Court. We were his sole counsel during said trial and up to the time of the preparation of the original motion for new trial, at which time Leonard Haas was joined as counsel, but Leonard Haas had no connection with the original trial and preparation of the case, and had no connection therewith until the beginning of the preparation of the original motion for new trial. The defendant, Leo M. Frank, immediately after the crime was discovered, was placed under arrest and from said time until the date of his trial, and after his trial, was kept either in the City Police Station or in the Fulton County Jail. By reason of this incarceration the said Frank could aid his counsel in the preparation of his case only by constant consultation and advice with them. He had no opportunity, himself, to examine witnesses or to search for evidence which would aid him in his cause. By reason of his confinement, the preparation for the trial of the case, the examination and discovery of witnesses was left entirely in the hands of Frank's counsel there and then. Frank was not well known in Atlanta, except among his own people, and, without the small circle of friends from such people, he had but few friends in the city, and he, while living in the City of Atlanta, devoted himself assiduously to his business, and he was, to all intents and purposes a stranger in the City of Atlanta, without any general influence in the community, and without any powerful friends to aid him in

seeking information with reference to his case and in looking up and discovering such witnesses as might be of advantage to him. The atrocity of the crime, immediately upon its discovery, created great excitement and intense bitterness. Upon suspicion being pointed to Frank, he immediately became the center of many sensational stories and of intense and widespread bitterness. The public press, spurred on by the wide interest in the case, published almost daily, wild sensational stories painting the atrocity of the crime. Numberless wild and incredible stories were published about Frank, linking him with crimes in Atlanta and elsewhere. Among other things, it was published broadcast in the public prints that he had been married before coming to Atlanta, that he had been a criminal in Brooklyn, and that, since his residence in Atlanta, had made a habit of corrupt practices, such as would and did visit upon him widespread contempt and hatred. So wide-spread were these rumors, not only through the public prints but by word of mouth, as to the atrocity of the crime, as to facts and circumstances claimed to connect Frank therewith and of Frank's habitual perversion, that practically the whole community absorbed the idea that Frank was guilty of this crime; and, if not guilty of this crime, that he was a pervert, for whose safety there need be no particular care.

When the trial began, it was apparent that intense prejudice against Frank was widely spread among the people, and that he had but few sympathizers or friends. False rumors as to the crime's atrocity, as to Frank's connection with it, and to his lack of character, had embittered practically the whole public against him; and he went into the trial of this case in the face of this public prejudice and bitterness. The court house was crowded with men and women, the great majority of whom were bitterly prejudiced against him and who intensely desired his conviction. During much of the trial, great crowds surrounded the court house, practically all of whom were bitterly antagonistic to Frank. So bitter and unreasonable was this crowd, that when the verdict was rendered, they indulged in a great demonstration of delight at Frank's conviction. The conditions surrounding the trial, from

its beginning to its inception, is accurately set out in the original motion for new trial, and certified to by the Judge. At times, when the presiding Judge would decide against the defendant the crowd would make demonstrations of approval. As illustrating the conditions surrounding the trial of Frank, and of the prejudice and bias in the public mind against him, we attach hereto, as exhibit A, grounds sixty five, sixty six and seventy five of the original motion for new trial, certified to by the presiding Judge. The facts alleged in this exhibit are true as therein stated, and are here sworn to by these deponents for the purpose of illustrating and showing the public prejudice and bias against Frank before and during the trial. The public prejudice was so great against Frank that it was with the greatest difficulty that any information could be obtained with reference to any facts or circumstances surrounding the crime which would be beneficial to Frank. Witnesses who had such information would either avoid giving information or give it only upon condition that they should not be called as witnesses and that their names should not in any way be associated with the case. Minola McKnight, one of the witnesses for Frank, had been arrested and placed in the station house, because she would not give such a statement as met the approbation of the detectives, and was kept in confinement until she gave a false statement. This incident was given the widest publicity by the press and had the inevitable tendency to prevent people from making any statements in his favor, or giving any information that would be beneficial to his case.

As soon as ^{we} were employed, ^{we} began at once an earnest, active and laborious investigation into all the facts and circumstances of the case. ^{we} They met with the greatest difficulty in obtaining information, even when such information was in the keeping of people being interviewed. From the time of the employment of counsel, as aforesaid, up to the date of the trial, ^{we} they gave almost continuous, laborious and earnest effort to discover everything which could throw any light upon the facts and circumstances surrounding the trial and showing who was the real perpetrator of the crime. Not only so, but we employed assistants to aid us in discovering every fact and circumstance that might throw light

upon the crime and its perpetrator. These assistants gave their time to it for weeks and months, under the guidance and direction of ~~them~~ us, and each of these reports was investigated and verified in an effort to bring to light every fact and circumstance connected with the crime. We, in person, conferred with every person of whom we had any knowledge was in any condition to know the circumstances surrounding Frank's life before and after he reached Atlanta, the facts and circumstances of the crime and any facts or circumstances throwing light upon whom was the perpetrator of the crime.

Prior to the trial and until after the original motion for new trial was overruled, we did not know Mary Rich and had never seen her. We did not know before the trial and until after the original motion for new trial was overruled that Mary Rich would testify that she knew Jim Conley; that on April 26, 1913, at about 2:15 P.M. she saw Jim Conley come out of the alley immediately in the rear of the National Pencil Factory; that Jim Conley came to where she was running a lunch stand on wheels and ~~having~~ bought a twenty cent dinner from her and after purchasing said dinner carried same in his hand and went back in said alley in the direction of the pencil factory.

We had tried persistently to determine and develop Conley's movements on the day of the murder, but were unable to discover the existence of anyone who knew the facts testified to by Mary Rich.

We did not know at the date of the trial, and did not know until the motion ~~was~~ ^{for} new trial was overruled; that, on the note written on the yellow carbon order blank, about eight lines from the bottom of the sheet there was the faint scrawl of H.F. Becker, sought to be erased but which is discernible under a microscope; and that, also, on said note, is the date September, 1909, sought to be erased but which is discernible under a microscope, together with the serial number 1018; that said sheet was a duplicate of a requisition sent to the Cotton States Belting & Supply Company, in September, 1909, by said H.F. Becker, who was Master Mechanic at the National Pencil Company at that time, and whose business it was to secure and obtain supplies for the National Pencil Com-

pany at that time, and whose business it was to secure and obtain supplies for the National Pencil Company; that it was his practice to write out the requisition, sign it with his name and send it by an apprentice to the place where he desired to secure the supplies; that it was the practice and custom of said Becker to sign the requisition, send the original to the place where he secured supplies and retain a carbon duplicate thereof in his own office on the fourth floor of the pencil factory; that the said duplicate requisitions were contained in pads which remained in his own office on the fourth floor of the Pencil Factory from the time Becker first entered the employ of the National Pencil Company to January 1, 1912; that he was allowed to obtain supplies without the sanction or authority of anyone else in the factory; his department being entirely independent from other departments and the requisition being sent out through his office without passing through anyone else; that it was his practice to keep his pads of duplicate requisitions in his office and after having no other use for same, to send them down the basement of the factory, with other trash; that the serial number in said note, namely, 1018, corresponds to the serial number of a requisition made on the Cotton States Belting & Supply Company, by said Becker, in 1909, the preceding serial numbers being 1016 and 1017, being dated September 10, 1909, and serial number 1019, the one immediately following the sheet on which Conby wrote, being dated October 6, 1909.

We had heard before the trial, that certain strands of hair were found on a lathe on the second floor of the National Pencil Factory, in the metal room; these strands of hair we never. Our recollection is that when the hair was asked for during the trial it was reported by the Solicitor that it was lost. Our information is that the Solicitor, and his assistants say, that the hair is lost and can not be found. When it was lost these deponents do not know, but we do know that they have never had any opportunity to see the hair itself; nor did we know that there was in existence or had been obtained off of the head of Mary Phagan hair, with which the hair could be compared that was found on the lathe.

We did make an extensive inquiry among the employees of the factory, seeking information about this alleged hair, and the

only information we were able to get was that one Barrett had found some hair upon the lathe, but we learned of no one who was willing to say whether the hair found was that of Mary Phagan or not. We had no opportunity to make any comparison between the hair found on the lathe and the hair of Mary Phagan, and we did not know that Doctor Harris, when he made the autopsy had taken some of the hair from Mary Phagan's head and that he had made a microscopical ~~examination~~ comparison between the hair found on the lathe and that taken from Mary Phagan's head, nor did ^{we} they know at the date of the trial, nor at the date of the overruling of the motion for a new trial, that Dr. Harris had taken any of the hair from the head of Mary Phagan or that he had made a comparison between the hair found on the lathe and Mary Phagan's; nor did we know at either of the times aforesaid, that Dr. Harris had reported to the Solicitor that the hair found on the lathe differed from the hair of Mary Phagan in shape, color and texture; nor did we know at either of the times aforesaid that upon reporting to the Solicitor General that the hair on the lathe differed in color and texture and shape from the hair of Mary Phagan; that the Solicitor had then told Dr. Harris that he would let the investigation of the hair end there.

We did not know that Dr. Harris had made a postmortem examination of the body of Mary Phagan. We knew this fact by hearsay only. We were not notified in advance that the autopsy was to be held, nor were we asked to participate either ourselves or by an agent in that autopsy. Prior to the trial the result of Dr. Harris' autopsy was concealed, but we ~~gave~~ sought to learn just what Dr. Harris had discovered but were not able to do so. We never had any intimation, by hearsay or otherwise, that any hair from the head of Mary Phagan had been obtained as a result of the autopsy and that a scientific examination of the hair had been made showing that the hair found by the lathe differed from the hair of Mary Phagan in color, shape and texture. The first intimation we had of these facts was after the original motion for a new trial had been overruled by the Supreme Court.

Dr. Harris was a witness at the trial and testified as to the autopsy; testifying as to the examination of the stomach

and other organs of Mary Phagan, but made no statement at all with reference to the taking of the hair of Mary Phagan from her head during the autopsy, and examining it in comparison with the hair found on the lathe in the metal room. Dr. Harris was upon the stand twice, an interval being had in his examination by reason of his sickness, and at neither time while on the stand did Dr. Harris intimate that he had made any examination of this hair. While on the stand he was asked what part of Mary Phagan's body he examined, and he answered in a way misleading to us.

Prior to the trial Dr. Harris had been approached by Mr. Oscar Pappenheimer, a friend of Leo Frank, and was asked what he, Dr. Harris, learned as a result of the examination of the body of Mary Phagan. At first Dr. Harris declined to state, but finally said "I may say this much to you, Mr. Pappenheimer, that what I found during the examination was of no importance whatsoever, and need give you no bother."

During the trial and before Dr. Harris had finished his testimony, L. Z. Rosser and R. R. Arnold, called upon Dr. Harris and urged him to tell just what he did discover from the autopsy of the body of Mary Phagan, and just what facts he knew about which he was willing to testify. Dr. Harris declined to give this information, stating that he had promised the Solicitor to keep the matter a secret. We urged him to frankly tell us all he knew, stating that he was a public official of the State, that he had been employed by the County and paid with the money of all the tax payers of the county, and that under the circumstances he could not afford to conceal anything. This argument had no influence with Dr. Harris. He declined to give us any information, but he did state that he would state fully and frankly all he knew when he was on the stand. Thereafter Dr. Harris went upon the stand again. He was asked just what part of Mary Phagan's body he examined. He evaded the answer leaving the impression upon us that he examined only the organs testified about. He never mentioned an examination of the hair, nor was there any intimation during the trial that any examination of the hair had been had. We had no information of any hair, or any of the facts herein stated until after the motion for a new

trial had been overruled and after the case was affirmed by the supreme Court. With reference to the hair found upon the lathe, we made inquiry, extensive inquiries of employees of the factory as to any information they had with reference to this hair found on the lathe.

We had no information, nor did we know, that Miss Jimmie Mayfield had ever been shown the hair, which Barrett claimed to have taken from the lathe. The information that it had been shown to her came to us after the trial, and after motion for a new trial had been overruled. This witness, Miss Jimmie Mayfield, was not a witness at the trial, and at the date of motion for a new trial we had no knowledge that she had ever seen the hair on the lathe so as to make a comparison with the hair of Mary Phagan.

We did not know at the date of the trial, nor after the motion for a new trial was overruled and after the case was carried to the Supreme Court that Mrs. Cora Falta had seen the hair upon the lathe that had been found by Barrett, and that she knew and would swear that the hair found upon the lathe was not the hair of Mary Phagan. This witness, Mrs. Cora Falta was not a witness at the trial and we had no information, until after the dates aforesaid, that she had any knowledge about the hair said to have been found by Barrett, and that she knew and would testify that it was not the hair of Mary Phagan.

We did not know ~~the~~ Alice Marjorie McCord, nor did we know that she had ever seen the hair claimed to have been found by Barrett upon the lathe, nor did they know that she, having seen the hair, would testify that it was not the hair of Mary Phagan. This Alice Marjorie McCord was not a witness in the trial of the case, and ~~therefore we had not the slightest information, or~~ we had not the slightest information, or suspicion that she had ever seen the hair and knew that it was not Mary Phagan's.

We also claim that we did not know and we had no knowledge, until motion for a new trial had been overruled and the case was affirmed by the Supreme Court that Albert McKnight had admitted ~~anything~~ testifying falsely as to seeing Leo M. Frank in the dining room of his father-in-law, Mr. Selig's home, on April 26, 1913; nor

did we know or have any knowledge that McKnight admitted that he falsely swore as to the other facts, which he now admits that he did falsely swear to, set out in his affidavit shown to the court at the hearing and submitted to the court in verification of the extraordinary motion for a new trial.

McKnight was a witness for the State at the jury trial and testified as he now admits, falsely, "that he looked in the mirror from the kitchen and saw Frank in the dining room of his father-in-law's home" and that "he did not eat any dinner" that "he went to the sideboard of the dining room, stood there a few minutes and went out and caught a car" and that he "did not stay in the house more than five or ten minutes". The falsity of this testimony was unknown to us until after the time aforesaid.

We further claim that we did not know on the date of the trial ~~that Mrs. Miller~~, nor until after the motion for a new trial had been overruled, that Mrs. Ethel Harris Miller and Maier Lefkoff would testify as set out in paragraph seven of the Extraordinary motion for new trial; nor did we know until after the time, as aforesaid, that they saw Leo M. Frank between 1 o'clock and 1:30 o'clock of the 26th day of April, 1913, at the corner of Whitehall and Alabama Streets. Neither of us knew Mrs. Miller and had no intimation that she knew or was in a position to know the things she testifies about. We had made every effort in our power to discover any parties who did see Frank without the factory between 1 o'clock and 1:30 o'clock; had inquired of every source that we thought profitable and had obtained at the times as aforesaid no information about Mrs. Miller.

Miss Dewey Hewell was a non-resident of the City of Atlanta at the date the crime was committed and was residing in Cincinnati, Ohio. A messenger of the State was sent to Ohio to bring Miss Hewell to the trial and such messenger did bring her to the trial; neither of us, nor anyone representing us, had any opportunity to confer with Miss Hewell to determine to what she would testify. Upon her testifying she was carried back to Ohio and has since been in Ohio. No opportunity was given us to confer with Miss Hewell while she was in Atlanta before or after her testimony. We did not know at the date of the trial nor until the case

had been affirmed by the Supreme Court that in truth Miss Hewell did not know Mary Phagan and did not see or hear Leo M. Frank speak to Mary Phagan; that she had never seen the defendant and Mary Phagan together, and that she knew the facts, and would testify to the facts set out in her affidavit to the court shown at the hearing. We did not know until after the trial and after the motion for a new trial had been overruled, that Miss Ruth Robertson would testify as is set out in her affidavit to the court shown at the hearing. We did not know that she would be a witness at the trial, had no opportunity to confer with her, no facts, or set of facts, had come to us which would lead us to suspect that she would testify as she has testified in said affidavit.

We had no knowledge at the time of the trial, nor until after the motion for new trial had been overruled and the case affirmed by the Supreme Court that Miss Marie Karst knew and would testify to the facts as set out in her affidavit here to the court shown, dated April 9, 1914, and we did not know at said time that Leo M. Frank was acquainted with this lady or that she had any knowledge of the things testified to by her in said affidavit.

~~Neither of us knew during the trial before the jury nor at the time the motion for a new trial was overruled and out~~

We did not know at the date of the trial, nor since the said date until the Frank case had been affirmed by the Supreme Court that C.B. Dalton would testify as set out in his affidavit here to the court shown, dated March 3, 1914.

We had never heard of C.B. Dalton until the witnesses were called at the trial. We made diligent effort to discover who he was during the trial, but failed to do so, and we did not know who Dalton was until he was called and sworn as a witness, nor did we know that he would testify as he had in said affidavit to the court shown at the hearing, until after the case had been affirmed by the Supreme Court. We sought to get into communication with Dalton so as to test the accuracy of his statements, but we failed to do so until the date of said affidavit.

We did not know during the trial, nor until the motion for a new trial was overruled that Ivy Jones would testify as is set out in his affidavit here to the court shown, dated Feb. 6, 1914.

Jones was a witness for the State and testified at the trial that he saw Jim Conley at the corner of Forsyth Street between one and two o'clock and he left him at the corner of Hunter and Davis Streets a little after two o'clock. We did not know that he would testify to the contrary and that he would testify as is stated in his affidavit.

We did not know, nor did we have any opportunity of knowing, until after the date of the trial, of Leo M. Frank and after the date of the ~~reversal~~^{affirmance} of same by Supreme Court that Helen Ferguson would testify as is set out in her affidavit here to the court shown, dated April 9, 1914. Helen Ferguson was a witness for the State during the trial but at no time in her testimony did she intimate the things set out in her affidavit, nor did ~~these~~ we know that she knew the things set out in said affidavit.

We did not know during the trial, nor until the motion for a new trial had been overruled, that J. E. Duffy would testify as he has testified in his affidavit hereto the court shown, dated April 18, 1914. Said Duffy was a witness for the State at the original trial and was cross-questioned at length by one of us, and we did not know, nor did we have any reason to suppose that the facts existed as set-out in his affidavit to the Court shown at the hearing.

At the date of the trial we did not know that Mrs. M. Jaffe would testify ^{that} on the date of the crime, April 26, 1913, she saw Leo M. Frank at the corner of Whitehall and Alabama Streets, Jacob's corner at 1:05 o'clock P.M. We had made strenuous efforts to obtain ~~by~~ the names of every one who would testify to seeing Frank out of the factory from four minutes to one o'clock until half past one o'clock and until the trial had ended, nor did we have any intimation that Mrs. Jaffe did see Frank, and would testify to the same. Mrs. Jaffe, long after the crime, did state to one of us that she had seen Frank as above stated, and upon inquiry as to why she did not let it be known, said that her husband persuaded her not to furnish this information to Frank's attorneys for the reason that the feeling against Frank was so strong he was afraid that it would injure him in business.

CONFIDENTIAL

We did not know during the trial nor until after the motion for the new trial had been overruled that Mrs. Mamie Edmunds (formerly Mamie Kitchens) would testify as she has testified in her affidavit here to the court shown, dated April 13, 1914. Mamie Kitchens was a witness for the State at the original trial and was cross-questioned at length by one of ~~the attorneys~~ us and we did not know, nor did we have any reason to suppose that the facts existed as set out in her affidavit to the court shown at the hearing.

(Exhibit A, attached to said affidavit is as follows)

"EXHIBIT "A"

Ground 65. (a) On August 6, 1913, during the trial, the defendant's counsel, moved to rule out the testimony of the witness Conley tending to show acts of perversion and acts of immorality, on the part of the defendant, wholly disconnected with and disassociated from this crime. The Court declined to rule out said testimony and, immediately upon the statement of the court that he would let such testimony remain in evidence before the jury, there was instant, pronounced and continuous applause throughout the court room where the trial was being had, by clapping of hands and by striking of feet upon the floor.

While the jury was not then in the same room where the trial was being had, they were in a room about fifty feet from where the Judge was sitting and about twenty feet from portions of the crowd applauding, and so close that perhaps the jury could have heard the applauding.

(b) And again, during the trial, Mr. Arnold, one of the counsel for the defendant, in the presence of the jury, objected to a question asked by the Solicitor, and the following colloquy took place:

Mr. Arnold: I object to that your Honor, that is entering the orders on that book merely; that is not the question he is asking now at all.

The Court: What is the question he is asking now?

(Referring to questions asked by Solicitor-General)

Mr. Arnold: He is asking how long it took to do all this work connected with it. (Referring to work done by Frank that day of the murder?)

The Court: Well, he knows what he is asking him.

(Referring to the Solicitor General).

Upon this suggestion of the Court that the Solicitor knew what he was doing, the spectators in the court room applauded by striking their hands together and by striking their feet upon the floor, creating a demonstration. Defendant's counsel complained of the conduct of the spectators in the court room. The Court gave no relief, excepting directing the Sheriff to find out whom was making the noise.

(c) During the examination by Mr. Arnold, counsel for the defendant, of V.H. Kriegshaber, a witness for the defendant, there was laughter in the audience sufficiently generally distributed throughout the audience, and loud enough, to interfere with the examination. Mr. Arnold called the court's attention to the interruption for the purpose of obtaining some action from the court thereon.

The Court stated that.. if there was other disorder, no one would be permitted in the court room the following day, and requested the sheriff to maintain order.

(d) That during the trial, on Friday, August, 22nd, 1913, when the court had adjourned for the day, and the jury was about 300 feet away from the court house, proceeding north on Pryor Street

as Mr. Dorsey, the Solicitor General, was leaving the court room a large crowd assembled in front of the court-house and, in the hearing of the jury, cheered and shouted "Hurrah for Dorsey".

(e) That during the trial, on Saturday, August 23, 1913, when Court adjourned and Mr. Dorsey emerged from the court room, a large crowd, standing on the street, applauded and cheered him, shouting "Hurrah for Dorsey". At that time the jury was between the court house and what is known as the German Cafe, and near enough to the crowd to hear the cheering and shouting. A portion of the crowd moved up in front of the cafe, at which the jury were at lunch, and, in the hearing of the jury, shouted "Hurrah for Dorsey."

(f) On the last day of the trial, Monday, August 25, 1913, a large crowd, including many women, had assembled in the court room before court had opened, taking up every seat in the court room. The jury were in their room about twenty feet from the court room and as Mr. Dorsey entered the room, the crowd applauded loudly by clapping of hands and stamping of feet, which the jury perhaps could have heard. The court did nothing but admonish the people that if the applause was repeated, he would clear the court room.

(g) On Monday, the last day of the trial, after the argument of counsel had been had and the charge of the court had been given, and the case was in the hands of the jury, when Solicitor Dorsey left the court room a very large crowd awaited him in front of the court house and shouted and applauded by clapping their hands and shouting "Hurrah for Dorsey".

(h) When it was announced that the jury had agreed upon a verdict, the Judge of the Superior Court, his Honor, L.S. Roan, went to the court house, which was a comparatively small room on the second floor, at the junction of Hunter and Pryor Streets, and found the court room packed with spectators. Fearful of misconduct among the spectators in the court room, the Court of his own ~~motion~~ motion, cleared the room before the jury announced their verdict. When the verdict of guilty was rendered, the fact of the rendition of such verdict was signalled to the crowd on the outside, which consisted of a large concourse and crowd of people standing upon Hunter and Pryor Streets. Immediately upon receiving such signal, and while the court was engaged in polling the jury, and before the polling ended, great shouts arose from the people on the outside, expressing gratification. Great applauding, shouting and halloing was heard on the streets, and so great became the noise on the streets, that the court had difficulty in hearing the responses of the jurors as he polled them. These incidents showed as the defendant contends, that the defendant did not have a fair and impartial jury trial, and that the demonstrations of the crowd attending court was such as to inevitably affect the jury.

Ground 66. The court room wherein this trial was had was situated at the corner of Hunter and Pryor Streets. There are a number of windows on the Pryor Street side looking out upon the street and furnishing easy access to any noises that would occur upon the street. The court room itself is situated on Hunter St. 15 or 20 feet from Pryor Street. There is an open alleyway running from Pryor Street along by the side of the court house and there are windows from the court room looking onto this alley, and any noise in the alley can easily be heard in the court room. When Solicitor Dorsey left the court room on the last day of the trial, after the case had been submitted to the jury, a large and boisterous crowd of several hundred people was standing in the street in front of the court house and as he came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the street into the Kiser Building, wherein he had his office. This crowd did not wholly disperse during the interval between the giving of the case to the jury and the time when the jury reached its verdict, but during the whole of such time a large crowd was gathered at the junction of Pryor and Hunter Streets. When it was announced that the jury had reached its verdict, his Honor, Judge L.S. Roan, went to the court room and found it crowded with spectators to such an extent as to interfere with the court's orderly procedure, and fearing misconduct in the court room, his Honor cleared it of spectators. The jury was then brought in for the purpose of delivering their verdict. When the verdict of guilty was announced, a signal was given to the crowd to that effect. The large crowd of people standing on the outside cheered and shouted and hurrahs at the outset of the poll of the

jury, and before more than one juror had been polled, to such an extent ~~was~~ that the court had some difficulty in proceeding with the poll of the jury, which was then in progress and not finished. Indeed so great was the noise and confusion without that the court heard the responses of the jury during the polling with some difficulty. The Court was about ten feet from the jury. In the court room, was the jury, lawyers, newspaper men and officers of the court, and among them there was no disorder.

GROUND 75. Public sentiment seemed to the Court to be against him. The court room was a small room, and during the argument of the case, so far as the Court could see, about every seat in the court room was taken, in and without the bar, and the aisles at each end of the court room were packed with spectators. The jury, in going from the jury seats to the jury room, during the session of the court, and in going to and from the court room, morning, evening and noon, were dependent upon passage ways made for them by the officers of court. The bar of the court room itself was crowded, leaving only a small space to be occupied by counsel in their argument to the jury. The jury box, when occupied by the jury, was enclosed by the crowd sitting and standing in such close proximity thereto that the whispers of the crowd could be heard during a part of the trial. When the Court's attention was called to this, he ordered the Sheriff to move the crowd back and this was done.

During the argument of the Solicitor, Mr. Arnold of counsel for the defense, made an objection to the argument of the Solicitor and the crowd laughed at him, and Mr. Arnold appealed to the Court.

On Saturday, prior to the rendition of the verdict on Monday, the Court was considering whether or not he should go on with the trial during Saturday evening, or to what hour he should extend it in the evening, the excitement in and without the court room was so apparent as to cause apprehension in the mind of the Court as to whether he should safely continue the trial during Saturday afternoon; and, in making up his mind about the wisdom of thus continuing the trial, his Honor conferred with, while on the stand, and in the presence of the jury, the Chief of Police of Atlanta, and the colonel of the Fifth Georgia Regiment stationed in Atlanta conferred with his Honor. Not only so, but the public press, apprehending trouble if the case continued Saturday, united in a request to the court that he not continue the court on Saturday evening. The court, being thus advised, felt it unwise to extend the case on Saturday evening and continued it until Monday morning. It was evident on Monday morning that public excitement had not subsided, and that it was as intense as on Saturday previous. The same excited crowds were present, and the court house was in the same crowded condition. When the Solicitor entered the court room he was met with applause by the large crowd - ladies and gentlemen present - by stamping their feet and clapping their hands while the jury was in their room about twenty feet away.

While Mr. Arnold, of the defense, was making a motion for a mistrial, and while taking testimony to support it before the Court, the crowd applauded when the witness testified that he did not think the jury heard the applause of the crowd on Friday of the trial. The jury was not in the court room, but were in the jury room about 20 feet away.

When the jury was finally charged by the Court, and the case submitted to them, and when Mr. Dorsey left the court room, a large crowd on the outside of the court house, and in the streets cheered by yelling and clapping their hands, and yelling "Hurrah for Dorsey".

When it was announced that the jury had agreed upon a verdict, crowds had thronged the court room to such an extent that the court felt bound to clear the court room before receiving the verdict. This the Court did. But, when the verdict of the jury was rendered, a large crowd had thronged the outside of the court house someone signalled to the outside what the verdict was, and the crowd on the outside raised a mighty shout of approval. So great was the shouting and applause on the outside that the court had some difficulty in hearing the response of the jurors as he called them.

The defendant was not in the court room when the verdict was rendered, his presence having been waived by his counsel. This waiver was accepted and acquiesced in by the Court, because of the fear of violence that might be done the defendant were he in court

when the verdict was rendered.

When Mr. Dorsey left the court room, he was met at the court house door by a multitude, was hurrahed, cheered, taken upon the shoulders of a part of the crowd and carried partly to the building opposite, wherein he had his office."

MORRIS BRANDON, Sworn for the Movant. I did not take part in the actual trial of said case, and therefore know nothing of what transpired at the trial. I did not have actual charge of the preparation of the case, therefore I can not say what occurred at the court house during the trial, except from hearsay, but I have read the foregoing affidavit, and believe the same states the facts correctly. I make affidavit to all the facts stated in the foregoing affidavit, except as here modified.

LEONARD HAAS, Sworn for the Movant. I was not of counsel for Leo M. Frank during his trial in the Superior Court of Fulton County, Georgia. I was first retained as counsel during the first week in November, 1913.

LEO M. FRANK, sworn for movant. in affidavit attested by Geo. Burke as Notary
On Monday, April 28th, 1913, I was taken in charge by the Police Officers of the City of Atlanta, Georgia, and taken to the Station House, where I made a statement to the Chief of Detectives and upon said statement being made I was released. I remained released for that day and night until early April 29th, 1913, when I was taken into custody. Continuously from that day up to and including the present time, I have been confined in the Station House in the City of Atlanta, or in Fulton County Jail, and during all of said time I have had no opportunity of doing anything for myself in the way of discovering witnesses in my behalf or making any investigation into the facts and circumstances surrounding the murder of Mary Phagan. During the whole time I have been forced to depend upon the investigation and integrity of my counsel and friends, without being able to give them any of my personal aid.

I did not ^{know} except from hearsay, that there had ever been any exhumation and examination of Mary Phagan's body. I had heard rumors that Dr. H. T. Harris had exhumed the body and made an examination of certain parts of the body, but this was purely hearsay and I had no opportunity at any time to determine whether

such hearsay statement was or not the truth.

I did not see the hair that was claimed to be found on the lathe by one Barrett. I understood that Barrett had found certain hair upon the lathe, but I never had the opportunity of examination or to see it, or did I ever have any opportunity to see and know whether it was or was not similar to the hair of Mary Phagan. I did not know until after my trial and after my case had been affirmed by the Supreme Court, that Dr. Harris had in fact taken hair from the head of Mary Phagan and examined it in connection and in comparison with the hair claimed to have been found upon the lathe by Barrett. Nor did I, until after the trial know that Dr. Harris had examined any of the organs of Mary Phagan, except upon hearsay, as stated above. I did not know until my case had been affirmed by the Supreme Court that Dr. Harris had ever made any microscopic examination, or any other examination of Mary Phagan's hair in comparison with the hair claimed to have been found upon the lathe. I heard Dr. Harris's examination before the jury, and his cross-examination by my counsel, but I never understood from the examination of Dr. Harris, or any other source, that Dr. Harris had ever examined the hair of Mary Phagan. Nor did I then, or did I ever know until my case had been affirmed by the Supreme Court that Dr. Harris had told the Solicitor that the hair upon the lathe was different from the hair of Mary Phagan in color, shape and texture, and thereupon Dorsey said, "we'll let the hair matter rest." I understood, from inquiry, made during the trial, that the Solicitor General claimed that the hair found upon the lathe was lost. I remember distinctly inquiry was made as to where the hair was, and my recollection is that the statement was made that it was lost. I did not know that anyone had made a comparison of the hair claimed to have been found by Barrett on the lathe with the hair of Mary Phagan, or that the hair had been submitted to anyone as to whether or not the found hair looked like the hair of Mary Phagan. The first intimation I had that there had been any comparison of the two hair was obtained while one of the witnesses for the State was on the stand, when she swore that the hair claimed to have been found upon the lathe by Barrett looked like the hair of Mary Phagan. I did not then know, nor until my

case had been affirmed by the Supreme Court that any other party, or parties, had opportunity to examine the hair found by Barrett and to say whether or not it resembled the hair of Mary Phagan.

I did not know that Miss Jimmie Mayfield, nor that Miss Cora Falta, nor that Miss Alice Marjorie McCird had ever examined or seen the hair claimed to have been found by Barrett, or that they had any knowledge as to whether the hair so found was the hair of Mary Phagan. The first intimation I ever had that ~~my~~^{these} three witnesses knew anything about the hair found by Barrett or anything about whether a comparison of that hair shown that it was the hair of Mary Phagan, I learned after my motion for new trial had been overruled and the Supreme Court of Georgia had affirmed such overruling.

I knew nothing about the fact that Albert McKnight had repudiated his story about seeing me at the home of my father-in-law about 1:30 o'clock P.M. on April 26, 1913, until after my case had been affirmed by the Supreme Court. I had never had any opportunity to talk with McKnight and did not know until the trial that he would testify falsely against me; nor did I have any opportunity to see ~~me~~ him after the trial on account of my confinement. I had no knowledge that McKnight would testify as he did in his affidavit to the Court shown at the hearing.

I did not know until after my trial before the jury and after my motion for new trial had been overruled and carried to the Supreme Court that Mrs. Ethel Harris Miller and Maier Lefkoff would testify as they had in their affidavit to the court shown at the hearing. I did not know or remember that Mrs. Miller saw and spoke to me while standing at the corner of Whitehall and Alabama Streets between the hours of 1 and 1:10 P.M. on April 26, 1913. There was no pretense that I was engaged with Conley in concealing the body from four minutes to 1 o'clock to 1:30 o'clock P.M. on April 26, 1913 until in the very midst of the trial Conley testified that he and I were concealing the body from four minutes to 1 o'clock until 1:30. Until the very midst of the trial, therefore the importance of this time had not occurred to me, and I had not sought to remember who I met between those times. After Conley's testimony, and after it was found to be important for me

to account for myself between these two times, I did my best to remember who I saw between those times and do as best I could I could not remember that I had spoken to Mrs. Miller at the time, nor do I remember with certainty now her speaking to me as testified to by her in her affidavit. Mrs. Miller is a woman of veracity and character and I feel sure that she did see me and that if the matter had become important immediately after the crime I could and would have remembered the fact.

I did not remember at the trial, nor until after my motion for new trial had been overruled that I had seen either Mrs. Miller or Maier Lefkoff at the time and place indicated.

I knew nothing about what Dewey Hewell would testify at the trial. I had never in my life had any conversation with Miss Hewell. I was incarcerated and could not communicate with her and could not know what she would testify at the trial. After the trial, Dewey Hewell was carried back to Ohio, and has been there since said date, and I did not know and could not know what Miss Hewell would testify at the trial; and I did not know and could not have known from that date until after my motion for new trial was made, and until after her affidavit dated February 25, 1914, that Miss Hewell did know and would testify to the facts as set out in said affidavit.

I did not know, nor could I have known until after the dates of the affidavits made by Miss Ruth Robertson and Miss Marie Karst dated April 4, 1914, that Miss Robertson and Miss Karst would testify as set out in their affidavits to the court shown at the hearing. I had no opportunity to confer with Miss Robertson and Miss Karst before the trial, nor during the trial, nor did I have any opportunity to confer with them or either of them, after the trial. The first intimation that they would testify as they did in said affidavits was after the date of said affidavits.

I did not know, nor did I have any reason to know, until my case was affirmed by the Supreme Court that Mary Rich knew and would testify that on April 26, 1913 at about 2:15 o'clock P.M. she saw Jim Conley come out of the alley immediately in the rear of the National Pencil Factory, that said Jim Conley bought a twenty cent dinner from Mary Rich, who runs a restaurant on wheels, and

after purchasing said dinner he turned, carrying the dinner in his hand, toward the Pencil Factory and that said Mary Rich saw no more of Jim Conley during that day.

I did not know C. Burtus Dalton, and had never seen him until he was placed on the stand. I had no idea that said Dalton would or could be a witness against me, I knew I had never seen Dalton and had never had anything directly or indirectly to do with him. I have not seen said Dalton since he testified, nor have I had any opportunity to see him. I am advised and believe that said Dalton left the State of Georgia after testifying and is now at some place in Florida. I did not know or suspect that said Dalton would testify to the facts and things set out in his affidavit, dated March 3, 1914, until after the date of said affidavit.

I did not know that upon the yellow carbon order blank ~~wh~~ whereon appeared one of the notes written by Conley, the name of H. F. Becker could be seen by a microscope. I could not see the name by the use of my eyes and I had no microscope, nor did I know that the date of "Sept. 9, 1909" was discernible under a microscope; nor did I know that said yellow copy order blank was the duplicate carbon order blank of a requisition on the Cotton States Belting & Supply Co. of September, 9, 1909 made by said H. F. Becker. I did know that this yellow carbon order blank was not one used by ~~him~~ me, but that it was an old blank used by Becker during his time, and made such statement to the jury, but ~~that~~ I did not know I could confirm these statement to the jury by the facts above outlined. The existence of said facts did not come to my knowledge, I not having the use of a microscope as aforesaid and not knowing that a microscope was necessary until after my motion for new trial had been overruled and my case carried to the Supreme Court.

I did not know the negro Ivy Jones, and did not know what he would testify to when he was introduced by the State. I had no reason to suppose that Ivey Jones would change his statement and did not know that he had changed his statement, and that he would testify as is set out in his affidavit, dated February 6, 1914, to the court shown at the hearing, until after the date of said affidavit.

I knew Helen Ferguson and knew what she testified for the

State upon the trial, but I did know at the time of the trial or until after the date of Helen Ferguson's affidavit, dated April 9, 1914 to the Court shown at the hearing, that she would testify to the things in said affidavit set out. I did not know until then that Conley had had the conversation with Helen Ferguson set out in her said affidavit.

I had no opportunity myself to know what J. E. Duffy would testify to on the trial nor did I have any opportunity to discover whether or not Duffy would add to or vary the testimony rendered on the trial. I did not know or have any opportunity of knowing that the said Duffy would testify to the facts as set out in his affidavit dated April 18, 1914, to the Court shown at the hearing.

I did not know on the trial and until after the motion for new trial was overruled that Mrs. M. Jaffe saw me on April 26, 1913 at the corner of Whitehall and Alabama Streets at Jacobs' corner at 1:05 o'clock P.M. There was a considerable crowd upon the streets that day and I have no recollection of seeing Mrs. Jaffe, indeed the importance of remembering whom I saw while I was at the corner of Whitehall and Alabama Streets at the time and the day stated did not originate so far as I know until during the trial when Conley ~~was~~ testified that he was with me concealing Mary Phagan's body between four minutes to o'clock and 1:30 P.M. on that day.

I know Mrs. Mamie Edmunds, formerly Mamie Kitchens, was a witness for the State upon the trial, but I did not know at the time of the trial or until after the date of the affidavit of Mrs. Mamie Edmunds which said affidavit is dated April 13, 1914, to the Court shown at the hearing, that she would testify to the things in said affidavit set forth.

1ST AMENDMENT TO MOTION FOR NEW TRIAL.

J. W. BOOZER, Sworn for the Movant. In April, 1913, and for several months prior thereto I was employed as a collector for Patrick & Thompson, Jewelers, on South Broad Street, this city. While collecting for Patrick & Thompson, one of my accounts was an account against Jim Conley, the negro who is now in jail, as being connected with the Mary Phagan murder.

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For several weeks prior to April, 1913, Mr. Leo M. Frank paid me a dollar a week out of Jim Conley's pay on account for a watch purchased by Conley from Patrick & Thompson. I collected a dollar in this manner on March 8, 1913, March 15, 1913, March 22, 1913, March 29, 1913, April 5, 1913, and April 19, 1913. On April 26, 1913, I was unable to get to the Pencil Factory by one thirty o'clock in the afternoon, it being customary for me to go to the Pencil Factory by that time each Saturday to get the dollar and I did not call at the factory that day. On the afternoon of April 26, 1913, after four o'clock in the afternoon, as near as I can recollect, about four fifteen (4:15) o'clock and certainly somewhere between four o'clock and four thirty (4:30) o'clock, on Saturday afternoon, April 26, 1913, I came upon and met up with Jim Conley on Peters Street, near Castleberry Street. I know Jim Conley well and that Jim Conley was, on the afternoon of April 26, 1913, between four and four thirty o'clock on said Peters Street, and when I came upon him, the said Jim Conley was standing leaning against a pole, and then and there I and the said Jim Conley spoke to each other and had a brief conversation. I asked Jim Conley for his weekly payment of a dollar on his watch, and then Jim Conley told me that I could get the money that Mr. Frank had for me, and Jim Conley asked me whether or not I had been by the factory for the dollar.

When I told Conley that I had not, Conley merely said that he could get the money from Mr. Frank. I did not tell these facts to anyone at the time, nor immediately after the news of the Mary Phagan death, but during the month of July, to the best of my recollection I did tell these facts to Solicitor Dorsey, but I did not tell any of the lawyers of Leo M. Frank, nor so far as I know, were these facts ever communicated to them before the date of this affidavit. My associates are G.W. Patrick, E.B. Durham and J.H. Hilley.

G.W. PATRICK, E.B. DURHAM, J.H. HILLEY, Sworn for the Movant. We are acquainted with J.W. Boozer, and know that he has lived in Atlanta and been in and about Atlanta for the past twelve months and longer. He is a man of good character and credibility and we would believe him upon oath.

L.Z.ROSSER, MORRIS BRANDON, R. R. ARNOLD, HERBERT J.

HAAS, LEONARD HAAS, Sworn for the Movant. We did not, at the date of the trial, nor until after the Supreme Court had affirmed the case of Leo M. Frank have any knowledge of the fact that J.W. Boozer knew and would testify that Jim Conley was on Peters Street in the City of Atlanta, on the 26th day of April, 1913, between the hours of four and four thirty o'clock. We (except Morris Brandon, who did not have active control of the case, and whose firm was represented by L.Z. Rosser) made active search to trace Conley during each hour of the day of April 26, 1913, and did not, until the date of the affidavit of said Boozer find anyone who would testify to seeing Conley at that date. Neither of us had any knowledge until the date of the affidavit of said Boozer, to-wit, April 17, 1914, that the said Boozer knew and would testify to the facts set up in the affidavit of said date.

LEO M. FRANK, Sworn for the Movant. I did not, at the time of the trial, nor until after the Supreme Court had affirmed my case, have any knowledge of the fact that J.W. Boozer knew and would testify that Jim Conley was on Peters Street, in the City of Atlanta, on the 26th day of April, 1913, between the hours of four and four thirty o'clock. I made active search to trace the movements of said Jim Conley during each hour of the day of April 26, 1913, and did not until the affidavit of said Boozer find anyone who would testify to seeing Conley at that date. Neither did I have any knowledge that the said Boozer knew and would testify to the facts set up in his affidavit made on the 17th day of April, 1914.

attested by C. W. Burke as Notary,

END AMENDMENT TO MOTION FOR NEW TRIAL.

MRS. MAUD BAILEY, Sworn for the Movant. On Saturday, April 26, 1913, I was living at 255 Humphries Street. At eleven o'clock A.M., or a very few moments after that time I boarded a Stewart Avenue car and left the car at Forsyth and Mitchell Streets. My mother, Mrs. May Barrett was with me, and after leaving the car we both walked together to the store of Alverson Brothers, located on Forsyth Street and near Mitchell Street, which time I think was about eleven thirty o'clock A.M. when we reached Alverson's store, and my

mother left me at the store to go to the pencil factory, promising to come right back; and after waiting at the store for about ten minutes, I decided to walk toward the pencil factory to meet my mother; and, upon arriving at the factory, inasmuch as I did not meet my mother, I entered the factory and went to the second floor near the time clocks, one of which registered fifteen minutes until twelve o'clock, noon, and the other one showed thirteen minutes after twelve o'clock. When I reached a point opposite the time clocks, there was present Leo M. Frank, a lady stenographer, or at least a lady was sitting at the typewriter, Corinthia Hall, Emma Clarke Freeman, Arthur White and Mrs. Arthur White. Emma Clarke Freeman asked Mr. Frank if she could use the 'phone, whereupon Mr. Frank told her that she could use the 'phone, and after a short talk on the 'phone, Mrs. Freeman and Miss Hall left the factory, and I did not see them any more that day. Just after Mrs. Freeman and Miss Hall left the factory, and while Arthur White and his wife were standing at the foot of the steps leading up to the third floor from the second floor, where they were in conversation, my mother came down the steps referred to, and when she saw me standing near the time clocks, my mother said "I thought I left you at Alverson's store, and I replied that I was tired of waiting and told my mother to hurry and go out with me; and my mother told me that she had to go back to the fourth floor to get a package, and would be back as quickly as possible. I and my mother talked for several minutes and when I and my mother finished talking, my mother went up the stairs, Arthur White also went up the same stairway, and Mrs. White left the factory. When I was again left alone, I noticed that the lady that I had supposed was the stenographer was gone, and I did not see her any more, and I think she must have left the factory while I was talking with my mother. At about ten or twelve minutes after twelve o'clock, noon, I saw a young girl come up the stairs and walk into Mr. Frank's office, and I paid very little attention to the girl's face, and after remaining in Mr. Frank's office some three or four minutes, the girl went out of Mr. Frank's office and passed on down the stairway that lead to the first floor. The girl had on an attractive dress which I think was between a pink and lavender color and that the dress was short and the girl was evidently young and she was heavily built. The

passed right on down the stairway that lead to the first floor and I did not see the girl again. Just as the girl left the office floor, I saw Mr. Frank in the outer room of his office and saw him disappear into his private office, where I could not and did not see him again. In about five minutes after the girl referred to left the factory, my mother came down the stairs and she and I at once left the factory. When I reached the bottom of the stairs, Lemmie Quinn was going up the stairs very fast, and I said "howdy" to Mr. Quinn and Mr. Quinn nodded but did not speak. I and my mother then went to Alverson's store to use their 'phone and to call Mr. W.B. Newcomb, who works at the Swift Soap Works, which was then between twenty five and thirty minutes after twelve o'clock, noon, when I reached the store. The reason for knowing that it was about that time being because the Swift Soap Works do not permit their employees to use the 'phone after twelve thirty o'clock and I know that I was just in time because I had only a moment or two to talk to Mr. Newcomb. When I entered the Pencil Factory that day, Jim Conley was sitting on a box between the stairway and the elevator, on the first floor. I would not have noticed Conley, but for the fact that he made a noise with his foot against the box upon which he was sitting, which attracted my attention and caused me to look up and see him. I have made an affidavit to Mr. Hugh Dorsey and if Mr. Dorsey had treated me properly and had not abused me and cut me off my story and interrupted me continuously, I would have told him exactly the same state of facts that I have outlined and described in this affidavit. I wanted to tell Mr. Dorsey all I knew that might throw light on the investigation that he was conducting but Mr. Dorsey wanted to get from me evidence of conditions that were not the facts, on account of which I got mad with Mr. Dorsey and his methods. It was very evident that Mr. Dorsey became angry with me, the result being that he took only a short affidavit from me and Mr. Dorsey had me so confused at the time that I cannot at this time recall just what Mr. Dorsey put in the affidavit which he took from me, and I left his office and have not seen him since.

MRS. MAY BERRETT, Sworn for the Movant. I have read the affidavit of my daughter, Mrs. Maud Bailey, sworn to and subscribed before J.O. Knight, a Notary Public, for Fulton County,

Georgia, on April 22, 1914, and in each part of Mrs. Bailey's affidavit where in reference is made to me, same is the truth and in every way correct.

L. Z. ROSSER, MORRIS BRANDON, REUBEN R. ARNOLD, HERBERT J. HAAS, LEONARD HAAS, Sworn for the Movant. We are the counsel and the only counsel of Leo M. Frank in the case above stated. All of us were counsel of Leo M. Frank at his trial, at the July Term, 1913, of Fulton Superior Court, except Leonard Haas, said Leonard Haas ~~being~~ having become connected with the case after the motion for new trial was filed. We had no knowledge at the time of the trial or at the time it was overruled, of the testimony of Mrs. Maude Bailey as set forth in her affidavit in this case, or of the testimony of Mrs. May Barrett as set forth in her affidavit in this case. Each of us exercised diligence in ascertaining all the facts in connection with Leo Frank's defense, and at no time was any suggestion made to the effect that Mrs. Maude Bailey or Mrs. May Barrett would swear as set forth in said affidavits. Said testimony is important and material and is newly discovered.

LEO M. FRANK, Sworn for the Movant. Neither at my original trial, nor at the time of making my original motion for new trial, nor at the time the same was overruled, did I have any knowledge of the facts testified to by Mrs. Maude Bailey or Mrs. May Barrett, as set forth in their affidavits made in this case. From Tuesday, April 29, 1913, I have been in ~~prison~~ prison and have been unable to rely upon others to go ~~the~~ out and investigate the evidence of my case, and have been compelled to rely upon others to do the work for me. I exercised all possible diligence under the circumstances, to ascertain all facts which throw any light upon the truth of the charge against me, but had no knowledge of the facts testified to in these affidavits.

(3RD AMENDMENT TO MOTION FOR NEW TRIAL STRICKEN ON MOVANT'S MOTION.)

4TH AMENDMENT TO MOTION FOR NEW TRIAL.

ANNIE MAUDE CARTER, Sworn for the Movant. I was locked up in the Fulton County Jail about October 7, 1913. I first met Jim Conley in the Court House in November, 1913, at the time I was sentenced to jail. After I was sentenced I was well acquainted with Conley and

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knew him well for four months straight in jail. I talked daily with him about all his affairs and I asked him if he was guilty or not, and he first told me no, that he was innocent; that God above alone knows who did the murder, and I said if you were not guilty, why should you worry so, and he told me he was so near guilty, he felt lost; that he had lost all hope. During December, 1913, we were very good friends in jail, he had all confidence in me, he would tell me his secrets and of course I would listen. He again told me he didn't know anything about Mary Phagan's murder and then I told him if that was so, he ought to prove up his character, so during Christmas week I was talking with him in his cell and he said he would tell me the whole truth about it. I asked him why he waited so long. He said: "If I tell you will you marry me" and I told him yes. He then told me that he really did the murder of Mary Phagan, but that it was so plainly shown on Mr. Frank that he let it go that way; that him and Mr. Frank both had connection with the girl, but then he immediately confessed that he lied, when he said that Mr. Frank had connection with the girl; and said that he had done it all alone by himself. He begged me never to say anything about this. He said he first choked her and after she was unconscious he had connection with her, and she being young and never having had anybody, he had to tear her privates. He said he was sitting on a box in the factory when the girl came down, that he told her someone had called her, that she turned back and he then struck her with his fist, knocking her down and dragged her back where they put rubbers on pencils; that finding Mr. Frank absent, he dropped her through the hole; that he then took her around by the furnace starting to put her in the furnace but his conscience wouldn't let him; that he put her down there to make people believe Newt Lee did it; that afterwards he found a piece of blank paper, tears it in two, picks up a pencil, and puts the paper on the cellar door and writes the notes; that he first took the notes and put them in her bosom, then he took them out and laid them by her side. That he then took a thing they use to open boxes with and pulled the staple out of the back door, and went out the door, going over on Broad Street to get a glass of beer; that he went back to the factory to make people believe that he was innocent, but that the truth must come to light; that he wanted to save Mr. Frank by saying he helped move the body but that

he knew that ~~he~~ would not work; that afterwards he went and got drunk, went home and started to leave town, but that he knew that that wouldn't do, so he stayed here to show that he wasn't guilty. He begged me not to say anything about this, that he wanted to serve his twelve months so that he would be free; that if he couldn't get me he would go north and marry some white woman around Cincinnati. He also told me that he kept the money but gave the purse to a negro child. While I was in his company, he asked me to be with him and I told him No, that's what got him in jail there. He asked me that twice in my presence. He asked me that several times in letters he wrote me but I simply sent the letters back to him not caring to be in his company any more. He wrote me that he had a big hard thing waiting for me and that I had a big, fat ass, and he wanted to get it down to natural size. I have not got the letters, I give them back to him. I have not told this before, because I only got out of jail March 9, 1914. Detectives Lanford, ~~Chewing~~ and Sturdevant took a statement from me today. I did not tell them all that I am telling here because I knew that they were trying to get things to favor Conley and I knew that he was guilty, and that what I knew wouldn't help him but would break his neck. Chief Lanford also asked me if Conley used his mouth on me and I did not say anything. As to how I come to make this statement when I was down to the station house today and the detective asked me all those questions I knew what they were trying to do, they were trying to help Conley, so I went right from the station house to Mr. Jake Jacobs on Decatur Street and told him everything that had happened and he then told me I ought to make a statement about it and that is how I come to make this statement.

JULIA CARTER, Sworn for the Movant. I am the mother of Annie Maude Carter. Annie Maude Carter is 21 years of age and lived with me up to one year ago. Annie Maude Carter is of good character and attended private school at Atlanta up to the time she was 16 years of age. She has been working as a laundress and house cleaner, and I would believe her on oath in a court of law. I now work as a nurse at Dr. Cromer's at No. 240 Peachtree Place and I am 45 years of age. I worked at Mr. Walter Ballard's family for 27 years up to 10 years ago. I was with Annie at the jail the day Conley was sentenced and Annie said when someone came back and told of Conley's

getting 12 months sentence, that Jim was doing a lot of talking and that if he didn't stop talking so much, he was going to talk his neck on the gallows. This morning somebody come after me to go to Mr. Dorsey's office. I went there and he told me that I must remember that Annie's case hadn't been settled yet and he said that the best thing I could do for Annie and myself was to bring Annie down there to him. I told him I didn't know where she was and all I could do would be to ask the lawyers in the 4th National Bank Building where she was and I said I thought I would go over and ask them where she was, and he said there wasn't no need in the world to ask them. On last Thursday I met Annie on Decatur Street and she said she just came from the station house and said they wanted her to tell about some of Conley's letters and she said that she didn't tell them anything. She said she was going up to the Fourth National Bank Building on some business. She left me at the corner of Peachtree and Decatur Streets. Nobody was with her when I met her and nobody was with her when she left me. I signed a paper in Mr. Dorsey's office. I can't read and I can't write, but they read the paper out to me and I put my mark to it. The paper said that I hadn't seen Annie since Thursday when I met her on Decatur, and also asked me if Annie had some things in a pawn-shop on Decatur Street, and I said yes, but I didn't know what it was.

J. JACOBS, Sworn for the Movant. I am acquainted with Annie Maude Carter. She is a woman of good character and credibility and I would believe her on oath.

LEO M. FRANK, Sworn for the Movant. The facts set out and sworn to in Exhibit A, hereto attached, ^(Carter affidavit) were unknown to me at the time of my trial before the jury in Fulton County, Georgia, and were unknown to me until the date of Exhibit A. I did not know the facts and circumstances set out in Exhibit A until the date of said Exhibit A and could not possibly have known the same by the exercise of any manner of diligence.

L. Z. ROSSER, R. R. ARNOLD, LEONARD HAAS, HERBERT J. HAAS, MORRIS BRANDON, Sworn for the Movant. We did not, at the date of the trial, nor until after the Supreme Court had affirmed the case of Leo M. Frank, have any knowledge of the facts and circumstances set out in Exhibit A, hereto attached. We, (except Morris Brandon, who did not have active control of the case, and whose firm was represented by L. Z. ROSSER) made diligent search to find out all about the

connection of James Conley with the murder of Mary Phagan, and neither of us had any knowledge of any of the facts and circumstances set out in Exhibit A, hereto attached, at the date of the trial of Leo M. Frank, nor until the date of Exhibit A, hereto attached. We knew nothing of the facts set out in Exhibit A, hereto attached nor could we possibly have known the same by the exercise of any manner of diligence. *(Exhibit A referred to was one in Carter affidavit)*

5TH AMENDMENT TO MOTION FOR NEW TRIAL.

(GROUND 1-a) MRS. GEORGIA DENHAM, Sworn for the Movant. I was employed at the plant of the National Pencil Company on Forsyth Street, Atlanta, Georgia, during ~~the~~ April and May, 1913, and on a certain day which I believe was Thursday, May 1, 1913, which was the day upon which James Conley was arrested in connection with the murder of Mary Phagan, I saw Conley in the metal room of said pencil company washing a shirt. I saw said shirt plainly and on same there was a large spot which looked to me like blood, the same about the size of a person's hand. I asked Conley what it was and Conley said that it was blood, that his nose had bled when he had bumped his head. And the said Conley attempted to demonstrate to me how the blood from his nose had gotten around on top of his shoulder. I related the above facts to the detectives who were then working on the case and my affidavit was taken by them. Some of my associates are Miss Mary Pirk, Jimmie Mayfield and Annie Howell.

MARY PIRK, JIMMIE MAYFIELD, ANNIE HOWELL, Sworn for the Movant. We are acquainted with Mrs. Georgia Denham and know her character, Her character for truth and veracity is good and we would believe her on oath in a court of law.

(GROUND 1-b) CORA L. LAFFEY, Sworn for the Movant. I was present in the metal room at the National Pencil Company's plant on Monday, April 28th, 1913, when some strands of hair were found upon a certain lathe, and which were sought to be identified as the hair of Mary Phagan, deceased. I was well acquainted with the deceased Mary Phagan, and with the color of her hair, and the hair above mentioned was not the hair of Mary Phagan. It was entirely too light in color to have been from the head of the deceased. Amongst

those present t the time were Mrs. Georgia Denham, R.P. Barrett, Cora Flata, Marjorie McCord, Miss Jimmie Mayfield.

GROUND 1-c. GEORGIA DENHAM, Sworn for the Movant. I was present in the metal room at the National Pencil Company's plant on Monday April 28th, 1913, when some strands of hair were found upon a certain lathe, and which were sought to be identified as the hair of Mary Phagan, deceased. I was well acquainted with the deceased Mary Phagan, and with the color of her hair, and the hair above mentioned ~~were~~ not the hair of Mary Phagan. It was entirely too light in color to have been from the head of the deceased Mary Phagan. Mary Phagan's hair was of an auburn hue, while that found on the lathe was more blonde. Among those present/were Mrs. Cora Lavender, R.P. Barrett, Cora Falta, Marjorie McCord, Miss Jimmie Mayfield. Some of my associates are Miss Mary Pirk, Miss Jimmie Mayfield, and Annie Howell.

GROUND 1-d) ANNIE MAUDE CARTER, Sworn for the Movant. I was put in jail in Atlanta, about six months, beginning October 7, 1913, until March 9, 1914. I was bound over to the Tower on the 7th day of October, 1913, and given fifteen years on the 15th of October, 1913. Then I got a new trial on the 7th day of March, and I made bond on the 9th day of March, and I had a trial on next Monday, March 16th. The court costs were paid, and that settled it. It was \$42.05. I paid the nolle prosequere fees amounting to \$42.05. During the time I was in jail, there was a man/named James Conley. I met him in the court house at the time of my first trial. I saw him often in the jail. His cell was the first north and mine was the third West. I worked for the Sheriff on the run-around. I did the laundry. I saw James Conley every day. I got very friendly with him. I got friendly enough with him for him to ask me to marry him. I received letters from him. I got letters from him for this reason: I went to his cell and was talking to him from the corridor and the sheriff's cook told them that I was there talking to him, and the sheriff had given orders not to let anybody in there talking to him except his attorneys, so they gave orders for me to be locked up for talking to him, so that is how I came to be getting letters. I was locked up. I got the letters from him during the week that I was locked up. I couldn't count the number of letters I got. At one o'clock, I could go downstairs while they were moving the slip and talk to him, while the men were out, and when I couldn't go -

down, I would write him notes, and he would write me; but he went beyond himself in writing to me and I brought them back to him and asked him for my letters. I would lay them down and go downstairs for something and I would come back and they would be gone, and in two or three days, I would find them lying around in a peculiar place. I don't know whether any of these letters were dated. I didn't pay that much attention to them. He would write six or seven pages in one letter, and as high as ten pages. These twenty seven sheets written in lead pencil are some of the letters received by me and were taken out of my cell. They were written by James Conley and are in his handwriting. Two of these letters he handed me himself. All of the letters are in his handwriting. I received these letters when I was in the jail in Atlanta at the same time that Conley was there. I wrote these letters consisting of twenty two separate pages to Conley. These twenty two separate pages are in my handwriting. They are letters that I wrote to Conley while in the Fulton County Jail in Atlanta. Some of them are dated. One of them, I believe is dated January, 16th. Some of them are undated. I got my letters to Conley by giving them to different men, who were serving sentences in jail. They were short term prisoners. I didn't deliver any of the letters to Conley through any of the deputy sheriffs, only through the prisoners. I would receive two or three letters a day from Conley, and I would write him every two or three days. I received other letters from Conley about as many as you have shown me. I don't know what became of them. I am marking in red ink the letters which Conley wrote to me, and in red ink the letters which I wrote to Conley. This is the absolute truth. Nobody has promised me anything to make this statement. Nobody has threatened me. I have lived in Atlanta twenty one years. My associates are Mary Lou Wright, Viola Bare and Annie Grogan.

(Attached to the affidavit of Annie Maude Carter were the following letters:

Letter 1.

My dear little girl:

I got letter and feel alright now and is not made with you at all now, and I believe what you say about old Jim since I read your mother's letter, and I still love you and will always love you, but I must not have a wife that will tell people to kiss her ass.

Well, I will forgive you all about that now, and let us see how much we can love each other, Baby Doll. I love you more than your Mother do I believe, and I wish I that I was there to tell you how much that I love you, don't you Honey? Baby, you ought not never said anything to me about your hippe, why my dick went clean across my cell, and I read it all night, your letter, I could not sleep. Honey, you was right when you said that you had up there what I wants. You know then that I would not be mad with you, when you said you could make me call you mama, well Baby, if you do, Papa will give you what it takes to bring the bacon home, and I like to hear you said that because I always believed you could do it, and believe you could make me love it, and if you do, I will try to give you anything in the world, if I have to go and take something, cause you have got to have it Honey. That made me love you that much more, you said you would hold from the bottom, why Baby I know you can do that. I just know that and every time read that my long dick get on a hard, why I would like to hold it in one of your hippe this morning, and let you take everything that I have got there with me, because I love you so much and if I could put my sweet long dick in your hippe, I think I could make Mama call me Papa, one time. Honey could I get you not to get out on hond. Baby, I am afraid that you will give it a way before you can make Papa call you Mama. Baby, I will marry you, but I dont no about in there. I love you enough to, but you know they will talk about it. Well that all right Honey, don't worry, I will do just what I say I would, for I am pleased with you very much and think we could be happy, But I would like to wait til we get out of there, for I love you so much. Now, dear tell I will do now, when we get out and that not long, two weeks now, you be a godd little girl for I am going to call you my girl and a little later I am going to call you my wife and give you whatever you wants, that is if you dont spent what I have got too fast off. I will do all I can in this world for you because I love you and knows that I can take care of you because I have many friends to not take care of you, and all of them are white friends. Now little girl, you ought to see how long my dick has got since I read your letter and it has got just as pretty as I can be, and it is yours. Be good now, let me hear from you. I would write more but Frink is hurring me up, so by by, from

(Signed) Jamez.

Letter 2.

Now Baby Doll Papa got your letter and was very glad to hear from you, and will be glad to get your picture. Now Baby, you know we dont want to get mad any more, so you tell me now what is that, that somebody has told you a bought me. Let me know, it will be alright.

Dont hold it back because I love you so tell me know what it is. I wish I was up there when you was dressing so I could feel your ass. Baby I will give you the last 14 dollars that I have got right now if you will come down there and let me see it. Just let me look at it, and I know I will come all over myself. I have got the money right there waiting for you, if you dont believe it, come on down there and see, and if that aint enough, I am going to get some more in the morning and that if that aint enough, why just wait til I get out and papa go and get what you want for your big fat ass.

Well Baby Doll you aint got to wait much longer that is if you dont get out on no bond. I know if you get out on bond, somebody will get it before I do and they will make you call them papa before you can make me call you mama. I want you to keep your ass right there because it is good and you told me this last night in your letter, that two hours fucking on your big fat ass would stop all of this argument. Well that right but you know that Papa cannot lay on your ass that long before you would be done made me come, if ther ever was a man that want to lay on your ass that me, and make me love it and I will show you better than I can tell you what I do for you.

Now Baby if you dont get out on no bond or if you do get out on a bond you have that right hip for me cause if you hold your fat ass on the bottom and make papa go like a kitty cat then you have won a good man, that's me. I will try to give you this world, but if you let papa putchis long ugly dick up in your fat ass and play on your right and left hip, jast like a monkey playing on a trapeeze, then Honey Papa will be done played hell with you. Then you will mall me Papa all the time then.

Well Baby Mr. Gilliland was not there to let me know what we was talking about but I am going to do so, so dont worry now Baby. Do you really mean that you are going to get out on bond? I see that your Mother said that somebody was going to give something on your bond. Tell her that you dont wanto get out on bonds, because we are going to do what I say, cause I want to stick my long däck in your ass.

Well Honey this is alright now be a good girl and save your fat ass for me and will take care of it just as sure as I am (Blank). Give your heart to God and your ass to me few you mind. Well Baby, I just dont know what to think about your case.

Well go on and get out on bond, then pay your lawyer a little to keep it out of court, but if you dont get out on bond I dont think that they can do anything with you for you have got a good lawyer. I think you will get a new trial, so dont worry. If you dont get out on bond and dont get no new trial then go to a high court and then get a bond.

Baby, your case is not so much, you know that because the bond that they put you under is not anything. That negro man has got out on bond. You dont know if they did turn him a lose then the detectives must be trying to work it off on you. They may not dont like you.

Well I dont care if you did do it, or if you did not, I love you just the same, and if I was out you would get out too. For I would spend everything that I have got to help you and to help your Mother to get you out.

So you ask your lawyer do he think it would be best to get out on bond.

Well Dear dont worry about a thing for Papa love you and my step mother love you, so tell my step mother I say hello, so this is all, go to sleep now, Baby Doll, Sweet Dear, bye bye.

(Signed) James Conley.

P. S. On back of page 2.

Miss Annie Carter Conley, got a fat ass and a sweet pee hole I do believe and they will be mine soon (blank) I will just want that ass, Honey.

P. S. On back of page 4.

James Conley.

Answer right away I write it tonight.

Letter 3.

Well baby, doll papa has got your letter and was glad to hear from you, - to know that you are feeling fine. Well honey you know if we do wait, why we can love each other just the same and when we get out why all that I have got to do then is to go and get what I have got put up and give it to you. Darling I know you told me to judge well. That alright Papa will do anything that you tell him but baby papa is going to let you be the boss always. You know that you want to, and I will let you have everything that I have got. So now dont worry honey. The time is not long. I am going to ask Mr. Gilliland again. He asked me did I have any money to pay the Pastor and to get the thing with. I told him yes, and I told him if they would let one of my friends come to see me I could send him to get some money for me. He said I better let that stay there until I get out. Well honey I think that would be best, but if you think it would be the best wait 'til we get all right. So you be a good girl until papa can see what Mr. Gilliland will say in the morning. He say that Mr. Roberts may not be there Monday.

He say he will get them things for us if we know any pastor that we could get and get him in there before anybody see him.

Well, babay, I dont know, I will let you be the boss all the way through, and I will do whatever you say. So By By, from James, dont worry, and dont hurry, just take your time and right.

Letter 4.

Honey, I did not ask Dr. Ren to let you come up there because Mr. Billy Land is not there, but just save it for me because papa love you and is going to help you if you dont get out on bond or dont get no new trial. Now, you be a good little girl until I can get up there, or until I can get some money. I have got the money alright but how is I going to get it.

Just to show you honey that I love you if I could get it I would do all in this world for you. So dont worry now. Time is not so long now before that I can show you better than baby. I dure wish that Mr. Gilliland was there so I could come up there with you and lay in your arms.

Honey- dont you think that you will go to no prison, becuase you wont. I know that because I love you so much and know what I can do for you for I have it to do for you. Now if I could get it that why I say dont worry you wont go nowhere that is if you be a good girl- I will help you. If you dont be a good girl then I wont. I have got a negro watching you. Now do like I tell you be good and dont worry.

Save it til I can come up there.

Letter 5. (1st page)

Atlanta, Ga., Jan. 26, 1914.

My Dear little girl-

I got your letter and I did not that you--- for you was playing -- your line be--- to fall in hard---. Aint that so honey I dont think that you meant for me to come up If you do I will try to come up there tomorrow So dont worry I love you just the same All that I want is a woman that can work her ass and I believe you can. So dont worry about that ~~ether~~ No woman- and I dont want her I want you That is if you will be a godd little girl. "Over" on next page Honey I will tell you what my lawyer say I have not got___.

2nd Page.

just to fill out your line_--- You have and _____ your fat ass_____ just as far up in _____ ass I can get nuts and all Now baby I am not mad with you, so dont worry Do like I do Dont worry Just a good fucking will make you feel all playing cards so _____ you forget it You was not thinking that much about me Well that is all right I thought of you so I have not got anything to say about that woman for I just knows her and that is all_____.

3rd Page.

forget to and ___ I say but that is all right I love you just the same and love nobody but you I have not told you how much I live you yet honey It would brake my heart to tell you because you would mistreat me_____ When _____ I love you so much sweet dear darling honey baby Papa want to fuck you so bad and give you a good facking to your _____

You say that honey I am half drunk but that all right. I love you and is Not said a thing Nobody for honey I think you just made that up_____ I tell you you a baby. I could write more but you have hurt me to ~~my~~ my heart to

Over (3) James.

because honey I love you so much me. I love feel now good wish you there to get I am drinking. Dont worry honey. Dick and a so got to sleep now . Let me hear you say that you worry- ing any more. You good pussy little girl_____you.

Letter 6.

Honey, readx til you come all over yourself. Well dear how are you feeling tonight. I hope you are not worry- ing at all, so go to sleep and let your good fat ass rest til I can get on it and that wont be long, baby, because we will get out all right and we will marry and live happy. Now tell your mother to look for a good house. A first class one I am not lying honey. What take to pay for that house I have got it.

What it take to make you happy and give you everthing you want and make you keep your fat ass at that four room house dam if I aint got it til and what I am talking about nobody aint going to spend it. but Miss good fat ass.

Good pussy Annie Maude all I know that your ass is fat you need not say that it aint and I know your pussie is good and fat and warm and hairy. How do I know because my dick stay on a hard all the time.

When you pass this door my dick say here she go and do you know little firl that I love you to my heart. I love you more than any man that you ever went with and how I man love you, so much is because I believe that you will make a good wife for me, and not to tell you no lie I will be good to you and will give you anything that you want to make you be good to me. I am not talking just to hear myself talk. I am talking this because I know that I can do and what I have got to do with because you know if a man get you he is got to do if he want you to treat him right, and I

Letter 7.

Now I tell you Miss Annie you dont have to write and ask me do I like that not a dam tall. I told just what I heard so you must know that whoever told me that was tell the truth. I guess I dont know and dont give a dam and if you dont want to write down there to me I dont care. But I will say this I love you all right and have loved every since we was at court together.

I am surprised at you Annie to hear you say for somebody to kiss your ass.

So far as you say that your mother told you not to eat or drink anything from Jim Well that all right I believe you are telling the truth about you dont care anything about him and I know that he is not your husband and not me but I would like to be if we were not in there for I love you and has always told you so and was just thinking me and Mr. Gilliland how to do. Of course I know that you never did love me and know that you are not crazy about marrying me for I was the one crazy about marrying you. You should know that I would like for you to have been my wife because I would have been pleased with you and knows that you have had a good time in your life and will change now and be a good girl and you and I could get along fine and be happy. But I did not know that you tell people to kiss your ass and I know that you are not no fool miss and I am not no fool. And I dont listen to everything that the boys tell me for I just told you just what I heard and did not tell you that it was the truth and I know that you dont have to tell me no lie for you are your own woman and you cannot mess me up for I love you too much and would do anything in this world for you. I love you and love you to my hear and if you dont love me I dont give a dam and you dont have to tell me to stop writing up there. Of course if you want me to then I wont. But, I will love you just the same. I have been writing some good letters up there too. To let you know how much I love you and I mean it well. I guess I will try to fergot you. It will take me a long time for every time I read your letter I think that much more of you. Well that alright if you did not want me you did not have to get on your head. I wish you had wro te you smart letter a little sooner before Mr. Gilliland left. If you like this--- write. Please answer all of your letter. I would like to hear from you. I am not mad at all with you and you say somebody is telling you something around there about me.

73 Why--- nobody cant tell you anything about me for nobeddy around there knows anything wrong about me and what they do know they know I am a good man. Tell me what some of them are saying Answer Miss Smart.

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To Miss Smart. Answer if you like for I am not no fool either. Understand it too and I am not mad with you.

Letter 8.

Atlanta, Ga., February 14, 1914.

Miss Annie Conley, 92 Tatnall street, Ga.

Well dear I just dont know what to say. You say you are made with me and it hurts me to my heart. Did I tell you that love you and love nobody but you and I think if you go back on me I dont know what to do. So baby dont me mad with me please because I think I think that you and I will be happier some day. I know we will Annie if you will be a good little girl around there which I know you will if we ever get out of there. Because I will do all that a man can dor for you xto to make you be good for I know that you like a good time and have had a good time in your life and I believe that you will change now and do right. Sweet dear dont worry for I love you more and more. Every day that I hear something good about you and I have always believed that you will make a good wife to me or any man that will treat you right and honey I know that I can do that and I was not trying to fool you dear. I have always loved you and will always love and if you be a good girl you will always have a good friend because I am a man that loves and will give you all that you want and that is . You know that I will. You find out I will give you want you want then you will love me more. But I tell you now dear from my heart that I can do for you a long time for I know what I have got you think that I would be in this case and not get anything out of it. All that I would like for you to do is to be a good baby and dont let nobody tell me anything on you no more I would like to you all in my arm which would make me do more for you. Because I think that you could put it where it would go to me head, dont you? and I believe that you could put it to some man and make him do right for you and I am one of them too. Because I have got it in my head that you can do it to me if you do, I will go out and bring back the money and it would not be long for I am a man that tell the truth about what I will do if I love a woman. I will do for her I say that I love you and love nobody but you and know what I can do for you. If I did not love you I would not write to you at all. That's the man that I am.

Well honey the time aint long as it have been with me and I am going to beat my case so help me God. They have got to try me in this court or turn me a lose one. So dont you worry. If I get out first I will do all I can for you if you dont get no new trial in this court, just to show you how much I love you I will help to carry it a higher court if want me too. I just as well to help you as to help someone else for some one is going to spend what I have got. Now, baby that women that you saw talking to me is not anything to me and could not give me any money, for I could give her some money like I am now. I dont want nobody to give me anything now. I just sent around to some of my friend just to see where they are at. I could give them something now and if i could get where you is I could give you what you want here. Because I think that much of you and am pleased with you. If you be a good little girl because when I hear things around there about you it go to me heart. Just like I told you that I love you to my hear and if you do love long will it. Of course you like a good time. just like anybody else and I like a good time and what take to give you a good time, I have got it. I wish I was out there where you was are you in there with me . Now I.

SECRET

have wrote you all the paper that I have got. Now you know that I love you and will do all in this world for you. If I could get you in there I could make you love me or try like hell one. For I love you with all the love in the world. If I didn't make you love me I would by love from you if it takes every dollar I have got.

P. S. at top of page (8), Annie I spelled my words so that you can understand it. I am not writing so fine you know

"From James which is scratched.

P. S. On page (4). Now tell me something good baby doll- from James Conley.

Now I tell you Miss Annie you dont have to write and ask me do I like that. Not a dam . I told just what I heard so you must know that whoever told me that was telling the truth.

Letter 9.

Well honey how are you this time. I hope you are feeling fine for I am dear. Why do you say that I need what I have got. It is not because you cant get to send me any I would have sent you some money but you know that it is to hard to send my money to you of what I want to send because you are up there and I am down there. I cant tell what going. You knows that your self of course. I could send you some change Annie dear. What I want to send I want to send something that will do you some good and I would like to help you in your case all that I could. But, you have not been a good little girl so they tellme. Honey it would take me a long time to spend what I have got in my cell and if I did spend all what I have got I could get more for I have got it and if I was out there with you I could give you whatever you want because I relly love you baby and would like to let you spend some of my money because somebody is going to do it. But I will just let you do what you want to. If you want to marry right there I will or if you. So write now and let me know what a bout in there Want to wait til you get out I will then.

So dont worry I just let you th ink but dear if you really mean what you say about it. I will do all that I can do for you and I knows what I can do for you because nobody knows I have got but me and Frank and God and Frank he cant say anything for he known where I got it from -----so. Now sweet dear you be a good little girl for my time is not long. now----So if you dont want to marry in there why I hope we will be good friends until we get out. It hard to tell about that . Have you got to wait til the last of Feb. before you be tried. Somebody told me tou did well of you have. I hope you dont let the chief cook take you away. I heard you is loving him, is that so. If it is, me and you must do something right away for I am loving you now wvth all the love in the world and willdo my best to make you happy.

Letter 10.

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Get it down to two or three years then motion for a new trial in a still high court then get out. It dont cost much. It will be the 15th of next month before you will get a hearing from this court and that aint long. I think when that woman come back there I will send her to get some money for me. If she will bring it back and I will let you have some money to help you as I may get out

before the 15th of next month and if I get out I will help
you all I can Annie Bear, because I love you so much-if I
tell anybody where my money is they will go and get the
whole dam bunch- Then I never would get it and the State may
be so long paying me, then I would not know what to do then
but dont you worry.

R.P. BUTLER, N.V. DARLEY, H.G. SCHIFF, EULA FLOWERS, JOE WILLIAMS, JOS. STELKER, R.W. LOEB, L.A. QUINN, F. ZIGANKI, Sworn for the Movants.

We are acquainted with the handwriting of Jim Conley. We have examined the letters attached to Annie Maude Carter's affidavit and the same are in the handwriting of said Jim Conley.

SIG MONTAG, H. HEIN, CHARLES LEER, Sworn for the Movant. We are acquainted with R.P. Butler, H.G. Schiff, Rudolph Loeb, F. Ziganki, Jos. Stelker and Miss Eula May Flowers and know their general character for truth and veracity; the same is good and we would believe them on oath in a court of law. They work^{ed} at the National Pencil Company during the time that Jim Conley worked there and had an opportunity to become familiar with his handwriting. All of said persons are employees of the Pencil Company and have been thus associated with each other for some time.

H. A. ALEXANDER, Sworn for the Movant. I am a practicing attorney in Atlanta, Georgia, and I have made a careful study of and am familiar with the handwriting of Jim Conley as shown in the two writings or notes found near the body of Mary Phagan, also in other specimens of his handwriting made for the police department, and particularly the note written by him for the police on an occasion when he was taken to the National Pencil Factory by them. I am familiar with the peculiarities of Conley's handwriting, notably the unnecessary stroke which he invariably throws into the letter "s"; his unusual method of making the letter "o" by which he brings into the circle of the "o" the ending of the last stroke of the preceding letter and the beginning of the first stroke of the following letter; the uniform dropping of the letter "h" below the line; the disjoining of the last stroke in the letters "w" and "b" from the following letter when such following letter begins on the line; the use of a capital "p" and the dropping of the letter "k" below the line. I have examined the letters attached to the affidavit of Annie Maude Carter entitled and filed in the above stated case, and in my opinion said letters were unquestionably written by Jim Conley; In my examination of said letters, I find ~~the~~ identical peculiarities described above and also the same mis-spelling, for example, "wood" for "would", "hisslef" for "himself". There is not

the least doubt in my mind that these letters were written by the same person who wrote the notes found by the dead body of Mary Phagan.

S. N. TEITELBAUM, Sworn for the Movant. I am a court reporter and reported the oral argument made by Solicitor General H.M. Dorsey to the jury in the matter of the State vs. Leo M. Frank in Dulton Superior Court, on August 22, 23 and 25th. The Solicitor made the following statements:

(page 78) "...this man Frank, by the language of these notes, in attempting to fasten the crime upon another, has indelibly fixed it upon himself. I repeat it, these notes, which were intended to fix the crime upon another, have indelibly fixed it upon this defendant, Leo M. Frank. (page 79) And this man, here, by these notes purporting to have been written by little Mary Phagan, by the verbiage and the language and the context, in trying to fasten it on another, as sure as you are sitting in this jury box has indelibly fastened it on himself. (page 80) This letter that I hold in my hand says that this negro 'did it', 'did it', 'did it'—Old Jim Conley in his statement here, which I hold in my hand, every time he opened his mouth says, 'I done it' and 'I done it' and 'I done it'. Old Jim Conley if he had written these notes, never would have said 'this negro did it by hisself', but Frank wanted it understood that the man that did it, 'did it by hisself'. (page 81) My! My! 'That negro fireman down here did this'. ~~That's what they say, that's what they say~~ Now, let's see how many times Jim says 'done it'. 'I locked the door like he done told me, I remembers that because the man what was with the baby looked at me like he thought I done it'. That's when they ran into the man that Jim says that man looked at him like he thought 'I done it'. It's the difference between ignorance and education, and these notes that you had that man prepare in your office on this paper that stayed on that floor and on that pad that came from your office, bears the marks of your diction, and Starnes and Campbell, with all their ingenuity, couldn't have anticipated that old Jim would get up here and state that 'this man looked at me when we ran into that baby like I done it'; and couldn't have said 'I locked the door like he done told me'; and couldn't have said 'I went on and walked up to Mr. Frank and told him that girl was done dead, he done just like this and said sh-h-h'. I could go on with other instances. (page 91) ..and it's a reasonable tale that old Jim tells you, and old Jim says, 'I done it', not 'I did it', but 'I done it' just exactly like this brilliant superintendent told him. There's your plot. (page 172) The diction of the notes, 'this negro did this', and old Jim throughout his statement says 'I done it', sustains Jim Conley. (page 174) Maybe he did, in certain instances, say that he did so and so, but you said in your argument that if there is anything in this world a negro will do is to pick up the language of the man for whom he works; and while I'll assert that there are some instances you can pick out in which he used that word, that there are other instances you might pick showing that he used the word 'I done' and they know it."

LEONARD HAAS, Sworn for the Movant. I have read the brief filed by the Solicitor General in the Supreme Court, and said brief contains

the following language: "These letters have intrinsic marks of a knowledge of this transaction. First: the pads were both usually found in his office and near his office. The language of these notes in attempting to fasten the crime upon another has indelibly fixed it upon himself. The pad, the paper, the language, yes, even the fact that the notes were written, show not that the negro committed the crime, but another."

78 W. CARROLL LATIMER, ALBERT E. MEYER, Sworn for the Movant. We are acquainted with Leonard Haas and Henry A. Alexander and know their gen-

eral character for truth and veracity. The same is good and we would believe them on oath in a court of law.

WILLIAM J. BURNS, Sworn for the Movant. In the office of Solicitor General Dorsey I carefully examined the clothes taken from the body of Mary Phagan and found the same to be the following condition: The inside seam of the drawers was cut, not with a sudden rip, but deliberately, by one who took his own time in doing it. The cut began at the lower right leg, continuing up across the crotch and partially down the left leg. The drawers themselves were extremely baggy and roomy - This left the anatomy of the little girl fully exposed, with the exception of the knitted undershirt, the garment that was worn next to her skin, which adhered closely to the body and came down pretty well over the hips, the knitted undershirt was also cut, the cut starting on the left side, extending up about four or five inches, then the cut extended across the shirt to the left side. There was also a cut over one of the breasts of the shirt, which exposed the left breast. The drawers themselves, and the stitches indicate that the drawers were cut and not torn, and at the crotch you can see where the knife slipped and the material, itself was cut. There is blood and urine all over the front of the skirt almost from the bottom up to the breasts. *attested by C. W. Burke*

as notary
DAVID MARX, ISAAC H. HAAS, Sworn for the Movant. We are acquainted with Wm. J. Burns. His character for truth and veracity is good, and we would believe him on oath in a court of law.

H. A. ALEXANDER, Sworn for the Movant. I accompanied Wm. J. Burns when he called at Solicitor General Dorsey's office and saw the said Burns examine the clothes taken from the body of little Mary Phagan. *attested by C. W. Burke as notary*

JAMES I. ENNIS, Sworn for the Movant. I am a handwriting expert from Chicago, Ill. I have been engaged in this work for about twenty five years. I have testified in probably 300 cases. For the past two years and a half I have been one of the Masters in Chancery of Cook County. I lecture for the Illinois Bankers Assn. the American Institute of Banking, the Walton School of Accountancy, the Chicago Business Law School. I have done most of the work of the U.S. District Attorney's office and the U.S. Secret Service in the City of Chicago for the last sixteen years. As to this case, I

79 have been called in to the case by Mr. Herbert J. Haas, who requested

ed me to make a comparison of the handwriting which appeared on the two notes found by the body of Mary Phagan, and copies of which appear as State's Exhibits Y and Z in the brief of the evidence filed in this case, with the handwriting of the letters attached to the Annie Maude Carter affidavit of April 23, 1914. Mr. Haas placed in my possession these letters, together with the original notes. Mr. Haas gave me these exhibits with the statement that I was to compare the handwriting and to give my opinion as to whether or not all of the writing was written by the same person, or if it was the handwriting of more than one person. I spent five hours today in thoroughly examining, comparing and analysing the handwriting appearing in all these documents, said documents being two original notes and the twenty seven pages comprising the letters attached to the Annie Maude Carter affidavit, and from such examination, comparison and analysis, I am of the opinion that the same person wrote each and every specimen of the handwriting submitted to me. After I had so reported to Mr. Haas, he asked me whether or not, in my opinion, the two original notes were written by the same or different person from the person who wrote the other letters shown me. I told him, as before, that they were made by the one person, and that but one person was the author of each and every specimen furnished me. The many, many striking points of similarity are so great that in my opinion, it would be impossible for more than one person to have exhibited all the peculiar characteristics exhibited in the two original notes, which are reproduced in all of the other exhibits. ~~Exknownothing~~ My associates are Francis W. Walker, Attorney at law, E.D. Hulbert Chicago, Vice-President Merchants Loan & Trust Company Bank, Chicago; Judge Marcus Kavanaugh, Judge Superior Court, Cook County, Ill; E.G. Sims, Ex-E.U. District Attorney, Orson Smith, Pres. Merchants Loan & Trust Company Bank, Chicago.

ORSON SMITH, EDMUND D. HULBERT, FRANCIS W. WALKER, Sworn for the Movant. We know James I. Ennis and know his general character for truth and veracity. Said character is good and we would believe him on oath in a court of law. We know that James I. Ennis is an expert in handwriting and has had twenty five years experience as a handwriting expert.

001608

COUNTER SHOWING OF THE STATE.

GROUND 1.

W. A. GHEESLING, Sworn for the State. I am the undertaker who took charge of the body of Mary Phagan and who swore upon the trial of the case of the State of Georgia vs. Leo M. Frank and Jim Conley. On Sunday morning, April 27, 1914, one of the first things that I did was to clean up the body of Mary Phagan, and among other things I washed her hair thoroughly with pine tar soap. The effect of pine tar soap on hair is always to change the color of the same, and as a matter of fact the washing of Mary Phagan's hair with the pine tar soap did change the color of Mary Phagan's hair. It rendered the hair lighter. This change was very perceptible to the eye. The effect of washing the hair with pine tar soap was not only to cut out the dirt that had gathered in the same, but also took out and off of the hair all of the oil which is usually found on the hair of living persons. Mary Phagan was buried on Tuesday following the day that I washed her hair. I have been an undertaker for eighteen years, and I personally know that it frequently happens that hair on dead persons' heads grows both in length and size.

J. W. COLEMAN, Sworn for the State. I am the husband of Mrs. Fannie Coleman. Mrs. Fannie Coleman was the mother of Mary Phagan, who was killed at the National Pencil Factory. I am the step father of Mary Phagan. I have known Mary Phagan for about four years before her death, and she lived with me and her mother in our home, from the time of our marriage up to the time of her death. I saw the hairs which were taken from the lathe handle in the pencil factory. I saw them at the City Police Headquarters. They were exhibited to me by city detective Black. The hair exhibited to me by officer Black resembled in every way, that I could tell by the naked eye the hair of Mary Phagan. I looked at the hair closely and did my best to arrive a true conclusion, and to the best of my knowledge and belief, the hair exhibited to me by officer Black, as the hair recovered from the lathe in the factory, was the hair of Mary Phagan, my step-daughter, who was killed at the factory. This hair was exhibited to me a few days after the killing.

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JOHN R. BLACK, Sworn for the State. I am the party referred to in the above affidavit of Mr. John W. Coleman, and that I did so exhibit the hairs recovered from the factory and delivered to me as the hairs recovered by Barrett on the lathe of the National Pencil Company, and the hairs examined by said J. W. Coleman are the same hairs recovered and said J. W. Coleman did as above indicated state upon examining said hairs at the city police headquarters, that to the best of his knowledge and belief they were the hairs of Mary Phagan, who was killed. These hairs examined and referred to in the above affidavit of Mr. Coleman are the same hairs that were delivered to Dr. Harris at the State Capitol, I being present when said hairs were delivered to Dr. Harris.

MRS. L. L. ARMSTRONG, Sworn for the State. I am the proprietor of the Sanitary Hairdressing School at 100½ Whitehall Street. During the many years experience I have had in the business of hairdressing and dealing in human hair I have examined hundreds of specimens of hair and know it to be an established fact that hair from the same head often varies widely, both in color and in texture. As a general rule samples of hair taken from the ends of a long strand of hair are of a lighter shade than samples taken from closer to the base. It is also a fact that a small sample of hair, consisting of only a few strands, when compared with a larger sample, of hair from the same head, will almost always look lighter in color, especially if the hair is of a light shade. Attached hereto is a small sample of hair which I myself cut from a person's head today. Examination of this sample shows that one end is much lighter in color than the other end, the light colored end (a slightly reddish color) being the extremity of the hair and the darker brown colored being the end next the scalp. I have seen many cases like this, and some in which the variation in color was even more marked than this.

(Attached to the affidavit is the hair referred to therein)

MISS JIMMIE MAYFIELD, Sworn for the State. I am employed at the National Pencil Company and have been there about a year and a half.

I have read ground #2 of the extraordinary motion for new trial in the above case and they have me quoted as saying "the said Jimmie Mayfield now states positively that the hair showed to her by the said Barrett, was not the hair of Mary Phagan, and that the same was

entirely too light in color and was not of the same texture as that of Mary Phagan." This statement is false and untrue. I did not say positively that it was not Mary Phagan's hair, for I did not know, and do not know now. I did say that the hair Mr. Barrett showed me was too light for Mary's hair, but I could not say positively that it wasn't her hair. I have read the foregoing statement which I made in the presence of officers J.H. Starnes, and Pat Campbell and my father and mother, Mr. and Mrs. S.I. Mayfield.

MRS. CORA PALTA, Sworn for the State. I have been working at the National Pencil Company's factory for five years. One Monday, April 28, 1913, we were all at work and Magnolia Kennedy come running in the room and said "we have found some of Mary's hair on the lathe machine" and we all quit work and went out there and looked at it. I just did take a look at it and then walked away, and I could not say how many strands of hair were on the machine, and I said "Mary's hair was kind of dark and that hair looks light", and then I walked away. That is all I said about it. About ten days ago, Mr. Burke come down to the National Pencil Company to get me to sign an affidavit regarding the color and texture of Mary Phagan's hair, and he had the affidavit written out when he came, and he read it to me, and that affidavit quoted me as saying that "I would swear positively that the hair found on that lathe machine was not Mary Phagan's because it was too light and not of the same texture as Mary Phagan's hair" and I told Mr. Burke right then that I did not say positively it wasn't Mary Phagan's hair, because I didn't know whether it was or not, and I told Mr. Burke he would have to take that part of it out, and he said that was all right, that they would fix that all right. When I told Mr. Burke to scratch out that part of it, about swearing positively it wasn't Mary Phagan's hair, that big man, whom I have since learned is Mr. Lehon, he come right up to me and said "Oh, no, of course not, none of us can say positive, but we will fix that all right". I held up my hand and swore to this affidavit when they said they would scratch out that part I told them to. I did not know then and I do not know now whether that was Mary Phagan's hair which was found on the lathe. I have just been shown a copy of the extraordinary motion for a new trial in the above stated case, and in ground #3, pages 5 and 6, they

have me quoted as saying "positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and not of the same texture". This statement is absolutely false and untrue.

GROUND #4.

BASS ROSSER, Sworn for the State. I have examined the stenographer's report of the trial of the case of State vs. Leo M. Frank, same comprises seven large volumes, written on legal cap paper, and covers 3,647 pages.

5th GROUND.

ALBERT MCKNIGHT, Sworn for the State. I have heard read to me the affidavit which has my signature on it, and which I swore to before G.C. February on the 16th day of April, 1914, and witnessed by several white men, this being the affidavit that was taken from me at the police station recently. This paper is just exactly as I spoke it. This affidavit is absolutely true. The reason I made the affidavit for Burke was because he kept an after me. Burke came to me and told me that he would get me a job at the Terminal Station, making \$10.00 a week, and he said the tips I would get around there would average \$100. He asked me how much I was making, and I told him \$7.00 a week. He asked me hadn't I rather have a job like that than have one just making \$28.00. I told him yes. He says, "Why don't you go on then and tell me the truth," says, that "there isn't one out of a hundred believes what you told on the stand." He asked me could he learn me how to drive his automobile, and I told him yes. He says, "Well, then, if you wouldn't like the job around the Terminal Station, I will learn you how to drive the car, and move you in a little house out near me, and Minola can work for me if she wants to. The job he got me was a job at a guano house. I wouldn't take that job, and he sent me then down to Schoen Bros., 325 Decatur St. packing hides. Schoen Bros. are Jews. I worked down there five days. I lays off then until next Monday. He promised ^{me} that Terminal job and never gave me that, and promised to learn me to drive his automobile and didn't give me that job. I got hurt at a crossing on McDaniel Street. I was hiding out to keep away from the detectives. Burke told me that they were looking for me to make a witness out out of me in the Conleya case. This is the first I knew they were

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looking for me. He told me to leave town that Sunday before the Conley case came up the next week. He told me not to let them get me by any means. I asked him if I went to Stockbridge to my mother's would that be all right, and he said yes, just so I got out of town and didn't let them get me. After I was hurt they took me down to Fairhaven Hospital, colored. When I was down there Burke came down and ~~XXXXXXXXXX~~ brought a man by the name of Burns and some Jew, whose name I don't know. Burns went over with me, in Burke's presence the same things that I stated to Burke, and I told the same thing, I told Burke, but Burke knew that I was not telling the truth. I am now staying at the police station because I want to stay there to keep Burke and his crowd from worrying me. While I was over at the hospital, while Mr. Burns and Mr. Burke were present, they tried to get me to say that the city detectives beat me up. They asked me if I was sure the train hit me, said I had a scar on the back of my head, and I couldn't have got bruised up by getting struck by the train, that they believed the detectives beat me up. They asked me "Do you know for certain that the train hit you?" I told them yes sir. Burke gave me the attached card and said to leave town, and if any of the detectives got me to call him up and he would come to see about me. Nobody has mistreated me since I have been staying at the station house. I have read over as best as I could this affidavit and the affidavit I swore to before G.C. Debruary, on 16th of April, 1914, and I have written my name on each page to this affidavit, and of that affidavit, both of which I say contain true statements.

(Attached to the above affidavit is the card of G.W. Burke, referred to in the affidavit, with the name Albert McKnight written across it).

Mr. Burke come out to my house three or four times to see me in the afternoon, but he didn't catch me there until he had made the third or fourth trip, and he caught me there at seven thirty and I was in bed, and he sat down and talked to me, the way people do and that I had to die, and if I had to die then did I think I would go to heaven and all like that and I said yes, and all the time I knew what he was after, for me to change my affidavit, and Minnie would tell me at night that these fellow had been out there to see me, and I said what for and she claimed she didn't know, and he come

the second time and I wasn't there, and he come again, I think it was Thursday or Friday, and I wouldn't make him no affidavit, and then he says "I will come to see you Sunday afternoon, will you be here, and I said yes sir, and he said I will be here at 2 or 3 o'clock and I said all right, and so he come out there that evening. There was nobody with him that Sunday I give him the affidavit, and he told me, he says "there isn't one out of hundred that will believe what you testified to on the stand" and I says "I can't help that, it was the truth" and he said "that is a damned lie, you know it aint the truth, why don't you tell me the truth now, your wife has told me that you told her it wasn't the truth" and I told him I didn't tell her that. He wanted me to make another affidavit, and he said "didn't Craven offer you a whole lot of money or give you some money to make the affidavit" and I said no he didn't promise me nothing, I made it of my own free will" and Mr. Burke keeps after me until I would say I would make him one and so I said all right and I said I don't know nothing about it, I wasn't there on that day I was there at 12 o'clock and leaves there at 12:30" and I says "I was not at home when Mr. Frank come in, whether he was there or not, I don't know for I wasn't there" and Mr. Burke wrote all of that down, and I told him all of this affidavit was a lie, and that it was made up, and when I told Mr. Burke it was made up by me, he wrote it down as Mr. Craven preparing it for me, and I swore to it, but I didn't tell him Mr. Craven prepared it for me, and he says, he asked me a whole lot of questions, he said if I hadn't changed my affidavit and told the truth the Jews were fixing to do something to me, he never did say what they would do only he said they would kill me if I hadn't changed my statement and told the truth, and I told him that I told the truth the first time, and he says I gained more friends by changing my statement. I never did make but one statement to Mr. Burke, but I have signed three or four for him, I signed one yesterday for him, I was at the Terminal Restaurant, and Mr. Burke comes in the cook room where I was at and said "hello Albert" and he said "come on there are two fellows out here wants to see you, but I didn't know who they were, and I goes on with him and goes to the colored waiting room and Mr. Burke stops in the hall where the white folks go to the trains, and he talked with

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the head man, and me and these other two fellows were standing in the waiting room and he reads this affidavit over to me, or pretended to read it to me, whatever he read sounded like this first affidavit I made for him, and I signed it, and after I signed he says "this is your affidavit then is it" and I said "yes sir" and I held up my right hand and swore to it and he says all right good bye and they passed by Mr. Burke and I go back into the cook room and Mr. Burke never said anything more to me at all, and he tells Mr. Boyd to discharge me from my job, and Mr. Boyd said when ~~he said~~ ^{and he} said right now. The reason I quit the Beck & Gregg Hardware Co. Mr. Burke said he would get me a better job. While I was at the hospital Mr. Burke called on me and asked me if I was suffering for anything and I told him no. I don't remember how many ~~times~~ times He come out there to see me, but he come once or twice before I got my senses. Mr. Burns come to see me while I was in the hospital and he read the affidavit to me that I had made to Mr. Burke, and he asked me if it was true and I told him yes, and he just went over a whole lot of questions that Mr. Burke had gotten. That was while I was sick in the hospital. The affidavit those two fellows got me to sign over at the Terminal Station was already typewritten when they brought it over there, I didn't have to say anything. The only paper that was written in my presence was the first one I made at home. All the others that I have signed, which have been at different times, were already written when they were brought to me, and they read something to me, I suppose they read what was in the papers. The first ~~state~~ affidavit I made to the officers and in court is the truth and all the others are false.

R. L. CRAVEN, Sworn for the State. I have known Albert McKnight for over a year. I did not know where he lived or for whom his wife worked, or that he knew anything about anybody related to Leo M. Frank in any way until one day I happened to hear Albert make a remark to another negro about Frank. That attracted my attention, and I asked what he knew about Frank. He said he ought to know, his wife had been working for Frank about a year and a half. I went on to question him to tell me what he knew about it. Albert said he was at the Selig home when Mr. Frank came in at lunch time, said Frank came in the dining room, went up to the sideboard, looked in the sideboard, stayed in there a few minutes and turned

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around and walked out and he told me other things connected with that matter at that time. I asked him to make a statement and he said he was afraid they would lock him up. I told him he needn't be afraid if he told the truth, and if he knew anything and it was the truth, he ought to tell it, and ~~he~~ I cautioned him not to tell anything but the truth, and to be very careful what he said, because it was a very serious matter to accuse a man of a crime of that kind unless it was absolute fact. He also ^{told} me what his wife, Minola McKnight, told him, which was as follows: That Miss Lucile was telling Mrs. Selig Mr. Frank came home and acted like he was drunk, didn't sleep well and made her get out of the bed and sleep on the rug by the bed, said she wanted to know what was the matter, and he said he had murdered somebody. Afterwards I told both Mr. E. H. Pickett and Mr. Angus Morrison. Albert told me his tale and I wrote it down. I told Mr. Morrison to get in some place where he could hear me talk to Albert about it without Albert knowing ~~it~~. Morrison was listening. I did that, and Albert repeated the same story he had originally told me, and I then also, in addition to letting Albert tell me, read it over to Albert so Mr. Morrison could hear it, and Albert was right there with me, helping to read what I had written out. I read it slowly, so he could understand everything. He said what I had written down was true, and he afterwards swore to the same thing on the stand. Afterwards he swore to the same paper which I read over to him. Said paper is hereto attached, marked Exhibit "A" and made a part hereof, same being identified by writing my name on it. Nothing was ever said at any time by me with reference to any reward, and I have never put in any claim for any reward, and I do not now claim a reward, and I do not expect to make any application for any reward, and do not want any reward. My interest was simply to get at the truth. McKnight's talk with another negro was simply overheard by me and he made every statement that he made to me with reference to what he knew about this freely and voluntarily without any threats of any kind or character whatsoever. I neither threatened him nor paid him nor urged him, but did from from time to time ~~urge~~ caution him to tell nothing but the truth, and endeavored in every way that I could to impress upon him that it was a very serious proposition to tell what he told un-

less it was the truth. I was present at the police headquarters when Minola McKnight made her affidavit sustaining everything that Albert McKnight said to me. Albert McKnight, in the presence of his wife, Minola McKnight, stated that what he had said was the truth, and Minola McKnight at last admitted that it was the truth. George Gordon, who claimed to be the attorney for Minola McKnight, heard every word of the paper which Minola McKnight signed, read over to Minola McKnight, and was present when Minola McKnight signed her name to that paper, which she afterwards repudiated, and said George Gordon questioned Minola McKnight in my presence about some statements contained in that affidavit, and Minola McKnight told him in my hearing that the statements were true. Albert McKnight was also present and heard everything that occurred and was urging Minola McKnight to tell the truth. I heard J. N. Starnes, detective, tell Minola McKnight before she signed her paper, that if she could tell him anything favorable to Frank, that he wanted her to do it, because he would a good deal rather hear something favorable to him than something against him, and he further told Minola McKnight in the presence of her attorney, George Gordon, and in the presence of her husband, Albert McKnight, "Now Minola, if this ^{is} not the truth that you are stating, don't you tell it." Albert McKnight is present when I sign this affidavit and I have read over to him the same before I signed it, and Albert McKnight says that wherein reference in this affidavit is made to him and what he said and did, the same is absolutely true:

(Exhibit "A" referred to above is as follows:

June 2, 1913 - *Monday - May 26 - 1913 - attested before a notary*
I, Albert McKnight was at Mr. Leo M. Frank's home on East Ga. Ave. the Saturday the girl was murdered at the Pencil factory on Forsyth St. My wife Minola is cooking for Mr. Frank and has been for about two years. I was in the kitchen about 12 o'clock this same Saturday that they say the girl was murdered. The door bell rung and my wife Minola went to the door. When she come back in the kitchen I asked her who it was at the door and she said Mr. Frank. She asked him if she must fix his dinner now and he said he did not want any. He did not go upstairs to see his wife as she asked what went with Mr. Frank, wasn't that him that some ~~fact~~ *fact* now. Mr. Frank left the house in about five minutes. I saw him go out of the house and catch the Georgia Avenue car. I was at the house from about 9 A.M. Saturday on until about 3 P.M. I went back to Mr. Frank's house the next morning Sunday. When I went in the kitchen my wife said what do you think Mrs. Frank said Mr. Frank said he had killed some body and that he rolled and tumbled all night and said he could see it looking at him and to give him his damn pistol and let him hoot his damn head off; What made me do it, a man like me, I must be crazy. Mrs. Frank asked her father and mother if she thought he had really killed some one. He had been drinking, he made me get out of bed and sleep on the rug by the bed. This was told at the

breakfast table Sunday morning and my wife was listening from the kitchen. Then Mrs. Frank was only paying my wife \$3.50 per week up to the Saturday of the murder and they told her if she would not talk they would pay her \$7.00 per week and she would not have to work as late as she had been doing. And for her to say nothing at court but what they told her to say. They gave her \$5.00 extra the day she went to court. They are paying my wife money all along as she is buying lots of dresses and has money all the time. I can tell Mr. Frank has done something as they act strange. Mrs. Frank tells Magnolia every day not to forget what to say if they come for her to go to court again. Mrs. Frank had a quarrel with Mr. Frank the Saturday morning of the murder she asked Mr. Frank to kiss her good bye and she said he was saving his kisses for a girl and would not kiss her. Magnolia also heard Mrs. Frank say she would never live with him again for she knew he had killed that girl and that they had the right man and ought to break his neck.

Signed Albert McKnight & returned by R. L. Craven & Agnus Morrison
E. H. PICKETT, Sworn for the State. I have been working for the

Beck & Gregg Hardware Company for twelve years. Albert McKnight was discharged by me for some minor offense from the employ of the Beck & Gregg Hardware Company some time immediately previous to April 26, 1913. I cannot recall the exact date and was not working for me on April 26, 1913, but came back to work for the Beck & Gregg Hardware Company a few days after the murder, but exactly how many I cannot recall. Albert McKnight freely and voluntarily stated to me that he saw Leo M. Frank on April 26, 1913, at the Selig home between 1 and 2 o'clock; that Frank did not eat ~~any~~ any dinner and that he went over to the sideboard, stood there for a few minutes and left the house in ten minutes after arrival, and made the other statements which he swore to in the trial of the case of the State vs. Leo M. Frank. He not only made these statements to me, one time, but many times. I have read over the affidavits this day signed by Messrs. R. L. Craven and Agnus Morrison, and the same are true, wherein they contain statements which purport to refer to those certain facts coming within my knowledge. I was also present at the police station and heard what occurred there, as testified to by Mr. Craven. After Albert McKnight made the statement to Mr. Craven, and before the same was sworn to, and before anything was made public, I impressed upon Albert McKnight the importance of telling the truth, and I told him that under no circumstances could he expect to get any reward or any money for what he said he was willing to swear. On the other hand I told him that it would probably cause his wife, Minola McKnight, to lose her job and could only result in worry and trouble to him, even if what he said was true, my purpose being to see that there was no improper influences

operating on his mind in telling what he did. Albert McKnight is present when I sign this affidavit and has heard read over to him the same before I signed it, and Albert McKnight says that wherein reference in this affidavit is made to him and what he said and did, the same is absolutely true.

ANGUS MORRISON, Sworn for the State. I have been working for the Beck & Gregg Hardware Company for fourteen years. I heard the affidavit this day signed by R.L. Craven, dictated, and I have read over and seen him sign that affidavit. In so far as the statements in that affidavit refer to me, they are absolutely true. I concealed myself in #3 warehouse of the Beck & Gregg Hardware Company at the request of Mr. Craven and for the purpose of hearing Albert McKnight make a statement with reference to what he knew about Leo M Frank on Saturday, April 26, 1913. I heard Albert McKnight tell Mr. Craven that he saw Leo M. Frank between one and two o'clock on the Saturday that Mary Phagan was killed, that Frank came home, that he saw him through the looking glass, go into the dining room, that Frank did not eat anything, that he stepped over to the sideboard, and that Frank left the house within ten minutes after he got there. I also heard him tell what Albert said his wife Minola told him about what occurred between Mrs. Lucile Frank, Mr. Frank's wife, and Mrs. Selig, Sunday morning at the breakfast table. I then heard Craven read over to Albert McKnight what Craven said he had written out and Albert said it was the truth. I never thought of any reward don't want any reward. I knew the Solicitor General well and I happened to meet him casually one day after I had heard the aforesaid conversation. I told him that I could give him an important bit of information, but that at that particular time I was in a hurry. A week or ten days passed before the matter was again discussed, then Starnes and Campbell came up and said that Mr. Dorsey had sent them to see me. I declined to talk to them until I had called Mr. Dorsey over the telephone, and he said it was all right and I then took them down to Mr. Craven and McKnight. McKnight told the detectives exactly the same thing he told Mr. Craven. Both Starnes and

Campbell told him that if it wasn't the truth to say so. McKnight then signed the paper, which Craven had read over to him. McKnight

continued to work at the Beck & Gregg Co until it was reported in the papers he had made an affidavit for Leo M Frank

~~never~~ came back to work after the newspaper published the repudiation of his evidence *in affidavit of April 15, 1914.*

W. W. BOYD, Sworn for the State. I know C.W. Burke. I run the Terminal Restaurant. Albert McKnight was working in the restaurant in the capacity as pot washer. On the 15th day of April, 1914, Burke came to me and told me that McKnight wanted to quit. I did not know McKnight until Burke came and told me that he wanted to quit. Lehon and another man were with Burke at the time. Burke talked with McKnight, I don't know how long, over in the colored cafe. I assumed that McKnight wanted to quit and I let him go.

4TH GROUND

ALICE MARJORIE McCORD, Sworn for the State (before Commissioner) I have been employed at the Pencil factory for about five years. I have read the fourth ground in the extraordinary motion for new trial, where I am quoted as saying "positively the hair on said lathe was not the hair of Mary Phagan and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan." *I didn't make the statement as quoted* The statement is not true ~~and~~. I did not say positively that it was not her hair. I did not say anything about the texture of Mary Phagan's hair or the difference in the texture in her hair and that found on the lathe. I don't know whether there was any difference. The hair found on the lathe, I said looked to be lighter than Mary Phagan's. *I could not swear to my own hair positively if brought to me sometime after taken from my head.* 7th GROUND.

CHARLES PHILLIPS, JR., Sworn for the State. On or about March 6th, 1914, I called at the tower for an interview with Leo H. Frank, and questioned him about the affidavit of Mrs. Ethel Harris Miller. He discussed the matter at length and in the course of his conversation said that sometime after the trial a friend of his told him that Mrs. Miller, formerly Miss Harris, saw him on the corner of Whitehall and Alabama Streets, on the 26th of April. "The moment it was mentioned to me", said Frank, "the whole occurrence flashed over my mind and I remembered that she bowed to me and that I tipped my hat. Although I had naturally racked my memory until for every happening on that day I had not remembered seeing Mrs. Miller until the matter was mentioned to me after the trial. When the matter was mentioned to me, however, I then remembered how she was dressed

and described her costume to my friend who said: 'That's right, she was wearing clothes of that kind.'

8TH GROUND

MRS. CARRIE SHITTY, Sworn for the State. On Monday night, April 20, 1914, at about 10:00 o'clock I was standing at a weiner stand immediately in the rear of the Metropolitan Club building near the corner of South Forsyth and West Mitchell Streets. A man who had introduced himself to me, who had been passing under the name of Maddox and who represented himself to be a book agent and said he was at work getting up a book, came riding by in an automobile which stopped in front of the entrance of the Metropolitan Club. In this automobile there were one or two other men. I cannot remember exactly, but I think there were two other men; at any rate, some of them got out of the automobile and went into the entrance of the Metropolitan Club and this man Maddox came up to where I was. He bought him a weiner. This is the man who said to me that he was an agent and was getting up a book on the Frank case and that his commission on the book would be \$40.00 and he told me if I would sign a certain paper which he brought to me, he would give me one half of his commission. I refused to sign the paper. I formerly worked off and on three years for the National Pencil Company and knew Leo M. Frank well. I was well acquainted with his general character and reputation and I state that his character and reputation are and were prior to the murder of Mary Phagan, bad. I have read over my evidence as given on the trial of Leo M. Frank and say that the same is true. I was present when twelve or fifteen girls were in the office of Solicitor General Hugh M. Dorsey in the Kaiser Building, the day we were sworn in the case against Leo M. Frank. This was the first and only time that the Solicitor General ever talked to me. He stated that the law only allowed certain questions to be asked and that there were certain answers, one way or the other, to be given. He put the questions, viz, first "Are you acquainted with the general character and reputation of Leo M. Frank?" If there were any present who did not answer that "yes" it was only one or two, as certainly most every one present ^{said} they were. He then put the question, "Is that character good or bad?" and the girls answered, including myself, that Frank's character

was bad. Some time after the trial of the case I was requested by Miss Marie Karst to meet her for the purpose of going to a show on the 7th floor of the Grant Building. I went up there and there found this same fellow Maddox who undertood to pay me \$20.00 to sign his affidavit. Miss Marie Karst was not present and I did not get to see her. There was another man with Marie who undertood to talk to me also about the case. After telling the Solicitor General on this April 20, 1914, about how I was gotten up into the Grant Building, I went to the same place in order to see whose office it was. I find that the office they had me go to, in which this man Maddox was seen by me, was the office of Rosser, Brandon, Slaton & Phillips, and the private office into which I went and where I saw this man Maddox was the office which has on the door thereof the name: "Mr. Slaton".

JOHN R. BLACK, Sworn for the State. About 7 o'clock, on April 24, 1914, I was standing at the corner of S. Pryor and Mitchell Sts. with C.A. Isom, when Miss Carrie Smith came out of the Southern Bell Telephone Exchange and came across Pryor St. and Mr. Isom pointed her out to me as being the same lady he had seen on April 20, 1914, at the weiner stand in the rear of the Metropolitan Club on Forsyth St. about 10:00 o'clock P.M., and I saw her stop and talk with N.A. Garner on this April 24, 1914 there on Mitchell St. about 7 o'clock, and Mr. Isom told me that she had on the same dress that she had on the night he saw her at the weiner stand.

MRS. MAGGIE NASH (formerly Griffin), Sworn for the State. I have read over my evidence as given on the stand on the trial of the case of the State vs. Leo M. Frank. The same is true and absolutely correct. I am acquainted with the general character and reputation of Leo M. Frank. It is bad. I am also acquainted with the general character and reputation of Leo M. Frank as to lasciviousness, that is his relations with women. That character is bad. It is true that during working hours, as stated in my evidence given on the stand, I saw Leo M. Frank go into the lady's dressing room with a woman who worked on that floor. I saw him go in there three or four times, sometimes in the evening and sometimes in the morning. He would stay in there as long as from 15 to 30 minutes. So far as I know there was nobody else in that room with Frank and this woman

at the time. I don't know, of course, what Frank and this woman were doing in there, but I do know that they were in that room which was supposed to be used only by the girls as a dress room, and I don't know of any business that could have been carried on in that room by Frank and this woman that was right and proper or connected with the National Pencil Company's business. The key to this room was carried by the woman I saw go into this room with Leo M. Frank. It was her uniform practice, as soon as the girls were dressed for work and went to work, to lock this room and put the key in her pocket. I don't know whether Frank, when he and this woman were in that room together, whether the door was locked or bolted. I never did try to go in there when they were in there, and so far as I know no one else tried to go in on them. I have read, myself grounds 8 and 9 of the extraordinary motion as filed on behalf of Leo M. Frank in the Clerk's office of the Superior Court on the 16th day of April 1913. The original paper is before me at the time I sign this affidavit. The statements contained in ground 8 are absolutely false in every particular. I have not made any affidavit to anyone with reference to my evidence as given on the stand. I have not made any statement to any person contrary to what I swore on the stand. The evidence I gave on the stand is the truth in every particular, and I here and now re-affirm and re-assert the evidence as given on the stand and I now say that Leo M. Frank is a man of general bad character and reputation, both generally and in reference to his relations with women. I merely knew Dewey Hewell. I never talked with her in my life except the day she was up in the office of the Solicitor General, Hugh M. Dorsey, and she then and there voluntarily told me what she was going to swear on the stand. She told me she was going to swear exactly what she did swear. I did not approach her or suggest anything at all to her with reference to the evidence that she swore. Dewey Hewell told me she had seen Frank talking to Mary Phagan and had heard Frank call her "Mary". Dewey Hewell also told me that she saw Frank one time on the 4th floor of the National Pencil Company's place of business, with his arms around a woman, off in a dark place near the stairway. She said

Frank and knew that he was the man. I didn't pay much attention to what the girl had to say. I talked to Solicitor General Hugh M. Dorsey in the presence of Mr. Pass Rosser, City detective. The day I went on the stand, Mr. Dorsey came into the room in his office where all of the girls were assembled, including Miss Nellie Wood. Mr. Dorsey stated that the time had now come when the State would introduce evidence with reference to Leo M. Frank's general character. He said he had been over and had talked to ^{each of} us separately, about the evidence we were going to give, and now he wanted to talk to us ~~us~~ together, and see if everybody understood exactly what questions would be asked. Mr. Dorsey told us he only wanted the truth and nothing but the truth. He also said that if we were not going to swear as we had told ^{him} we would swear that he wanted us to say so then and there in order that he might be saved and time and trouble of putting the witnesses on the stand. He then said, I will now ask the question and I will take each of you one at a time, I want you to pay strict attention and give the answer that is the truth and that you expect to give on the stand. He then said "Are you acquainted with the general character and reputation of Leo M. Frank" and put that question to each one of the girls who were present. Among others was Miss Nellie Wood, and she stated yes, and he then went to ^{each} one of the others with this question and all of them answered yes. Mr. Dorsey then said "is that character good or bad" and went first for the answer to that question to Miss Wood and she said it was bad. Each and all of the girls present in that room stated that the character of Leo M. Frank was bad. At no time did the Solicitor General ever tell the witnesses to answer off sharp and quick. He did say that the answer was first yes or no, as to whether Leo M. Frank's general character was bad, and he did tell us that it was not what we knew personally about Frank, but what was generally said of him by other people. Some of the girls were frightened at the idea of going into the court room. We were assured by Solicitor Dorsey that there need be no fear, and that it would not probably take very long. Dewey Hewell was not present when all these other girls were being talked to by the Solicitor General at his office in the Kiser Building. The conversation I had with Dewey Hewell occurred after the Solicitor General had a talk with the other girls and left. It is absolutely false in every particular that I coached Dewey Hewell, or that I said "we will go over it again so

won't forget it." I have heard people say that Frank was a man of bad character. This was the general talk among the girls in the factory. I heard the employees in the factory talk frequently about Frank being attentive to the women working the factory, whose reputation were bad, and I have seen myself Frank spend a great deal of his time with this woman whose reputation was bad. I don't know myself that anything wrong ever occurred between them, but I do know that he devoted a great deal of his time talking to her than was necessary and that it was generally understood among the girls in the factory that Frank didn't have the best reputation and that his character was bad. I found in the office of the Solicitor General, Hugh M. Dorsey, on this Monday, April 20, 1914, a young lady. I looked at her and thought I recognized her face, though I could not call her name. I was afterwards informed that this was Miss Ruth Robinson and I knew that I never talked to Miss Ruth Robinson a moment in my life, either at the office of the Solicitor General or anywhere else on earth. And if Dewey Hewell ever talked together, I don't know anything about it and if Ruth Robinson heard what Dewey Hewell said to me I don't know anything about it, but everything that was ever said to me by Dewey Hewell or by Dewey Hewell to me was said in the room where there were other people who could have heard it if they had wished to. Sometime recently two men one of whom was W.W. Rogers, and the other being, as I have been informed, the detective W.J. Burns, came to see me with reference to my evidence. Rogers and Burns tried to talk to me about my evidence. I told them emphatically that if they were to come to me in a hundred years from now that I would still be the same ^{& say the same} because it was the truth. I was very enthusiastic in letting this man Burns, know that I didn't intend to waste any time going over with them evidence, which I had given and which was the truth. This was the only enthusiasm I ever remember to have shown in connection with this case. These men disputed in the little time they talked to me, my word and said they supposed Miss Grace Hicks knew where Mary Phagan worked. Rogers then said "come on lets go we can't get anything from her" and I said "I am tired of your company and wish you would go on for I don't like to be called a story. Among other things, one of these men representing themselves

to be Burns detectives, asked me if there was anybody else besides myself that I knew who had seen Frank go into the dressing room with women. I stated that my recollection was that Miss Myrtie Cato saw this occur. They then asked me where Miss Cato worked and I told them she worked ^{at} E.H.Cone's drugstore and I added, "you go there to see her and you will get the same dose you got here." N. A. GARNER, Sworn for the State. About 7:00 o'clock p.m. on April 24, 1914, I was standing at the corner of Mitchell and South Pryor Sts. when Miss Carrie Smith came across the street from the Southern Bell Telephone Exchange, and she stopped and talked with me a few minutes, this being the same Miss Carrie Smith who testified at the original trial of the above case, but who was at that time or sometime since has married a man named Benton.

C. A. ISOM, Sworn for the State. On Monday, April 20, 1914, about 10 o'clock, P.M. I could not say whether it was twenty or thirty minutes before or after, but about that time. I know that it was previous to 11 o'clock because we had to be at 33 Forsyth Street before 11 o'clock and we got there with the automobile before 11 o'clock. On the date and at the time stated I was sitting in this automobile referred to in front of the Metropolitan Club, on South Forsyth Street. In this automobile was Jimmie Wrenn. Jimmie has been working for Burke, who is employed in the office of L.Z. Rosser on the Frank case, for the last several months. Fred Linn ^{who has been running the automobile of C.W. Burke} was also in the automobile. We were going North on South Forsyth St. and we passed the entrance of the Metropolitan Club which was on the West side of South Forsyth Street at the corner of West Mitchell. We passed beyond a weiner stand next to the Metropolitan Club. As we passed it, I first noticed a girl, my attention being attracted to her by Linn saying to Jimmie Wrenn, "yonder she is Jimmie". She had on a light blue dress, blue hat. After the automobile stopped Linn gave Wrenn a nickel and Wrenn went up to the weiner stand. He was the only man who went up to the weiner stand, and the girl described was the only girl present. I did not see them speak, because Linn suggested that we stand in the stairway as a city policeman was ~~standing~~ coming up just then. We were in the staircase entrance about a minute when Jimmie Wrenn came up eating a weiner. I pointed this girl out to detective Black on Friday, April 24, 1914. She came out of the southern bell telephone exchange, and I saw her talk a few minutes with Mr. N.A. Garner.

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RUTH ROBERTSON, Sworn for the State. I worked at the National Pencil Company for three years and was working there during the year 1912, up until the middle of April, 1913, just a few weeks before Mary Phagan was killed. I have known Mary Phagan ever since she has been a very little girl, having known her in Cobb County, where we both lived. *Mary was a beautiful girl.* I knew Leo M. Frank. I have had read to me the evidence that I gave on the trial of the case of the State vs. Leo M. Frank. Every word of it is absolutely true. I did see Frank at Mary's machine, talking to Mary and I heard Frank call her "Mary". I heard it many times. Frank was at Mary's machine a great deal more than there was any need for him to be there. Mary had worked at the Pencil Company a good long time and understood her business, and did not have any need for anybody to be there at her machine showing her anything/because Mary needed ~~anybody~~ anybody to show her how to operate the same or how to do her work. I have seen Frank go to Mary's machine three and four times a day. Sometimes he would remain as long as fifteen or twenty minutes. Frank did not very often pay any attention to the work being done by the other girls on that floor, other than Mary, I have seen Frank, in showing Mary about her work, take hold of her hands and hold them. For a while I did the same work exactly that Mary did. It was simple and easy as it could be. Frank's visits to Mary and talks with her and assistance given her became more frequent and more constant during the time that I noticed them which was from about some time during the summer or fall of 1912, and ~~constant~~ continued until the time I left there. I have forgotten the exact date, but the very last day that I worked at the National Pencil Company's place of business I saw Frank talking to Mary. I heard him call her Mary. I have read ground #9 of the extraordinary motion for new trial of Leo M. Frank, as filed in the clerk's office on the 16th day of April 1914. I have just this minutes been introduced to a lady who goes by the name of Mrs. Maggie Nash and who says that she was Miss Maggie Griffin. Miss Maggie Griffin when she came into the room stated that she did not know my name. She thought after looking at me she had probably seen me but she was not positive about that. She denied in my presence that she had ever coached me or talked to me about the Frank case or my evidence on the

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Frank case. I can positively state that I do not remember ever having seen Miss Griffin and I did not know her name, and certain it is that she never talked to me in her life or undertook to coach me about what I should say. It is not true that Maggie Griffin and Dewey Hewell left the large room referred to in Frank's motion two or three times together and returned together, and it is not true that I heard Dewey Hewell say repeatedly that she was afraid she would forget all Maggie had told her to say when she went into the courthouse, and it is not true that I heard Miss Griffin or any body else say that she did not know where Mary Phagan worked and that she did not know her name. It is not true that Dewey Hewell said that she was rehearsed in her part by Maggie Griffin in any room, anywhere at any time. On the other hand I never heard Dewey Hewell say anything about Frank one way or the other at any time. It is true that I was taken by Bass Rosser to the office of Solicitor General Hugh M. Dorsey on the very day that I testified in the case. I never saw or talked to Solicitor General Dorsey about this case until the day I went on the stand. I never talked with Detective Bass Rosser about this matter until the day I went on the stand. I did talk to a great many people immediately after Mary Phagan was murdered about what I knew about Frank's knowing Mary Phagan, and among others I talked to my father, who lives in Cobb County, about it and I told him exactly what I told on the stand. I have never made any affidavit for anybody till this time and I have never stated to anybody the things that are set out in this extraordinary motion in paragraph 9. It is absolutely false that the solicitor told me that I knew something ^{against} ~~about~~ the character of Leo M. Frank. The solicitor asked me questions about what I knew about Frank's character. I stated to the solicitor general that I was acquainted with the general character and reputation of Leo M. Frank and that that character was bad. The solicitor stated that they had enough evidence with reference to Frank's general bad character and that he would not ask me those questions, but that he would only ask me questions with reference to Frank's knowing and being acquainted with Mary Phagan. If the solicitor or counsel for Frank had seen fit to ask me about Frank's general character on the stand, I would have told them as I state in this affidavit that his character was bad. It is absolutely false that the

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solicitor insulted me. The solicitor general never suggested or intimated in any way that I had had sexual intercourse with the defendant in his office or any other place in his factory, or that he knew the location of any room or that he knew of other girls having been in the room with him. The solicitor general merely asked me about what I had heard other people say about Leo M. Frank's general character and I never even told him until today, April 20, 1914 about any conduct on the part of Frank toward me in his office. I have today, however, told the solicitor general about what I considered an improper proposal on the part of Leo M. Frank to me. In other words, the said Leo M. Frank undertook to give me seven dollars when he knew I was not entitled to the said money and he endeavored to arrange a meeting with me sometime the next week. This occurred in his office in the presence of other people and I fully understood what Frank meant. I do not know who the people were in Frank's office at that time, but he had there three girls. I never had a private conversation with the solicitor general in my life. There were always other people present. He never used any insulting language to me and it is absolutely untrue as stated in the motion for a new trial that he said anything that was improper. It is absolutely untrue that I was ever in any room with twelve or fifteen other women, all witnesses in the Frank case, at the same time Mr. Dorsey was there. The only time I was in any room with 12 or 15 witnesses in the Frank case was in the courthouse across the street from Mr. Dorsey's office in the Kiser Building and while Mr. Dorsey was in the trial of the case in the court room. I know Carrie Smith, but I never talked to her in Mr. Dorsey's office or elsewhere. The day I was sworn was the only time I saw Mr. Dorsey. I know Myrtle Cato, but I was not in any room with her. It is absolutely false that the ~~solicitor~~ solicitor general told me to answer questions right off sharp. All the allegations with reference to what Maggie Griffin did or said in the room with twelve of fifteen other girls, as stated in Frank's extraordinary motion for a new trial are absolutely false, so far as they refer to me.

W. T. ROBERTSON, Sworn for the State. I dropped in of my own accord to the office of Hugh M. Dorsey, solicitor General, while he was talking to my daughter, Miss Ruth Robertson about the evidence which she gave in the Frank trial. I was present at the dictation

of her affidavit. Directly after the murder, knowing that my daughter had been working at the pencil company's place of business, I talked to her about the same and she then told me exactly what she said on the stand, namely that Leo M. Frank knew Mary Phagan, that he called her "Mary" and that he spent a good deal more/^{time} than was necessary at Mary's machine talking to her. She also told me that this man Leo M. Frank, was a man of general bad character, though she did not tell me of the incident with reference to Frank's trying to give her seven dollars and arrange for her to see him the next week, until she told it today in the office of the solicitor general, as set out in her affidavit which she signed and which I have seen. I did not know that she would be a witness in the case, and I did not know that she had been a witness in the case until I saw it in the paper.

RUTH ROBERTSON, Sworn for the State. I made no affidavit in connection with this case, except the affidavits that I made in Mr. Dorsey's office. I have made no affidavit such as the one which is set out in the extraordinary motion for new trial, in which it is represented that I have made a great many statements. I have had exhibited to me by detective Bass Rosser, what purports to have been an original affidavit and I have carefully examined the signature, and I swear positively that same is not my signature thereto and that same is a forgery.

S. L. ROSSER, Sworn for the State. I am a city detective. At the direction of Solicitor General Dorsey, I procured from Hon. Stiles Hopkins, one of Mr. Frank's attorneys, the original affidavit offered by Mr. Frank upon a hearing of the extraordinary motion for a new trial of Miss Ruth Robertson. I immediately carried same to Miss Robertson and exhibited same to her and she carefully examined the signature to same, and said affidavit is the one referred to in the above affidavit of Miss Robertson, which I have read.

MRS. MAMIE EDMUNDS (formerly Mamie Kitchens) Sworn for the State. Attached, marked Exhibit "A" is the entire evidence, questions and answers, chief examination and cross examination, which I gave on the trial of the case against Leo M. Frank. I have read over this evidence carefully and now state that every word as testified to by me is true and that the attached exhibit A is a full, complete

and true report of the evidence which I gave on that trial. Some time recently, C.W. Burke, representing himself to be a detective representing Leo M. Frank and from the office of L.Z. Rosser, called on me at the pencil company's place of business. Burke paid me for the time I lost in talking to him about this case. He said that "Mr. Rosser said you had an honest looking face, and that he wanted me to come down and have a talk with you, and he told me to ask you questions concerning Frank's character," and he began asking questions about had I ever seen Mr. Frank acting in a familiar way with the girls, or ever seen him lay his hand on any ^{girl} and had I ever seen any lady in Frank's office. I don't remember just in what way he put that, but of course he meant through harm. I told him no, only a stenographer, and he asked me was she conducting herself in a ladylike way, and I said "Yes, she was writing on her typewriter."

I told him I had been downstairs but very few times during work hours and that I had never seen Mr. Frank acting in any way familiar with any of the ladies. He always went through the shop in a businesslike way and I never seen him laugh but very few times. Then he asked me if I thought Mr. Frank meant any harm by coming to the dressing room.

I told him I did. He says Why? I said, because when Mr. Frank come to the door and seen that we were partially dressed, I think it would have been as little as he could have done to have said "excuse me ladies" and walked away. He stood there and laughed or grinned.

I don't know when a Jew is laughing or grinning, but he stood there and make no effort to move. When he come to the door he said: "What is the matter girls, haven't you got any work? and he just kept standing there and didn't make no effort to move until Miss Jackson said 'We are dressing, blame it' and then he shut the door and disappeared. He said, "well would you have a man hung on that, convicted and hung?"

I said, "certainly not, I am not that unreasonable, but I do think he meant harm, and I think a man could act the gentleman as well as anything else, that when a gentleman meets a lady he ought to treat her with respect." He said, "Well I don't look at it like you do. You must consider Mr. Frank is a business man and many of these things he don't pay any attention to, like a man like me would. I would think of those things, but a businessman sometimes forgets these things." I said, "I don't see why he should, when he stood there

long enough to think what to do and what to say? Burke was writing this all down, as we were talking and when we finished, he got the stenographer of the National Pencil Company to write out what was said. The paper was not written in my presence. I went upstairs while they were preparing it. He then sent for me to come back to sign it. I did not read the paper that I signed. I don't think there was anybody in the room. Afterwards Burke came to see me at my home and asked me to sign another paper. Burke represented that the new paper which I signed was exactly like the other one, except that the new paper had on it "Extraordinary Motion for new trial". I took Burke's word as to what these papers contained. I did not tell Burke anything different to what I have set out above, and if he has anything in either one of these papers other than what I have stated, then said Burke has misled me and misrepresented the facts to me. Frank did not knock at the door, and gave no intimation that he was coming in. It is true that Mr. Rosser when he talked to me about Leo M. Frank, asked me fully with reference to what I knew concerning said Frank's character and his relation with women, and of course that line of questioning was calculated to be embarrassing, but the deportment, bearing and manner of the said Rosser was gentlemanly in every respect, and he only asked such questions as were necessary to get at the truth. I refer to the detective Bass Rosser.

(Exhibit "A" referred to in the above is as follows)

MISS MAMIE KITCHENS, Sworn for the State in Rebuttal, testified as follows: DIRECT EXAMINATION BY THE SOLICITOR GENERAL.

Q. What is your name? A. Mamie Kitchens.

Q. Where did you work Miss Mamie? A. National Pencil Company

Q. How long had you been working there? A. It will be two years this coming October.

Q. Two years this coming October, what floor do you work on? A. Fourth.

Q. Where are you working now? A. I am working on the plugging table for Mr. Joe Stelker.

Q. On what floor? A. Fourth.

Q. For the National Pencil Company? A. Yes sir.

Q. How long I mean where were you yesterday, the day before and the day before that? A. I was at the Pencil Factory yesterday and the day before.

Q. And the day before; now, have you been sworn in this case by the defense, have you been put on that stand? A. No sir.

Q. By the defense? A. No sir.

Q. Do you know of any other lady or ladies now work on that floor that have not? A. Yes sir.

Q. Who? A. Miss Jones and Miss Howell.

Q. They have not been; are you able to recall any others, that work on that 4th floor that have not been? A. No sir, I don't believe I do.

Q. Miss Mamie, do you or not remember an incident, first I will ask you if you are acquainted with the general character of Leo M. Frank? A. Well, I know Mr. Frank when I see him.

Q. I know, but are you acquainted with his general character, what is generally said about what has been said about him? A. I can't express my opinion of his general character?

Q. Just answer yes or no? A. Yes sir.

Q. Well, is that good or bad? A. I can't express my opinion of his character from hearsay.

Q. All right.. that is what we want - from hearsay, up to April 26, 1913, just what people say said before the Phagan girl was killed. That hearsay is all you can give under the Judge's ruling? A. Well I will tell you all I can say--

The Court: Don't tell what you have heard, just tell whether or not you have heard anything.

Q. I won't press the point. I want to ask you if you knew Miss Irene Jackson? A. I certainly do.

Q. Do you know Miss Mayfield? A. I do

Q. Were you or not ever present in the dressing room of the ladies on the fourth floor, when Miss Irene Jackson was present and when Miss Mayfield was present, when any or both of these young ladies were partially undressed, and Leo M. Frank came in that dressing room? A. I was in the dressing room with Miss Jackson when she was undressed.

Q. Was undressed? A. Yes sir.

Q. Did or not Leo M. Frank come in there? A. He came to the door and opened it, and stuck his head inside of the door.

Q. Stuck his head inside of the door, did he or not knock? A. He did not knock.

Q. He did not knock; what, if anything was said -- when he did that, or what did he do when he stuck his head in? A. He just stood there and grinned or laughed, I don't know which.

Q. What was said to him by anybody in that room when he did that?

A. Miss Jackson -- he stood there for a few minutes longer, I suppose, then she thought he ought to, and she said, "Well, we're dressing, blame it," and then he shut the door.

CROSS EXAMINATION by Mr. Rosser.

Q. Didn't he ask you if you girls didn't have any work to do? A. Yes sir.

Q. He put his head in, and didn't he say, "Haven't you girls got work to do?" A. He didn't say it that way.

Q. Of course, he didn't say it like I do, but he asked you if you didn't have any work to do? A. Yes sir.

Q. That was the only time you were ever in the room when he tried to come in, that is the fact, isn't it, and he never said anything but that? A. I didn't understand the question.

Q. I didn't think you did; well now, you were in there that day, Miss Kitchens? A. I was in there with Miss Jackson.

Q. Who else was in there? A. Well Miss Ethel Stewart, was in there part of the time.

Q. Just you three? A. Just us three.

Q. What time of day was it? A. Well, I can't state the exact time, it was in the afternoon.

Q. Well, was it during business hours? A. Yes sir.

Q. During business hours? A. Yes sir, we were dismissed from work, we didn't have any.

Q. You didn't have any work to do that day? A. No sir.

Q. And you were all just resting in the dressing room. A. Just what?

Q. You were in the dressing room because the work had been dismissed?

A. Now sir, we were in there dressing to leave.

Q. Dressing to leave? A. Yes sir.

Q. Who had dismissed you that you wouldn't have any work to do?

A. Mr. Joe Stelker.

Q. Mr. Stelker, and that is all he said, he asked you if you girls didn't have any work to do? A. That is all he said.

Q. And you all told him you didn't have any work to do? A. Yes sir.

Q. Aren't you mistaken, Miss Jones has been down here and testified, hasn't she? A. I have only got her work for it, she told me she had not.

Q. As a matter of fact, I am asking you if you know? A. I don't know.

Q. Now did they work there before this murder took place? A. Yes sir Miss Jones worked there before I ever went there.

Q. Did Miss Howell work there? A. No sir, Miss Howell worked there when the murder was committed, I think, in fact I know she told me she did, but I don't know just exactly, I was off from the factory four months, I quit in February, and never went back until -

Q. I am going to ask you a question, Miss Howell has been on the stand, hasn't she? A. She says she has not.

Q. I think she is mistaken. I am going to ask you the question that we have asked all of those ladies that worked on the 4th floor; I

am going to ask you were you ever in Mr. Frank's office, meet him there between the middle of June and the 1st Saturday in January of this year, inclusive, if you ever met him there for any immoral purpose? A. I never met him therefor anything except to get the money out of my time."

11TH GROUND.

MISS MARIE KARST, Sworn for the State. Attached is a copy of the examination in chief and the cross examination which I gave on the trial of the case of the State vs. Leo M. Frank. Every word of this testimony attached and set out in Exhibit "A" is true and correct. While I did not understand the meaning of the word "lasciviousness" I did understand and do understand the meaning of this language, viz: "his attitude toward ^{girls} ~~men~~ and women" and in answering the question I gave my answer based on the words referred to. I now state again that I am acquainted with Leo M. Frank and was prior to April 26, 1913, and I was acquainted with his general character. The general character of Leo M. Frank was bad. The character of Leo M. Frank in respect to his relations with women was bad. I now understand the meaning of the word "lasciviousness" and Leo M. Frank's character for lasciviousness was bad. I have seen Leo M. Frank in the factory frequently talking to women. He usually talked with women in the factory who bore bad reputations. I never saw Mr. Frank stand and chat with women of good reputation like he did with those whose reputation and character were bad. When I was interviewed by the Solicitor General, he explained to me what the questions laid down by the law with reference to showing a man's bad character were, and he stated to me that I must answer one of the questions which he asked either yes or no. The Solicitor General did not tell me what Frank's general character was, but I told him that his character was bad, just exactly as I swore it in open court when on the stand and examined. I did not, if I ever stated in any affidavit that the Solicitor said he wanted me to answer questions right off sharp and quick, mean that he told me what to answer, and I did not mean that he told me to answer them sharp and quick, except in the sense that the Solicitor told me that the answer to one of the questions had to be yes or no, and nothing else. It is true that the Solicitor General did not use the word "lasciviousness" in talking to me in his office prior to going on the stand, but the Solicitor General did talk to me in plain language about Frank's reputation as to women.

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I have given an affidavit to one C.W. Burke, and some man representing himself to be a Burns man. I did not put in that affidavit or authorize these men to put in that affidavit anything contradictingⁱⁿ any way the evidence that I gave on the stand, and if any paper which they have purports to have changed the evidence that I gave on the stand, it is a false paper and not authorized by me. Burke wrote out a paper in my presence himself, and had me sign it. I did not myself read the paper, but some man claiming to be a Notary Public, I have forgotten his name, professed to read the paper to me. I did not, when I signed the paper, hold up my hand and take any oath, but merely signed my name, though the man who said he was a Notary Public, asked me if what he read me was true.

(Exhibit "A" referred to above is as follows:)

"MISS MARIE KARST, Sworn for the State in rebuttal.

Direct Examination by the Solicitor General.

Q. Miss Karst, did you ever work at the National Pencil Company?

A. Yes sir.

Q. When? A. About two years ago.

Q. Two years ago; what floor did you work on? A. I worked on the second floor.

Q. Second floor; are you or not acquainted with Leo M. Frank?

A. Yes sir, I am.

Q. You are; are you acquainted with his general character prior to April 26, 1913? A. Yes sir.

Q. Is that character good or bad? A. Bad.

Q. Bad; now, Miss Karst, I will ask you if you are acquainted with his general character for lasciviousness, that is his attitude towards girls and women? A. Yes sir.

Q. Is that character good or bad? A. Bad.

Cross examination by Mr. Rosser.

Q. Where do you ~~live~~ now? A. I work for Nunnally & McRae.

Q. Nunnally & McRae; where do you live now? A. I live at 195 Kelly St.

Q. 195 Kelly? A. Yes sir.

Q. You worked therein 1910 two months? A. Worked?

Q. Two years ago you worked at the National Pencil Factory two months. A. No, I worked 18 months there.

Q. Eighteen months? A. Yes sir.

MARIE KARST, Sworn for the State. On Last Saturday, April 18,

I signed an affidavit dictated in the office of the Solicitor General. I did not at that time make any mention of the matters referred to in this affidavit with reference to Miss Carrie Smith. I was only asked about that last night and this morning in the office of the Solicitor General. Soon after the trial of the case, Lemmie Quinn, foreman in the National Pencil Company's place of business phoned me. Lemmie told me to meet him at a certain time and place, viz., at Nunnally's across from the Piedmont Hotel. I met him there, as per his request. He told me that Frank's side had gotten hold of that scrape at the pencil factory about drinking; if I would see Burke and give him a statement that he could keep

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~~bring~~ this out of court, but unless I did, they would bring it up in court against me, and I told Lemmie that he was the foreman there and ~~we~~ ought to know whether we got drunk or not, and he said he didn't know anything about it. We went out there and somebody had a half pint he got at the club, and another girl and I slipped around and got it and two more came around and drank some of it. At that time I was only 15 years old and the girls who drank this with me were fifteen or younger. It was stolen as a joke, out of the pocket of one of the boys working there; we drank it publicly and with the knowledge of everybody and as a joke. There was no secret about it. We made no effort to keep it secret. None of the girls were in the least bit under the influence of it. The incident caused a good deal of fun and that was all there was to it. I never heard any remarks made about it until Lemmie Quinn brought it up. Lemmie Quinn, in his talk with me, made it appear that Frank's side were going to make a big scandal out of it and it had the effect of scaring me, because I did not want my name made public in connection with that, unless all the facts were truly shown, and I did not wish the names of the other girls connected with it made public. Lemmie wound up his talk with me by insisting that I should go to see C.W. Burke and at last Lemmie went and phoned somebody and in a few minutes C.W. Burke came to see me. Lemmie set up to drinks and Burke talked to me. Burke wound up the conversation by asking me to come up to the office of Rosser, Brandon, Slaton & Phillips on the 7th floor of the Grant Building. I didn't go. Afterwards Burke met me on the street and again wanted to see about my working for him. The result was that I consented to work for Burke. I was not a stenographer, and could not write on the typewriter. ~~But~~ Burke stated that he only wanted me to work during the afternoons, and he paid me \$2.00 per day for the afternoons. I worked for him about a week. Burke wanted me to go around and see the girls who had sworn for the State on the trial of Frank, about his general bad character, and he wanted me to talk to them and report to him what they said, and see if they would not change their evidence. He then told me that what I swore on the stand didn't amount to anything because I wasn't cross examined, and said it was not recorded. I saw several of the girls among them Helen Ferguson and Carrie Smith, and they told me they would not change their evidence because what they swore was

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true. I did not tell them that I was working for Burke, but merely talked it over with them. One day Brke wanted me to see Monteen Stover, and talk to her, and see if I couldn't get her to change her evidence, given on the stand. I did not go to see Monteen Stover. One day Burke told me that he was coming out to my house and going to see my mother and tell her that I was going off with him to work on a street car case, and that he wanted me to go down and live in the house with Monteen Stover and pick her. Burke did come out to my house and saw my mother and tried to get my mother to let me go off to work on the street car case. My mother refused to let me do it, and would not let me go back and work for Burke any more. I met Burke and had my talks with him in the private office of Gov. M. John M. Slaton, in the office of Rosser, Brandon, Slaton & Phillips. One day I asked Carrie Smith, a friend of mine, to meet me up at Gov. Slaton's office in the Grant Building. That afternoon, however, I failed to go back to the office because it was raining. Next day when I saw Burke, he said "I had the best luck yesterday you ever saw. I got Carrie Smith where I want her". I asked Burke after I had seen Carrie Smith and she had told me what had happened, if he had a man by the name of Maddox working for him and Burke said no, and that he didn't know anybody by the name of Maddox. Carrie Smith had told me that she saw this man Maddox in the office at the time she saw Burke, and that Maddox had been to her representing himself to be a magazine man, wanting to write an article about the Frank case. Burke told me if Carrie didn't give what evidence he wanted, that he had a friend in an assignation house that knew Carrie, and that Carrie came down to this house lots of times, and she always called him up every time Carrie was down there and notified him and said that if Carrie didn't give the evidence he wanted when this girl called up next time he would go down there. I asked Carrie about this and she said she did not know anybody by the name of Langley, the man Burke said was meeting her at that place, and she did not know anything about any such house. I have known Carrie Smith since she was a baby. We were little tots together. Her reputation is of the very best. She was never guilty of any such thing as Burke suggested and I knew it. I did not tell Burke anything but I just listened to what Burke had to say. During the time I was

at Burke's office, I would frequently not work over fifteen minutes. He paid me however the \$2.00 a day as he promised. Burke told me that he took Mrs. Lillie Pettis out to see her sister Miss Nellie Pettis, who had sworn on the trial of the case of the State vs. Frank, and that Miss Nellie Pettis had admitted to him and her sister-in-law, Mrs. Lillie Pettis, that what she had sworn to on the hearing before the Coroner and on the trial of the case of the State vs. Leo Frank was untrue. I do not know why Burke told me this but he did.

NELLIE PETTIS, Sworn for the State. It is not true that I ever admitted in the presence of my sister-in-law or anyone else that I had sworn to a falsehood on the trial of the State vs. Leo M. Frank. I have read over my evidence as given on the trial of that case. If Mr. Burke ever told anybody that I had admitted to him that what I had said on the stand was false, that is untrue. Attached hereto is a copy of the questions and answers asked me by Solicitor General and Mr. Rosser. It is absolutely true. It is true that I did not understand the meaning of the word "lasciviousness" when the Solicitor General asked me that question, but I did understand what he meant when he asked me if I was acquainted with the general character of Leo M. Frank with women. I answered that it was bad and I now state that it was bad. I further state that Leo M. Frank insulted me in his office and made to me an indecent proposal which I resented, leaving the office immediately and rejoining my sister-in-law, who is present at the dictation of this affidavit. I have not made an affidavit for anybody changing the evidence that I gave at the Coroner's inquest and on the trial of the case, in the Superior Court. After I swore on the trial of the case, somebody came to see me, representing himself to be a newspaper man. I do not remember his name. My father has been missing for a long number of years. This man stated when he first saw me that he was against Frank. He came out again in an automobile and there were two or three men with him. This man said he would find my father and he took out a sheet and put a picture of my father in a chair and professed to take a picture of my father's picture, and said he would send the picture to me, but he never did. He had an affidavit already written out. He told me that if I would sign a certain paper which he had there that he would find my father. I read the paper myself. It had nothing in it but the truth and the same thing that I testified

before the Coroner's inquest and on the trial of the case. I did not put anything in that paper different from what I swore on the trial. This man was tall and there was some defect in his front teeth.

(Exhibit "A" referred to above is as follows)

MISS NELLIE PETTIS, Sworn for the State in rebuttal.

Direct Examination by Solicitor General.

- Q. What is your name? A. Nellie Pettis.
Q. Miss Nellie, do you know Leo M. Frank? A. Yes sir.
Q. How long have you known him? A. Well, I don't exactly know him personally, but I know him when I see him, often enough to know him.
Q. Are you acquainted with his general character prior to April 26th, 1913? A. Yes sir.
Q. Was it good or bad? A. Bad.
Q. Bad; are you acquainted with his general character as to lasciviousness, that is with women prior to that time? A. Yes sir.
Q. Is it good or bad? A. Bad.
Q. What floor, when did you work over that at the National Pencil Company? A. I didn't work there, my sister-in-law did
Q. Your sister-in-law did work there, A. Yes sir.
Q. How often were you up there and around there. A. Well, I went nearly every Saturday, she would stay out and tell them she was sick on Saturday and I would have to go nearly every one.
Q. You would have to go up? A. Yes sir.
Q. What for, for what purpose? A. To get her money.
Q. To get her money? A. Yes sir.
Q. And who would you see when you went to get her money?

Mr. Rosser: That is immaterial

Mr. Dorsey: It is very material because they have denied that Mr. Frank ever paid these people.

Mr. Rosser: If it is for that, all right.

The witness: I saw Miss Eula May Flowers mostly when I went and one time - - -

- Q. Did you or not ever see Mr. Frank with reference to that pay
A. One time.
Q. One time?

CROSS EXAMINATION BY MR. ROSSER.

- Q. Who is your sister? A. Mrs. Lou May Pettis
Q. Is she working at the factory? A. No she quit just about three weeks ago, before the murder
Q. Before the murder? A. Yes sir.
Q. Where do you live? A. Nine Oliver Street.
Q. Where do you work. A. I don't work anywhere, I stay at home and keep house for my mother.
Q. How long since you worked anywhere? A. Well, I worked last week with my mother, helping her out.
Q. Where does your mother work? A. 99 1/2 Whitehall Street.
Q. What does she do A. Make some paper boxes.
Q. Makes paper boxes for the Atlanta Box Company? A. Yes sir."

MRS. LILLIE PETTIS, Sworn for the State. My sister-in-law, Miss Nellie Pettis, has never stated to me at any time or place that when she swore on the Coroner's inquest or on the trial of the case of the State vs. Leo M. Frank was untrue. On the other hand, she has always stated to me that it was true. I remember sending my sister-in-law up to see Leo Frank to get my pay and waiting for her at the place she stated in her affidavit. I never told anybody and I never signed any paper to the effect that I did not believe that Leo M. Frank winked at my sister-in-law. I read in the paper

where they said that I had made the statement, but the same is absolutely false. It was published in the paper that Mr. Bass Rosser the city detective got mad when I refused to swear against Leo M. Frank. I positively deny that I ever made any such statement to anybody. Mr. Rosser merely asked me those questions necessary to get at what I knew about Leo M. Frank. I never said to anybody at any time or place that I did not believe that my sister-in-law Nellie Pettis, knew Leo M. Frank.

15TH GROUND.

MARY RICH, Sworn for the State. Sometime recently, Mrs. Leo M. Frank and Rabbi David Marx and two other men came to see me to get me to make an affidavit. The affidavit was not true and I refused to sign it. Mrs. Leo Frank said to me: "If you will sign this affidavit you will take the rope from my husband's neck". I replied I could not tell a lie and to sign that paper would be telling a lie. One man with Mrs. Frank and Rabbi Marx tore off a little piece of paper which was in his hands. This man was C.W. Burke. He said: "You take this paper". I told him I didn't want this piece of paper and he said: "This will not harm you, but you keep this piece of paper and it is just for you so that you will know it when you see it again". I ^{took} that little piece of paper and kept it. I showed it in a few minutes afterwards to Mr. F.J. Wellborn, a man that I have known a good long time and who was standing by when these people were talking to me. Afterwards I took the piece of paper and gave it to somebody in the office of Solicitor Hugh M. Dorsey. I have looked at the piece of paper attached to the affidavit signed by F.J. Wellborn and it looks to me to be about the size and shape of the paper which Burke gave to me. Burke also told me that if I got in trouble that I might know the cause of it. My daughter, Mary Rich read me out of the newspaper a statement to the effect that I had seen Jim Conley on April 26, 1913 at about 2:15 P.M. come out of the alley immediately in the rear of the National Pencil Company. This was the first intimation that I had of such a claim, and on April 1, 1914, I went voluntarily, without being sent for, to the office of the Solicitor General. He not being there, I ^{left and} voluntarily returned to his office on April 2, 1914 and I voluntarily make this affidavit. I deny emphatically that I saw Jim Conley come

out of said alley on any date; and neither is it true that Conley after purchasing a dinner from me on the 26th of April, 1913, went back to the aforesaid alley in the direction of the pencil factory. I never told anybody at any time or place that I saw Jim Conley come out of the alley immediately in the rear of the National Pencil Company's factory, or that after purchasing said dinner, said Conley went back to the aforesaid alley in the direction of the pencil factory. I am the only Mary Rich that I ever knew to keep a lunch stand between Forsyth Street and Madison Avenue on Hunter St. My daughter, whose name is also Mary Rich has nothing to do with the stand and did not keep the same for me or have anything to do with it on April 26, 1913.

(Attached to the above affidavit is the business card of C.W. Burke)

F.H. WELLBORN, Sworn for the State. I know Mrs. Leo Frank and Rabbi David Marx when I see them. I also know an old negro woman who sells lunches by the name of Mary Rich, she having sold lunches near my place of business. Sometime recently I saw talking to this negro woman, Mary Rich, Mrs. Leo M. Frank, Rabbi David Marx and two other men. I don't know who the other men were. I moved over as near as I could get to these people and stood as close as I could without attracting their attention. I did not hear anything that anybody said, except what Mrs. Frank said to Mary Rich and what one of the two unknown men said at the conclusion of the discussion.

A great deal was said because they talked to her for about an hour. I remained there listening about thirty minutes. I heard Mrs. Leo M. Frank, among other things say, to ~~Marx~~ Mary Rich, "If you will sign this affidavit, you will take the rope from around my husband's neck." Mary Rich said in reply to that "I could not tell a lie". Mary Rich finally refused to sign the paper, and as they went to leave one of the unknown men said to her tearing off a piece of the paper which was in his hand, "Here keep this paper, and when you get in trouble you may know the cause of it. The piece of paper is hereto attached. I examined this paper carefully and it resembles in every respect the paper torn off by the unknown man on the occasion above set out and left with Mary Rich, and is the same piece of paper there torn off. Mary replied that she

couldn't see how she could get into trouble by telling the truth. This is only a portion of the conversation I heard. This conversation occurred Monday, April 13, 1914.

(Attached is a piece of paper)

JIM CONLEY, Sworn for the State. It is not true that on April 26, 1913, at about 2:15 o'clock P.M. or at any other time on said day, ~~and~~ I come out of the alley immediately in the rear of the National pencil Company factory, nor is it true that I bought a twenty cent dinner on that day or anything else from Mary Rich. Nor is it true that I returned carrying said dinner in my hand and went back up said alley in the direction of the pencil factory. I was formerly employed at the National Pencil Company and I knew Mr. Becker and recall that when he left, I assisted in the removal of his desk and papers from Mr. Becker's office on the fourth floor to the office of Mr. Frank on the second floor. Among the papers of Mr. Becker that were moved were the order blanks upon which the notes written by me found by the body of Mary Phagan were found. These were moved with the desk to Mr. Frank's office. It is also true that I was a fireman in the basement of the factory for about two months; ^{the elevator} ~~that~~ I run/for about a year and a half going to the basement and ~~that~~ the rest of the time while I was working at the factory I was familiar with the conditions existing in the basement. It is not true that the basement was allowed to have papers accumulated in it or stored in it. The basement was inspected by firemen of the city of Atlanta, and we were required to keep the basement cleaned of trash and papers. We were compelled to clean up all papers and trash and would burn and put it in front of the furnace and burn it up. The blank upon which I wrote was in Mr. Frank's office on the second floor of the pencil factory." There were no order blanks or books allowed to stay in the factory basement and I saw none and did not write on any found in the basement on April 26, 1913. I do not know by name Miss Helen Ferguson. I was not on the second floor of the National Pencil Company factory on the Saturday preceding April 26, 1913 and make any statement to her, "Yes, take all the boxes you want, Miss Helen". I did not keep getting closer to her, nor did I make any move as though I intended to grab her, nor did she become frightened and run away. My work is on

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the fourth floor and I had nothing to do with the boxes on the second floor. On Saturday mornings the factory would close at about 11:45 A.M. and I was always busy at my work cleaning up the fourth floor so as to be able to get off promptly at closing hour. This box room is immediately across a small aisle from a large working room where about fifteen ladies are at work and it is also within 50 or 60 feet of the office, where the entire office force are and at the other end of the hall within about 50 or 60 feet is the metal department where a number of people work and if I had made such an attack against Miss Ferguson, I would have done it with full knowledge that one scream from her would summon a large number of people. I never heard of any such charge against me before and Miss Ferguson never complained about what she says.

14TH GROUND.

G. B. DALTON, Sworn for the State I have just read over the report of my testimony as contained in the brief of evidence approved by Judge Roan in that trial and every word of my evidence is the absolute truth. That evidence is as follows:

"I know Leo M. Frank, Daisy Hopkins and Jim Conley. I have visited the National Pencil Company three, four, or five times, I have been in the office of Leo M. Frank two or three times. I have been down in the basement. I don't know whether Mr. Frank knew I was in the basement or not, but he knew I was there. I saw Conley there and the night watchman, and he was not Conley. There would be some ladies in Mr. Frank's office. Sometimes there would be two, and sometimes one. Maybe they didn't work in the mornings and they would be there in the evenings.

CROSS EXAMINATION. I don't recollect the first time I was in Mr. Frank's office. It was last fall. I have been down there one time this year but Mr. Frank wasn't there. It was Saturday evening. I went in there with Miss Daisy Hopkins. They were ladies. Sometimes there would be two and sometimes more. I don't know whether it was the stenographer or not. I don't recollect the next time I saw him in his office. I never saw any gentleman but Mr. Frank in there. Every time I was in Mr. Frank's office was before Christmas. Miss Daisy Hopkins introduced me to him. I saw Conley there one time this year and several times on Saturday evenings. Mr. Frank wasn't there the last time. Conley was sitting there at the front door. When I went down the ladder Miss Daisy went with me. We went back by the trash pile in the basement. I saw an old cot and a stretcher. I have been in Atlanta for ten years. I have never been away over a week. I saw Mr. Frank about two o'clock in the afternoon. There was no curtains drawn in the office. It was very light in there. I went in the first office, near the stairway. The night watchman I spoke of was a negro. I saw him about the first of January. I saw a negro night watchman there between September and December. I lived in Walton County for twenty years. I came right here from Walton County. I was absent from Walton County once for two or three years, and lived in Lawrenceville. I have walked home from the factory with Miss Laura Atkins and Miss Smith.

RE-DIRECT EXAMINATION. I gave Jim Conley a half dozen or more quarters. I saw Mr. Frank in his office in the day time. Mr. Frank had coca-cola, lemon and lime and beer in the office. I never saw the ladies in his office doing any writing.

RECALLED FOR CROSS EXAMINATION. Andrew Dalton is my brother-in-law. John Dalton is my first cousin. I am the Dalton that went to the

chain gang for stealing in Walton County in 1894. We all pleaded guilty. The others paid out. I don't know how long I served. I stole a shop hammer. That was case No. 1. There were three cases and the sentences were concurrent. One of the other Daltons stole a plow and I don't know what the other one stole. I was with them. In 1899 at the February Term of Walton Superior Court I was indicted for helping steal a bale of cotton. In Gwinnett County I was prosecuted for stealing corn, but I came clear.

RE-DIRECT EXAMINATION. It has been 18 or 20 years since I have been in trouble. I was drunk with the two Dalton boys when we got into that hammer and plow stock scrape.

CROSS EXAMINATION. I don't know whether I was indicted in 1906 in Walton County for selling liquor. I know Dan Hillman and I know Bob Harris, I don't know whether I was indicted for selling liquor to them or not.

RE-DIRECT EXAMINATION. Miss Daisy Hopkins knows Mr. Frank and I have seen her talking to him and she told me about it."

I have never signed any paper or statement which I knew to be a re-

traction of the above evidence or of any part of that evidence, *and it is true as given.*

About two months ago Mr. G. W. Burke of Atlanta came to see me in Fort Myers, Fla., where I was then working. I have been working for Mr.

Heifner, a contractor, for about three years and Mr. Heifner had sent me to Fort Myers, Fla. to superintend his boat business at that

place. Mr. Burke told me he wanted to talk with me about the Frank case. He came to the River Side Hotel, where I was staying, but he missed seeing me, because I didn't want to see him and I stayed out late. He sent a messenger to me with a message as if it was a night telegram. I thought it best to keep Burke from worrying me so I went to see him at the Bradford Hotel. He asked me about how Mr.

Dorsey and Starnes and Campbell questioned me before the trial and whether they didn't try to make me say things that were not so, and

I told him "no" and that they had acted in a perfectly proper way in their questions to me. Burke then asked me to sign a paper to go before the pardon board then in session in Atlanta. He wanted me to sign the paper to help get the pardon board to keep Frank from hanging. He offered to give me \$100. if I would sign the paper.

This paper was in hand writing. I didn't sign the paper. The next day he came out to Frogtown, near Fort Myers, where I was working.

He had a typewritten paper which he wanted me to sign, because he was leaving for Atlanta right away. He said it was the same as the paper he had showed me last the night before. He read a part of it to me. The part he read didn't say anything about taking back evidence or about my having said anything that wasn't true at the trial. I finally signed the paper which he had. He told me to come up to his hotel that night and he would give me the money. I went to the hotel that night, but he had gone. I asked if he had left

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anything for me and was told he had not. Burke had told me also that he would give me a pass from Jacksonville to Atlanta to use anytime soon. Burke did not leave either the \$100. or the pass. The only other time I have been offered any money in connection with the Frank case was in Dublin, Ga. just a short time after the trial last year. I went to Dublin with Mr. Heifner to do some work on a bank which he was working on there. When I got off the train at Dublin there were two Jews standing there talking. I heard one of them say to the other: "There's that fellow Dalton that swore in the Frank case". They came over and talked to me. They said they knew me by my picture. That night I met both of them on the corner and asked me why I didn't leave the state and get out of the Frank case because I could make some money out of it. I told them I had not done anything to leave for. One of them said "Dalton you can make \$400. if you will leave the State." I still told them I didn't want to go away. I saw them two or three times after that. The same big fat one said "We will give you \$400 if you will leave the State for we are going to get Frank a new trial." I refused each time. I told Mr. Heifner what they had said and he said to me: "You haven't done anything to leave for. You have told just the truth and you are not going to leave." I never found out who they were. I received a letter from Mr. Dorsey saying that he wanted me to come to Atlanta and that he would pay my railroad fare if I would come on the next train. In addition to my testimony in the court at the Frank trial, I have on my several visits to Leo M. Frank's office seen Frank with girls in his office, and I have seen Frank play with them, hug them and kiss and pinch them. I do not know who any of the girls were. I saw Frank on two or three occasions take a girl and go to the back of the ^{room} where the dressing room is. On one occasion Frank had six bottles of beer and I carried three more bottles to his office. I was with Daisy Hopkins when she telephoned first to Frank's office and told him that she wanted to borrow some money. She said "I have got a friend with me now" and she was told to come right over and bring her friend with her. We went right away. There I saw her when she borrowed the \$5.00 from Frank. In regard to the cot in the basement, I know that Leo M. Frank knew about it. He was talking to the girls and

I said something about having to pay room rent and he spoke up and said it wasn't necessary to pay room rent because they had a cot in the basement. I used this cot with Daisy Hopkins half a dozen times.

J. N. STANNES, Sworn for the State. I have read the affidavit alleged to have been made by C.B.Dalton and introduced in the extraordinary motion for new trial in the case of the State vs. Frank. In so far as the affidavit refers to me, in stating that I had coerced or otherwise unduly influenced said Dalton in the giving of his evidence, it is absolutely false. I have never in any way sought to threaten or influence him in any way, and to the best of my knowledge and belief the evidence of said Dalton at the trial of Leo M. Frank was given freely and voluntarily and without coercion and influence of anyone else at all.

PAT CAMPBELL, Sworn for the State. I have read the affidavit alleged to have been made by C.B.Dalton and introduced in the extraordinary motion for new trial. In so far as that affidavit refers to me, in stating that I coerced or otherwise unduly influenced said Dalton in the giving of his evidence at the trial, it is absolutely false. I have never in any way sought to threaten or influence him in any way, and to the best of my knowledge and belief the evidence of said Dalton at the trial of Leo M. Frank was given freely and voluntarily and without coercion or influence of anyone else at all.

14¹ GROUND

PHILIP CHAMBERS, Sworn for the State. I worked at the National Pencil Company on Forsyth Street under Leo M. Frank as superintendent, as office boy from the 20th of December, 1912, until about a week before J.M.Gantt left the National Pencil Company's place of business.

I think it was about three weeks before Mary Phagan was killed when Mr.Gantt quit. I knew H.F.Becker. He was the master mechanic of the National Pencil Company. He had his office on the top floor. Before I went into the office as office boy in 1912, I worked up on the top floor in the paint department for about a year. Mr. Becker quit the pencil company pretty soon after I went down to the office. I was present in the office when Becker's desk was brought down from the fourth floor and placed in Frank's office.

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Frank used the same for his desk because Becker's desk was larger than the desk that Frank was using. Frank moved the desk which he was using over in the other corner, so that Darley could use that. All of the books and papers and everything that was in the Becker desk was taken out of the same in the office next to Frank's office where the supplies were kept. Among other papers taken off of Becker's desk when that desk was placed in Frank's office were old order blank books. There were approximately a dozen. Attached hereto and marked Exhibit "A" and made a part hereof is a book which was exactly like these books taken out of Becker's desk, except that nearly all of the books like this were already used, that is, Becker had written on most of them and kept the carbon copies. These used carbon copy order blank books remained there in that office up until the time I left. In the course of my duties I had frequently to go down into the basement in the factory and I know that no trash, books or papers were ever left down there in that basement floor any length of time, but some were always burned up. The practice was to take the trash down in little push carts, put it right in front of the furnace and burn it up. I never did see any of these order blank books among it. After Becker left, all of these order blanks were handled by Frank and when he would use up a book he would always turn it over to me to file, and I always filed these books in the outer office in the pigeon holes close to the place where all of Becker's old order books were kept. The order books which I helped to take off of Becker's desk were loose. They were not ~~was~~ tied up.

(Accompanying this affidavit is a new, unused book of order blanks, with white and yellow sheets alternating. The date line on said order blanks is as follows: "Atlanta, Ga. _____ 191 ")

J. M. GANTT, Sworn for the State. I was present at the dictation of the affidavit this day made by Philip Chambers, and where it refers to me is true. I know Leo M. Frank and know that he personally knew Mary Phagan and know that he called her by the name "Mary" I was present in the office when the desk used by Becker on the fourth floor was moved down into Frank's office. Frank set aside his desk and put it over in a corner of his office and used as his own desk, from the time Becker left until the time I left, the desk which Becker had previously been using. I helped Chambers take

the papers in Becker's desk out and Chambers and myself placed all these papers in the office next to Frank's private office. These papers were within ten feet of Frank's desk. Among other papers were quite a number of order blank books, similar to the one which is attached as Exhibit "A" to Chambers' affidavit. These carbon copy order blank books remained in the place where they were placed by Chambers and myself from the time Becker left until the time I left there. All the time I was there, the only man who ever had charge of any order blank books was Frank. The books used by Leo M. Frank were always filed in the office adjoining the office occupied by Frank. I was frequently down in the basement. At no time did I ever see any scratch pads or blank order books in the basement anywhere. The uniform custom and practice was to take daily the trash on the elevator down into the basement and have it immediately burned in the furnace. I never did see any scratch pads or order blank books sent down there. During Christmas week, an inventory was taken, and a general cleaning up was had. Frank personally requested me at that time to go down into the basement and see that the trash swept up and carried down into the basement was burned up. I did that. In the trash taken down into the basement at this time there was not one single order blank book, as far as I knew or could see. All of the trash moved down into the basement at the general cleaning up, Christmas, 1912, was burned up as per Frank's instructions. Taken out of Becker's desk and put in the office adjoining Frank's office were the following:

R. I. DEVORE, sworn for the State. I am a photographer. I have charge of the finishing department of the A.K. Hawkes Company. Some time immediately after the murder of Mary Phagan, Hugh M. Dorsey, the Solicitor General brought the original notes to me for the purpose of having same photographed. Attached hereto and marked Exhibit "A" is one of the first photographs which I made of the order blank note. At Mr. Dorsey's request, I sent to the Eastman Kodak Company, Rochester, N.Y. and secured what is known as a color plate, the purpose being to develop, as far as possible, the number. Attached hereto and marked Exhibit "B" is the photograph produced by me by the use of said color plate. Furthermore by the use of this color plate and lenses and powerful magnifying glasses, which I had examined as carefully as I could, the original note and the

The uniform practice was to keep all order blank's

I saw the trash daily that went to basement

General

shown spirit April 5, 1913

photographs made thereof. From an examination of said note and the photographs made by the use of the color plate, in my opinion ~~the~~ the number of the order blank note is "1818" Mr. H. A. Alexander, an attorney at law, in this city, showed to me the photograph of this note attached to a pamphlet which he has been distributing with reference to the Frank case, with reference to the notes found by the body of Mary Phagan. It is evident that this is a photograph of the original note, or of a photograph of the one which has been touched up in certain places. Mr. Alexander himself admitted to me that he had the engraving company to touch up the same in certain places. He said that this touching up was done for the purpose of eliminating the dirty background, and to bring out the writing more clearly.

(Exhibit "A" attached to this affidavit is a photographic copy of one of the original notes found by the body of Mary Phagan, which was written on an order blank. The order number is very indistinct on this. Exhibit "B" is a photographic copy of the same note with the order number brought out more clearly, Exhibit B being an exact copy of the State's exhibit Z, appearing on page 252 of the Brief of the Evidence, filed in the Supreme Court.)

HENRY A. ALEXANDER, Sworn for the State. The engravers plates used in the printing of the pictures of the two murder notes in my pamphlets distributed to the public in February and March, 1914, were the identical plates without alteration, change or retouching of any kind whatsoever that were used in the printing of the same notes in the printed copy of the brief of evidence of said case filed in the Supreme Court of Georgia and accepted as correct pictures of said notes both by the defense ~~and~~ and by the State. The ~~picture~~ picture of the yellow note on which the order number in question was shown appeared in said brief of evidence on page 253 of said printed brief. Said brief of Evidence was printed by the Foote & Davies Company, of Atlanta, Ga. prior to December 15, 1913, when it was delivered, and the plate of said yellow murder note was made by the Southern Engraving Company some time prior to that date. I had nothing whatever to do with the making of the photographs ~~of~~ of the plate of said yellow murder note. The pamphlet referred to was written and distributed in the months of February and March, 1914, a month and a half after said plates had been made. It was also printed by the Foote & Davies Company, and

121 I simply got permission of the attorneys for the defense to use

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said plate which had remained in the possession of Foote & Davies and was still in their possession. I neither admitted or stated to R.A.DeVore or to any other person that I had had the engraving company to touch up said plate in certain places, nor did I state to said DeVore or to anyone else that this touching up was done to eliminate the dirty background or to bring out the writing more clearly or for any other purpose. At the time said pamphlet was printed, the question of Becker's signature and the invoice number had not been suggested.

H. W. OATTIS, Sworn for the State. I am connected with the fire department of the city of Atlanta, in the capacity of fire inspector and have been serving in this capacity as fire inspector since February 1, 1910. I am familiar with the building on South Forsyth Street, partially occupied by the National Pencil Company. It was my duty to make frequent inspections of this building from time to time to see that those in charge complied with the ordinances and regulations as to fire risks and hazards. I frequently did make, from time to time such inspections, including the basement of this building, owing to the fact that this building was an old one, and in this basement was a furnace. I am personally acquainted with Leo M. Frank and also with Mr. Darley, both of whom were connected with the National Pencil Company. From time to time I called their attention to the fact that they were failing to comply with the city ordinances and especially as to accumulation of trash and paper and other combustible material and I have personally heard both Mr. Frank and Mr. Darley give specific directions to their negro employees to clean up this trash and to keep it cleaned up. I have compelled the officials, including Mr. Frank and Mr. Darley, through their employees to clean up the basement of the factory in compliance with the ordinance of the City of Atlanta, Code section 1099. ^{of} That pursuing the terms of the said ordinance, I did inspect from time to time the basement of the National Pencil Factory during the period prior to April 26, 1913, and from the date indicated, that is from and about February 1, 1910, regularly and continuously up to April 26, 1913 and since that date. Mr. Frank took up with me the matter of being allowed to place empty boxes for shipping, temporarily in the basement, which was allowed, provided

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these boxes would only remain a short time to go out as they were needed in shipping and to be so arranged and stacked regularly as not to prevent the cleaning of the basement of paper, trash or other combustible material. I can be positive that the basement of the National Pencil Factory was cleaned of trash, paper and other combustible material between January 1, 1913, and April 26, 1913, and I can also be positive that the basement of the factory was not allowed to have stored therein papers. I have examined the order book marked Exhibit A of the National Pencil Factory attached to the affidavit of Mr. Phillip Chambers dated April 20, 1914, and I can say to the best of my knowledge and belief that I never saw any such books or similar paper material in the basement of the National Pencil Factory, and if I had so seen same, or any other paper located therein, I would have ordered it removed at once.

~~The following is a certified copy of City Ordinance~~
(The following is a certified copy of City Ordinance, Section 1099, referred to in the above affidavit.)

"CODE OF THE CITY OF ATLANTA,
Page 311, Section 1099.

Sec. 1099. Combustible matter in Building, Cellars, or Yards to be removed. . . Inspection by Chief of Fire Department -- No person shall be permitted to place and let remain in any box, barrel or otherwise, in any building, cellar, street, alley-way, or yard within the fire limits, longer than six hours, any loose straw, hay, paper or other combustible matter; and all owners or occupants of buildings or cellars within said limits are hereby required to permit the chief of the fire department, or any member thereof designated by him, or any officer or member of the police force, to inspect their buildings, cellars and premises, to see if this ordinance is being complied with. And it is hereby made the duty of the Chief of the Fire Department, and of the police force to make such inspection.

STATE OF GEORGIA,
COUNTY OF FULTON,
CITY OF ATLANTA.

I, Walter Taylor, Clerk of Council of the City of Atlanta, a municipal corporation, in said County, under the laws of said State, do hereby certify that I am the Clerk of Council of the City of Atlanta as aforesaid, and that as such I have in my custody and care the laws, ordinances and records of legislation of the said City of Atlanta, including the Code of the City of Atlanta, in which are codified the ordinances of the City of Atlanta, in force; that the above and foregoing is a true and correct copy of section 1099 of the Code of Atlanta of 1910, as same appears of record and file in my office as such Clerk of Council. In witness whereof I have hereunto set my official hand and seal this the twenty third day of April, 1914. Walter Taylor, Clerk of Council of the City of Atlanta." (Seal)

15th GROUND

IVY JONES, Sworn for the State. Since I was sworn on the trial of the case of the State vs. Leo M. Frank, I have not made an affidavit or signed a paper for anybody. I haven't made a statement to anybody changing in the least bit, the evidence that I gave on the trial. The evidence I gave on the trial is absolutely true. I have

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not signed any paper or authorized anyone for me.

swore on the trial of the case of the State vs. Leo M. Frank as

follows: "That on Saturday, April 26, 1913, I saw Jim Conley at the corner of Forsyth and Hunter Sts. I met him there at a saloon. I was in there when Conley came in, and we went on up Forsyth St. to Mitchell, and out Mitchell St. to Mangum and from Mangum to W. Hunter and on down to Davis St. and we met some other fellows and we stopped and talked with them a few minutes, and I goes on home. I was going to the ball game. I met Jim Conley first at the corner of Forsyth and Hunter St. between 1 and 2 o'clock. I can't be more accurate than that because I didn't pay any more attention I know I got off after one o'clock from my work. Jim Conley wasn't drunk when I saw him. The place where I saw Jim Conley is on the corner right in the next block to the National Pencil Company's place of business, the opposite corner from the block where the pencil company's plant is located. The way Jim Conley and I went was towards Jim Conley's house. I don't exactly the time I left Jim at the corner of Hunter and Davis Sts, but it was somewhere I guess after 2 o'clock. I gave Jim a glass of beer, each one of us had some."

I have been knowing Jim Conley about three or four years. I have been shown on this Tuesday, April 28, 1914, in the office of Hugh M. Dorsey, Solicitor General, an affidavit which purports to have been ^{sworn} ~~sworn~~ to by me on the 6th day of February, 1914, before C.W. Burke, a Notary Public, for Fulton County, Georgia. The signature as attached to this paper is a forgery. Some parts of said affidavit however, are true, and some parts are false. The affidavit is false when it says that I was not joined on the way by anyone and is false when it says that I did not meet anyone I knew until I reached Davis St. The truth as to what really occurred was told by me on the stand. I do not know C.W. Burke. Sometime about the first of the year, two men come to see me up there at my work, and they asked me did I see a fellow get hurt in the Central Railroad. They told me it was a fellow by the name of George Brown and I told them I did not know anything about George Brown or any other fellow getting hurt at the Central Railroad. They said for me to sign a paper they had which would release me from coming to court. The paper which I signed had big letters at the top, like a grocery store heading and it wasn't a long piece of paper like the affidavit which I have just seen and read which C.W. Burke claims I signed. I signed that paper with a pencil. I have just gone downstairs to the sidewalk and standing in front of the Al Bronx Saloon I saw the little fellow who got me to sign this paper. Mr. Starnes accompanied me down there and he told me the man I saw down there was Jimmie Wrenn.

EUGENE FERRY ("BUDDY BROOKS") Sworn for the State. I have known Ivy Jones for about six years. I have also known Jim Conley ever since he was a baby. On April 26, 1913, I left my place of business

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between ~~12~~ 12:30 and 1 o'clock. After going home I stated back to town to go to the ball game. I met Ivy Jones and Jim Conley at the corner of Hunter and Haynes Streets at 2:15 p.m. and had a conversation with them. I told them I was going to the ball game. Ivy Jones said "Well wait for me over on Peters St. and I'll go with you. Then I left them. I didn't go by way of Peters Street then but went over to the house of Major Caldwell on Nelson Street and went with him to the ball game. I didn't see Ivy Jones or Jim Conley any more that day. About three weeks ago a rather small, young, clean-shaven fellow came to see me twice. The first time he came he said he wanted to ask me about a railroad accident. I said I didn't know anything about any railroad accident. He said he wanted to find out who I met that day, on April 26, 1913. I told him I met Ivy Jones and Jim Conley. I told him how I had met Jones and Conley on ~~Peters~~ ^{Hunter} Street that day and that was the only time I saw them. A little over a week after that, the same young fellow who had talked to me before came again. He handed me a paper. The paper said that me and Caldwell went out to the baseball game on April 26, 1913. It said that ^{I met} Ivy Jones on the corner of Hunter and Haynes Streets along about 3 o'clock, and I said "No, it was 2:15. o'clock. You ain't got Jim Conley's name there and I told you I met both of them, Conley and Jones." He took a pencil and put Jim Conley's name on the paper and ~~expanded~~ he put 2:15 instead of 3 o'clock. He handed me the paper and a pencil and said to sign it. He said he was going to have me subpoenaed to the Superior Court if I didn't sign it and I said I didn't care for I didn't want to sign it. I never signed any paper for him at all.

JAMES H. WAITS, Sworn for the State. On or about May 31, 1913, I was with my wife, Mrs. Hattie Waits, on a train returning from Savannah where we had been attending the Odd Fellows Convention. Somewhere near Jessup, Ga. I purchased a newspaper carrying the confession of James Conley., in which he stated that he met Leo M. Frank at the corner of S. Forsyth and Nelson Sts. on April 26, 1913. My wife immediately stated that she must have been Frank and Conley at this place. In some way the detectives learned what Mrs. Waits knew and called to see us.

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MRS. HATTIE WAITS, Sworn for the State. My husband and I were living at No. 28 ~~Market~~ ^{Marham} Street in the city of Atlanta, on April 26,

I saw that it was a Jew and
said to myself "that account for
them being so close to the negro, he
is a Jew"

1913. On Saturday morning, April 26, 1913, I wanted to go to town to get my niece, who lives with me, some slippers. I always go to town across the Nelson St. bridge. As I reached Nelson and Forsyth Sts. I saw a negro and a white man standing on this corner talking together. The negro had his face turned towards ^{me} The white man at first had his back to me, and I thought at first the white man was a gentleman I knew. As I got even with them the white man stepped back and I turned ~~and~~ looked at him and saw that he was not ~~the~~ gentleman that I thought he was. I recognized this white man as one whom I had seen several times prior to this date. I have seen him several times on Forsyth St. I have since seen the negro and this negro was Jim Conley. I have seen a number of pictures of Leo M. Frank and Leo M. Frank is the same person I saw talking to Jim Conley. To the best of my knowledge it was between 10 and 11 o'clock. I saw Mr. Frank at the trial and recognized him as the man I saw standing on the corner talking to the negro. I was unwilling to make this affidavit until I first went in person and looked at Conley himself. We went to the county jail today and saw Conley and I found that he was the negro that I saw talking to Mr. Frank, between 10 and 11 o'clock on April 26, 1913 on the Northwest corner of South Forsyth St.

S.L. MORRIS, Sworn for the State. I am personally acquainted with Mrs. J.M. Waits. I have known her well for a short period. I am acquainted with her general character and reputation. It is good.

O. H. PUCKETT, Sworn for the State. I am personally acquainted with Mrs. J.M. Waits. I have known her for ten years. I am acquainted with ^{her} general character and reputation. It is good. I would believe her on oath.

16TH GROUND.

HELEN FERGUSON, Sworn for the State. Since the Frank trial last summer, in which I gave testimony, two attempts have been made either to get me to leave the city or change my testimony- the first by money and the second by having a young man make love to me and offering to marry me. Shortly after the trial I left home one morning to go to my work and on a street corner a young man who was a Jew came up to me and said he would give me \$100 and pay my board and all expenses if I would leave Atlanta, as Frank was going to get a new trial sometime soon. I refused and turned and walked away.

The second attempt occurred in December, during the two weeks just before Christmas. When I left my work at the Clark Woodenware Company one afternoon, in December, I was walking down the street with another girl when a young man, whom I afterwards found out to be Jimmy Wren stepped up to us and said "Howdy do Miss Ferguson." I told him I didn't remember him and he said: "This is Mr. Howard, don't you remember when you worked at Blocks? I worked there too and wanted to meet you then but I didn't have a chance." That was the way I met him. He took me to the show a night or two later and was mighty nice to me. I hadn't known him more than two days, before he began to make love to me. A ~~night or two later~~ few days after I met him we were walking uptown together, when we met a big heavy fellow, whom I have since found out was Mr. C.W. Burke, the detective. Jimmy Wren, or Howard, as he called himself at that time, stopped and introduced me to him as his father. We talked for several minutes. He said some awful things about the police. He said something about wanting me to make a new statement in the Frank case, and I said "No sir" As we turned to leave he said to Mr. Howard "Bring her up to the office tonight I want to talk to her anyhow." That night Mr. Howard came to the Clark Woodenware Company at 9 o'clock when I got off to take me to town to see a show, Jimmy was making real love to me that night, said he wanted me to marry him, but he kept on talking about wanting me to sign an affidavit about the Frank case first. He took me up to the Grant Building and there in an office his "father" was waiting for us. They asked me again to ~~change my statement in the Frank case~~ *and say it was some other time Frank had refused to sign* But I said that I had told the truth and wasn't going to change it, and Jimmy said "Well, I'd hate to be the main one to put the rope around Frank's neck, and I said I couldn't help it, since I had only told the truth. While we were talking about the Frank case in this way, I happened to tell them that I was afraid of Jim Conley. They then dropped the talk about my evidence and fixed up an affidavit for me to sign about Conley, and I signed it in order to satisfy them. I have never seen him but once since that night. I found out a few days later that his real name was Jimmy Wren and not Howard. It was several weeks later before I found out that his "father" was the detective C.W. Burke. A newspaper reporter came out to see me about my affidavit

the more they hear the more they know about it

and described Burke to me and the description made it plain that he was none other than "father". *The office I was in was that of Porter in Reiser's office.*
H. I. QUINN, Sworn for the State. I am personally acquainted with Miss Helen Ferguson. I have known her for the last twelve months. I am acquainted with her general character and reputation. That character and reputation is good and I would believe her in a court of justice or anywhere else.

17TH GROUND.

J. E. DUFFY, Sworn for the State. I am the J.E.Duffy who was a witness on the trial of the State vs. Leo M. Frank. My evidence ^{was} ~~is~~ as

follows: "I worked at the National Pencil Company. I was hurt there in the metal department. I was out on my fore~~fm~~-finger on the left hand. That is the cut right around there (indicating) It never cut off any of my fingers. I went to the office to have it dressed. It was bleeding pretty freely. A few drops of blood dropped on the floor at the machine where I was hurt. The blood did not drop anywhere else except at that machine. None of it dropped near the ladies dressing room, or the water cooler. I had a large piece of cotton wrapped around my finger. When I was first out I just slapped a piece of cotton waste on my hand.
 CROSS EXAMINATION. "I never saw any blood anywhere except at the machine. I went from the office to the Atlanta Hospital to have my finger attended to."

That statement is the truth. The reason I changed my evidence was because C.W.Burke first came to see me. My brother-in-law, Mell Arnold, came one day where I was working and told me that a man by the name of L.P.Eubanks wanted to see me that night at his (Eubank's) house Mr. Burke was there and met me with Eubanks, that being the second time I had seen Burke. Burke went ahead and wrote out a paper and had me sign it. That paper was false. Burke did not pay me anything, but promised me that he would get me a job paying me \$15.00 a week until he got me a job working with the Southern Railroad again, if I would sign the affidavit. I borrowed \$5.00 from ~~Eubanks~~ of L.P.Eubanks before I made this statement and Eubanks told me if I wanted money I could get it from him and he would take my notes for it. Sometime about a year ago myself, L.P.Eubanks, Mell Arnold and B.G.Duffy (my father) were arrested for alleged car breaking. Eubanks is the man who swore against the crowd and secured the indictments. At that time C.W.Burke was the special agent of the Southern Railroad and had charge of the prosecution. It was through Burke that Eubanks' case and the cases against the other men mentioned was not pressed. Eubanks, in this prosecution, was Burke's head witness in all these cases. A fellow by the name of Fritz Lynn and Jim Wren took me Thursday night, April 30 to my mother-in-law's house

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at 332 Barnett Street. This was sometime before 12 o'clock. I could not get in the house and took a street car to my own home. When I got home I saw Jim Wren and Lynn in an automobile in front of my house. I whistled and they came up to where I was. I told them I could not get in my mother-in-law's house. Then they put me in the automobile and after driving around town a little bit and giving me supper, etc. they then took me to Austell, Ga. All the sleeping I did that night was done in the automobile. The automobile was stopped on the side of the road and all of us went to ~~sleep~~ sleep. The next morning we spent in Austell. Wren and I stayed in Austell and Lynn came back. Lynn is the man who drives the automobile for C.W. Burke and Jim Wren is working on the case for C.W. Burke. Wren bore all expenses. Last night, May 1st, Lynn, came to Austell and brought me back to Atlanta to the Capital City Chair Company on Marietta St. That was around 9 o'clock. There were a number of people gathered there, all of whom I took to be Jews, about eight or ten in all. They asked me all about my connection with the case. I told them all about it, and told them that Burke had promised to keep me out of jail if I would sign the affidavit which I had signed for Burke, and to get me out of any trouble of any kind in which I got. The other day, when Mr. N.A. Garner came out to ask me to come to Mr. Dorsey's office, I told him I would come if I could, but I did not come. Afterwards when Mr. Garner came to serve me with a subpoena I saw him and dodged.

N. A. GARNER, Sworn for the State. I went to the Southern Railroad Yards at the lower end of Decatur Street today about one o'clock to look for J.E. Duffy in order to subpoena him to go before an official court stenographer to make a statement for the hearing of an extraordinary motion for new trial in the Lee M. Frank case, or to get him to sign an affidavit which I had written out. The first time I saw him at this time was when he came out of a little shanty in the railroad yards and started walking fast toward some box cars. As soon as I saw him I started running after him but before I could get over to the shanty, he was out of sight, there being many box cars standing on the tracks all around there which prevented my finding him or seeing which way he went. As soon as I got over to the shanty, though I saw Mr. L.P. Eubanks, who told me that he had

been talking with Duffy just a moment before and Duffy had said: "Yonder's a fellow I don't want to see." Eubanks asked him "Who is it?" Duffy Replied, so Eubanks told me: "Newt Garner, and Duffy replied "I'm going' to beat it," and immediately left. For three quarters of an hour I searched around among the box cars looking into many empty box cars, ~~hopk~~ hoping to find Duffy, but finally left without finding him.

ROBERT L. WAGGONER, J. H. DOYAL, Sworn for the State. We are detectives of the city police department of the city of Atlanta. We are acquainted with J.E.Duffy. Several months ago we saw Mr.Duffy in the office of the detective department. We do not know whether or not he came to the office upon his own initiative, or whether or not someone requested him to come. The first time we saw him was when he was there and talking about what he knew about his hand getting out at the National Pencil Company. Mr.Duffy stated that he had heard that it had been stated that the blood found on the factory floor possibly came from his finger when it was out. He stated that this was not true, that it could not have been possible. He stated as his reason the fact that he had some waste in his hand at the time his finger on his other hand was out and that he caught his finger at once in his other hand with the waste around it and held it tight catching whatever blood came from his hand in the waste and holding his finger tight with the waste so as to impede the flow of blood, and that holding his hand in this way he went immediately out of the room and on into Mr.Frank's office.

E. E. DUFFY, Sworn for the State. I am the father of J.E. Duffy. About one months ago I was ~~walking~~ walking home from the Southern Railroad yards with L.P.Eubanks and L.P.Eubanks said to me: "We are ~~ketting~~ your son, J.E.Duffy, have money, and we are taking his notes for it, but that don't make any difference, He will not have to pay it back."

N. A. GARNER, S. L. ROSSER, Sworn for the State. We know J.E. Duffy and together ~~with~~ we talked with Mr.Duffy, at the office of the Solicitor General, a short time after the murder of Mary Phagan and Mr.Duffy told us that when his finger was out at the National Pencil Company, that he had some waste and that he immediately wrapped it around his finger and held the waste and the injured

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finger in his uninjured hand and that he was absolutely sure that no blood could have escaped to the floor; that he immediately went to the door of Mr. Frank's office and from there to some hospital. We were at the time of this statement discussing as to how the blood spots had gotten on the floor of the factory, and the fact that it had been suggested by someone that the injury of Mr. Duffy's hand was probably the source of the blood. This Mr. Duffy denied. We talked with Mr. Duffy on the evening of April 23, 1914, at his home in Atlanta and Mr. Duffy then stated that Mr. Dorsey, the solicitor General had not paid him any money, but that the Solicitor General did O.K. his subpoena, so that he could draw his compensation as a witness allowed by law, and that after the solicitor approved his subpoena that he (Mr. Duffy) went to the County Treasurer and got the money, about \$7.60.

H. L. CULBERSON, Sworn for the State. I am Treasurer of Fulton County, Georgia, and was during the year 1913; The record in my office show that on August, 19, 1913, I paid to one J.E. Duffy the sum of \$7.60, same having been paid him on a witness subpoena approved by the Solicitor General for two days' service as a witness and an affidavit sworn to by the said J.E. Duffy for \$3.60 mileage. ~~This approval witness subpoena and the affidavit herein referred to are on file in my office.~~

MELL ARNOLD, Sworn for the State. I was indicted in the Superior Court of Fulton County, on evidence produced by C.W. Burke, who was then special agent on the Southern Railway. There was absolutely no truth in the charges against me. Burke's main witness was one L.P. Eubanks I lost my job with the Southern Railway on account of this indictment. C.W. Burke was helping me, since he left the Southern Railway to get my position back. While Burke was helping me to get my job back, one day he asked me to see my brother-in-law, J.E. Duffy and to ask him to go to the residence of L.P. Eubanks on Alexander Street. I went to J.E. Duffey and told him to go to Eubanks' house. I am not positive whether I told Duffey that C.W. Burke would be there at Eubanks' house or not. After I went to Duffey and requested him to go to Eubanks' house I was present when Duffy executed a paper for Burke. Burke and Eubanks however both knew that I was going to be present when they interviewed Duffy. After this occasion

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, I got my job back on the Southern. Fritz Lyn was also present when Duffy made this statement for Burke. I do not know myself about any money being paid. I had been promised the job by the Master Mechanic of the Southern Railway and Eubanks before the Duffy statement. I do not know whether it was the next week or the next month, but sometime soon after this I went back to work for the Southern Railway .

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J. L. MOORE, Sworn for the State. I know Mrs. M. Jaffe, wife of the optician who did run an optical business on Whitehall Street between Mitchell and Hunter Streets. I was in the place of business of M. Jaffe several times during the month of May, 1913, immediately following the murder of Mary Phagan on April 26, 1913, and from time to time I discussed with Mrs. Jaffe the Frank case, either while he (Mr. Jaffe) was actually at work upon my eye-glasses or waiting on someone in his shop, or while I waited for the return of her husband. Knowing me as a customer, she discussed with me the Phagan murder and the connection therewith of Leo M. Frank, who about this time was indicted by the grand jury of Fulton Superior Court. She discussed with me in detail a great deal of the evidence, and particularly the evidence of James Conley and endeavored to have me say that I considered Leo M. Frank innocent. At that time did she ever intimate or suggest in any of these conversations that she had ever seen Frank on the Street on the day in question or at any other time.

H. H. ORR, Sworn for the State. I am personally acquainted with Mrs. M. Jaffe. I have known her for two or three years. I am personally acquainted with her general character and reputation. That general character is bad. I could not believe her on oath.

3RD AMENDMENT.

B. S. SMITH, Sworn for the State. I was serving Hugh M. Dorsey, Solicitor General, in the capacity of stenographer, and as such took down the questions propounded by Hugh M. Dorsey to Mrs. Maud Bailey, hereto attached and marked Exhibit "A". This stenographic report is a full, true and correct report of the questions asked and the answers given by the said Mrs. Maud Bailey. This papers was taken on May 14, 1913, in the office of the Solicitor General in the Throver Building in the presence of Mr. Plennie Miner, Mr. Bass Rosser, Mr. Dorsey the Solicitor and the paper was written by me and signed in my presence

by Mrs. Maud Bailey.

(The following is exhibit "A" referred to above.)

"Statement of Mrs. Maude Bailey, 253 Humphries St., Atlanta, in reference to the murder of Mary Phagan, Atlanta, April 26, 1913, in the presence of Mr. Dorsey, Mr. Minor, detective Rosser and B.S. Smith.
Atlanta, Ga., May 14, 1913.

Questioned by Mr. Dorsey.

- Q. What business is your husband in? A. Meat cutter, on Gordon St. and Nembitt.
- Q. Where did you say you lived? A. I live at 253 Humphries St.
- Q. Where did you live at that time? Q. I lived in a whole lot of places, Acworth St., Greensferry Ave., etc.
- Q. You used to work at the National Pencil Co? A. Yes sir, one year ago.
- Q. Did you know Mr. Frank? A. Yes sir.
- Q. What kind of man is Mr. Frank; what is his reputation. Q
- A. He has always treated me mighty nice.
- Q. What is his reputation, what did other people say at the time, A. Some say mighty nice things, some say not.
- Q. Those that say he is not nice, in what way did they say he is not nice. A. They seemed to say he is too fast around the girls.
- Q. That is his reputation, being a bad man after the women? A. Yes sir.
- Q. What did you ever hear any of them say about his undue familiarity with the girls, or what was your experience yourself? A. I heard a right smart of them say he got too fresh around the girls.
- Q. How many? A. A whole lot of them.
- Q. Would not you name a few? A. I could not.
- Q. I just want a few names. A. Well, my mother.
- Q. What is her name? A. Mrs. Mae Barrett.
- Q. What did you hear your mother say? A. Mama sais Mr. Frank was not running the place right; that he was too fast around the girls, I think so myself.
- Q. What did you ever see him do? A. I never paid any attention to him.
- Q. What are some of the things you saw him do? A. I never saw him do anything, but he said he did not want old ladies to work there, he wanted young girls.
- Q. Were you present when a woman gave birth to a child? A. I was up there when a girl miscarried.
- Q. Who was that? A. Viola Franklin, and there was another one miscarried there, but I dont remember her name.
- Q. What did Mr. Frank say when that girl miscarried that you know about? A. He never done anything; let her stay in the dressing room until she was able; she stayed there about two or three hours. They never said anything about it; she worked there about three months after that.
- Q. Did he get excited or get a Doctor? A. Certainly.
- Q. Was there any talk at that time as to who was the father of the child? A. I dont think there was anyone at the factory was.
- Q. Well, the other one, did Mr. Frank pay any attention to that? A. It seems he did.
- Q. Who was she? A. I dont remember.
- Q. Opie Dickson or Mattie Smith? A. One of them.
- Q. Are you sure it was one or the other of them? A. Yes.
- Q. What did he do this time, did he seem very anxious? A. Just got a doctor to her there; came up several times to girls there.
- Q. What Doctor? A. I dont know what doctor; the ambulance came once to one of the girls, Maybelle Reed; She was laid out on the table; I thought she was dead.
- Q. Was that in connection with child birth? A. I dont know never knew.
- Q. What did you ever see Frank do that looked like he was unduly familiar? A. I never paid attention to Frank, never had time.
- Q. You heard it talked around that he was trying to do things with the girls that was the general talk and general reputation? A. I certainly have.
- Questioned by Mr. Rosser.
- Q. He wanted young girls, not old girls?
- A. He wouldn't hire old girls; looks like to me old ones could do the work just as well as the young ones.
- Questioned by Mr. Dorsey:
- Q. He preferred ones with short skirts? A. Yes.
- Q. He said he did not want any old women? A. Why certainly.
- Q. His reputation was so bad it was common talk by everybody that worked there? A. Some of them that worked there didn't say anything,

but that was because they were his pets. He had some pets around there.

Q. You were there Saturday, April 26th? A. Yes, quarter to twelve.

Q. Who all did you see? A. Mr. Frank.

Q. What was he doing at that time? A. He was going to the shipping room, and he spoke to me.

Q. Who else did you see? A. Arthur White.

Q. What was he doing? A. Standing there talking to his wife.

Q. Who else? A. Corintha Hall.

Q. Who else? A. Emma Clarke

Q. Who else? A. Stenographer in the office; I don't know her name.

Q. Did she wear glasses? A. I ~~don't~~ don't know, I never saw her face.

Q. How did she look? A. I never paid much attention to her

Q. You got there at what time? A. Quarter to 12.

Q. How long did you stay? A. 10 minutes 12.

Q. You did not see Mary Phagan? A. I saw two girls come out of the door, but didn't know who they were. ^{blue}

Q. How was Frank dressed? A. Frank had on a dark/suit of clothes, was in his shirt sleeves, and had a paper in his hands and was going to the shipping room; said to Arthur: How late are you going to work this afternoon? About 3, Arthur said. You will be shut up by yourself. Then Arthur said all right. Then Frank laughed, looked kind of white in the face. That was before Mama come down.

Question by Mr. Rosser:

Q. Did he look like there was any trouble on his mind?

A. Yes sir, looked to me like he was worried. Mama went up there to get some boxes to make some slats to go up on the back window to keep the sun out.

Q. How long did Frank stay in the shipping room? A. Just a few minutes, went back to the office.

Q. In his shirt sleeves? A. Yes.

Q. Was he writing? A. Never saw him writing.

~~Question by Mr. Rosser:~~

Q. How come you to notice him this time being nervous? A. I just listened to him and Arthur talk. I looked at Frank; he looked kind of funny, dropped his eyes when he went in the shipping room. He said Howdy Miss Maud, and I said, Howdy Mr. Frank, was all he said to me.

Q. Did you ever notice him being nervous before when you were around him? A. Well I never looked at him that hard.

A. CAPT. PLENNIE MINOR:

Q. What did Arthur White ~~say~~ say to his wife when she went down the steps? A. She was standing at the foot of the steps; had one foot on one of the steps. Arthur was standing there on the third or fourth step, anyway he said: "You can go down and stay at somebody's else's house and spend the night, because I'm liable not to come home tonight, and may not come home tomorrow." Then she said "No, I'll stay at home whether you come or not. He said: "I'm ~~not~~ going to get on a "high-way".

Q. Arthur said that? A. Yes sir. Arthur used to get beer in the basement.

Questioned by Mr. Rosser:

Q. Did you ever know anything about the cot being in the basement?

A. Never did, until I saw it in the paper. I have never been in the basement; I have been all over the factory except the basement.

Questioned by Capt. Minor:

Q. Do the girls and boys working there know anything about this basement? A. If they did, I never knew anything. They stand by the elevator every day at noon, talking and go back in the dark.

Q. Never heard of any of them going down in the basement? A. No sir.

Questioned by Mr. Dorsey:

Q. Did you know Mary Phagan? A. I certainly ~~did~~ did.

Q. What kind of girl was she? A. Nice girl.

Q. What kind of reputation, good or bad? A. Good reputation.

Q. Never heard anything wrong? A. Never did, never saw anything wrong. She would never stand on the stairway and talk with boys.

Q. What about the general reputation of that factory?

A. Well it had a pretty bad name I should think. "

B. S. SMITH, Sworn for the State. I took down the questions propounded ~~thax~~ by Hugh M. Dorsey to Mrs. May Barrett, hereto attached

and correct report of the questions asked and the answers given by the said Mrs. May Barrett. This paper was taken on May 14, 1913, in the presence of Plennie Minor, Mr. Bass Rosser, Mr. Dorsey, the Solicitor and myself as stenographer and was written out by and signed in my presence by Mrs. May Barrett.

(The following is Exhibit A referred to in above)

"Statement of Mrs. May Barrett, 253 Humphries St. in reference to ~~xxxxxxxx~~ conditions around the Pencil Company factory relative to the murder of Mary Phagan, Atlanta, April 26, 1913, in the presence of Mr. Minor, Mr. Rosser, Mr. Dorsey and B.S. Smith. Atlanta, Ga, May 14, 1913.

Questioned by Mr. Dorsey:

- Q. What is your name please? A. May Barrett.
Q. Where do you live? A. 253 Humphries St.
Q. Where do you work? A. National Pencil Co.
Q. How long have you worked there? A. Somewhere in the neighborhood of three years.
Q. You ~~was~~ were there on Saturday, April 26th? A. Yes sir.
Q. When did you get there? A. Somewhere in the neighborhood of quarter to 12.
Q. With whom did you come? A. By myself?
Q. Did you see your daughter there? A. Yes sir.
Q. Who all did you see there when you got there? A. I went up on the top floor. I work there, and as I come back my daughter was standing at the steps at the first floor and Emma Clark, forelady, was there, and Corinthia Hall, and Arthur White, and his wife.
Q. Did you see Mr. Frank? A. No sir.
Q. How long did you remain up there? A. It was something after 12 o'clock, I remember hearing the whistles blow.
Q. How did you have your hair fixed? A. Just like this (Done up)
Q. Did you see Mrs. Arthur White? A. I dont really know, but my daughter said it was.

Questioned by Mr. Rosser:

- Q. How long did you stay? A. I waited ~~x~~ for them to saw some of the planks on the rip saw.
Q. How do you know it was quarter to 12. Did you look at the clock? How long did you stay there? A. Some few minutes.
Q. 15 or 20 minutes? A. I suppose about 20 minutes or 25 minutes.
Q. Did you see anybody when you come out? A. I saw my daughter, Corinthia Hall, Emma Clark, Arthur White and his wife.

~~xxxxxwifes~~

Questioned by Mr. Dorsey:

- Q. You saw her (Mary Phagan) A. No sir.
Q. Didn't you see her when she ~~she~~ come away? A. No sir, neither coming or going.
Q. You would have been coming away a little after 12? A. Yes sir.
Q. The whistles blowed for 12 before you come out? A. Yes sir.
Q. How long after 12? A. I dont know exactly; I was on the top floor.
Q. It would have taken you a minute to walk down the steps? A. Yes sir, I suppose so.
Q. You had come out of there two or three minutes after 12? A. Yes sir.
Q. You were out of there by what time? A. I dont know exactly.
Q. You think it was sometime immediately after 12, A. Yes sir.
Q. Did you see Mr. Frank at any time? A. No sir.
Q. Did you hear him say anything? A. No sir.
Q. You are acquainted with his general character and reputation? A. He has always acted like a gentleman in my presence; I could not say anything else and tell the truth.
Q. Did you hear people talk about him in the factory; never heard his name called; You dont know whether his reputation is good or bad? A. No sir, I could not say.
Q. Talking about what people said of him, never heard them discuss his disposition to flirt with the girls, make love to them, etc? A. No sir, I never have.
Q. What is it that you know about this business that you are holding back? A. Nothing at all.
Q. Did you tell anybody ~~this~~ that you knew a good deal, but they had to pay you money to tell it? A. No sir, I did not, no sir, indeed never did

Q. You do not know anything you want to sell do you? A. No sir, indeed I dont.

Q. You have told us everything that happened? A. Yes sir ,as far as I know.

Q. You were on the floor above the office floor? A. I am on the very top floor of the building.

Q. Your little daughter says she heard you talking about Mr. Frank?

A. She is sadly mistaken. My little daughter is not responsible for what she says.

Q. This little girl? A. No sir.

Q. What is the trouble? A. She tells lies.

Q. What makes her tell them. A. I dont know.

Questioned by Mr. Rosser:

Q. How is it you should be the first person to come here and talk like you do when there are a dozen others tell the same thing your daughter did: Are they all telling a story? A. I cant help that.

Q. You are a married woman and know about these things: You never saw any of these foremen fell of the girl's legs? A. Saw them laughing and talking.

Q. Never saw them with their hands on the girl's? A. I have seen them jolly and go on.

Q. What do you call jolly? A. Laugh and talk.

Q. Is this as far as they went? A. I didn't see any harm in that. I didn't pay any attention to anybody's business but my own?

Q. What about when the girls sat down and ate their dinner, the foreman and boys getting down to where they could see and peeping up under their dresses at their legs? A. I haven't anything to do about that; I am not taking care of other people's business.

Questioned by Mr. Dorsey.

Q. You say your little girl tells stories? A. She certainly does.

Questioned by Mr. Rosser.

Q. What did she ever tell a story about. A. I suppose that's my business; it does not concern others at all.

Q. We want to know the trouble. A. I told you - -

Questioned by Mr. Dorsey:

Q. Hasn't she good sense? A. I suppose she has, but she don't use it.

Q. The people at the factory give her a good name. A. But you dont know.

Questioned by Mr. Rosser:

Q. You mean your daughter is no account? A. I dont meant that; I didnt say those words.

Q. Just explain it your own way. A. I said she ~~x~~ told stories.

PLENNIE MINER, Sworn for the State deputy sheriff of Fulton County, Georgia, and in making investigations with reference to the death of Mary Phagan, I, in company with detectives L.S. Rosser, went to the Swift Soap Works and found Mrs. Maud Bailey, daughter of Mrs. May Barrett at work there. She told us some things and also said in substance as follows: "That her mother, Mrs. May Barrett, was at work at that time at the National Pencil Company's place of business and that she was at the National Pencil Company on Saturday, April 26, 1913 at some time. She said that her mother knew a good deal about it, and that she knew a good deal more about it than she would tell, and that she would have to get something out of it before she would tell." She said we would have a pretty hard time getting it out of her, that she was mad at her (Maud Bailey) because she had told it. I carried Mrs. Maud Bailey in my buggy to the office of Hugh M. Dorsey, the Solicitor General, and S.L. Rosser, the city detective, returned to the office on the street

car. I was present ^{when} the stenographer took down the questions propounded to both Mrs. Maud Bailey and Mrs. May Barrett. I told the Solicitor General as to what Mrs. Maud Bailey had stated

to me before he began questioning her. As Mrs. ~~May Barrett~~ ^{Sworn to} went to leave the office of the Solicitor General, she saw sitting in the office her ~~mother~~ ^{daughter} ~~Mrs. May Barrett~~ ^{May Barrett} ~~Maud Bailey~~ ^{Maud Bailey}. Mrs. May Barrett said in substance to her daughter, "you told a pack of lies."

B. L. ROSSER, Sworn for the State. I have read over the above and foregoing as signed by Deputy Serhiff Plennie Minor. The recitals of fact as contained therein are true.

MRS. T. D. MORRIS, Sworn for the State. I am personally acquainted with Mrs. May Barrett. On April 26, 1913, Mrs. May Barrett, Mrs. Maud Bailey, and myself and my daughter, Florence Earnest, went to Moon's Shoe Store on Mitchell Street between 9 and 10 o'clock. Mrs. Barrett said she had to go to the pencil factory so she left us at the corner of Mitchell and Forsyth Streets. After Mrs. Barrett left us we went to Duffys, on the corner of Mitchell and Forsyth Streets. We finished our business in Duffys and came out and waited on the corner for Mrs. Barrett. She did not come back as soon as we expected her to, so Mrs. Maud Bailey asked me to go down to the National Pencil Company's place of business with her to get her mother. I said to Maud I won't go upstairs, I will stay down here and wait for you. Stewart Ave car ~~was~~ came along and my daughter Florence said to me "let's go home". I said "I can't - I have Maud's umbrella. When my daughter boarded the car and while I stayed in the doorway of the National Pencil Factory there was an old negro man sitting down on a box at the right hand side of a person as they went into the the factory, in other words, the man sat at the north of the entrance. Three white men were standing out in front of the pencil company. While I was standing in front of this building two ladies came down and went across Forsyth up Hunter St. One was a tall lady and the other was low and chunky. There was a tall, slim negro sitting on the inside of the door and he came out and sat down by the side of the negro who I first saw sitting on a box ~~in front of the~~ I have today looked at this man that I saw sitting on a box in front of the factory, on April 26, 1913, and I am informed that this man's name is Truman McCrary. I remained in front of the pencil factory until Mrs. Barrett and Mrs. Bailey came down. I

and Mrs. Maud Bailey left Mrs. Barrett at the grocery store and we caught a Stewart Avenue car at the corner of Mitchell and Forsyth Streets. As we were about to catch the car we heard the 12 o'clock whistles blow. When I got home it was twenty minutes past 12 o'clock. About a week after the death of Mary Phagan, I was talking to Mrs. Barrett on the corner of Wells and Stewart Ave. I asked her what she thought of the murder, as to who was guilty and she stated that she believed Mr. Frank was guilty and I remarked that she would have to go to court to testify in the case and ^{she} stated that she could not help that. Job or no job she had to tell the truth. I had a conversation with Maud Bailey about a week after this occurrence. Miss Maud stated that she knew a lot about the pencil factory and that she thought Mr. Frank guilty, and if she ~~was~~ had to testify she would say that she believed Mr. Frank was guilty. Last Saturday morning, Mrs. Bailey came to my home, 39 Comulgee Street and stated to me that the detectives representing Mr. Frank sent for her several times at the Dixie Comb Company to come to the pencil factory, and she stated that a detective asked her if she did not want to go back to work at the pencil factory, saying that they would give her a good job, and she told them that she would not work there for \$5. a day. These detectives paid her carfare and her time while she was away from her work. I have been knowing Mrs. Mae Barrett and her daughter Mrs. Maud Bailey going on two years. They lived next door to me on Wells Street last year. I do not know anything about Mrs. Mae Barrett or Mrs. Maud Bailey that is good or bad. I do know that it is generally known that Mrs. Mae Barrett drinks whiskey and gets drunk at times. I have heard Mrs. Maud Bailey on several occasions speak to my children of knowing Mary Phagan and how pretty she was and what pretty hair she had. I have stated these facts to nobody and would not have stated it now if it hadn't been for the fact that I read a newspaper account of the evidence purposed to have been given in the shape of an affidavit by Mrs. Maud Bailey. I knew that this statement as to the time of her being at the pencil factory was false. I knew that she was with me and she was obliged to know that what she stated was not the truth.

my mother or as to the facts stated in the affidavit ^{it} is true in every particular.

MRS. MINNIE WILSON, Sworn for the State. On the 26th day of April 1913, I saw Mrs. Maude Bailey at 122 Wells St., my husband's place of business. Mrs. Bailey came into the place and asked permission to use the telephone and we told her she could use it. Whoever it was she was talking to, she called the Swift Soap Works, where she worked at the time, and whoever it was that was talking with her at the end of the line evidently told her to come up there for her money for her reply was, "I can't come up there for I am sick and I will send an order", and I said to her after she got through talking, what do you want to be lying to them for, you know you are not sick, and she said "I am always sick". A girl named Florence Earnest came into the store with Mrs. Bailey, and after Mrs. Bailey had talked awhile, she let Florence Earnest talk over the phone and Mrs. Bailey had a pair of new shoes with her and while the other girl was talking, she (Mrs. Bailey) tried on one of the shoes. All this happened a little before twelve o'clock, noon, and then Mrs. Bailey went out of our place, and in about 15 or 20 minutes she came back and asked to use the phone again, and she called the Swift Soap Works and asked to talk to Mr. Newcomb and she seemed to be quarrelling with Mr. Newcomb. She told him to meet her at twelve thirty or as soon thereafter as possible to see the parade. I know Mrs. Bailey's general character or reputation. That character is bad and I would not believe her on oath.

MRS. J. ARTHUR WHITE, Sworn for the State. I was standing talking with my husband, J. Arthur White, at the top of the stairway on the second floor of the National Pencil Factory on Saturday, April 26, 1913, the day Mary Phagan was killed, between 11:30 and 12 o'clock. I know it was that time because I came out before 12. While standing there, May Barrett came down the steps from the floor above and met Maud Bailey on the second floor and they went on down the steps toward the front door. I immediately followed down. I saw them leave the office floor and I did not see them on the staircase or in the building as I went down.

ARTHUR WHITE, Sworn for the State. I was standing talking with my wife, at the top of the stairway on the second floor of the

National Pencil Company, on Saturday, April 26, 1913, between 11:30 and 12 o'clock. I know it was that time because my wife left before 12. While I was standing there, Mrs. May Barrett came down the steps from the floor above and met Mrs. Maud Bailey on the second floor and they went on down the steps toward the front door. I did not see them go out the front door, but I saw them leave the office floor.

DR. RUSSELL D. STALLINGS, Sworn for the State. About three weeks ago late in the afternoon a lady came in and asked me to let use the telephone. After she got through using the phone, her ~~was~~ conversation with me was as follows: "I know in my own mind that Frank did kill Mavy Phagan. He is one of the meanest men I ever had any dealings with. I worked for him and I know him. None except young girls and them good looking can get a job with him, and they have to do as he says or they can't hold their positions. I left because I would not do as he wished. My mother works there now but she commenced after Frank was locked-up." I was a witness at the trial. I asked her her name and she told me her name was Mrs. Maud Bailey. J. A. Bledsoe was present during this conversation. I have seen same lady and found her name to be Mrs. Maud Bailey.

W. T. QUINN, Sworn for the State. I am acquainted with the general character or reputation of Mrs. Maud Bailey, and that character is bad. I have two daughters working at the Swift Soap Works, where Mrs. Bailey worked, and Mrs. Maud Bailey's reputation was so bad that I went to Mr. Norris, Assistant Superintendent of the Swift Soap Works and told him that if he didn't get rid of Mrs. Bailey that I would remove my two daughters from the factory. A short while after that Mrs. Bailey was discharged.

E. H. DUNCAN, Sworn for the State. I am acquainted with the general character of Mrs. Maud Bailey. I used to work at the same place she did and I know her personally also. Her general character in the community where she lives is bad and I would not believe her on oath /

J. A. ADKINS, Sworn for the State. I am acquainted with the general character and reputation of Mrs. Maud Bailey; that character is bad and I would not believe her on oath.

B. H. HOLT, Sworn for the State. I live at 117 Wells St., Atlanta Ga. Next door lived Mrs. Maude Bailey and Mrs. May Barrett.

CONFIDENTIAL

I am also personally acquainted with Will Newcomb, who is a foreman at the Swift Soap Factory, and he frequently visited Mrs. Maud Bailey while she was living at No. 117 Wells St. He would stay there from 7 o'clock to 9, 10, 11 and 12 o'clock at night and drink beer together. I have known Mrs. May Barrett to leave and go to work of a morning before her daughter Mrs. Maud Bailey would go and after Mrs. Barrett would go Will Newcomb would come down there to see Maud Bailey, go in the house and close the door, but I don't know how long he would stay on these occasions. There was a man boarding with me by the name of Haynes, but he didn't stay very long. One night while he was there, somewhere around eight o'clock or half past eight, Mr. Hayes started to the back part of the house, and he called me to come out there and see something and I went out there and saw Mrs. Maud Bailey backed up against the railing of the back porch and Will Newcomb was standing up between her ^{legs} ~~legs~~, but we did not do anything to interrupt them. Another time at night, along about this time, about seven or seven thirty, I come home and found Mrs. Maud Bailey in my side of the house, with nothing but her night clothes on, and she looked like she was scared to death, and I asked her what the matter was, and she said her mother was drunk and had run her out of the house, but soon after I got there her mother, Mrs. May Barrett got quiet and Maud Bailey went back to her side of the house. I knew the general reputation and character of these women and I didn't want to live in such close proximity to them and I moved away from there. The general character of these two women is bad, and I would not believe them on oath.

T. F. WILSON, Sworn for the State. I am acquainted with the general character of Mrs. Maud Bailey and that character is bad and I would not believe her on oath.

HARRY BAKER, Sworn for the State. I am personally acquainted with Mrs. May Barrett and her daughter Mrs. Maud Bailey. Along last summer during the trial of the case of the State vs. Leo M. Frank, I personally heard Mrs. May Barrett say that if she would tell all she knew about the case that both Frank and herself would be lynched.

4TH and 5TH AMENDMENT.

ANNIE MAUD CARTER Sworn for the State. I was in the Fulton County Jail 6 months. I went there last October and Jim Conley was in jail

when I was put in jail. Whenever Mr. Roberts would go downstairs to empty the slops I would go around to see Jim Conley and give him things to eat, and I think I went the first Sunday in December. I wrote him two or three letters, and he sent them back because he said he couldn't read them. No I wrote him three and he wrote me ^{two} to my knowing. There was nothing vulgar in either one of the letters he wrote me, and I sent the letters back to him by Fred Berguson because I couldn't read all of them, and I sent them back to him and went down there at 12 o'clock to see what he wanted and he wanted me to let him have ten cents to get a piece of bread and some sardines, and if there is anything vulgar in any of those letters he wrote, it has been put in there since he wrote them to me by somebody else. Jim Conley told me this last gone Tuesday when I was up there to see Asa McFarland. He asked me if any of Mr. Burns' men had been to see me, he said first did I know this other girl, where she lived, that had been coming there, and I said I know where she lives, but I don't know her name, I knew her sister but I don't know her, and he says I know where she lives, and he said somebody told the sheriff about me talking to Jim and they locked me up about it and I stayed there a week and they found I wasn't down there at the time they said I was and Mr. Roberts had the sheriff turn me out again, and Jim told me Tuesday that someone took those letters I wrote him and the ones he wrote me and I sent back. I asked him if he had them and he said no that somebody took them sometimes in January, but that he ~~sax~~ just hated to tell me. I said don't forget to take those letters out with you, for he told me he was going to get out in May, and then he told me that somebody got them. During Christmas, I was due to go in at 7 o'clock and Mr. Gillem would let me stay out until nine and nine thirty. One day Jim Conley said "are you going to let her come in here Mr. Gillem" and Mr. Gillem said he could not do it then that I had better wait until another time, and I said I don't want to go in there, and Jim said, "if he will let you in here it will be satisfactory won't it" and I says "I don't think that much of you, and Jim says "you haven't been corresponding with me all this time and don't think that much of me, do you". But Mr. Gillem told me he would give me \$2.00 himself if I would go in there and see Jim Conley. Geo. Wren wrote a letter and give it to me, he dropped it first, he said you are going downstairs now and ~~give~~

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I said yes, and he said you go downstairs and give it to Jim Conley and tell him it just come in through the mail, and I took it down there and Jim said you know I can't read, maybe it is from my mother and I thought it was devilment in it, and it said in the letter, "Now you know you know all about this, why don't you tell the truth about it, for you know you are in the hands of your enemies, and I will do this and that to you, and if you don't tell the truth about it you will be hung by an enemy that is bitterly against you", and right after that I goes to Mr. Suttles, he can remember the time, he was going down and Jim Conley hid from him because he thought he was a Jew. He went back and got another man, I think it was "Mr. Owens, and he said, "here is another Jew Conley and laughed, and Jim Conley said "I thought you all were Jews at first. Mr. Gillem says to me, "You go in there and talk with him for he will tell you anything, and I went in there one evening at 3 o'clock and stayed until 7:30 and Mr. Gillem told me to find all I could from him. Of course he said he didn't believe him was guilty but he believe he knew something. I asked Conley, I said "I want you to tak an oath and swear to me if you know anything about it" and he said "Yes I know Mr. Frank killed that girl" and I said "what else did he do" and he said "I don't know but he killed her and made me take her downstairs" and I said "Is that all" and he said "yes" but he would tell me other things about Mr. Frank being with these different women at the office, and I come out and told Mr. Gillem this, and he said "that is the same thing he tells everybody." Mr. Gillem tried to get me to go in there, he said "you are not obliged to be with him, I just want to see if he will try to fool with you with his mouth or his privates." I have asked Conley and he said he wouldnt do anything like that I *and said he never did anything but in the natural way* asked him which way he done it and he told me. I saw him stark naked one day just like he was born, and he looked alright to me, and I asked Mr. Gillem who said Conley was a cock sucker, and he said "Oh, that son of a gun can do it as good as any man. The first Sunday in December, I was sitting on the second floor, and a Jew came up. Mr. Frank was out there and three or four more Jews. Mr. Pappenheimer was there with him too. This Jew asked me was I out ~~xx~~ all the time, and I said yes, and he said I want to see you, and I said all right and he said do you know how to get rich right quick, or have you as

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want, or more than you will ever be able to dispose of. Do you ever go to talk with Jim Conley, and I says I am on my way there now. And he said I want you to do something for ^{me} and state your own price. ~~It is dangerous, don't let get about your food,~~ I want you to take this little vial and put a drop in his food and give it to him and I will guarantee you will have a pot of money and will be a free girl before tomorrow night, and I said he aint done nothing to me and he said I know, but it is our man he has got and what do you care about a negro hanging, all you want is money, and I said I don't want the money and he said if you refuse the money you are a damn fool and walked off. I don't know his name, but he comes up there with Elein boys. He has black hair and his hair stands up and his hat pulled down on one side.

JAMES CONLEY, Sworn for the State. I am now in the Fulton County jail, where I have been ever since the trial of Mr. Frank In July of last year. I am located in the wing on the North side of the jail on the first floor. No other person is kept in there with me. I know Annie Maud Carter, who was a negro woman prisoner and who stayed in the jail for a few months. The first time I saw her was upon one occasion when I was carried up to the court house for trial. I was not tried at this time, however. I saw her in the jail a number of times after that. I never talked with Annie Maud Carter about all of my affairs. I never discussed my case with

U Annie Maud Carter. At one time she tried to talk to me about the case, and asked what I expected they would do with me, and I told her I didn't know. It is not true that I told Annie Maud Carter that only God knew who did the murder; nor did I tell her that I was so near guilty that I felt lost and that I had lost all hope. I did not have all confidence in her, nor tell her any secrets. I was warned by a negro named Fred Perkerson, who was also a prisoner in jail, that Annie Maude Carter was crooked. She had told me that the first man she ever had anything to do with was a Jew and that she could count the negroes she had ever had anything to do with. She did suggest to me that she would marry me right here in the jail if I would consent. She talked to me usually through the bars of my cell door, which was usually kept locked. It is not true that during Christmas week that I ~~did~~ told her that I would make any statement to her if she would marry me. I did not tell her that I murdered Mary Phagan; nor did I tell her that it was so plainly shown on Mr.

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Frank that I let it go that way; nor did I tell her that I and Mr. Frank both had connection with the girl: or that I lied when she claims that I said that Mr. Frank had connection with the girl. I did not make any statement like that to her, nor did I tell her that I done it all by myself, and never to say anything about it. Nor did I tell her that I first choked Miss Mary Phagan, and after she was unconscious, I had connection with her, ~~as~~ that she was young and never having had any one that I had to tear her privates: or that I was sitting on the box when the girl came down: nor that I had called her and when she turned back that I then struck her with my fist knocking her down and dragging her back where they put rubbers on pencils. It is not true that I told Annie Maud Carter that finding Mr. Frank absent, I dropped Miss Mary Phagan through the hole and that I then took Miss Mary Phagan around by the furnace and started to put her in the furnace but that my conscience would not let me do so; nor did I tell Annie Maud Carter that I put Miss Mary Phagan down there to make people believe that Newt Lee done ~~it~~ it; nor that afterwards I found a piece of blank paper and tore it in two and picked up a pencil and put the paper on the cellar door and wrote the notes that were found by the body of Miss Mary Phagan; nor did I tell Annie Maud Carter that I first took the notes and put them in Miss Mary Phagan's bosom, and that I then took them out and layed them by her side; nor that I then took a thing they opened boxes with and pulled the staple out of the back door and went out of the door, going over to Broad St. to get a glass of beer; nor is it true that I told Annie Maud Carter that I went back to the factory to make people believe that I was innocent but that the truth must come to light; nor that I wanted to save Mr. Frank by saying that I helped move the body of Miss Mary Phagan, but that I knew that would not work; nor that afterwards I went and got drunk and started to leave town and that I knew that that would not do, and that I stayed in Atlanta to show that I was not guilty. It is not true that I told Annie Maud Carter not to say anything about this, that I wanted to serve my twelve months and be free, and that if I could not get Annie Maud Carter, that I would go North and marry some white woman around Cincinnati. It is not true that I told Annie Maud Carter that I kept the money that was in

Miss Mary Phagan's purse, and that I gave the purse to a negro child; nor did I ask Annie Maude Carter to be with me; nor did she tell me "no, that was what got you in jail". I did not make these statements to Annie Maud Carter, either in substance or in any other like language. I further state that if Annie Maud Carter states that same is true, that she is misstating facts. I further state that such statements are untrue and are not the facts, that I did not do the things above stated, nor did I tell her that I done them. I know Dr. Wren, knew him while he was a prisoner in the Fulton County jail. I have seen him and Annie Maud Carter talking together in the jail on the first floor. Dr. Wren has delivered to me in my cell wing upon several occasions, notes from Annie Maud Carter. He would sometimes bring them into my cell wing at night and throw them in on my bunk and tell me that Annie Maud Carter had sent them to me. At one time I saw him throw her a note from the second floor, where he was standing, immediately in front of Mr. Frank's cell and Annie Maude threw the note to me. I have been bothered by people coming into my cell wing; sometimes Deputy Roberts would bring people in as if he were showing them the heating system, and lots of times when he would come in and go out he would leave the cell wing door open or unlocked, and others would come in. Some Jews have been in my cell wing, and Mr. Darley from over at the pencil factory, has been one of those who have come into my cell wing. Dr. Wren's brothers have both been in my cell wing, and he himself was in my cell wing frequently while he was in jail as a prisoner. In this way Annie Maud Carter did come into my cell wing once and stayed a short time. It is not true that I saw J.W. Boozer on Peters St. on April 26, 1915.

FRANK REESE, Sworn for the State. About the middle of last summer, 1915, I was sentenced to serve six months jail sentence for carrying concealed weapons. I got out about February of this year. While I was a prisoner serving a jail sentence during that term, I was a trusty prisoner and cleaned up around the jail and did laundry work. I knew Dr. Wren, a white prisoner who was also serving a jail sentence and who was also a trusty prisoner. He roomed in the hospital on the fifth floor and had charge of the medicine room on the fifth floor.

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He helped the County Physician and had charge of the sick and the giving out of medicine while the County Physician was not present. He had access to all the inside part of the jail, including the cell wing of Jim Conley. I have seen him in Conley's cell wing quite often and have seen him carry Conley something to eat from the Deputy's table, where Dr. Wren usually ate. I have heard Dr. Wren telling Conley, that he had been tried, that he (Conley) could take this murder on himself and that this would free Mr. Frank and that they would never try Conley any more for it, after he had once been tried. Conley would not agree to do this. Dr. Wren talked to Fred Perkerson and myself several times and tried to get us to agree to go to Conley's cell and come out and claim that Conley had confessed to us. He said he would get lots of money from the Jews to do this. Dr. Wren would talk to us, usually when Mr. Hilliland would go to the front to get his dinner. Dr. Wren would keep me in cigars to smoke. Fred Perkerson was a colored man, also serving a jail sentence. We both told him that we would not say this about Conley. Dr. Wren told us that Conley was not kin to us, and all that we ought to want was the money and that when we got out that we would need it. We told Dr. Wren to work this himself and he said he didn't want to mix in it, that we were damn fools that money would be brief when we got out, but that when we got out everybody would have money. I knew Annie Maud Carter, who was a negro woman prisoner in the jail and who was released on the trusty or clean up work every morning by Deputy Roberts, and was locked up by Deputy Allen, when he came on duty every day about 3:30 P.M. Annie Maud Carter did the cleaning up of the hospital and also some laundry work on the fourth floor. She did some ironing on the fifth floor in the medicine room. I have seen Dr. Wren and Annie Maud Carter talking together very often but do not know what was said between them. I saw Annie Maud Carter go to Conley's cell wing once and Fred Perkerson and myself called to her not to go in there as she would be locked up and she stopped at the door to the cell wing. Both Fred Perkerson and myself knew that she was crooked and we thought she was up to some mischief and we cautioned James Conley ourselves that she was a bad woman and might try to do him some harm. I never saw Annie Maud Carter go into the cell wing of James Conley, but simply stand in front of the door and talk

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to him. I saw Dr. Wren at one time give Annie Maud Carter a note or rather he threw her one from the second floor and she carried this same note that Dr. Wren had thrown her and she pitched the note into Conley through the door to his cell wing. Last night after I had gone to bed, Dr. Wren came to my home and called to me and got me to get out of bed and come out on the outside. He asked me what I was doing and I told him nothing and he told me that he had a little job for me to do, and that he wanted me to come to his house in the morning, and he gave me 10 cents car fare to come on. This morning Mr. Wren was at my house before seven o'clock. He had a long white paper, and wanted me to sign it. I cannot read or write and I told him I wanted to wait and see what the paper was, he wanted me to sign. He said it was a paper that I had carried notes from Conley to Annie Maud Carter. He said well you can't write, and I will write it for you. I told him not to do it, that I wouldn't authorize any one to sign for me until knew more about it. He gave me 20 cents so that I could go and get him and I a drink of whiskey and when I got it he wouldn't drink and he told me he didn't believe he would drink any as he didn't want the boys where he worked to smell it on him, and he told me to drink both drinks for myself. I drank them both and then he took me up with me the question of signing the paper, which I refused to sign. As we came around the house, we met another man, with some other men. He is a bailiff in the Thrower Building. Mr. Bass Rosser, the city detective, said he was a Mr. Goodlin. He did not have anything to say to me and I do not know what he knew what Dr. Wren wanted with me. He told Mr. Rosser the detective, that the men with him were prisoners he had arrested. While I was still talking with Dr. Wren, detective Bass Rosser walked up and told me that Mr. Dorsey the solicitor general wanted to see me at his office and I left and went with detective Rosser to Mr. Dorsey's office, where I am now and make this affidavit.

ELLEN SIMS, Sworn for the State. I am acquainted with Annie Maud Carter. She is my cousin. She was at my home a few days after she got out of jail, and talked to me about seeing Jim Conley she she was in jail. She said she had talked to Conley. I asked Annie Maud Carter whether or not she had got Conley to talk with her about the murder. She said he would not talk with her about that case, and all she could get him to say was that he had told the truth. When she

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told me this my sister was present and also a man, and they also heard what she said to me. I am acquainted with Annie Maud Carter's general character and general reputation; her general reputation and character for truthfulness is bad; she is entirely unreliable and can not be depended upon. She has been in jail before this last time and that was also for stealings *I enquired for Annie Maud Carter and cant find her*

WILLIS J. GILLELAND, Sworn for the State. I am connected with the sheriff's force in charge of the prisoners at the jail, serving as inside guard from about 8 A.M. until about 3:30 P.M. each day. I have charge of the prisoners locked up in the cell wings, the working force for cleaning up the jail, for laundry work and for preparing meals for prisoners being under the direction and control of Deputy Roberts, who is on duty inside, for the same period of time during which I serve. - In cleaning up the wings of the jail it is necessary for the cleaning force to go into the cells wings to do so, and this is done under the supervision of Deputy Roberts. The negro prisoner James Conley is lodged in cell wing "First North", there being no other prisoner lodged permanently in this cell wing. The meals are distributed by this prison help and the meals are sometimes carried to Conley by the trusty prisoners. The cooking and distribution of meals is under the supervision of Deputy Roberts. The cell wing in which negro women prisoners are located is on the "Third West". I knew Annie Maud Carter while she was a prisoner at the Fulton County Jail and her cell was located in "Third West". Annie Maud Carter was used by Deputy Roberts as a trusty, she being released by him from cell wing in the morning about 7:30 or 8 A.M. o'clock, She was used in laundry work and did most of her ironing on the fifth floor in what was called the medicine room. She was usually locked up by Deputy Allen when he came on duty about 3:30 p.m. I also knew Dr. George Wren. He is a white prisoner whom the prisoners and every one most around the jail called Dr. Wren. He was a trusty prisoner and was used by Dr. Hurt and the jail officials to hand out medicines and do any work for the sick while Dr. Hurt was not in actual attendance at the jail. I know his brothers who visited him at the jail quite often, among them was one named Jim Wren. Jim Wren came to see his brother, the prisoner, Dr. George Wren very often. I have seen Jim Wren go into

Mr. Frank's cell wing to see him. I have seen Jim Wren and a Mr. C.W. Burke come in there last week and they went into together to see Mr. Frank in his cell wing. I have seen Mr. Burke call Dr. George Wren off to one side and talk with him privately upon one occasion. I have seen Dr. George Wren visit Mr. Frank's cell very often. I have never seen Annie Maud Carter in Conley's cell wing and she has requested me to allow her to go into Conley's cell wing, but I told her that I would not allow her to do so, and if she was ever in there, it was without my knowledge and in direct disobedience to what I had told her. Oftentimes it is difficult to keep in touch with the entire building. I have to go to the upper floors at times and get out prisoners who have made bonds or to be sent to the gang or for other reasons, and it is impossible to know what is going on all the time on all floors. I kept Conley's cell wing door locked as often as possible, and the cleaning up force had to get in there from time to time, and the feeding force also, and I can not say positively that Annie Maud Carter was never in the cell wing of Conley, but if so, it was without my knowledge and against my orders. I have seen Dr. George Wren and Annie Maud Carter talking very frequently and generally up in the medicine room. I knew Frank Reese and Fred Perkerson, who were negro prisoners and who were used as trusty prisoners while they were there, or at least most of the time. I am acquainted with the general character of Annie Maud Carter; Her general character and reputation are bad and I would not believe her on oath.

JOHN L. HAYES, Sworn for the State. I reside at the Fulton County Jail and am working there in the capacity of Engineer at the County Jail. My work carries me all over the jail. I have been in this position constantly since April 1, 1913. I know James Conley. I knew Annie Maud Carter. She was released however each morning about seven o'clock for the purpose of her working on the laundry work, principally on the fifth floor in the medicine room, next to the hospital ward on the fifth floor. I knew George Wren, who was known at the jail as Dr. Wren because he helped the county Physician. He was also a trusty white prisoner. Wren slept in the hospital ward and his work carried him to the medicine room a great deal. I carried 150 keys to all cell wings. Mr. Bob Hardeman was also engaged with me at

times in looking over, inspecting and repairing the different sections of the jail. We kept our key downstairs in the Engineer's department and locked up. This key was used only by Chief Engineer Baves, Mr. Hardman and myself. I never saw Annie Maud Carter go into the cell wing of Jim Conley. Annie Maud Carter was under Deputy Roberts who released her for work and she stayed most of the time at this medicine room on the fifth floor, where she did most of her work. She was locked up about 3:30 P.M. when the inside guards make their changes, and Deputy Allen comes on duty usually. I have seen Dr. Wren and Annie Maud Carter very frequently alone in the medicine room. I have seen them talking together at this place. I knew Wren's work carried him to the medicine room and this Annie Maud Carter's work also carried her there. I know that they had plenty of opportunity to talk to each other as it is impossible for the inside deputies to actually know what is transpiring on each floor of the jail. Their duties carry them to all parts of the jail, generally looking after the cleaning up of the jail, the feeding and care of the prisoners and with the work of Wren and Annie Maud Carter throwing them together, it was impossible for me or other jail officials to check them up every minute during the day. I know that I never permitted Annie Maud Carter to enter Conley's cell wing and there was no way for her to have gotten the key to his cell wing. Annie Maud Carter was never in Conley's cell wing within my knowledge. I have seen George Wren up and around Frank's cell wing quite often and I have seen him in Frank's cell wing several times. I have also seen George Wren's brother, Jim Wren, visit him, but whether or not Jim Wren went to Mr. Frank's cell I do not know.

WILEY B. ROBERTS, Sworn for the State. I am a deputy sheriff, serving at the county jail from about 7 a.m. until about 3:30 p.m. each day. I have charge of the work of the cleaning of the jail and the feeding of the prisoners and looking after the inside of the jail generally. I have this work performed by persons who are serving jail sentences and who are in the nature of trustees and also by persons who are waiting trial and who volunteer to assist in this work, in order to have more liberty in the jail. I know James Conley, who is confined in a cell wing known as the first north, and no other person being lodged therein except Conley. I know Annie Maud Carter, who was a negro woman prisoner and who

was lodged in the cell wing known as the third west. While Annie Maud Carter was a prisoner at the jail or at least a portion of the time, I used Annie Maud Carter as a helper in laundry work, washing and ironing clothes. A portion of the time her work was upon the fourth floor, where the laundry was located, and a portion of the time upon the fifth floor, in what is generally known as the medicine room, in which she did a large portion of her ironing. I never saw Annie Maud Carter in the cell wing of James Conley, nor even at the door. We did our best to keep this cell wing door of Conley's locked at all times. It was necessary in the cleaning of the jail and in the feeding of Conley to allow trusty prisoners, under our supervision, to enter Conley's cell wing only long enough to discharge their duties, and then to leave this cell wing and the door was locked. All of these trustees used in Conley's cell wing were male trustees. Annie Maud Carter was never used in Conley's cell wing for any of this work, and to the best of my knowledge never entered Conley's cell wing, nor did I ever see her about the door. I did not ever see any notes pass between Conley and Annie Maud Carter, and never heard of any until within the last few days. We understood that there was specific orders to keep every one away from Conley's cell wing and we did our best to comply with this order. I knew George Wren, who was known as Dr. Wren, and who was a white trusty prisoner. He assisted Dr. Hurt the county physician, in caring for the sick at the jail, and for this work he was also used as a trusty prisoner. He slept in the ~~main~~ hospital on the fifth floor and got his medicines from the medicine room. I have seen him talk to Annie Maud Carter; I know Annie Maud Carter's general character and reputation while she was at the jail, and that general character and reputation was bad, and I would not believe her on oath. I know on no occasion for Annie Maud Carter being upon the first floor of the jail, as her work called for her to be on the fourth or fifth floor ordinarily. If she had any opportunity I never knew it, and I was constantly on duty during the hours I have named.

JOHN SHIELDS, Sworn for the State. I have been working since May, 1913, at the National Pencil Company. I know C.W. Burke and Jimmie Wren. Burke and Wren have been constantly around the National Pencil Factory for the last several months, working on the Frank case. Several times during the last two or three months Jimmie Wren has

been after me to make an affidavit for him that Jim Conley had been down on me, or had asked me to let him go down on me. I refused every time because it was a lie. Jimmie Wren said if I would do this, he would dress me up and send me to Cincinnati or anywhere else I wanted to go, and I told him I wouldn't do it, that there wasn't a word of truth in it. In talking to me, Jimmie Wren used the word "cock sucker." Since I have been at the factory, I have never heard anyone there say anything about Jim Conley ever having done anything of that kind. A few weeks ago, Jimmie Wren came to me and said: "I am in a hell of a fix, I have got to get something good, won't you know a negro woman I can get who will swear that Jim Conley went down on her?" and I told him I wouldn't do it, and that I didn't know of any negro woman. *Wren asked me if I would not get a negro woman who would swear that Conley*

MAGGIE GUNTER, Sworn for the State. I am a cousin of Annie Maud Carter. I was at Ellen Sims' house when she was sick, and it was just after Annie Maud Carter got out of jail and we were talking to her and she told us that she knew James Conley and that she had talked with James Conley and had tried to get him to tell her about the murder of the little white girl, but she told us that Conley would not talk to her about it, except he told her that ^{he} did not kill the girl, that Mr. Frank had done that and that he would not discuss the case with her. That Conley ^{said he} had told the truth. I have known Annie Maud Carter all her life and I know her general reputation and character and the same are bad, and I would not believe her on oath. *went down on her*

L. JACKSON, Sworn for the State. I am a Methodist preacher. I have known Annie Maud Carter and her mother, 6, 7 or 8 years. I am personally acquainted with the general character of Julia Carter, the mother Annie Maud Carter. Julia Carter is a good woman and has a good reputation. I am also well acquainted with the general character. I could not under any circumstances believe her on oath. She has been constantly in the courts for robbery, stealing and other crimes.

JACOB HARRIS, Sworn for the State. I have known Annie Maud Carter since she was about eight years old. I have lived close to her for several years and close to her kinspeople pretty much ever since I have known her. I know Annie Maud Carter's general character and reputation, and they are bad, I would not believe her on oath.

C. J. GRAHAM, Sworn for the State. I am an attorney at law. I have represented Annie Maud Carter in the Criminal Division of the Superior Court of Fulton County. I have had occasion to interview members of her race and people with whom she mingles and associates. I have heard a great deal of her among the white race. I know her general character and reputation; the same is very bad. I would not believe her on oath.

J. Y. DONALDSON, Sworn for the State. I know Annie Maud Carter and knew her when I was connected with the City Stockade as Quarry Foreman. I know her general character and reputation; the same is bad and I would not believe her on oath/

JULIA CARTER, Sworn for the State. I am the mother of Annie Maud Carter, who was recently in jail in Fulton County. I visited my daughter Annie Maud Carter twice a week while she was in the County Jail. I usually found her on the fifth or top floor where she was ironing ~~sk~~ in the medicine room. Sometimes I saw her sitting around on the first floor. While visiting my daughter, Annie Maud Carter, I also met a white man, whom the prisoners called Dr. Wren. I would often see him on the top floor. I have heard him talking to Annie Maud Carter about Jim Conley and Dr. Wren told her she ought to marry him Conley, that he was going to have plenty of money some day. I remember while I was there Dr. Wren brought her notes upon two occasions and he told her he brought them from Jim Conley. She read the notes to me, but there was nothing bad in them, and they were love notes. I do not know whether or not Conley wrote them, except what Dr. Wren said. I can not read myself very well and did not read the notes. I have since the last few days been trying to find my daughter and I have been to see a number of people whom I tried to find out from. I have been to see a Mr. Jacobs who runs a pawnshop on Decatur Street and he told me that she was in safe hands and would not be mistreated. I went to an office in the Fourth National Bank Building, and talked with some men in Mr. Haas' office. I understood them to be Mr. Haas, Mr. Arnold and Mr. Burns. I found this place by the direction of this Mr. Jacobs, who is a pawnbroker and Jew on Decatur Street. He showed me what office to go to. I told ~~him~~ them I was the mother of Annie Maud Carter and wanted to see my child, and they told me that whenever I got ready to go, they would get me a ticket and

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would send me with some one to see her. I talked with Annie Maud Carter and she never told me that Conley had ever stated to her that he had killed the little girl. She told me that he said Mr. Frank had killed the girl. Since Annie Maud Carter was turned out of jail, about a month ago, she has been living at my house. On last Thursday, April 23, 1914 she left home. After she left home I met her accidentally uptown. I met her on Decatur Street. She has not been home since. Mr. J. Jacobs told me that she was taken good care of. He said that she came to him and told him about some men trying to trip her up and that she thought one of these men were Mr. Burns. He said that he had sent her to an office in the Fourth National Bank Building. I was told by my next door neighbors that they saw Annie Maud Carter at my house, Friday, April 24. I did not see her myself. I found that all of her clothes was gone. I know that she had something pawned at No. 120 Decatur Street, with said Jacobs. In an effort to locate my daughter I went to Burns' Detective Agency in the Healey Building. While there I talked to Herbert Haas. Mr. Haas told me yesterday, April 28th, that he would send me to her whenever I wanted to go. Mr. Haas told me today, Wednesday, April 29th, that he didn't know where my daughter was, but he would locate her and let me talk to her. He said he would not send me to her, because some of the city detectives or some of the men from Solicitor Dorsey's office would follow me. The attached letter upon which I have written my name came through due course of mail in the attached envelope. It came to my daughter Ruth Carter. I recognized the writing on the envelope and the writing in the letter. It is the handwriting of my daughter, Annie Maud Carter. My daughter married Joseph Griffin, and was at one time known, and passed under the name of Joseph Griffin.

(Attached to the above affidavit is an envelope addressed to "Miss Ruth Carter, in care of Mrs. Robert Campbell, living on Reed Street, Atlanta, Ga." The envelope is postmarked New Orleans, La., April 27, 1914, 12 P.M. The letter is as follows: "New Orleans Louisiana, This is where I am living, 314 Lower Line Street, April 27, 1914: My dear ~~father~~ father. I will write you to let you here from me and no where I am. Well I am in New Orleans for a while and I am going leave here for New York. I am working with Mr. William Burns so you no bye that what I am doing dont tell no one where I am keep that to your self tell amama the same and when you write dont call me Annie Maud Carter. Call me Mrs. Joseph Griffin. Give all my love this is my office No 314 Lower Line Street, New Orleans Louisiana. Be mother and father.")

E. F. HOLLOWAY, Sworn for the State. (being portion of testimony given on the original trial) "On Monday morning I saw Conley. Instead of being upstairs where he ought to be, sweeping, he was down in the shipping room, watching the detectives, officers and reporters. I caught him washing his shirt. Looked like he tried to hide it from me. I took it up and looked at it carefully and looked like he didn't want me to look at it at all."

The State further introduced the original bill of indictment, verdict, sentence, motion for new trial and order granting new trial in the case of the State vs. Ed Williams and Annie Maud Carter.

The records shows an indictment for the theft of a gold watch and Twenty dollars in money. A verdict of guilty, a sentence/ of fifteen years in the penitentiary and an order granting a new trial on March 7, 1914.

The State further introduced the following telegram addressed to Charles A. Isom, c/o Reed House, Chattanooga, Tenn, "Take first train from Atlanta. (Signed) C.W. Burke."

Dated Atlanta Ga. April 6, 1914

The State further introduced the following transcript of the evidence of R.P. Barrett, given at the original trial:

"Did you or not find any hair anywhere there? A. I found the hair on a bench lathe, on the handle.
Q/How far was this hair, what kind of a handle was it on? A. It was in the shape of an "L".
Further on, ~~on page 507~~, the following questions were put by the State and answers given, viz:
Q. How was the hair caught in there? A. Swinging down like this (indicating ~~some of the defense~~)
Q. Was Miss Magnolia Somebody there? A. As near as I can remember, Miss Magnolia was there."
Counsel for the defense cross-examined said Barrett, and for some reason best known to them, did not ask him whether or not he could identify the hair found by him as that of Mary Phagan, but as is shown on p. 534, Vol. 2, contented themselves with asking him the questions following, to which they received the answers set out:
"Q. You called Mr. Quinn to see that? A. I called him.
Q. Were they long strings of hair or were they knotted and matted hairs? A/They were around my finger. I pulled the handle and they got around my finger." Quinn was a witness for the defendant on the main trial."

Kate Allen testified by affidavit as follows:

I am the wife of Aaron Allen. I now live at No. 9 Piedmont Ave. I am personally acquainted with Jake Jacobs, a man who runs a pawn shop at 120 Decatur street, Atlanta, Georgia. I personally know that my husband, Aaron Allen, has been pawning things with Jacobs at 120 Decatur street, Atlanta Georgia, for about two or three years. Sometime about six months or more ago, I have forgotten the exact time, Allen left Atlanta. He was sick in Indianapolis, and wrote me he wanted to come home. I lost the letter that he wrote me. Sometime about March 29th, I will not be certain about the date, but probably a month or two months ago, I took this letter and showed it to Jake Jacobs at 120 Decatur street, and told him I wanted to make some arrangements to get some money to bring Allen home. Jacobs told me that he would bring him home. I didn't have to pay him any money and I didn't have to pawn anything. I didn't ask him how he was going to bring him home or why, but I stated to him that if he brought Allen home I would see that he got his pay. I did not know anything more about the matter until I saw Allen on last Friday April 24th at about 12 o'clock.

Aaron Allen testified by affidavit as follows:

I am making this affidavit for use on the hearing of the extraordinary motion for new trial of Leo M. Frank. I am a negro, having been born in Alabama. I lived in Atlanta, Ga., off and on for the last nineteen years. I have done some work as a detective for the police officials of the City of Atlanta, and am well known to Chief Lanford. Mr. Harry Scott, the Pinkerton man, and Mr. John Black, city detective, put me soon after Mary Phagan was murdered into the cell with Newt Lee, and instructed me to do all I could to find out who murdered Mary Phagan. They wanted to know what Newt Lee knew, and told me that if Newt Lee was guilty they wanted to know it. They said to be mighty particular about everything I did or said because they wanted nothing but the truth and didn't want to swear anybody's life away.

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I left Atlanta of my free will and accord and went North. I was in Indianapolis, Indiana, for about six months sick. I was under the care of the city dispensary there, being unable to work, and was being cared for as a stranger. I have just this day been to see a doctor here in Atlanta. He tells me that I have consumption and that I cannot live long, and I promised him I would go to the Battle Hill Sanitarium.

A white man, who said that his name was "O'Neal" came to me in Indianapolis the 30th day of March, 1914, and said among other things, that he wanted me to go down to Chicago and catch a negro who was sleeping with some white woman and getting all of her money. He didn't call him a "negro" but called him "a colored gentleman". He also addressed me as "Mister Allen". I caught him in two or three mistakes but I knew I had done nothing so I told him I would go on to Chicago or anywhere else in the world he wanted me to go. I wanted to get away from where I was and wanted to come to Atlanta and had a ticket to Atlanta at that time. This man took my ticket away from me and I went with him to Chicago.

I remained in Chicago five days and was paid \$15.00 and all expenses. I was paid by somebody connected with the William J. Burns detective agency in that town. When I first got there this man sent me out to spend the night with a negro detective by the name of Bell. This man Bell had a wife who looked to me like a white woman. Though I would not say she was white woman I believe she was white. They told me to go to a certain place, but then somebody met me and told me that was the wrong place, and at last they brought me into the Transportation Building into the office of William J. Burns. I saw Mr. Burns' picture hanging on the wall, and I saw big offers of rewards. The rooms that I went into were on the 6th floor of the transportation building, and had the name of the Burns detective agency printed on the door. I didn't know what they wanted me for and I let them do most of the talking.

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After I got up into the office I met William J. Burns himself. He put everybody else out of the room and this is about what occurred between us: He asked me did I know my wife wanted

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to see me and how I was feeling. He asked me did I know Mr. Jacobs of Atlanta. He asked me whether I was sick enough to have a doctor, if I was he would have one come in right away. I said "No, sir, not now". He went away just then and sent in Mr. Jake Jacobs, a man who keeps a pawn shop at 120 Decatur st., Atlanta, Ga. Mr. Jacobs shook hands with me and called me "Mr. Allen". (Mr. Burns called me Mr. Allen when he talked to me too.) I asked Mr. Jacobs: "Why do you call me Mr. Allen, now that you got up here too?" He told me I was in a different country, and I was just as much here as anybody else. I told him "Well, I knew that". He said my wife was wanting to see me mighty bad. Mr. Jacobs asked me: "Why did you leave Atlanta?" I said: "Why, Mr. Jacobs?" He said: "Your wife told me that the detectives all told her to keep Allen out of the city because they are wanting him here". How come you to leave Atlanta", he asked me again. "I left Atlanta of my free will", I told him Jacobs said: "You know you are lying. I am a good mind to knock you over from this table". I asked him "Why do you speak that way?" He answered, "Because you know you are lying. You were paid to go away from that place and you gave your wife \$35.00 to pay her rent with and you pawned your things to me the day you left". He said, "You know who gave you that money for you to leave town--- those city detectives---and you won't tell it because you are afraid of them. You don't have to go back down there. You are scared of them. How many times have I seen John Black say 'Come here, you black son of a bitch' and slap your jaws". I told him it wasn't true that I had not been paid anything to leave at all.

Before I finished talking with Mr. Jacobs, Mr. William J. Burns came in. He said at first: "Mr. Allen, the only thing we want of you is the truth and nothing but the truth. You know when you said that you didn't know any of the parties personally---Jim Conley or Leo Frank or Newt Lee---that you is absolutely lying. You know when you say that you had \$320 of your own honest, clean money, that you worked and shoveled and got hold of in Atlanta-- that you are a dam lie!

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His voice was loud. "Why, Mr. Jacobs says he has known you from five or six or ten years and never known you to have over \$20.00. Now, Mr. Allen I am sorry I said what I did but if you will you can state the truth and nothing but the truth, and that is what we want out of you". He didn't say the detectives gave me the money, then, but he said: "You know somebody gave you that money to leave town with and you are a liar every time you say they didn't do it".

When Mr. Jacobs left Mr. Burns had a talk with me privately. He asked me what did I know of the Mary Phagan case. I replied: "Mr. Burns, do you want me to tell you the truth or to tell you a story"? He said: "Mr. Allen we don't ask anybody to tell us lies, but the plain truth". He said: "Now, Mr. Allen go ahead, just state to me what you know about it". I replied again: "Mr. Burns, truth is the light, ain't it?" He said "Yes". I said: "I knows nothing at all about the lady getting killed, no more than I just heard". I says, "I was one time asked by Mr. Black, a city detective in Atlanta, Ga., and also Mr. Harry Scott, a Pinkerton man. I was charged to go down and get in the cell with Newt Lee and find out what Newt Lee had to say fully and in detail. I told him Newt said he was innocent. Then I went into detail and told him what happened about as follows:

"When I got in the cell with Newt Lee in the city of Atlanta, I was in there about 20 minutes, and I spoke to Newt Lee first. I asked him what was his trouble. He replied to me that he had no trouble whatever. I says "Why are you in here?" He asked me had I knowed about the white lady had got killed at the pencil factory. I told him no, that I was a stranger in town. In order to get in with Newt Lee I told him a falsehood about killing a white man. Lee told me that he hadn't done nothing and that he was innocent. Lee told me that he knowed nothing in the world concerning what he was put in there for. I told him if I was him I would tell the truth, I wouldn't lay here in jail, I would tell just what I knowed about it. I said, "If you thought or knowed that white man

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killed this girl with you working there, and had you to help him do away with her, I would go up and tell the detectives so they would turn you out". He said, "Lord have mercy, hush, you are trying to get me in trouble, because I don't know nothing in the world about it, no more than I found the lady, and I hope and trust the Lord will show everybody on earth who killed her. The Lord knows and detectives will know some day just who killed the lady, because I am a innocent man". I asked Lee who he thought killed this lady, asked why they had to arrest ~~him~~ him, because he found her. He answered and told me he had no thoughts, and he didn't know, but he knowed one thing, that my boss, who was over me, he acted very strange. He told me to come back at half past three or four o'clock-- I have forgotten what it was, half past three or four- I did so, as he asked me to, and I come back, he told me I was just a few minutes early, or late (I forget which he said) but that was all right, and I did not begin work I could go on out in town and come back. Well, friend, I will say to you it looks mighty strange that Mr. Frank called me up about 7 or 8 o'clock, and asked me how was everything. He had never called me and asked me before. I thought that looked mighty suspicious and strange, but as to what I know, brother-friend I don't know nothing, I don't know nothing. If they hang me, or kill me, or turn me a loose, or do whatever they want to with me, it will be all right, because Lord knows, the detectives will know, everybody on earth will know that I know nothing concerning that lady getting killed". Newt Lee was taken out of the cell from me, and when he come back I asked him where had he been. He told me they had taken him and put in the cell with Mr. Frank. I say, "Well, partner, you better make it up in your mind to tell the truth and nothing but the truth, because these white folke kill and lynch a nigger, whether he is guilty or not. If I knowed who killed her I would sure say so. I am going to tell the truth in my case". He told me he didn't know. He said, "I'll tell you what did happen. Mr. Frank told me if I kept talking so much

until its going to get us both in trouble". I was then taken out of the cell with Newt Lee and had a talk with Mr. Black and chief Lanford and Mr. Scott, and told them all I knowed that Newt Lee said. They told me to go ahead "We will see you again, Allen; if we need you, we will let you know". I was then never asked any further questions any more in that case by none of the detectives or any of the officers until I was questioned by detective Wm. J. Burns, Mr. O'Neal, Mr. Jake Jacobs and Charley Isom, in the city of Chicago, Ill., April 2nd.

When I got through this statement, Mr. Burns asked me what was my opinion about the case altogether. I told him I had no fixed opinion about the case, that I knowed nothing concerning the case, that I wasn't implicated and never worked in the case but one night and half of a day. He asked me how much money was I promised to go down in the cell. I told him not any money was promised to me, that Mr. Black told me that he would see that I got paid for my work, but he had not paid me a penny up to that time.

After I had seen Burns the first time, and before I saw him the last time a negro boy who was called in the office of Mr. Burns, Mr. Bell, and who was one of Burns' men, told me that he wouldn't tell any story for Mr. Charley Isom or Mr. Jacobs or anybody on earth, if he was in my place. Bell told me ^{this} after I had had a talk with Charley Isom. I knew Charley Isom in Atlanta. After Burns talked to me the last time then Charley Isom came. I had been up to Burns's office going on the third day before Isom came. After I saw Burns the second time they turned me over to Isom. The following is what occurred between myself and Isom after I had been there about three days and had already seen Burns twice:

Mr. Isom met me and shaken hands with me and said he was glad to see me ~~and~~ called me "Mr. Allen". I asked him did he call me "Mr. Allen", and he said "Everybody puts the mister in this part of the country, so they say". He told me that he come after me and I would have to go with

him. After he had teased me along, he told me he was just teasing and joking with me, and he was going to tell me the facts and the truth, and he was working for Mr. Burns, and asked me why did I leave Atlanta. I told him I left there of my own free will. He says, "They all say around there that you was paid to leave Atlanta, two or three hundred dollars, is that the fact?" I told him, "No, sir". He said, "No need of lying to me. Me and you have been friends; I have done you plenty of favors, and you have done me some, how come you can't tell me the truth?" He says, "I don't want you to tell nothing but the truth. You know you was in the cell with Conley. We want you to tell the truth about being in the cell with Conley". I told him, no, I was not, I didn't know Conley, never had seen Conley. "Well", he says, "to make the story long and short, I'll tell you, Allen, let's get down to business. You know Jim Conley, and he has already got a year conviction, and that Jew is already convicted to break his neck, and between you and me I'll tell you what they heard down there, whether it's true or not, that you did find out from Conley in the cell, that he did tell you he killed that girl, and your statement was going to be against Conley, and they gave you three or four hundred dollars, and run you out of town. Is that true or not?" I told him, "No sir, ". He says, "Have you ever told the truth"? I told him yes. "Did you ever tell a lie"? I hemmed and hawed and finally I told him I had told funny tales, but when it come to swearing a man's life away I wouldn't like to tell a lie and no other science business". He told me, "Well, you have told a lie, and it didn't hurt you. I want you to tell this lie, but I am trying to show where, if you told all kind of lies in this case, it wouldn't hurt you but would get you money". He says, "It is a feather in your hat, would be a feather in my hat; probably you will have a job as long as you live with these people at the rate of \$120 or \$125 a month, and maybe I will, too. If I was you, I would go on and tell, because this man Frank aint never going to walk on

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the ground no more nohow, " says, "it is only just to save neck, that is all. Don't you know I know that that man never will come clear". He says, "why don't you just go ahead and make them feathers for me and for yourself and go ahead and ~~and~~ go back up the country if necessary. Make an affidavit and get hold of them feathers, and if you think it is wrong, go down there and change it. Conley made 5 or 6 changes, why can't you change them". I told him I would just be telling a lie, because I had never seen Conley in my life. "If I was to tell anything concerning Conley, I would be telling a story, because I have never seen him. " He says, "Is you going to do it?" Says, "Give me your hands". I says, "I will give you my hand. I am going to tell the truth".

So he left me, and Mr. Burns told me "Mr. Isom says that you are ready to tell the truth, and I am ready to talk with you". He called his stenographer and started off. When they got through dictating the matter he asked me, "What was you scared to talk about, why was you scared to talk? I thought you was going to tell me something, and here you come telling the same old story that was printed in the paper and we knowed all that before hand. Now, don't you know that you are scared of them city detectives. I know that every colored man in the South has got to be humble and stay in his place." Burns says to me, shaking his finger in my face, "You know something". This was after I had told him twice already and told Isom and told all of them up two or three different times during all the five days that I stayed there, that I didn't one thing in the world except what I know. He said I knowed something, and wouldn't tell him.

When I got ready to leave, Mr. Burns told me, shaking hands with me, that the only thing he regretted was, he had handled two hundred thousand colored men, since he had been in the detective business "and had never saw one what wouldnt tell the truth but you". I shaken his hand, and told him, "well, Mr. Burns, if I never see you no more, I hope some day that the Lord will show to you that I have told you the truth

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so far as I know, so help me God". He says, "That is all right, I believe you are honest and straight, but you have made an affidavit down in that part of the country, and you are scared to tell what you know. I would take care of you, but as it is- by- hope to see you again".

One day I was in one of the offices in Mr. Burns' place in the Transportation building, and there were several of Burns' men in there. They all went out and left me in there, and then they called me out into another room, and kept me for about 20 minutes, and then took me back in the big room. When I left that big room, there was no money in there that I saw. When I got back in that big room, there was nobody in there at all but myself, and I saw on the table some money, both greenbacks and silver. It was lying up on the table where I couldn't help but see it, and I was left alone in this room with this money about 20 minutes, and then a negro detective who called himself "Mr. Bell" came in. I did not touch the money and did not count it. I sat off and looked at that money and looked around and tried to see how much there was there, but I would not go near the table, because I thought somebody was looking at me. The paper money was stuck all around, and the silver money was poured up on top of it. It was not piled up, but just scattered like you had poured it out of a sack.

I sat down in the presence of William J. Burns and dictated myself, an affidavit, to his stenographer, and afterwards she brought it back to me and I read it over three times and signed it. I signed two pages, but there were four pages of dictation. I didn't put anything in that paper except the absolute truth, and if he has got any paper that he claims I signed, stating anything except just like I have stated it in this paper, it is absolutely untrue and they have changed it. If he put anything in that paper about me knowing anything about Conley it is false, I didn't say it. After I signed the paper Burns said to some of his men, I don't know who it

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pay Allen whatever he thinks he wants, or whatever Mr. O'Neal has promised him, and let him go on home, or wherever he wants to go, because he won't tell the truth nohow. He knows something that would do us some good, but he is scared to tell it". Then I left his office with Mr. Bell, and he took me to the depot and he told me on the way that he thought I was the wisest colored man he ever saw or met, in not telling no lies. He told me in the presence of Mr. Burns that if he was me he wouldn't tell no lies. Well, he buys me a ticket from Chicago to Indianapolis, Ind., and told me he wished I would get well and do well, and to always stick and tell the truth, that it would always be better for a colored man in the long run. He said he certainly was afraid that Mr. Leom and Mr. Jacobs was going to make me tell the wrong tale, and he said he was certainly glad that I didn't do it, and believed I had done my part, and I shook hands with him and told him good bye and got on the train, and I haven't heard any more from him.

I remained in Indianapolis two weeks or more, then I went to Cincinnati, and from Cincinnati I went back to Indianapolis, and then I come from Indianapolis to Atlanta.

After I got to Atlanta, Ga., the first man I saw who asked me anything about this case was Mr. Jacobs, before I reached home. He told me to come in, that he wanted to see me. He asked me if I wanted to stay here, or go where my brother was or go where my mother was, and didn't I think it was too low for me to stay at my wife's house in my condition and that I had better go somewhere to a higher climate, and I told him I didn't know, and he said, "well, ^{it} won't do for you to stay down there, it is too low", and he said "wait just a minute", and he called somebody over the 'phone. My house is within a block of the station house. Mr. Jacobs know where my wife lives, and he knew where I was going when I done this talking. I told Mr. Jacobs that I thought I would stay here until I got better, or maybe always, that I just went off for experience, and now I felt like I had seen as

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much as I wanted about that good country they claimed, and he said "it was not so good to you, was it, you went up there and got tuberculosis", and I said "no", and he said "but the people here take better care of you and I would advise you not to stay here, I think there is some trouble out about you but if you do get into any trouble come and see me. I went on home, and the next day I was coming up the street and I passed his shop, and the young man that worked there told me that Mr. Jacobs wanted to see me right away quick, and I told him all right, and Mr. Jacobs wasn't there, and he called up somebody in the Temple Court Building, and he said Mr. Jacobs told me to meet him at the steps, and I did so and he carried me to the Fourth National Bank Building on the 11th floor, and he kept me there about an hour in a private room, and he went away some place, I don't know where, and he told me Mr. Burns would be there in a minute, and wanted to see me, and to just tell Mr. Burns where I wanted to go and he would send me wherever I wanted to go. I waited and waited and waited and he didn't come back, and nobody called for me, and I was sick and needed air, and I goes out and catches the elevator, and a gentleman met me and says "are you the boy that was in the office" and I said "yes", and he said "Mr. Jacobs said to come to his place right away", and I went down there and he said, "Mr. Burns said that was all right, to stay here, he don't think he will need your affidavit for it isn't any good anyway".

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Yesterday, which was Monday April 27, 1914, I was standing on the corner of Piedmont avenue and Decatur sts., and Chief Lanford passed by me and he and I spoke about the same time, I told him howdy and he told me howdy, and he told me as soon as I had time to come down to his office that he wanted to see me. I goes down to his office in the afternoon, about three o'clock, and he and I had a private talk in his office, and he asked me if I was ever in Chicago and I told him yes sir, and he asked me had I ever made an affidavit to Mr. Burns and I told him yes sir, and he said "well I've heard

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that, but I didn't know how true it was, I know I never missed you until a day or two back, some of them were saying something about you and I thought you were in town", and I said "Yes, I went off on an experience and had bad luck, got tuberculosis in that country, and he said, "Allen, go ahead and come back here about six o'clock Mr. Black wants to see you", and I goes to the hospital for an examination and when I got back the chief told me I was too late, and I told him I had to go to the hospital and was examined, and then he told Mr. Starnes and Mr. Campbell to take me in a private room and he will tell you all about what happened in Chicago. They did so and I told them all that I knew or could think of that was true. After I stated to them everything I knew, Mr. Starnes told me that the only thing he wanted was nothing but the truth and also Mr. Campbell said the same, and that it was hardly necessary to go over things that were not true, the only thing he wanted was the truth and nothing but the truth. Mr. Starnes told me if I could so arrange to meet him at the station house the next morning at 8 o'clock or ~~past~~ *half* past 8, and I told him I thought I could if I wasn't sick, and if I was able I would be there sure, and he said all right, if you are sick and can't come I will come to your house. But I come down there and met Mr. Starnes and Mr. Campbell and Mr. Black and Mr. Starnes told me to come in there and we could fix it up right away, get Mr. Febuary to take it down, and Mr. Black told Mr. Starnes he thought it would be wise to take me to Mr. Dorsey's office, and Mr. Starnes asked me if I would go to Mr. Dorsey's office, and I told him I would. I went over to the Solicitor General's office and this affidavit was taken down nearly all of it being dictated by myself. I have read the same over carefully and have signed my name on each and every page hereof, and the same is true in every respect.

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C. A. Isom testified by affidavit as follows:

I am personally acquainted with Jimmie Wren, who is in the employ of C. W. Burke, and he is the brother of George Wren, who has recently finished a jail sentence of 12 months for simple larceny (stealing \$50,000.00 worth of diamonds from an express wagon) and I am also personally acquainted with George Wren. I have seen Jimmie and George Wren with C. W. Burke on several occasions, in front of the Grant Bldg., in which Mr. L. Z. Rosser's office is located, who is an attorney for Leo M. Frank. I saw Mr. Burke come out of the building and talk with Jimmie and George Wren, and I have seen them together at other times, one time in front of the Fourth National Bank Building, in which Attorney Haas' office is located. I know that Jimmie Wren is working for C. W. Burke, but I don't know whether George Wren is working for him or not, but I see the two boys together a good deal.

Nellie Wood testified by affidavit as follows:

I live at No. 8 Essie Avenue. I have been a trained nurse, and have just finished a course at a millinery school 94-1/2 Whitehall St. At this particular time I am not doing anything.

I have read over from Vol. 7, beginning at p. 3418, what transpired in the court room when I was tendered as a witness by the State. The whole transaction is as follows:

MISS NELLIE WOOD, Called in behalf of the State,

DIRECT EXAMINATION,

BY MR. DORSEY:

Mr. Dorsey: I want to show by this witness the general character; second, I want to prove a specific incident that occurred between her and Frank, in his office, that he made her an indecent proposal, and she was working in the pencil factory at the time, and I submit it is material, because they have proven and undertaken to set up that no such proposal was ever made. This is in rebuttal of his statement.

Mr. Rosser: Your Honor let in certain statements over

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our objections, Conley spoke about some girls on the fourth floor, and we had a right to go into it and see what girls on the fourth floor; but are we going to try four or five different fornication cases now? Let's settle it right now, Your Honor.

Mr. Dorsey: They have asked certain witnesses if they had been to Frank's office on Saturday afternoon and Frank and did anything immoral. Now, if they can put that in, why can't we go on with this witness and show that such things did occur with this witness?

The Court: That came in without any objection, and came in absolutely in rebuttal of something that you had gotten in there, that they sought to rule out, - a piece of evidence Conley testified to, - and if it had been objected to at the beginning, I think I would have been compelled to have ruled it out, but I thought, inasmuch as they had cross examined Conley on it for a day or so, it was right to let it in.

Mr. Dorsey: Isn't it right for me to take this question and substituting the word "Mrs. Small", and say, "Miss Wood, you are a lady that worked on the fourth floor of the National Pencil Company two days, I'm going to ask you a question that they, the defendant's counsel have asked every lady that worked on that floor, so they say, 'Have you ever been down in Mr. Frank's office after hours drinking or doing anything immoral, at any time in that factory', and then can't I add, "or did Frank propose anything?"

The Court: To my mind, it isn't debatable at all.

Mr. Dorsey: Then we are absolutely shut out.

The Court: Well, I don't care, then the law shuts you out, if that's the case. According to that, you could put up everybody here and prove anything else he has ever done in his lifetime.

Mr. Dorsey: Now, they wanted it all covered at the same time. Now, haven't I got a right to show by a witness that worked at the National Pencil Company, the situation that she saw Frank in with a woman there?

The Court: I don't know, it's a good deal owing to what it shows.

Mr. Rosser: He means showing an immoral act on his part.

Mr. Dorsey: I am simply illustrating--have we got a right to show or not what this man did to girls when he went through the factory slapping them and all that?

The Court: I don't know about that, if it's relevant to this case, you could do it.

Mr. Arnold: Relevant to this case, what some other woman did?

The Court: When you put up these witnesses and prove bad character, then they can go into that and ask what makes up that bad character, - what have you heard, and so on. Now, he never said anything about any immorality except to dispute what Jim Conley had testified to, he didn't say a word, as I remember it, about the general proposition, he simply denied what Jim Conley had said about those things. I'll let you show by this woman or any other person, bad character on the part of this man, - but no specific acts or any specific crimes. That's the law.

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MISS NELLIE WOOD, Witness for prosecution in rebuttal, was then sworn.

DIRECT EXAMINATION.

Questions by Mr. Dorsey:

- Q. What is your name? A. Nellie Wood.
Q. Miss Wood, where do you live? A. Live in Ormewood Park.
Q. Are you acquainted with the general character of Leo M. Frank? A. No sir, not knowing him but two days. I didn't know him but two days.
Q. That's what people say about him, general character, what people say about him, that is prior to April 26th, 1913. Were you acquainted with the general character of Leo M. Frank? A. I am not positive about it.
Q. Just answer the question, yes or no, whether much or little

(Mr. Arnold:- Now, if the Court please, she says she didn't know it.

Mr. Dorsey:- She hasn't answered the question yet.)

- Q. Are you acquainted with the general character of Leo M. Frank? A. No sir, I only knew him two days. No sir, I do not know it.
Q. Miss Wood, you had a conversation-----

(Mr. Arnold: Now I object to that, Your Honor.

Mr. Dorsey:- I have been misled by the witness.

I told the Solicitor-General before he put me on the stand that I was in the office of Leo M. Frank on one occasion when the said Frank made an indecent proposal to me. My experience as a trained nurse enabled me to fully understand and know what the said Frank intended. His language to me on that occasion was about as follows:

He said, "You know I am not like other people", and drew his chair closer up to me; says, "I don't think you will understand me", and put his hands on me, and I resisted and got up and opened the door. He said, well he wasn't going to hurt me anyway, says, "You don't understand what I mean", and then he tried to pacify me, and convince me that he didn't mean it the way I had taken it.

Soon after I appeared as a witness on the trial of the case of the State vs. Leo M. Frank, some man, whose name I do not now know, came to see me. Afterwards C. W. Burke came to see me. The first man who came to see me came in an automobile which I recognized to be the same automobile that C. W. Burke visited me in. C. W. Burke did not himself ever offer me any money to swear for Leo M. Frank, but the first man who approached me, the man who came in the automobile in which C.

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W. Burke came, did make me a proposition to pay me money if I would swear to certain things in favor of Leo M. Frank. C. W. Burke afterwards came to see me and told me that the court had ruled out my evidence, and insisted that I should give him an affidavit. I gave him an affidavit, which stated that I personally knew nothing about Leo M. Frank prior to the murder, except as to what occurred between me and him in his private office. This occurrence, which I have heretofore referred to in this affidavit, occurred at a time when nobody was present in his office except Leo M. Frank and myself.

I have no interest at all in the case of the State vs. Leo M. Frank, and it has embarrassed me to relate what I have in this affidavit with reference to Leo M. Frank's deportment to me when I was in his private office. That part of this affidavit was dictated by me personally to a lady stenographer.

W. J. Laney testified by affidavit as follows:

I, W. J. Laney, do solemnly swear that I have carefully examined the brief of evidence, in the case of Leo M. Frank, plaintiff in error, vs. the State, defendant in error, now of file in the office of the Clerk of the Supreme Court of Georgia, and I find that said brief shows that on the trial of said case in the Supreme Court, the State introduced the following witnesses, to-wit:

Anderson, W.E.	Gantt, J.M.	Mangum, C.W.
Barrett, R.P.	Ghesling, W.H.	Farry, H.L.
Beavers, J.L.	Grice, L.O.	Rogers, W.W.
Elack, John R.	Harris, Dr. H.F.	Rosser, S.L.
Coleman, Mrs. J.W.	Haelett, B.B.	Scott, Harry,
Conley, James,	Hicks, Miss Grace,	Smith, Dr. Claude,
Dalton, C.B.	Holloway, E.F.	Stanford, Mell.
Darley, N.V.	Hurt, Dr. J.W.	Starnes, J.N.
Dobbs, L.S.	Jefferson, Mrs. Geo. W.	Stover, Miss Monteen
Epps, Geo.	Lassiter, R.M.	Waggoner, R.L.
February, G.C.	Lee, Newt,	White, Mrs. J.A.
Ferguson, Miss Helan	McKnight, Albert,	

Said Brief of Evidence shows, that after introducing the above named witnesses, the State rested.

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Said Brief of Evidence shows that the State introduced in said trial, the following witnesses in rebuttal, to-wit:

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Ballard, N.J.	Graham, B.K.	McGinnis, C.B.
Born, J.T.,	Griffin, Miss Maggie	McKnight, Albert,
Boyce, Leon,	Gordon, Geo.	McEwing, J.C.
Benedict, Dr. S.C.	Hale, W.C.	McCoy, M.E.
Caldwell, M.G.,	Heifner, F.P.	Niles, Dr. G.M.
Carst, Miss Marie,	Hunt, A.W.	Owens, W.B.
Carson, Miss Rebecca,	Hendricks, J.H.	Patrick, W.C.
Cato, Miss Myrtle,	Hewell, Miss Dewey,	Pettis, Miss Nellie
Craven, R.L.,	Hoffman, Henry,	Pickett, E.H.
Cook, W. M.	Hollis, W.T.	Reed, J.D.
Carr, Henry,	Hearn, J.T.	Robinson, Miss Ruth,
Coleman, J.W.,	Houston, A.B.	Rogers, W.W.
Davis, Miss Mary,	Ingram, L.	Rice, J.S.
Dobbs, Sergeant L.S.	Johnson, Dr. Clarence	Scott, Harry
Dobbs, W.C.,	Johnson, Mrs. H.R.	Smith, Len.
Donegan, Mrs. D.	Johnson, R.V.	Smith, Miss Carrie
Duffy, J.E.	Jones, Ivy	Starnes, J. N.
Epps, Vera,	Kendley, Geo.	Tillander, C.
Elder, W.J.	Kendrick, L.T.	Turner, W.E.
Floyd, J.R.	Kelley, N.	Wallace, Mrs. Mary E
Funk, Dr. John	Kitchens, Miss Mamie	Winkle, Miss Estelle
Gant, J.M.	Matthews, W.M.	Wright, W.M.
Goddard, R.M.	Maynard, C.J.	
Goddard, A.L.	Merk, W.P.	

Of said list of witnesses introduced in rebuttal by the State the following were "character witnesses", who testified to the bad character of the defendant, Leo M. Frank, to-wit:

Miss Myrtle Cato.	Maggie Griffin,	Mrs. C. D. Donegan,
Mrs. H.R. Johnson,	Miss Marie Carst,	Miss Nellie Pettis,
Mary Davis,	Mrs. Mary E. Wallace	Estelle Winkle.
Carrie Smith.		

Deponent does not construe certain witnesses who testified to specific acts of the defendant, reflecting on his character as "character witnesses".

I have also carefully examined a document handed me by Mr. Hugh M. Dorsey purporting to be a copy of the Extraordinary Motion for New Trial filed by the defendant Leo M. Frank. In said motion it is alleged that the following witnesses, introduced at said trial have repudiated their testimony, or certain material parts thereof, to-wit:

Albert McKnight,	Miss Dewey Hewell,	Miss Ruth Roberts
Miss Mamie Kitchens,	C. B. Dalton,	J. E. Duffey.
Miss Marie Karst (Carst)	Ivy Jones,	

Of said list of witnesses, who are alleged to have repudiated their testimony delivered on said trial, only one to-wit:

Miss Marie Karst (Carst)

was a "character witness".

The following is a numerical summary of the foregoing list of witnesses:

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Total introduced by State-----99-----Total alleged to have
repudiated-----8-----

Character witness inter- Character witnesses alleg-
duced by the State-----10-- leged to have repudiated
testimony----- 1

Deponent further says that he is an attorney at law,
and has been practicing at the Atlanta bar about seven years.

The State further introduced the following transcript of
the testimony of Miss Grace Hicks as given at the original trial:

"Q.How did you know that that was Mary Phagan? A.I just knowed her
by her hair being so long.
Q.Knew her by her hair? A. Yes sir.
On cross examination counsel for the defendant asked said witness,
among others,the following questions,and received the following
answers,viz:
"Miss Grace,what sort of hair did little Mary Phagan have? A. Well
she had a kind of sandy color of hair.
Q.Was it lighter than yours or less light? A. It was darker than mine.
Q.Darker than your hair? A. Yes sir.
Q.Much darker? A.Well,it was about two shades darker than mine.
Q. You would say about two shades;she was still a blond girl,
though? A. Yes sir."

The State further introduced the following transcript of
the testimony of Miss Magnolia Kennedy as given at the original trial:

"Q.Did you discover any hair on there anywhere,identify any hair? A.
Mr.Barrett called me and showed me the hair at the machine.
Q.And you identified it,didn't you? A. Yes sir.
Q.Whose hair was it? A. It looked like Mary's hair.
Q. Where was it when you saw it? A.It was on the lathing machine.
On page 2253 of said record,these cross questions were asked and
these answers given:
Q.Now,what was the color of Mary's hair,and what was the color of
this hair you found there? A.Mary's hair was a light brown,kind of
a sandy color.
Q. Was this light brown that you found? A. Yes sir."

The State further introduced the following statement made
by Frank's attorney at the original trial in the examination of
the witness Miss Corinthia Hall:

"Now I will ask you a question that I am asking every lady who works
on the 4th floor,- Did you ever meet Mr.Frank at the factory,or at
any time or place for any immoral purpose?"

and the question asked by Frank's attorneys of the witness Miss Ida

Hayes: "Now I am going to ask you a question that I am asking every
lady who works on the 4th floor, - Did you ever at any time or place
meet Mr.Frank for any immoral purpose down at that office,or any-
where else?"

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Nellie Wood testified orally before the Court as follows:

I am the Nellie Wood who worked at the National Pencil Factory. Worked there two days. I quit because Frank insulted me. I don't remember just what he did say, but I didn't like it. I do not care to go into details of what he said and did if it is not necessary. This man, L. P. Eubanks called me up over the phone and asked to speak to me. I says, "This is her". He says, "This is Mr. Eubanks". I says, "I don't know anything about any Eubanks". He says, "You would if you saw me", he said he wanted to see me, but wouldn't tell me what his business. I says, "My little brother is sick now and I cannot talk to you on business. You can come out to my place. I knew I had went on some people's bonds. I didn't know who in the world it could be. I asked him what his business was, what he wanted with me. He said, "I will tell you when I come out, I don't care to tellyou over the phone". He come out, he come there, the doctor was there and my father and everybody. I didn't know what he wanted to talk to me about, I thought maybe he wanted to tell me about somebody in trouble. I says, "I can not talk to you this afternoon". He says, "It won't take but a few minutes to tellyou what I want to know". He says, "If you care to you can come out and take a ride in the car"? He says, "It will not take more than fifteen minutes". I wasn't dressed to go out and he says, "You can put on your coat and come". I put on my coat and come on out and got in the car and as he was driving around he asked me if I remembered a sensational trial here in Atlanta. I says, "What do you mean?" He says, "The Frank case". I says, "Yes". He says, "What do you know about it?" I says, "Very little, why?" And he just dropped it. He says, "I want to make an appointment with you to talk with a party about it". I says, "The baby is sick and I can not leave home, but for a few minutes at a time". He said he wanted to make an appointment. He said he had a man who would come out the next day and talk to me about it. I told him the next day I had to go to the doctor and to meet me at the car, and he did and a man

named Mr. Burke was there and Mr. Burke didn't tell me anything and Mr. Burke and Mr. Eubanks asked me up to Mr. Burke's office, and asked me what I knew about the case, and I says, "I don't know anything at all." Eubanks told me I could make some money if I went to work on the case for them; that I was a working girl and needed the money, and I told him that I could not do it; that I didn't know anything about it. He didn't state any amount that he would pay me. Mr. Eubanks was the man that came in Burke's car. He told me he worked at the Southern Railroad. I am engaged to be married. This talk about my walking up and down Decatur Street is ain't true, it is scandalous, it has just ruined me. I lived right around the corner on Daniel Street, for a while and the negroes got in that section in the property around there, and we moved, we sold our place and bought another one. The only way he knew me he seen me on the streets there going home, and he didn't know me by name even, and didn't know me only that somebody may have gossiped around. I didn't know his name or anything. I testified before the Coroner's jury I told them everything I knew about Frank. I have never been arrested or in the police station. Only I was down there as a witness. I live on Pulliam Street, with my mother and father. Before that I lived at Ommewood Park. Before that I lived on Corput Street with my mother and father. Before that, near the Fulton Bag and Cotton Mills, where we lived six or seven years. I went on bond at police court to please a friend of mine two or three years ago. I went on the bond of a man named Ward, He was charged with seduction. He was a very dear friend of a lady friend of mine, and she wanted me to go on the bond. I am a milliner. I just learned and I stopped off for the purpose of getting married. Before I studied to be a milliner, I was a telephone operator. I never did anything disrespectful.

I. B. EUBANKS, Sworn for the State. I know J.E. Duffy. I have loaned J.E. Duffy money recently and have notes for same. I have the notes with me. I know C.E. Burke. I am the L.P. Eubanks who was a witness against Mell Arnold and Duffy and several other people, prosecutions for car robbery in the Superior Court. I was working for the Southern Railroad at the time. I never worked for C.W. Burke. I was present at a conference between Burke, Mell Arnold,

J.E. Duffy, and Burke's chauffeur, Lynn at myself at my house. No money was given Duffy at that time. I made him loans on April 4 and April 11th. I loaned Duffy money when he worked under me at the Southern Railroad in the year 1910 and 1911 and at various times I loaned him small amounts of money. I think \$3.60 was the greatest amount I had ever loaned him prior to that time. He got the money at three different times. He got \$5.00 at one time and then on May 4th, I put that on a note of \$10.00 I let him have and on May 11th I put it on a note with \$10.00 and let him give one note for it \$25.00. I said May a minute ago and that should have been April of this year. He made an affidavit on December 11, 1913, and I never loaned him any money at all, in fact until April 4, 1914. I did not give him one cent at that time. It must have been 7:00 o'clock when the parties met at my house. I never let Duffy have any money at all that night we met at my house. That was on December 11, 1913. He made an affidavit for C.W. Burke and on April 4, 1914, I let him have the first money I ever let him have since long before this trouble in 1912. I did not tell him he would never have to pay it back. I did not make such a statement to Duffy's father. Old man Duffy came over there to the railroad to my place of business - - I went to see Nellie Wood about the 25th of January, 1914. I knew she was a witness for the State/against Leo M. Frank. I went in ^{in the case} C.W. Burke's automobile, and I went at his instance. Burke asked me to go there, he said he didn't know her himself, and I did. I had been a foreman out there for the Southern Road at Decatur Street for a long time and everybody knew of Nell drifting up and down Decatur Street. I never had anything to do with her. I think she is a woman of bad character. I can give names as to who said she was a bad character, a fellow named Bishop. He was not one of the men indicted in that crowd. His initials are J.E. Bishop and is not related to B.B. She told me that, while I was talking to her, that anything and everything would be all right, in connection with what she was doing. If telling me would mean I did know, I do know of my own knowledge. Anybody down there who will say anything about her will talk of her general bad character. Bishop can be found on Decatur Street. He is working there for the Southern Road as car inspector. He is in my office there all the time.

He did not make an affidavit in the Frank case for me. He told me he gave her a dozen bottles of beer one night and she was to meet him and he said she went off and never came back. He was not asked to make an affidavit. I was not talking to him about the Frank case, I was talking about Nell Wood. I brought up the subject. We talk about all these kind of characters, you know, down there. I was not making any investigation for C.W. Burke at that time. Mr. CROSS EXAMINATION.

~~XXXXXX~~ I have never talked to Mr. Arnold or to Mr. Rosser about this case at all. I went to an office and said a few words to Mr. Haas about this case yesterday. Burke was at that time and prior to that time, under-taking to have some of the boys reinstated with the Southern Road and had been mixed ~~up~~ up in some cases and he had been working on Mell Arnold's case and while he hadn't gone back to work, he was promised the first opening that would come up. He went back to work on January 1, of this year. Burke was down there one day talking about that and he made the remark to me "I want to see Duffy too". I naturally supposed he wanted to see him about going back to work. Mr. Burke and everybody else knew I was not interested in the Frank case and did not care anything about it. He asked me where he was going and about going out to see him. I told him he was working at Kamperx. He says "I can not get hold of him for some cause or other. Can't you get him?" I told ^{him} I will ask Arnold to go out there and catch him and get him to come to my house tonight. Burke says "I would not like to go all the way out to where he lives. I told him he put up right down below me and I had no objection to his coming out to my house and I know he (Duffy) will come, as I know he is anxious to get back to work at the Southern Railroad. Arnold went and found him and told me that he said he would be there at 7:30. I went to the telephone and told him that Duffy had consented and was even anxious to come and he came and Mr. Burke did too. Arnold, Lynn, Burke and myself were there too. Arnold and Duffy had been charged with car robbery and indicted for it. I guess Duffy's case has been disposed of. I understood it was not pressed. As to what occurred at my house, we all went in the room there and sat down by the fire and talked along for awhile. We always felt pretty friendly towards one another. We hung around Burke's office nearly a year off and one and he has always made us

welcome. After a while, Mr. Burke commenced talking about the Frank case and he presented his theory of the case and told Duffy, "I want, if you have not already told the truth, or if you have, I want to get an affidavit from you". They discussed it on for awhile and Duffy agreed to make the affidavit, and they discussed the point of the possibility or probability of blood dropping on the floor, and then there was something mentioned about \$7.60 paid for court costs and I remember those things as having been gone over prior to the making of the affidavit. After the affidavit was made, and before it was signed, I heard Burke reading it over to Duffy and Duffy signed it. Burke did not ask anything but the truth. I was there all the time. The statement was the boy's own statement, according to the way he made it, voluntarily. He said it was absolutely true and he repeated that and asserted it positively and he was glad to do it for nothing. Burke did not threaten him in any way. I have not been riding in the automobile with Duffy recently.

WM. J. BURNS, Sworn for the State (by deposition). I am employed to investigate the Mary Phagan murder. I was first employed by Leonard Haas and Mr. Herbert Haas, attorneys for Leo M. Frank. There is still some money due me. There was a contract in writing. There was no stipulation as to my being paid more in the event I should report a certain way. There was not to be a particle of difference. My understanding was that I was to make my own investigation and find out the facts. I have been in conferences with Frank frequently. I concluded after the ~~time first~~ ~~first time~~ ~~first time~~ ~~first time~~ ~~first time~~ first time I saw him that he was no pervert. I talked with him many times, and my opinion was strengthened each time. A man will indicate in his looks or his actions that he is no pervert, or is. I have made a close study of human nature for many years and I have dealt with all classes of people. In view of the fact that I have ~~many~~ ^{many} times arrested men who were considered perverts, I consider my opinion, formed on personal conferences and my knowledge of human nature, accurate and trustworthy. I did not have any personal conferences with James Conley. I should say after reading the letters, that I felt sure Conley wrote, and after examining the clothing of little Mary Phagan, I gave it as my positive opinion that Conley was a per-

vert. As to ~~was~~ how I knew Conley wrote those letters, I have examined the writing of the letters you are referring to and what is known as the "murder notes". I would not say that I was a handwriting expert, but there are many characteristics in the writing of the murder notes which show very plainly in the notes written to Annie Maud Carter. My definition of "pervert" as applied to Frank or Conley, there are many phases of the pervert. The sexual pervert is a man who satisfies his sexual passion in an unnatural way. Considering Conley in connection with the letters, I would call him a fiendish pervert, that is, a man whose sexual passion is such that he would commit murder in order to satisfy it, in an unnatural way. You might take that term, it might take that turn, it might take a natural turn. He would be a pervert if it took the natural way. There are various phases of the pervert. The man who mutilates the person and is a pervert in the definition I gave is not usually a man of ignorance or a man of education, he might be a very cunning man. It is a crime of both the educated and uneducated. In my opinion, after reading those letters, I would say Conley satisfied himself in an unnatural way. Mr. Smith, attorney for Conley, gave me opportunity to see Conley whenever I wished, in his presence. I didn't avail myself of that privilege because I didn't think I would have the opportunity of talking with Conley in the way I wanted with the restrictions there were ~~thrown~~ thrown about him. There is a man named Adams who works for me, also Botts Rogers. Charles Ison is not on my payroll. He was not in Chicago with me. He came to my office in Chicago. He came to see a negro by the name of Aaron Allen. He came there with my knowledge and consent. It is not true that I had Ison there for the purpose of getting a statement from Allen after I had interviewed Allen myself for three days. I didn't send for Ison at all, I received a telegram from here that a man by the name of Ison was coming on there. I think the telegram was from Mr. Herbert Haas. Mr. Jake Haas was there at the same time with Aaron Allen/ I have ^{a man} named O'Neal in my employ in Indianapolis. The negro didn't look very well, but I don't remember his being very sick. He could go around. I interviewed him twice. I did not hear from Ison when he interviewed Aaron Allen. He was sent on from here. They said Mr. Ison knew him

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I didn't get a statement from Aaron Allen which amounted to ~~much~~ much. I never made any statement to Isom that I couldn't get anything from Aaron Allen I wanted. Isom didn't make any report to me. I told him he told me about being put into a cell with Newt Lee and about Newt Lee telling him he was innocent and then of a white man being put in the next cell and Newt Lee ~~xxxx~~ being placed there with him and overhearing the white man say "If you don't keep your mouth shut, you will get us all in trouble" and that the white man was brought back into the cell with Aaron Allen and he reported to Aaron Allen this same thing. I know Mr. Hopkins was there about the same time Allen and Isom were there and got the affidavit. J. Jacobs was there about the same time. I don't know anything about Jacobs' swearing to the good character of Annie Maud Carter, who gave these notes to you. I didn't hardly say anything to the fellow Aaron Allen. I didn't curse him, nor abuse him. No such thing ever happened as some money being put out on a table in the room where Aaron Allen was, where he could see it, and nobody else in there. I didn't pay Allen anything. I didn't authorize O'Neal to tell Allen he wanted him over there to do some work in connection with catching some negro who was sleeping with some white woman. I didn't take Aaron Allen from Indianapolis to Chicago at all, I didn't know he was there at all. He was not detained there at all. I don't know any negro detective there by the name of Bell. I don't know that Charles Isom was paid \$100. through my agency to go up there and get that Negro Aaron Allen and get from him a statement favorable to Frank. I never heard tell of it. I think Jacobs stayed there a day or two. Charles C. Tedder is not employed by me. I think he was employed by Mr. Lehon. I don't know how long Tedder had been drawing pay from my agency here. I don't know a thing in the world about Tedder being on the pay roll of the Wm. J. Burns Detective Agency. He didn't work on the Frank case that I know of. He worked on the Conley case, you might say. I am employed to work on the Frank case and the Conley case, everything connected with the Mary Phagan murder. I did not put Tedder to work on anything anywhere. I don't know what Lehon did. Lehon doesn't

181 make reports to me. He is manager of the Southern Office here and

also conducts the New Orleans office. He is making investigation into the Frank case and Conley case and the Mary Phagan murder like me and getting angles over the country. He does not report to me in writing. He sometimes reports to me verbally. I do not get all the reports eventually and ultimately from all men working on this case. Mr. Sears has charge of them. Mr. Sears and Mr. Haas get them. Mr. Sears is just the local man here. I do not get, either verbally or in writing full and complete reports as to the investigation going on. These matters are not reported to Frank's counsel before they come to me, they come to our office first, they should. I am not the man who makes the reports to Frank's attorneys. They report to Mr. Lehon and Mr. Haas. The purpose and object in dividing it up and my object in making subordinate reports to these men is so that they will know everything that is going on. I visited Mr. Wm. M. Smith in company with Mr. Dan Lehon some week or ten days ago, about eight o'clock in the morning. I knew that Carlton C. Tedder was reporting to Mr. Lehon at that time. Yes, I asked Mr. Smith if he trusted Mr. Tedder implicitly on that occasion. I wanted to know whether or not he was frank with us in stating he would get some facts or gather some facts in connection with Conley. I was not anxious to convict Conley and save Frank, not if Conley was innocent. I could not tell exactly when I first came into possession of facts with reference to this Ragsdale matter. The first time I ever heard of it, Mr. Lehon spoke to me about it. He stated that there was a preacher, and he was back in the alley, and when he got this far I stopped him. I didn't want to hear about any more people being in the alleys. Yes, I had sufficient of that, back of the pencil factory. I had a man in Chicago, who claimed to have picked up ~~in~~ a pocket book and memorandum book back in the alley of the National Pencil factory. I forget his name. He said he was a Salvation Army man. I did not get his affidavit. Mr. Hopkins, I think took an affidavit from him. I guess it is in the possession of somebody here in Atlanta. I heard so many alley propositions, there just have been three or four hundred propositions, I got disgusted. I didn't find them anywhere, either in Chicago, New York or Atlanta. The operatives kept telling me about them. Mr. Lehon and I were continually joking

182 about the number of men who were down in the alley. Yes, I talked

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to this fellow in Chicago, that picked up some books or things in the alley. He showed me a memorandum book and told me about it that certain writing was in the book when he got it. I examined it, and concluded it was not Conley's writing and told him so and that ended it, so far as I was concerned. I thought it was his own writing. He also had a pocket book. I never made the statement in my life that I had that pocket book in my possession. I have no pocket book or purse that any one claims to have belonged to Mary Phagan? I have no mesh bag. I never authorized the statement in any newspaper to that effect that I had it. I never at any time made any claim that I had it. I never made any statement in Cleveland, or any other city that the guilty man was at large. The newspapers have said many things that are not true about this in quoting me. They often misquoted me. At the time I asked Mr. Smith if he had implicit confidence in this man Tedder, I was not concerning myself about Ragsdale at the time. Mr. Tobie is my Chicago man. I have learned that he was down here on this case. I only know by hearsay who employed him. Mr. Tom Felder employed him. Mr. Tobie did not make any reports to me. I never heard of any reports he made, except what I read in the newspapers here. When I first heard of the Ragsdale incident, I told them I didn't care to hear any more of it. I first heard of it probably a week or ten days before the affidavits were made. Mr. Lehon spoke of it to me in my office. I don't know whether Charley Sears was present or not. The next time I heard of it Mr. Lehon came to me and told me the preacher had made an affidavit and that they had run out his record and found it alright. He did not tell me anything about Barber. He didn't say he had run out his character, he said it had been run out. I did not pay any attention to it. Yes, I did have a conversation with Mr. Lehon previous to that, he came to me again and told me about this preacher, and did say that he was corroborated, and I told him that I wouldn't have anything to do with a man who would keep that information all this time, and that he was not worthy of belief, and that I would not have anything to do with it, and to send them to Mr. Rosser or Mr. Arnold and after investigation if they saw fit to take it to do so. I don't know whether Mr. Lehon carried out my instructions or not. I suppose before the filing of amendment he did. I think it was two or three days before I heard that he

had made the affidavit. I never saw Arthur Thurman in my life. I do not know whether Messrs. Arnold and Rosser were talked to about this matter or not. I never talked to them about it. I do not know of any money being paid out, either to Ragsdale or Barber, nor to Thurman or Tedder. I never paid a cent and never authorized a cent to be paid. I do not think this thing would be handled by somebody on the side who would not report to me, in order to keep me from knowing it. I don't think such a thing would occur. He would be violating the rules of our agency absolutely to do anything of the kind. I did not hear through any source connected with this case or in any way that Carlton C. Tedder had been supplied money for the purpose. I am ^{more} familiar with the Annie Maud Carter proposition than with the Ragsdale proposition. No, it was not my particular discovery. I didn't work up that angle. I don't know who worked up that angle. I found the girl at Mr. Haas' office, on the day she made the affidavit. I never heard of her before. Yes I came in contact with a Mr. Wrenn. I have seen both of them, Jimmie Wrenn and George Wrenn. I did not see George Wrenn before he was released from the Tower. I saw them while they were working for C.W. Burke. I never saw Mr. Frank in the jail in company with Mr. Burke in my life. I never saw ~~Mr. Frank~~ Mr. Frank when Dr. Wrenn was there. Nothing was said to me about what was going on when Dr. Wrenn was down there. Nobody ever handled anything through Wrenn. The first time I ever saw Wrenn I sent for him and he came to my office. I asked who was familiar with those letters and they said Wrenn was, and I sent for him and asked him to sit down and translate them, which he did. It was a young fellow about 25 or 26 years old. He is the taller of the two. Wrenn read it. Leonard Haas afterwards furnished the translation. I am telling you Dr. George Wrenn did it first and then Leonard Haas did it afterwards. Dr. Wrenn did it for me. Two of the counsel were present, Leonard and Herbert Haas. I could not say how long that was previous to the beginning of the hearing up here on the extraordinary motion. It has only been four or five days ago. It was two or three days, I think before that that I had been in possession of these notes. I do not know that they have sought to have them photographed before that more than

184 that length of time. I got the notes from C.W. Burke, a little

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while before Wrenn interpreted them. Yes, Burke is the man who deserves credit for the discovery of the notes. ~~I have examined the evidence~~ I went over the evidence in the case. I read all the briefs in it; went down to the pencil factory, went over all the briefs in the case and interviewed all the witness at the pencil factory, went up to your office and examined the clothes, examined the evidence in the case and made my report to them that in my opinion that they did not need any evidence outside of that used at the first trial. That is my opinion now. I suppose there were over one hundred witnesses introduced by the State of Georgia in the case. I don't know how many were introduced. I didn't read overall. I did not read the stenographic report. I just read the briefs. I interviewed Schiff, Darley, Holloway, Lemmie Quinn at the factory, Frank himself, I don't recollect the others. I don't remember the States witnesses I examined. I employed Botts Rogers, who was one of the State's witnesses. He has not given an affidavit changing his evidence. I did not interview John Starnes and Pat Campbell. I tried to interview Monteen Stover. I did not interview Newt Lee. I tried to interview Monteen Stover twice. The first time was at Mr. Boorstin's office. I told Mr. Leonard Haas I would ^{not} like very much to talk with this little Monteen Stover, except with her permission, and he said he thought he could arrange it. Later I met Mr. Boorstin and asked him if he could make arrangements for the interview with Monteen Stover and he said he could. I told him to be sure and get the permission of the parents of the girl and the girl's permission. Later Mr. Haas telephoned me, told me that Monteen Stover and her father and mother were at the office of Mr. Boorstin. I went up there and as I walked in the door, Mr. Boorstin said "Come in Mr. Burns" and the little girl jumped up and went out the door and the mother after her. They went after her and called her back. I said "What is the trouble," I says, "Well, if she doesn't want to speak to me, let her go, don't call her back." I said to Mr. Boorstin, "Did you make the arrangement" and he said "No, I did not. I thought I would get her here and she would consent." Then I said "You gentlemen ought not to have brought me here without having made satisfactory arrangements for the interview." I did not see anybody grab hold of the girl and try to hold her. I did not have any conference with the girl who stays in Boorstin's office at all about detaining her, or directing

her to close the door on her mother when she went to go out and tell her to stay there. I did not talk to Mr. Edmondson, the step-father of this little girl, right there. I never saw him but once in my life. I did not talk to Dr. Claud Smith, the city Bacteriologist. I did not talk to the two doctors who were employed by the defense to ascertain whether or not that was blood on the second floor. I did not get their names or know anything about their report. I made a thorough inquiry about it. I made an investigation at the factory and the witnesses attached to the factory. I did not talk to Mell Stanford, Mrs. Jefferson, or R.P. Barrett. I did not find out from Frank who that was present with him when he got down on his knees and examined those blood spots. I never heard of it. I never saw Duffy in my life, and didn't discuss that with him. I don't know him. I never interviewed him. I never talked to Newt Lee. ~~It~~ I examined the blood spots on the first floor, where they chipped ^{it} up. I did not examine the ^{alleged} blood spots down in the area where Jim Conley is said to have been sitting, but I had an interview with Mr. McWorth, Mr. Whitfield, and they told me what they had found and then we examined some spots still there, and where they said they had been chipped up there. I think Whitfield has been working for me. I did not take him into my employ, Mr. Sears did. I talked to him about those blood spots. I did not have an analysis made of them, I never saw those chipped up from there. I never saw those around the elevator area; they were turned over to the Pinkertons and thrown away. It is my understanding that they were turned over to the Pinkertons. I have been there and seen the floor. There was something chipped up there, on the street floor near the scuttle hole. I know what Mr. Whitfield and Mr. McWorth told me, that they chipped them up and turned them over to Scott, or Pierce, I forget which, of the Pinkertons. McWorth is now an assistant at my office. He is retained to handle all matters. I saw the club McWorth and Whitfield reported to me. I saw it in Mr. Haas' office, and there was blood on it. I am more capable of looking at a man and saying he is a pervert, than looking at spots and tell they are blood or not blood. My next business engagement is out in

186 Oklahoma, Oklahoma City. I will return here in about ten days.

I have no evidence now with reference to this murder I have not reported to Lee M. Frank, or to his attorneys. I keep reporting every day and right along. I have made my final report to them. I have not it in written form. I am going to make a written report. I have advised them not to publish it, because of the fact that it looked to me as though every witness that is found here is bamboozled, or turned about, and I determined and advised them when they found a witness to send the witnesses out of town to preserve them. Annie Maud Carter was sent out of town on my suggestion. Mr. Lehon attended to that. I sent her to New Orleans. After she made the affidavit I advised the attorneys to send her out of town. I do not know where she is stopping. I do not know that she is stopping at 314 Lower Line. She is not working for the agency down there. I do not know who is living at that place. Nothing was paid Annie Maud Carter that I know of. I do not know of anything paid her for her evidence by Wrenn. I found Annie Maud Carter in Mr. Haas' Office. Leonard Haas and Herbert Haas^{were} both in the office together. I told Annie Maud Carter's mother that I would arrange for her to go and see her daughter. I have never seen her since. I do not know that she came to my office prepared to go to see her daughter. I did not personally tell her that I would let her telephone her daughter. I think Lehon ~~was~~ attended to the details of getting Annie Maud Carter out of town. I have no evidence of a physical nature not already before the court tending to expose who the murderer of Mary Phagan is. I have not anything of a documentary nature that has not been turned over to the attorneys. I am reporting to them every day. The last report was made to them probably a day or two ago. The last time I talked with these men was this morning, and last night. I have not seen a copy of their motion and amendments. I have not read them in the papers. No, I know of no evidence illustrating ~~any~~ any issue in this case I have not apprised these gentlemen of. I don't know anything about anything that they have not brought to the attention of the court.

CROSS EXAMINATION. It was extremely difficult to investigate the facts of this case, owing to the intense feeling on the part of some members of the public. The most difficult of any case I have ever ~~imagined~~ inquired into in all my experience. I never in all

my life met with such unreasoning prejudice as there is in this case, to give the facts, just the simple truth. I have never known a case where it is as hard to hold a man to his story, to just the simple truth as in this case. I have never heard tell or reas of anything as outrageous as was resorted to in this case to secure the evidence of Minola McKnight, or the treatment accorded to Albert McKnight. I talked to Albert McKnight after he was lately arrested. I have read the affidavit made by Albert McKnight that was put in this motion for a new trial. He stated that what he had sworn for the defense was absolutely true, and he was induced to tell the story he did on the stand by Claborne or Craven. I read the brief of evidence in this case. I would say the brief of evidence covered the truth in this case completely. I read the evidence of Jim Conley. I have never known of a white man with a hitherto unblemished ~~reputation~~ reputation being convicted on the testimony of a low criminal negro, who himself admitted to having written the notes found by the body of the girl, or of any court, jury, or anybody accepting any such criminal explanation of the crime. My conclusion as to who was the murderer of Mary Phagan, so far as all the evidence on the trial of a case is concerned, is unquestionably Jim Conley. I read the testimony of the Pinkerton man, Scott as to how Jim Conley changed his testimony, starting out that he knew nothing about it, and then he claimed he had written the notes on Friday, and then changed and said he had written them on Saturday, and that whenever ^(Conley) he said anything that would not fit, they would tell him to put in something that would fit. My statement first made as to the conviction of Frank is based on the ^{brief} which I read. I have never talked with Jim Conley. So far as my information goes, he has been kept ever since this prosecution at the jail. I understand that nobody has been allowed to talk to him. My information as to the terms on which this man Smith would allow me to talk with him, was provided that he was present and I think he wanted a reporter of the court present also. I dont think under such circumstances I could get anything out of Jim Conley. I examined the letters he wrote in the jail and the clothes of the little gir. The contents of these letters were very vile. I never saw a case more filled with that character of per-

version in my life. I have never attempted to get anything except what I considered the truth. There have been hundreds of rumors of a great many people wishing and proffering to tell ridiculous and what ~~you~~^I considered absurd things in this case. It is difficult frequently to tell just what motives were prompting them or why they wanted to get into it, whether it is the truth or not.

REDIRECT EXAMINATION. One instance I can name where obstacles have been thrown in my way as to getting evidence and ascertaining the truth, is the Conley incident and Monteen Stover situation, and I considered outrageous, perfectly outrageous. As to why it is outrageous for a private individual not to submit to cross examination by four or five different men, all in the pay for a convict and his friends, I suppose the object was to get at the real facts and find out who was the actual murderer. It seems a lot of extraneous matters have been injected into it, and I could see there was a feeling here on the part of lawyers that intended to interfere with a proper investigation of the case, as for instance, yours, (Mr. Dorsey) As to what obstacle you put in the way of a full investigation, you refused to discuss this case with me, after I told you I would report that Frank was innocent. I asked you if I could discuss the case with you and you said, no, not then. Yes, you said you would see me at any time afterwards. Yes, I told you that I would report in writing in a few days that Frank was innocent and Conley guilty. I had already made up my mind at that time. You told me if that was true there was no use to discuss it with me. Yes, you told me I could come back if I wanted to, and that you would be glad to see me and give me the opportunity of convincing you of his innocence. As to whether you told me you didn't care what my opinion was, that I need not ~~give~~ waste any time in giving my opinion attacking the verdict, that if I had evidence, I could take all the time I wanted to convince, yes, you said about that. You added that for some reason after you came out into the hall. Mr. Alexander had gone almost down the stairs. As to what other obstacles, other than the Monteen Stover and the Jim Conley instances were thrown in my way, I asked the attorneys for the defense whether it would be possible to see all the witnesses for the State and the defense and they told me it would be impossible to get to them, after we had started on Monteen Stover.

The Haas' told me that. Perhaps Mr. Arnold, I am not sure. Mr. Rosser may possibly have told me. I do not recollect any other obstacle that was thrown in my way. Perhaps if I had known you were going to ask that question I could have thought it over and refreshed my mind. As to why I did not go to see Jim Conley, because, as I have said, of the obstacles thrown in my way. As to why I could not ^{go where I could} get valuable information, I saw and read the notes and saw the clothes of the murdered girl and the manner in which the under garments were out. He admitted writing the murder notes. As to how I know that Conley ever saw or had his hands on those garments, why the way in which those garments were out, indicates to my mind that it was the act of a pervert, such a perverted mind as Conley betrays in those notes. The most ridiculous thing that has been brought to my attention in this case, is the fellows who claim to have been behind that factory, or the alley on that day, were lined up you would think it was a parade, also those who ~~xx~~ claimed to have heard screams there that day. Mr. Haas told me about some man who heard screams in that factory. I don't recollect he told me the names. I did not ever talk to a man who claims to have heard screams. I ~~wanted~~ never talked to a man who claimed to have seen Jim Conley, but the Salvation Army man in Chicago. Yes I heard that Mary Rich said that Conley bought a lunch from her down there. I was not therefore looking for anybody in particular who saw him come out of the factory. I was looking for anybody that had any information on the subject. The instances that have occurred throughout the course of this investigation that showed prejudice on the part of any people, were the handling of these witnesses, the Albert McKnight matter, and the statements that I read as having been made never knew of the effort that Burke made to send McKnight out of town when he was wanted as a witness in the Conley case. We made Annie Maude Carter a witness, she was our witness, and we wanted to take care of her, and we were satisfied what would happen to her if we left her here. In the investigation of Conley's record, this is the only instance, his connection with this case, I discovered. As to what criminal act Conley committed, I have only hearsay.

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DAN S. LEHON, Sworn for the State (By deposition) My position is that of Manager of the Southern Division of the William J. Burns National Detective Agency with headquarters in New Orleans. I have been here on the Frank or Mary Phagan case for the past four or five weeks/ I cannot recall just when I came here. Occasionally we call Mr. Burns "Governor". Mr. Burns came a few days before I arrived. I take charge of the work in general, nothing in particular. I did everything that came to me I thought was necessary to have to do in this matter. As to what I am paid in connection with my work in this Frank business, it doesn't make a particle of difference to me as to my compensation, I am paid a salary by Mr. Burns and this case has absolutely no bearing on my salary. I am not interested in the retained Mr. Burns receives. I am interested in the money Mr. Burns pays this agency here in Atlanta the same as any other employee would be in any concern or firm. I have no interest at all personally in the money that is received from Frank or his friends and paid to Mr. Burns or the Burns' Agency. I have been paid on account of the agency, some monies from our client. Yes, I have signed and receipted for the monies that have been paid for the services of Burns and myself and his agents here. I have not handled all of it. I don't know who has handled others. We got the money from Mr. Herbert J. Haas, of counsel for the defense. I can not recollect how much money we got from Haas at the time Ragsdale made his affidavit. I don't recollect whether or not I got any money from Haas at that time. Immediately previous I got five hundred dollars by check. I did not talk with Haas about the Ragsdale affidavit when I got this money. I recollect previously mentioning something about an affidavit that was to be made by a preacher and I never knew Ragsdale's name until the day he made the affidavit. As to my knowing my subordinates or the subordinates of the Burns' Agency, or Burns himself had been in touch with a preacher, I had heard there was a preacher from one of our operatives named Whitfield, the same man who used to work with Pinkertons under Pierce. I heard it from Rogers, a witness for the State. I also heard it from C.C. Tedder, also in my employ. I employed and paid Tedder. I advanced Tedder at the time that I employed him, which I think was the 15th or 16th of April, a month's salary, Two hundred and fifty dollars. I also advanced him \$250.00 for expenses of making
a trip

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interview
to ~~introduce~~ some witnesses that he told me were living in Birmingham, or Chattanooga, or Nashville. One of the witnesses he told me was a prostitute in a house of prostitution at either Chattanooga, or Birmingham, who had information would swear to Frank being a pervert and I instructed him to go and get this information by all means; and he also informed me at the same time that he had a very important witness in the person of Mark Wilson, a negro, who would testify that he saw James Conley buy a lunch from Mary Rich, the negress near the pencil factory on the day of the murder and that Wilson would also state that he saw Conley going back to the pencil factory, in the alley and coming out of the alley. He also told me there was another witness named Hodge, a negro, who could verify and support or corroborate the statement of Mark Wilson, and it was for that purpose I gave this money to Tedder to defray his expenses and he explained to me he was broke and needed money and asked me to advance him a month's salary, which I did. At the time I advanced this \$250.00 I had never heard of the preacher. I do not know a man by the name of Petrie, if he is working for the Burns' agency, I don't know it. I don't know anything about him. I never heard of the name Petrie before. At the time I advanced Tedder the second \$250.00 I had not then heard of this man Ragsdale. The first time that Tedder discussed Ragsdale with me I think was on the 22nd of April, Tedder told me that Arthur Thurman, a lawyer here, had a preacher client of his, who claimed to know a great deal about the Frank case; that he had overheard some negroes talking in an alley way and one of them admitted the killing of a girl in the pencil factory, and that they were willing to make an affidavit to that effect. I told him I would be very glad to get it. That was all that was said at that time that I can recollect. The next time, I think, was on the 23rd of April, Tedder called me up on the telephone and said, "Thurman is bringing those two men to your office, the preacher and another man, to make affidavits." I said, "All right have them bring them down." Thurman came into our office and said, "Mr. Lehon, this is Dr. Ragsdale and this is Mr. Barber" pointing to the men, "they desire to make affidavits in the Frank case". I said "All right" and Thurman withdrew. I asked Barber and Ragsdale to step into my private office and they were only seated a minute and I got

my hat upon the rack and said "Come on over to Mr. Rosser's office, the attorney's." I brought them to Mr. Rosser's office where they were first interrogated by Mr. Brandon, as Mr. Rosser was not present. It was during the noon hour. Later Mr. Rosser came and in my presence and in the presence of young Mr. Tifton, I think it is, the stenographer, and Ragsdale and Barber, their affidavit was taken by Mr. Rosser. They were not brought in by Mr. Thurman and Tedder, they were brought in by Mr. Thurman. Tedder called me up on the telephone and stated Mr. Thurman was coming to my office with those men. After Mr. Rosser had taken the affidavits of both Ragsdale and Barber and then asked them for the names of some of their associates or some reputable men here in Atlanta or elsewhere in the State of Georgia that could vouch for their good characters, and both Ragsdale and Barber furnished Mr. Rosser with a number of names, mostly of Atlanta citizens, and Mr. Rosser then furnished me with his list, and I immediately instructed our ~~special~~ operatives, and went personally to some of them myself, and interviewed two gentlemen at leadt in regard to Ragsdale. They are connected with the State Mission Board here; one of them was a preacher named Page, and the other man was acting secretary of the State Mission Board, Bernard, I think his name is. I don't know whether Bernard is an auctioneer. He was acting secretary of the State Mission Board in the absence of J. J. Bennett, who was sick in the hospital and whose name Mr. Ragsdale had furnished us, I called at the State Mission Board for the purpose of interviewing J. J. Bennett and found that he was sick. That is the first time I made an investigation, that is the first time I knew Ragsdale and Barber's names. I think it was a day or two previous to when I ~~first~~ ^{actually} got the affidavits that I obtained the information from Tedder that affidavit could be made. When I first mentioned the matter to the Governor about a preacher being in existence who knew something about this and when I mentioned he was in an alley-way he says, "No more of that-alley business. We have run enough of that", and didn't take the thing seriously at all. I could not say exactly how long it was previous to the time that affidavit was actually executed that I and W. J. Burns had this talk, but it was only a few days. I don't think I communicated this matter immediately and directly to the Governor. The reason for the delay

was because I didn't think it was very important myself. From the time Tidder first mentioned this matter to me until I got this affidavit, I only made one payment to Tedder; that was the day I employed him and that was an advance of a month's salary and \$250. for expenses to go to look up those witnesses. I got the money from Herbert J. Haas on account of our services. To the best of my recollection it was by check. I am not able to say whether it was by check or by money. I have been paid cash by them and also been paid by check. I have been paid so often by cash, I can not recollect how often it was. I can not recollect how often I have been paid by check. I could not state of my own knowledge whether the check was signed by Herbert J. Haas individually or as treasurer. I paid very little attention to the check. I could not tell you what bank the checks were on. I turned them over to the local manager, Mr. Sears. I don't recollect endorsing any checks. I don't recollect any cash or check transaction at all at the ~~the~~ immediate day the Ragsdale matter was on. We pay Boots Rogers a per diem basis. We have no usual custom of paying our agents. It varies. I did not pay Tedder any money the day this affidavit was made. I do not know of his getting any money. Tedder was not in my office at any time that day previous to the money being paid. I do not and do not think he was at the office of Messrs. Haas, No. Ragsdale and Barber did not refuse or delay the execution of those affidavits. They were only anxious to make them and was wondering why the thing was being delayed so long when they were extremely anxious to make the affidavit. I met Arthur Thurman twice. Tedder told me he went to Birmingham, Nashville and Chattanooga. He made verbal reports. I did not make daily reports to the Governor or to any of the Burns Central offices. Several men who have been working on this case down here have received cash payments from me. We pay nearly all of them in cash money. I don't know whether they are paid by check or not. Mr. Sears attends to matters of that kind. I have advanced several of the operatives expense money in cash and not by check. We usually take receipts and are filed in our office. I don't know anything about Jimmy Wrenn in connection with this case at all. I do not know him. I don't know anything about George Wrenn. I have not received reports from our men with reference to what they had done in this case.

George Epps testified in affidavit in substance as follows:-

"I am the George W. Epps who swore on the trial of the state of Georgia vs Lee M. Frank.

"On April 26th, 1913, I lived with my father and mother at 246 Fox Street, city of Atlanta, and I knew Mary Phagan well. I had known Mary about a year before she died. I rode on the car with her on April 26th. We reached the corner of Marietta and Forsyth Streets about 12 o'clock. Mary got off the car at this place and went on down toward the National Pencil Company's place of business. As we were coming into town on the car, Mary talked to me, told me she was going down to the National Pencil Company to get her pay. She also told me that Mr. Frank had been trying to flirt with her and that she was afraid of him. The evidence that I gave on the trial was the truth and nothing but the truth, and I here and now say again that what I swore on the trial is the truth. Soon after the case was ended a man came to me who said his name was Terry. I will describe that man as best I can. He was a short, skinny, low man and always wore a sour grin on his face. He told me when he first met me that he wanted me to take a message for him to Capitol Square and Washington Street. I took the message. It was to somebody by the name of Smith. I was never able to find this man Smith. I found a place where somebody by the name of Smith lived, but I never could find Smith. The next morning I reported back to Terry, or the man who called himself Terry, that I could not find his man Smith. Terry was in front of the Aragon Hotel and stopped me as I went along up the street and wanted me to take another message for him. This time the message was to Mr. Smith again, over at the same place. I took this message, which was a note, but I couldn't find his man again. I then reported back to Terry that I could not find Smith again. This time I reported to Terry at the same place, in front of the Aragon. When I reported back this last time, this man who called himself Terry asked me if I did not want to travel with him. He said he had a show company and wanted me to travel with him and that I could get \$10.00 a week and expenses, - that I would have a good time. He said he was going to take some girls along with them. He asked me would I go. I told him I would see about it.

He told me to report to him right across from the library that night. He didn't say anything more; said he would see me again that night. That night I reported where he said meet him, across from the library. He told me to stand in front of the House that Jack built. I had to wait for him. When he came, he came along. He said 'let's walk along,' and we walked down Cain Street, on out to West Harris Street and came back up to Peachtree Street. He said he wanted me to go with him - said I would have a good time, and get to go to New Orleans and would get out of this Frank case. He kept begging me to go. He offered me \$10.00 a week and expenses. I said 'Yes, I will go.' He said he would get me some nice clothes. He told me that night to meet him again the next night in front of the Carnegie Way Fire Engine House, between 7 and 8 o'clock. I met him that night, ready to go. I had to wait a long time. When he met me he said he couldn't get off, but would have to wait a week - said he wasn't ready, couldn't get his show girls up. He told me to meet him again the next Saturday night in front of the Winecoff Hotel. I went there Saturday night and had to wait a long time. He stood on the corner and motioned for me to come in the dark. He said he was going to be ready to go Wednesday night and would have my clothes and everything ready. He told me to go ahead and work for Mr. Miller until he got ready for me. He told me to keep this secret; not to let my father and mother or anybody know that I was going off. I did this, and didn't tell my mother and father. I saw him Sunday, coming down Forsyth Street, Kelly (C.W.Burke) and Terry were together, and they stopped at the corner of Walton and Forsyth Sts., at the corner of the Post Office building and Kelly left as I came up. Wednesday night I met him at the corner of Carnegie Way and North Forsyth Street. He gave me some of his old clothes and gave me one dollar in money and told me to go ahead and get a bath and to get ready, that we were going off that night at 11 o'clock and for me to meet him at the corner of Forsyth and Hunter Sts. I went ahead and got my bath down town and hung around and got some supper. At about 10:30 I went to the corner of Forsyth and Hunter and met him there and he already had my ticket; said we were not going to New Orleans but were going to Birmingham. He had said before that we

✓ were going to New Orleans. He said to go on over to the Terminal Station - that he had some girls to get. I went over to the Terminal Station and when I got there I met a man that had on glasses, who looked like a fellow I saw in Birmingham that passed off as Kelly. This fellow pretended he could not see good and asked me to help him down the steps. When Kelly and I got on the train, Terry was already on the train and pretended to get mad because I helped this man down the steps. Terry got off the train and told me to stay in there - that he would catch the train before it left; that he had some business to attend to. I went on in the train and sat down. Just as the train was pulling out of the Terminal Station, I saw this man Terry hop on to the train, but he did not talk to me until we got nearly to Birmingham. I do not know what became of the man who pretended to be blind and who looked like the Kelly I afterwards saw in Birmingham. I didn't see him after we got on the train. Terry then, when we got nearly to Birmingham, came in and began to talk to me. He said he was going to stay a week in Birmingham with the show. He did not stay with me long; said he was going back to stay with the show girls. I never saw any show girls.

"When ~~we~~^I got off at Birmingham I was with Terry. When I got about two blocks from the station, that man that pretended to be blind, came up and grabbed me; but he had pulled off his glasses. I do not say positively that he was the same man I helped down the steps but I think so because it looked exactly like him. The glasses made the difference. Terry asked the man that grabbed me what his name was and why he was grabbing me, and the man - who afterwards passed off as detective Kelly - said to Terry that I had stolen \$10.00 from the Miller Minute Messenger Service. Kelly said he was going to take me to jail. Terry told him not to take me to jail; take me to the hotel, and said he would pay my expenses at the hotel.

"Kelly took me to the Birmingham Hotel and Terry was with me. After they got me up to the Birmingham Hotel in Birmingham, Ala.

Terry then wanted to pay my fine and told Kelly he would pay it if he would let me go. Kelly then said he would call up the chief of detectives and ask if it would be all right to take the money.

197 He called him up, or pretended to call up, and Kelly then said -

after he had pretended to talk over the phone - that the detective chief said that wasn't the only case that they had against me; that they had me also for perjury in the Phagan case. Kelly said the chief of detectives said to keep methere until he came. Then both Kelly and Terry commended talking to me while they pretended to wait for the chief of detectives.

"After awhile somebody came in that they said was the chief of detectives. He didn't have any uniform. The best description I can give of this man who pretended to be the chief of detectives is as follows: He was a tall man, about like Mr. Pat Campbell, whose beard came down to a sharp point and whose moustache was clipped off short. All three of them then began to talk to me about the Frank case and what I had sworn on the Frank case. All three of them told me I had sworn a lie and had to come up and tell the truth or go to jail. I said I had told the truth about it. He said No, I had not told the truth and if I did not tell the truth about it, I would go to jail. I said 'I told the truth and that is all I know.' He said 'You know you never came to town with Mary Phagan on the car.' He said 'You know that Black put you up to this, and we are going to make it hot for him.' He rung a bell down stairs and they brought writing paper and a pencil and the chief of detectives commenced writing, and wrote three pages and then read them over to me. He commended talking to me and told me I was going to have to say this and if I didn't stick to it, I would have to come back to Birmingham and serve a sentence there. About this time he said he had to go home and get his breakfast; that he would see me after breakfast and bring a stenographer.

"This was in November, 1913. I got to Birmingham about 3 o'clock in the morning and they kept talking to me and did not let me go to sleep all night. Terry then took me out to get something to eat and told me to go ahead and stick to this story; he was going to take me to New Orleans and they could not bother me after I got out of Birmingham. He took me on down and got me something to eat and brought me back up to the Birmingham hotel. This time the chief of detectives brought a man, a stenographer, with him. I didn't say anything, but the chief told me to listen; that I was going to have to say that. He said he was going to have it copied

on the typewriter and he would bring it back to me at four o'clock and take me to a lawyer to be sworn in on it. Mr. Terry taken me down stairs and gave me \$2.00 and told me to buy a clean shirt and take the rest of it and go to the shows. About 3:30 I came out of the Benita Theater in Birmingham, and went up to my room. I was sitting in the window looking into the street, when I saw the chief of detectives and Mr. Kelly coming. They made a motion for me to come down stairs. They asked me where was Terry and I told them I didn't know. Then they took me over to a building I don't know the name of and they took me by the jail and said I was going to be sworn in and for me to say that was the truth - that is what they had written on that paper. They took me to the office and started reading it to me, and when it was done they made me hold up my right hand and swear to it, and when they got done Mr. Kelly took me back to the Birmingham Hotel and there we met the chief of detectives, and Mr. Terry was with him. Mr. Terry got me and we went walking around. That night he sent me on to the hotel and told me to wait until he come; that he wanted to see the show girls. I went up to my room and went to sleep. I don't know when Mr. Terry came in. The next morning he said he was going to move to the Empire hotel, and we went down stairs and turned in the key and went over to the Hotel Empire. He told me to go on up in the room and that he would see me later, and he give me some money. About 8:30 Mr. Terry came back and took us into the cafe which is in the Empire hotel and bought us some breakfast. Mr. Terry got two telegrams and he claimed they were from Atlanta and that the show had to come back to Atlanta before we could go to New Orleans, and that night I got ready and we left about 3 o'clock, and we got on the train and came back to Atlanta. We got to Atlanta about 7 o'clock in the morning, I think it was. Mr. Terry didn't ride with me all the way, but just before we got to Liberty Springs, he gave me a dollar and a half and told me to go to the Gate City hotel and stay there and don't let anybody see me; that he would come up there about 12 o'clock and get me. I waited a long time and Mr. Terry didn't come until one o'clock, and he told me to go on back home with Mama; that he was coming out to see my folks. He gave me a dollar and a half in nickles and dimes and told me to go out to the

football game; and I didn't see any more of Mr. Terry until one day just before I was arrested, and he told me that Mr. Kelly said I had not told the truth and they wanted me to come back and tell the truth about it. I said 'I have done told the truth, and I don't know anything about it, and there is some crooked work now;' and he left me at the corner of Edgewood Avenue and Ivey Street and told me to go ahead and go back to work.

"The reason I signed the affidavit for them in Birmingham was because they threatened me and I was scared and wanted to get back home. They said if I didn't sign it I would have to go to the Birmingham Reformatory, and that if I did sign it I would have to stick to it; that if I came to Atlanta and changed it, they would take me back to Birmingham, and that Birmingham would fix me.

"About three weeks after I came back to Atlanta from Birmingham, Judge Tindall sent me to the Reformatory at Milledgeville on a complaint in the Childrens' court. Judge Tindall said he would be willing to place me on probation, but remembering the threats made to me in Birmingham by the 'Chief of Detectives' and 'Mr. Terry' and 'Mr. Kelly' - to take me back to Birmingham if I did n't stick to the statement they made me sign, I asked Judge Tindall to send me to the Reformatory; I was afraid if I was placed on probation that when I repudiated the Birmingham affidavit and told how it happened, that they would take me to Birmingham and put me in jail for signing the statement over there.

"While I was in the Reformatory at Milledgeville, Ga., Mr. Stiles Hopkins came over there to see me; he told Capt. Lovvorn he wanted to see me; that they had an affidavit which I had made in Birmingham and they wanted me to sign it. They said they just wanted to change it from Birmingham, Ala. to Atlanta, Ga. Mr. Hopkins told me to take one copy of the affidavit I made in Birmingham and he would read over the one he had copied and see if it was the same one I signed in Birmingham; and I told him Yes, that was the same one, and then he had me to sign it - the typewritten one that he had brought with him, and after that a lawyer swore me to it, but I don't know his name. He asked me if it was the truth and I told him Yes, it was true that it was the same one I made in Birmingham; and I signed it, and Mr. Hopkins and the man who claimed

he was a lawyer, left.

"I was brought to Atlanta from the Reformatory at Milledgeville, Friday morning, May 1st, 1914. Since coming here I have seen a man who was pointed out to me as C.W.Burke. I have seen him twice since I came from the Reformatory. On both occasions I had ample opportunity to see him well and to watch him; and I am now prepared to say, and do say under oath that he is the man who was with me in Birmingham, passing under the name of Kelly; that is the name the man known as Terry called him; and it was what I called him, as he was introduced to me as being Mr. Kelly, and it was the name which he recognized and responded to. Mr. N.A.Garner was with me when I saw and identified Mr. Kelly as he was coming out of the National Pencil Company's factory on Friday, May 1st, 1914. The man who I pointed out to Mr. Garner as Mr. Kelly, got in an automobile - a Ford touring car - and Mr. Garner told me that the name by which he was known in Atlanta was C. W. Burke.

"When they had me up in the room in Birmingham all three of these men got me over in the corner right at the window and pulled down the shades. They cursed John Black, city detective of Atlanta; they talked to me entirely about the evidence that I had given on the Frank case and insisted that I should change it and would not let me hardly say anything to them. They talked low, but I was afraid; I am now just 15 years old.

"I have read over the above affidavit and it is all true, and I have placed my name on each and every page thereof after having read it."

Another affidavit of George W. Epps, in which he testifies in substance as follows:

"I met Jimmie Wrenn for the first time at the corner of Auburn Avenue and Peachtree Street, and not at Miller's Messenger Service, but four blocks away, or about that.

"Wrenn did not discuss the Frank case with witness casually or otherwise in Atlanta but decoyed witness out of the city and out of the state to discuss it with him.

"Witness did not state to Jimmie Wrenn (as C.W.Burke swears Jimmie Wrenn reported to him) that the testimony witness had given at the trial of the Leo M. Frank case was in most part false; nor

did witness tell Wrenn he had told some lies; nor that witness had been made to tell the lies by detective John Black. Witness did not tell Wrenn that he was going to take a hobo trip; that he was in bad with the Probation officer and the detectives and that witness was afraid of John Black. Witness did not promise to make any affidavit for Wrenn anywhere or say that he was afraid to make an affidavit in Atlanta.

"Each and every statement charged by Burke in his affidavit of May 5th, 1914 as having been made by deponent to Jimmie Wrenn in Atlanta, is absolutely and unqualifiedly false. And if Jimmie Wrenn made these statements to C. W. Burke as coming from ~~deponent~~ witness, said Jimmie Wrenn was "stuffing" said Burke with falsehoods which he, the said Wrenn, manufactured. Witness's affidavit given to Hugh M. Dorsey, Solicitor and sworn to and subscribed before an officer on Monday, May 4th, 1914, is a true statement of witness's dealings with Jimmie Wrenn."

John R. Black testifies in affidavit in substance as follows:

"On the first day of the Coroner's investigation into the death of Mary Phagan, Mr. J.W. Coleman, step father of said Mary Phagan, told me about 2:30 o'clock in the afternoon that there was a boy down in the lobby of the station house who had told him on Sunday and Monday nights that he had gone to town with Mary Phagan on Saturday, April 26th, 1913, and that this boy told him he sat on the same seat with Mary. Mr. Coleman also stated to me that this boy down in the lobby had described to him Mary's leaving the car at Marietta and Forsyth streets, her going south along Forsyth St. toward the National Pencil Factory, her conversation in which she told him she was afraid of Leo M. Frank, etc.

"Mr. Coleman and I went to the lobby and talked to the boy who was George Epps, later a witness in this case, - and George Epps admitted to witness the things Mr. Coleman had communicated to witness. George made a statement to witness embodying what he later testified in the case. Witness called the coroner out and
202 George Epps repeated the same things to him.

203 "The next I heard of said George Epps was the next day when George called me up by phone and asked me to come to the Spring

Bed Company's place, where he was working. This was out on Jones Avenue. I went to his place in company with Mr. Harry Scott. Said George Epps communicated certain names to us with the statement that these parties could furnish us information on the case. He volunteered to go with us, stating that he could carry us to these parties, and we accepted his offer to go; and we three went out together to look up these parties.

"I never was in Mr. Dorsey's office with George Epps before the trial, as I had been detailed by Chief Lanford to work with Scott of the Pinkertons and report to Starnes and Campbell what we might learn. It not being my duty to report to Mr. Dorsey at that time, I did not go about his office. Furthermore, witness never did, at the station house, in the Solicitor General's office or elsewhere direct, tell or suggest to George Epps what he should swear in this case. And any statement or insinuation by anyone whomsoever to that effect is utterly false.

"Regarding the alleged statement of Epps that witness put a statement in his mouth to fit the Jim Conley situation, - this is false and could not have been true because George Epps made his first statement before witness knew anything of Jim Conley in the case, Jim not having been arrested when George first made his statement to witness."

J. W. Coleman testified by affidavit in substance as follows:

"That the statements in the above affidavit of John R. Black are true, in so far as they relate to things done and said by this witness."

N. A. Garner testifies by affidavit in substance as follows:-

"I have read the affidavit of George Epps, Jr.; I am the N.A. Garner referred to in his affidavit. I was with George Epps Jr. when he pointed out a man as having passed in Birmingham, Ala. under the name of Kelly. I am personally acquainted with the man pointed out by said George Epps and know the man to be C.W. Burke who has been working on the Frank case. I was also with George Epps and city detective S.L. Rosser when said George Epps pointed out a man by the name of B. Bernard as being the man

who represented himself to be the chief of detectives in Birmingham, Ala., as referred to in the affidavit of said Epps attached. I am personally acquainted with said Bernard and know that the man pointed out by said Epps as the chief of detectives of Birmingham is B. Bernard of Atlanta, Ga."

R. P. Barrett testifies by affidavit in substance as follows:-

"My name is R.P.Barrett. I live at 549 West North Avenue in the city of Atlanta; I worked for the National Pencil Factory about four years in all; I was in the employ of said company in April, 1913 and at the time of the murder of Mary Phagan; I was a witness for the state on the trial of Leo M.Frank charged with the murder of Mary Phagan.

"I am well acquainted with Jimmie Wrenn, he having worked in the machine shop of the National Pencil Factory at the same time I was in their employ.

"On a Sunday morning not long after the trial of Leo M. Frank, Jimmie Wrenn met up with me at or near the corner of Marietta and Forsyth Streets and entered into a conversation with me about the Frank case. We walked down Forsyth Street to the corner of Trinity Avenue and stopped there for a little while. Just before we separated, Jimmie said to me 'Barrett, you are in a good position to make a barrel of money if you will go to New Orleans and change your statement in the Frank case.' I asked him: 'What do you want me to do?' and he replied, 'I want you to go to New Orleans and change your statement in the Frank case.' I said 'Jimmie, whom are you working for?' And he replied 'For Mr. Burke.' I did not then know Mr. Burke or what Mr. Burke he had reference to. Before I left him, he said 'Barrett - if you don't want to do this, don't tell anybody. If you do, tell me first and give me a chance to leave town.' We were together there only a short time after this, and I left him. Pretty soon after this conversation at the corner of Forsyth street and Trinity Avenue, Jimmie Wrenn came out to my house early one morning. I was just leaving home and had walked down toward the carline. Jimmie called me and I

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waited for him. He came up and said 'Barrett, you haven't said anything to anybody about that yet, have you? I told him No. He then said 'Well, don't tell anybody about it; but if you do, let me know before you tell, so I can leave town.' I probably said 'Allright' - I do not recall positively.

"This was the last of the matter between Jimmie and me until just before or about the time the Supreme Court rendered its decision in the Leo M. Frank case. Early in 1914 - I think it was in February - Jimmie Wrenn met me in the post office in Atlanta. He asked me if I wouldn't like to make \$4.00 a day for about 6 days and my expenses to New Orleans and return. I asked him what to do. He replied he was working for a press agent from Chicago who was going to write a book on the Frank trial; that this man, the press agent, wanted to get a statement from every witness who testified at the trial. I told Jimmie I would go and he said for me to meet him at the Terminal station at 3:30 P.M. the following Saturday afternoon, which was the next day. He said he would have passes for us. According to my promise, I met him at the Terminal station the next day at 3:30 o'clock in the afternoon, and he showed me two passes to New Orleans and return. I told him I would have to go home first before I could get off. He handed me a one dollar bill saying 'Here's a dollar for car fare. Hurry back.'

"Instead of going home, I went to Solicitor General Dorsey's office to report this to him, but he was out of the city, I was told. I gave the information to Mr. E.A. Stephens, an assistant to Mr. Dorsey, who advised me not to go to New Orleans. He advised me to delay the trip and talk it over with Mr. Dorsey on his return.

205 "When I went back to Jimmie at the corner of Madison Avenue and Mitchell Street, we walked down to Whitehall and Mitchell. I told him I could not go. He said 'Well, if you are scared, Mr. Kelly will be in Atlanta Monday and I will carry you around to the Kimball House to see him, at 2 o'clock in the afternoon.' Mr. Kelly was the name of the man he said was the press agent from Chicago.

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"I met Jimmie at the ~~xxxxx~~ Fourth National Bank corner at 1:30 Monday afternoon and he said we were thirty minutes too early. That Mr. Kelly would not be there until 2 o'clock. We waited around until 2 o'clock and went up to the Kimball House to a room the number of which I do not recall. Jimmie knocked at the door and a man I did not know opened the door and invited us in. After we got inside Jimmie introduced the man to me as Mr. Kelly from Chicago. This man asked me to have a seat and told me he was a press agent and that he wanted a statement from all of the state's witnesses in the Frank case. I told him to go to the courthouse and he could get my statement. He said that would not do, it would have to come from the witness's own mouth and have his own signature to it before his house would receive it.

"During the conversation, he said 'Barrett - what do you do?' I told him I was a machinist, He said 'I have a brother who is the master mechanic at the Southern Railroad shops; I might get you a good job at Hutcherson, Kansas. I know the people there. He asked me if I was a married man, and I told him I was. He said 'Barrett, do you know that I am the man who caught the murderer of Pearl Bryant, in New Castle, Pa?'

"In discussing the blood spots which I testified I found in the Pencil factory, he said: 'When you found that spot it was only a white spot.' He asked me if that wasn't all I knew about it. I told him that when I found it, the white spot was mixed with blood and he replied 'I didn't know that.'

"He tried to keep it uppermost in my mind that he was writing a book and he said 'If you let me win this point you will be rewarded with enough money to get you a handsome house and lot.' At this time we were talking of the spots and whether they were just white spots or had ^{red} been mixed with the white.

"This man said to me 'Barrett, I believe you think I'm trying to trick you.' He added 'If I were to put down a lie and send it to my house they would write back down here and say 'Burke, what in the Hell -----'; then he stopped without finishing the sentence, for he saw he had given himself away. I thought I was talking to a Mr. Kelly from Chicago, but I afterwards found out ^{was} that this man C.W. Burke, formerly a special officer for the South-

ern Railroad.

"It was getting late by this time so I told him I would have to go as I had some business I must attend to. He had been writing while we were talking. When I was about to go he asked me to read over what he had written and if I found anything in it I didn't like to make a check mark by it. I said I didn't care to do it, but he pleaded with me to just sit down and read it over and check off the part I didn't like. I told him he could write down all he liked and check off what he pleased but that I would check nothing off. I then left him after promising to see him next day, which ^{however,} I did not do.

"The above is a true statement of events that transpired and conversations that took place between Jimmie Wrenn and me and also between C.W.Burke (the man introduced to me as Mr. Kelly) and me. During the conversation in the Kimball House between Burke and me, Jimmie Wrenn was in and out the room, coming and going as he pleased. He seemed to be thoroughly acquainted with 'Mr. Kelly' as he called Burke, appearing to be quite intimate and confidential with him.

"The following week after the murder of Mary Phagan, Mr. Dorsey or someone had an electrician to run electric lights down in the basement of the pencil factory and a very thorough search was made in the basement for anything that would throw light on the murder. Those down there were hunting for any clues that might be found. There were in the crowd Mr. Dorsey, a stranger whom I did not know, but understood was a detective, - Mr. Pat Campbell, Mr. E.A.Stephens, Mr. Plennie Minor, Mr. Dan Goodlin, Mr. N.A.Garner and I think several city officers. Every nook and corner of that basement was searched, every box and barrel moved and every bit of the trash moved. There was not a book or scratch pad down there that we saw or found. Waste paper and trash, when carried to the basement was always piled in front of the furnace and kept there until it was burned in the furnace. It was constantly burned every week, and there was no accumulation of paper and blank books or other kinds of books down there.

"Becker left there in January, 1913, I think. I understood that he was going to New York with the Fabre Pencil Co."

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N.A.Garner testifies by affidavit in substance as follows:

"I am personally acquainted with W.W.Rogers, otherwise known as 'Boots' Rogers. On April 28th, 1914, I had a talk with Boots Rogers and asked him who the other Rogers was that was working for Burns and he said Burns had no other Rogers in the city of Atlanta. He admitted that he was now in the employ of Burns. He also stated that he had not changed or modified in any respect his evidence as given on the stand and it was the truth and nothing but the truth and he would repeat it again.

"Some time along in the early part of the year 1914, probably about the month of February, 1914, I saw R.P.Barrett come to the office of Hugh M.Dorsey, Solicitor General. The Solicitor General was not present. I was directed by the Assistant Solicitor General E.A.Stephens to follow said Barrett. I followed said Barrett and saw him meet Jimmie Wrenn, a man known to me personally, and the brother of George Wrenn who was convicted in the Superior court of a \$20,000 theft of diamonds. I saw Barrett and Wrenn both at Sig Samuels' beer saloon on Mitchell Street, between Broad and Forsyth. Wrenn had a grip. They stood there and talked a while. I am personally acquainted with both of these Wrenn Boys and know that they are brothers."

S.L.Rosser testifies by affidavit in substance as follows:

"On Tuesday morning, April 28th, 1914, while at work on investigating witnesses with reference to the extraordinary motion of Leo M.Frank, I was in search of a negro by the name of Frank Reese. I found said Frank Reese in an alley running from Hunter street between Frazier and Terry Streets, known as Kingley's Alley. I had information that Frank Reese lived in the first house leading from Hunter Street and as I turned in the alley and started towards this house on the right I looked at the end of a little blacksmith shop or old building of some kind on the left, and there stood George Wrenn, Frank Reese and Dan Goodlin standing close together in conversation. I know George Wrenn, the man convicted of a \$20,000 theft of diamonds and who has just finished serving a sentence in the Fulton county jail therefor. He was commonly known among the inmates of the jail as 'Dr. Wrenn.'

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This said George Wrenn or Dr. Wrenn being the brother of Jimmie Wrenn, - said Jimmie Wrenn being the man who has been assisting C.W.Burke, - said C.W.Burke being a witness signing the affidavit of C.Burtis Dalton in Florida and the notary public purporting to attest what purports to be an affidavit from an old negro woman by the name of Mary Rich."

Dan M. Goodlin, Jr. testifies by affidavit in substance as follows:

"On Tuesday the 28th of April, 1914, I went in company with Charles Sigels, whom I had arrested on a warrant from the Municipal court of Atlanta, to the vicinity of Butler street and Fraser street. We went there to look for a man who had agreed to go on Sigels' bond. We found the man we were looking for and all three of us stepped into a blacksmith's shop to fix up the bond. Just as I came out I saw a young negro boy by the nickname of "Peavine", - and he said 'You scared me; I thought you wuz comin' after me.' And then I said: 'Where do you live?' He pointed to where he lived. I then said 'Well, I'll know where to come when I want you.' George Wrenn had been standing nearby, in front of Peavine's house. Just then he came up to me and asked me something about how the sheriff's race was coming. About that time Bass Rosser walked up. There was no conversation at all between myself and George Wrenn or Peavine about the Frank case or anything connected with it. We just had a few casual words conversation."

George W. Epps, Jr. testifies by affidavit in substance as follows:

"I am the George Epps who testified in the trial of the case of the State of Georgia vs Leo M. Frank. Since signing an affidavit this morning with reference to what occurred in Birmingham, Ala., I have seen on the street the man who took me from Atlanta, Ga. to Birmingham, and who passed with me under the name of Terry. I picked him out on the street at a bootblack stand near the corner of Hunter and South Pryor Streets. I spoke to him and he spoke to me. I called him 'Mr. Terry.' I am positive that he is the man. I never knew him under any other name except the name Terry. Mr. H.A. Garner was with me at the time I saw him and addressed the man as Jimmie Wrenn, and Terry asked:

16 'What did you call me, Kelly?' I said 'No, I didn't call you Kelly; I called you Terry - the name you gave me.'

Fred Perkerson testifies by affidavit in substance as follows:

"My name is Fred Perkerson. I am employed by Mr. J.J. Woodside. About the latter part of the summer of 1913, I was sentenced to serve a term in Fulton county jail for drunkenness on the ~~the~~ public highway and I served this sentence at the county jail and for practically this entire time I was allowed the freedom of the jail as a jail trusty, as the prisoners serving sentences are used to do the labor around the jail.

"There was also a white prisoner serving a jail sentence whom the prisoners knew as Dr. Wrenn, as he helped the county physician and gave the sick medicines and looked after them when the county physician was not present at the jail. I have seen several of his brothers visit him at the county jail but their names I do not know. I have shined their shoes for them when they visited him at the jail. I have seen Jewish friends of Mr. Frank give Dr. Wrenn cigars and buy him drinks and I have carried papers from the jail office up to Mr. Frank, and Dr. Wrenn would sometimes request me to ask Mr. Frank to let him have some of the papers to read, when Mr. Frank got through reading them, and I have told Mr. Frank of this request of Dr. Wrenn and have carried some of the papers from Mr. Frank's cell to Dr. Wrenn.

"While I was there I often carried meals to Conley's cell and also cleaned up his cell for him. Dr. Wrenn has talked to me and Frank Reese, who was also serving a jail sentence and who was also a trusty and who had access to Conley's cell and who helped clean up his cell at times. Dr. Wrenn would talk to us usually when Deputy Gilleland would go to the front to get his dinner. Dr. Wrenn told us that we had good chance to make some money. He said that both of us could go into Conley's cell wing together and then come out and say Conley had confessed to us that he had killed the girl. He told us that we could get lots of money for this, - that the Jews would pay us well if we would do this. He told us that we would get out of jail after Christmas at the end of our jail sentences and that we would have no money and that this was our chance to get some money.

17 "Both of us told him we wouldn't do this; he stated that Conley was not any relation to us. He said all you want is the money when you get out. He said he would soon be out smoking good cigars and we would be broke. I remember he talked to me at least a half dozen times about this, sometimes talking to me by myself and sometimes to Reese and myself.

"I remember at one time Dr. Wrenn was talking to Conley in the presence of myself and Reese, and he told Conley the thing for him to do when he got his sentence was for him to take the murder on himself and in this way free Mr. Frank. He told Conley that he would only get about 6 or 12 months sentence and maybe that in jail and that he could never be tried again and that if he would take this murder on himself, that Mr. Frank would go free and that Conley would get a lot of money for it and that he could never be tried for it. Conley declined to do this. Dr. Wrenn was in Conley's cell wing very often. I have been looking for him at times to get medicines for some sick ~~prisoner~~ prisoner and find him in Conley's cell.

"I told Dr. Wrenn finally when he kept on after me to tell that Conley had confessed to me that I didn't see why Dr. Wrenn didn't do this himself; I told Dr. Wrenn that he had as much opportunity as I had to go in Conley's cell and he could swear that Conley had confessed to him as well as I could that he had confessed to me. Dr. Wrenn replied: 'You're a damn fool. I am not going to get mixed in it.' I told him I wouldn't get mixed in it either. He said 'You negroes are damn fools; when you get out, money will be brief; when I get out everybody will have money.'

"I knew Annie Maud Carter; she was a prisoner and was turned loose on the run around or round the jail as a trusty by deputy Roberts to wash clothes and clean up the hospital. Her work was on the fifth or hospital floor and in the laundry, on the 4th floor. She was turned loose every morning by Deputy Roberts and she was locked up by Deputy Allen when he came on duty every day about 3:30 P.M. Deputy Roberts had charge of the cleaning up of the jail and the laundry work and Annie Maud Carter was under his control and direction until 3:30 when Deputy Allen came in and she was then locked up.

211 "I have seen Dr. Wrenn and Annie Maud Carter talking together just in the same manner as he had talked to us. I could not hear

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what was said between them. I have seen them talking together a good many times. Dr. Wrenn roomed in the hospital where Annie Maud Carter cleaned up, and the medicine room was also on the fifth floor, and it was in this medicine room where Annie Maud Carter did her ironing. She did the washing for Dr. Wrenn.

"I saw Annie Maud Carter start into Conley's cell wing one day and we called to her and told her she would be looked up if she went in there and she stopped at the door and talked to him. I never saw Annie Maud Carter go into the cell wing of Conley."

Mrs. George W. Jefferson testifies by affidavit in substance as follows:

"I am working for the McClelland Bakery company on Hunter Street. I was in attendance as a witness on the trial of the State vs Frank for 2 weeks and went on the stand on Thursday.

"On Monday after the trial I went back to the Pencil Factory and went up to see my forelady and she told me they had given my machine away. And I went to see Mr. Darley, and Mr. Darley said that he did not understand that the firm intended to lay me off but that he thought I misconstrued the thing and didn't tell the truth and would rather I would go back to Mr. Dorsey and say that I swore an untruth about the strings at the factory and about the blood spots on the floor. I told him I could not do that - that I had sworn the truth and nothing but the truth. He gave me back my job on Tuesday and I went back to work.

"As I swore on the stand, the strings with which pencils were tied were always kept in the polish room, but the morning I went back to work after the trial, Mr. Darley called my attention to strings hanging around in the metal room and all around in the building and I said I never had seen any strings in there before, and Mr. Darley said: 'Well, they had been there and I probably never noticed them.' But I never had seen any strings before except in the polish room, where a few were kept.

"My forelady Mary Firk also insisted that I had not told the truth on the stand and tried to get me to state that the stains might have been paint spilled there by some of the girls, - but I stated to her, as I swore on the stand, that paint had never been carried into the metal room that I ever saw and I had been there ~~for~~ 5 years.

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"When I went to Mr. Dorsey's office to have my subpoena signed so that I could get my money - this being on Saturday after the trial - Mr. Dorsey stated to me that people all over the state had been sending him produce of different kinds, - tomatoes, melons, corn, etc.; he had a cake there that someone had sent him and asked me if I would like to have some, and gave me the cake which I ate and found to be very nice indeed, and enjoyed.

"After I went back to work, the Pencil Factory people let me alone for three or four weeks, after I had refused to change my testimony, until just after Christmas Mr. Burke came to me and wanted me to sign an affidavit. I told him that what I swore on the stand was the truth and I would stick to it. He said 'Mrs. Jefferson, would you answer that that blood could have been on the floor on Friday before Mary was killed?' And I says: 'No, I couldn't swear that I couldn't swear anything about it because I never had seen it there before; but I could swear I saw it there on Monday morning after she was killed.' He says: 'The alleged blood spots could have been there on Friday?' And I said: 'If they were there I didn't see them, but I couldn't swear that they were there or were not there; but I did see them Monday.' He said that that paper was only a statement for the office of Rosser and Arnold but wasn't an affidavit, and I signed it. I said that I didn't want to sign it if it would get me in any trouble, and Burke said: 'Why, you wouldn't mind signing it if it would help Mr. Frank and help you keep your job, would you?' I understood that the paper had in it just what is related above.

"When Mr. Burke was talking to me he laid a great deal of emphasis on the cake Mr. Dorsey had given me, and asked me if I knew Mr. Dorsey intimately; was I very intimate with him, and I told him no indeed, that I had never seen him before the trial but once and that I only knew him in connection with the trial.

"I did not swear to this paper which I signed but merely signed it, thinking it was only a statement.

"On the 19th of February, after Mr. Frank didn't get a new trial, - I was laid off. Mell Stanford, who testified for the state, was also laid off some little time before I was.

"Last Monday afternoon Mr. Dan Lehon also came to see me,

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and told me he had an affidavit he wanted to get me to sign for an extraordinary motion for new trial. I said: 'Wait a minute; I don't sign anything unless I read it.' It didn't read like I said it and I wouldn't sign it. I told him I didn't sign anything I didn't know what I was signing. He asked me if I wanted to see Mr. Frank hang. I told him if he was innocent I didn't, but if he was guilty, I did. I was so mad I wouldn't talk to him any more. "

Mrs. H.W. Edmondson testifies by affidavit in substance as follows:

"In reference to the evidence of Mr. W.J. Burns before the court on Saturday, May 2nd, 1914 in which he claimed amongst other things, that my daughter Monteen had failed to interview him at any time, is untrue. Mrs. Leo M. Frank came to my home in company with Rabbi Marx, and arranged an interview between my daughter Monteen and Mr. W.J. Burns for four o'clock that same afternoon; and at four o'clock Mrs. Frank, Rabbi Marx and W.J. Burns came to our home. My daughter Monteen and myself were present at the interview. Mr. Burns apologized to Monteen for the treatment she had received at Mr. Samuel Boorstein's office and said he had nothing whatever to do with it; said he was called over there after she got there. He told Monteen that he wanted her to tell him just how she went to the factory and back and she replied that she had already told it and if he wanted to see it, to go to Mr. Dorsey's office and he would show it to him. This made Mr. Burns very mad because Monteen would not go over the occurrences for him, and he turned and spoke to Mrs. Frank and said 'You are an unfortunate woman; you are up against it; you will have to wear the thermal it might as well be you as anybody.'

"When Mrs. Frank was here in the morning, she told me that a lot of people censured her for not going to see Mr. Frank at first but she said the reason she didn't go was on account of family affairs.

"When Monteen told Mr. Burns he could go to Mr. Dorsey's office and see what she said at the trial, Mr. Burns said: 'Are you sure he will let me read it?' and I said 'No, sir, I am not sure, but I suppose he will.' "

Mrs. H.W. Edmondson testifies by affidavit in substance as

214 follows:

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"About three weeks ago on Friday before Mr. Burns went to New York on his last trip, Mr. Samuel Boorstein, a lawyer, sent for my daughter Monteen, to come to his office. He said he just wanted her to make the same statement to him that she made on the stand at the trial of Leo M. Frank; that he did not hear the evidence then and had not heard it and he wanted to hear her statement personally because he felt a great interest in the case and because he was a friend of the family. Mr. Edmondson thought he was a friend to us all. We consented just because of that friendship and asked Mr. Boorstein if there would be anyone else there, and he gave me his word of honor that no one would be there except us, so I decided to let her go up there, and I went with her; and Mr. Edmondson went with us. It was about 12 o'clock noon when we left home and we went right to his office and there was no one in his office when we got there - not even Mr. Boorstein himself; but he came in a few minutes later, and the first question he asked Monteen was 'if she had ever been to school any.' Then he went on and asked her a thousand questions, some of them relating to the case and some of them didn't touch it. He asked all about the boarding house I was running and he asked Monteen 'if she didn't go to the pencil factory that Saturday for some other purpose than just to get her money.' We were in Mr. Boorstein's private office and we had been there for a long time, and I told Mr. Boorstein I would have to go home; that it was time I was going home, and then Mr. Boorstein asked us not to go then - to wait awhile and to have an ice cream soda or something; and we talked on for a few minutes, and Mr. Edmondson spoke up and said I would have to go home and that seemed to hurry Mr. Boorstein and he commenced asking questions just to hold us, and in a minute or so in come Mr. Burns. I knew it was Mr. Burns because Mr. Boorstein said: 'Why, howdy, Mr. Burns.' And I said: 'Monteen, we will not be done this way; if that man wants to talk with you, he will have to talk with you at home;' and I went out of the private office into the outer office and I looked back for Monteen, and the lady stenographer had shut the door and told Monteen she would have to stay, and I told her she didn't have to stay and I took hold of the lady stenographer (if she was a stenographer) and slapped her

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and told her that Monteen would come out too; and I opened the door and got Monteen and we come on out of the office, and Mr. Boorstein ran out and followed us to the elevator and insisted on having Monteen come back and that girl followed us out there and said 'Come back; you don't have to answer any questions if you don't want to.' And I caught the elevator and come on down and in a few minutes Mr. Edmondson caught up with us and we went on home. Nobody said anything to us outside of the office except Mr. Boorstein and that lady in the office but there were half a dozen or more men out there, but I didn't know them; and there were two men in Mr. Boorstein's outer office who were newspaper men. There was no one in the private office except Mr. Boorstein, Mr. Burns, Mr. Herbert Haas, Mr. Edmondson, Monteen and myself and Mr. Raubin."

Monteen Stover by affidavit, testified that the facts stated by Mrs. H.W.Edmondson were true.

Mr. H. W. Edmondson by affidavit, testified to the same facts as Mrs. H.W.Edmondson, and in addition that:after my wife and daughter left Mr. Boorstein's office, Mr. Boorstein, Mr. Burns, Mr. Herbert Haas, Mr. Raubin and myself were in the office and Mr. Burns says to me 'Do you believe Monteen went to the factory that day?' And I said 'Yes, sir; I know she went.' And Mr. Burns replied: 'She didn't go to the factory and I have evidence to prove that she didn't.' And I thought and believe yet that he said that to draw me out to say something against Frank, and I just composed myself and let it go at that and went on out of the office and caught up with my wife and daughter and come on home; and I haven't seen Mr. Burns since. This happened on the Friday before Mr. Burns went to New York, about 3 weeks ago."

C. A. Isom testifies by affidavit in substance as follows:

"Some time about the latter part of March or the first of April, 1914 I met G.W.Burke. Burke was at work on the case of the State vs Leo M.Frank. He asked me to try to locate a negro by the name of Mark Wilson and also another negro by the name of William Galhoun, also a negro by the name of Ed Whatley. Burke stated that these negroes Wilson and Whatley were working at the time Mary Phagan was killed in a livery stable next door to the National Pencil Company's place of business and he wanted to show by them that they

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heard a girl crying in the National Pencil Company's place of business about 2:30 o'clock in the afternoon, in the basement. He said that they wanted to find William Calhoun to show by him that the detectives had him down at the station house to talk with Jim Conley. He said that Conley stated to the detectives that he could show by Calhoun that he didn't pull the staple on the basement door at the basement of the factory and that if the detectives found Calhoun and had him down there and confronted him and Conley, that Calhoun would swear that he, Jim Conley, did not pull the staple. The detectives, said Burke, got Calhoun and had him down, but Calhoun stated that he did not know Conley. Burke said that Calhoun might know a whole lot and he wanted to get hold of him. Burke promised to pay me and did pay me while trying to locate these negroes - three dollars a day. I found out and reported that Mark Wilson had gone to Virginia. I found out at the home of William Calhoun that he was at 4232 Wabash Avenue, Chicago. I found that Whatley had been in the chaingang. I went to the chaingang and found that he had just gotten out, which I reported to Burke, and then I discovered that he had been living in Dovers Alley in Atlanta; and then I dropped that part of the investigation.

"I am personally acquainted with one Jim Wrenn. Jim has been working with C.W.Burke on this Frank case and is at work on it now. I received a note about the first of April from Wrenn, telling me to see Burke. I saw C.W.Burke and he wanted me to go to Chicago to get an affidavit from Aaron Allen, a negro that I had known in Atlanta. Burke also stated that he wanted me to talk while in Chicago to William Calhoun. I was paid three dollars a day and given one hundred dollars to cover expenses on this trip. Burke said he wanted to show by Allen that he had been in the cell with Jim Conley and that Conley had confessed to him that he murdered Mary Phagan. Burke said that Jake Jacobs, a Jew living in Atlanta, had been up in Chicago trying to get this affidavit. He also stated that Stiles Hopkins, an attorney in the office of L.Z.Rosser, one of Frank's attorneys, was then in Chicago. Burke said that Allen was sore with Burns' men and didn't know those men and that if it took any dinners, cigars and setting up, for me to use whatever money was necessary

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to get Allen in a good humor. Burke said 'Tell Allen that the detectives and Dorsey will all be down and out and we will be up; so don't be afraid on their account and make an affidavit.'

"I left Atlanta on April 2nd, 1914 and arrived at Chicago on April 3d. I went to the office of W.J. Burns' Detective Agency in Chicago in the Transportation building. I met there Aaron Allen. Allen told me that Burns' crowd had arrested him in Indianapolis and had brought him to Chicago. Allen furthermore stated that he had consumption and was nearly dead and had been in a hospital about six months in Indianapolis. Allen came into Burns private office and there I talked to him alone. Allen told me he was not in the cell with Conley at all and did not know Jim Conley and never spoke to Jim Conley in his life. Allen further said that no detective had ever spoken to him about Jim Conley until he was approached some time recently in Indianapolis, Ind. by one of Burns' men.

"I talked with Allen two hours, and after my talk with Allen I personally reported to W.J. Burns that Allen said he didn't know anything at all about the matters that Burke had instructed me to ask him about, and that he didn't know Conley and that he had never talked to any detectives about Conley except at Indianapolis. Burns throwing his hands out to oneseide, said to me 'Well, why did he leave Atlanta?' I said to him: 'Allen tells me that he left Atlanta of his own free will and accord.' Burns then said 'Well, where did he get hold of three hundred dollars?' I said 'Allen tells me that he got that money selling whiskey and running a gambling house.' Burns said 'He is a God Damn lie and just loyal to the police and he is afraid that if he goes backthere, they will jump on him.' Then Burns said 'Go on back and talk to him again; you can make him come across.' I told Burns that I was hungry and was going out to get a lunch and I then left and was gone about an hour and a half. When I got back to Burns' office after lunch I found Allen locked in a little room in the rear of a larger room on the door of which was printed 'Fire Escape.' In the room where I found Allen was a large cage, which one of Burns' negro detectives showed me could be set up in a very short while, made to resemble a cage in a jail. I talked to Allen in this room. Allen on this second visit told me: 'Mr. Isom, I will make that affidavit, but it will be a lie.' I told Allen I didn't want him to make this affidavit unless it

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was the truth. I then went in and told ^{W.J.} ~~Max~~ Burns that Allen said he would make that affidavit but it would be a lie. Then Burns said 'I will talk to him in a few minutes.' In a few minutes Burns went back and got Allen and brought him in his office. Burns then said to Allen 'You God damn bastard; you are just loyal to those policemen and you are telling me a damn lie and you just as well come on across and tell me all about it.' After this the door which led into Burns' private office was closed and I heard loud talking but could not understand what was said. I afterwards came from Chicago to Chattanooga on the same train with W.J. Burns; and the next morning on the sleeper Burns told me that Allen gave him the very affidavit that he wanted after I left Burns' office that night.

"While I was in Burns' office talking to Allen, on the day I got to Chicago, Burns was talking to William Calhoun in the next room. Stiles Hopkins came out of the room in which Calhoun was, for the purpose of talking to me in the hall, leaving the door open into Burns' room. When he opened the door I recognized Burns' voice and saw Calhoun, and I heard Burns say: 'You are a damn liar, you bastard, you!' Calhoun told Burns he was not at the station house in Atlanta and that the detectives had never talked to him about Jim Conley and that he did not know him. 'This man's name was never mentioned to me until your men came out to my house the other day' Calhoun said. Hopkins passed out of the room in which Burns and Calhoun were, into the hall, and said to me: 'Don't say anything to anybody about my being here. Don't tell Allen that I am here.' Hopkins said that Burns' son said that Allen wanted to talk to him, and Hopkins said 'Tell him that it is not Hopkins who is here, but somebody else' - whose name he gave me but which I have forgotten. I then went back and talked to Allen. A little while after that they let Calhoun go. Burns' son told me that they got an affidavit from Calhoun but I did not see it and do not know what it was.

"After Calhoun left a white man went into Burns' office and Burns and Hopkins talked to him. He was in appearance a Jew. I do not know his name. Burns' son afterwards showed me an affidavit which he said was signed by the man that I saw going into the office to talk to Hopkins and Burns. I read the affidavit. It was signed by someone whose name begins with "S", and as I remember it, the

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name was something like 'Stoll'. I am not sure about this name. The affidavit stated that the maker was 28 years old; that he was a citizen of Chicago, Ill. and said that he was with the Salvation Army in Atlanta when the murder of Mary Phagan happened and was at the rear of the National Pencil Factory's place of business on the afternoon of April 26th, 1913. The affidavit said he left because sentiment was so strong that he was afraid he would get into some trouble. The affidavit stated that he told a detective about the matters testified to in this office and that the detective's name was 'Shott' or 'Scott'. That the detective said to him that he, the detective, was running that business and for him to go ahead and attend to his business, and that he, the detective, would look after that matter. The affidavit stated that this man saw, on the afternoon of April 26th, 1913, a tall, black negro come out of the back end of the pencil factory and go up to Hunter Street and buy a lunch from an old negro woman and as he came out of the National pencil factory he dropped a pocket book and a day book which he, the said Stoll (or whoever he was) picked up. There was a pocket book and a day book lying there on the table which Burns' son told me was the one. It was a small, black pocket book, something like a card case, and the day book was longer than the pocket book, black, and had written in the back end of it the word 'Conley' plain, with a little scratching before the word 'Conley'."

The State further introduced the following transcript of the testimony of Leo M. Frank at the Coroner's inquest:

"Q. What time do you say it was when you left the building? A. It might have been a trifle after 1, two or three minutes, four minutes; it was a trifle after 1." On page 59, occur the following questions and answers: "Q. When you went out of the office, 5 minutes after 1 o'clock, tell us where you went, just what direction you took, etc.? A. I went up from the factory to Alabama Street, went up Forsyth to Alabama, down Alabama to Broad and Alabama, and I think I caught a car there. Q. Do you remember the car you caught? A. I think it was a Washington Street car. Q. It came first? A. I don't remember which came first."

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The State introduced the following documentary evidence to-wit:

Certified copy of an indictment against George Wrenn found at May Term, 1912, of Fulton Superior Court, in which it was charged that on the 17th day of April, 1912, the said George Wrenn did steal certain jewelry, a detailed description of which is set forth, of the alleged value of \$28,437.88, the same being the property of S. and H. Gilsey. Upon said indictment was a verdict of guilty dated October 30, 1912, and the sentence by the court that the said George Wrenn serve twelve months upon the Public Works of Fulton County.

The State introduced an indictment found at March Term, 1912, of Fulton Superior Court, against Mell Arnold, L. P. Eubanks and Jesse Duffy, charging the three parties named with the offense of car breaking, in the county of Fulton, on the 12th day of November, 1911, and upon said indictment was an entry signed by the presiding judge, that the same was nolle prossed in open court on the 27th day of June, 1912.

The State likewise introduced an indictment found at March Term, 1912, charging B. B. Bishop, Hal Cline, McHenry Hatmaker, L. P. Eubanks, J. R. Miles and A. L. Jesse, with the offense of car breaking, and upon said indictment is an entry of nolle pross, signed by the presiding judge, dated the 27th day of June, 1912.

The State likewise introduced an indictment found at March Term, 1912, of Fulton Superior Court, against Mell Arnold, John B. Hairston, Paul B. Jarnagan, L. P. Eubanks, A. L. Jesse, Jesse Duffy and Pate Duffy, charging the parties named with the offense of car breaking on November 5, 1911, and upon said indictment is an entry of nolle pross, signed by the presiding judge, dated June 27, 1912.

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The State likewise introduced an indictment found at March Term, 1912, of Fulton Superior Court, against Hal Cline, McHenry Hatmaker, E. F. Durham, L. P. Eubanks and J.

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R. Miles, charging the parties named with the offense of car breaking on the 2nd day of February, 1912, and upon said indictment is an entry of nolle pross signed by the presiding judge, dated June 27, 1912.

The State likewise introduced an indictment found at March Term, 1912, of Fulton Superior Court, against Hal Cline, A. Casey, McHenry Hatmaker, Jesse Duffy, A. L. Jesse and L. P. Eubanks, charging the parties named with the offense of car breaking on February 8, 1912, and upon said indictment is an entry of nolle pross, signed by the presiding judge, dated June 27, 1912.

Likewise the State introduced an indictment found at March Term, 1912, of Fulton Superior Court, against W. T. Smith, J. R. Miles and L. P. Eubanks, charging the parties named with the offense of car breaking on the 3rd day of December, 1911, and upon said indictment appears an entry of nolle pross signed by the presiding judge, dated June 27, 1912.

Likewise the State introduced an indictment found at March Term, 1912, of Fulton Superior Court, against J. H. Hilton, Mell Arnold, L. P. Eubanks, J. R. Miles, A. L. Jesse, and Jesse Duffy, charging the parties named with the offense of car breaking on October 9, 1911, and upon said indictment appears an entry of nolle pross, signed by the presiding judge dated June 27, 1912.

The State likewise introduced an indictment found at March Term, 1912, of Fulton Superior Court, against McHenry Hatfield^{Miller}, W. H. Fowler, W. R. Winent, J. R. Miles, W. T. Smith, L. P. Eubanks, V. F. Ransome, A. Casey, Hal Cline, E. F. Durham, Jesse Duffy and A. L. Jesse, charging the parties named with the offense of car breaking, on the 13th day of January, 1912, and upon said indictment appears an entry of nolle pross signed by the presiding judge, dated June 27, 1912

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The State likewise introduced an indictment found at

March Term, 1912, of Fulton Superior Court, against L. P. Eubanks, John B. Hairston, B. Z. Ellis, A. L. Jesse and J. R. Miles, charging the parties named with the offense of car breaking on the 27th day of November, 1911, and upon said indictment appears an entry of nolle pross dated June 27, 1912, signed by the presiding judge.

The State likewise introduced an indictment found at S. J. ROSSER, Sworn for the State. I was with Ivey Jones on Tuesday, April 26, 1914, when he left the office of Dorsey, Brewster, Howell & Henson in the Wiger Building for the purpose of going to look at a man who had been standing watching the people go into that office for several hours. Ivey Jones pointed out to me Jimmie Raine as being the man referred to in his affidavit, which had just been dictated. I am personally acquainted with said Raine. Raine spoke to me when I was with Ivey Jones and called me by name. Raine was walking up Pryor St. when we saw him.

GEO. W. EPPS, JR. Sworn for the State. I am the George W. Epps who testified in the trial of the case of the State vs. Leo M. Frank. Since signing an affidavit this morning with reference to what occurred in Birmingham, Ala., I have seen on the street the man who took me from Atlanta, Ga. to Birmingham, and who passed with me under the name of Terry. I picked him out on the street at a boot-black stand near the corner of Hunter and South Pryor Streets. I spoke to him and he spoke to me. I called him Mr. Terry. I never knew him under any other name except the name of Terry. Mr. N. A. Gerner was with me at the time I saw him and addressed the man as Jimmie Wrenn, and Terry asked, "What did you call me, Kelly?" I said, "No, I didn't call you Kelly, I called you Terry, the name you gave me."

N. A. GARNER, Sworn for the State. I was present with George Epps on the occasion referred to in the affidavit attached and heard everything that was said between George Epps and Jimmie Wrenn. George Epps pointed Wrenn out without any suggestion from me, as being the man who had taken him to Birmingham, by the name of Terry. I am personally acquainted with Wrenn and know that his name is not Terry, but that it is Jimmie Wrenn, brother to George Wrenn.

REBUTTAL ON BEHALF OF MOVANT.

GROUND 1.

DR. H. F. HARRIS, Movant introduced the following testimony of Dr. H.F.Harris, delivered on crossexamination at the original trial:

"Q.What did he (Mr.Dorsey) tell you to examine? What parts of the body did he tell you to examine? A. He told me he wanted me to examine the case and tell him all I could about it.

Q. Had you, in your own mind, what you were seeking to determine by the autopsy? What did you understand you were seeking? A. There was some question of poisoning at the time I went out there, but I saw at once there was no reason for assuming that. I failed to state on my direct examination that the stomach contents was tested for alkaloid poisoning. There was no poison; of course I dismissed that from my mind; as soon as I saw the girl I saw it was a matter of strangulation."

Q. Did you call in any other chemist to make this examination with you? A. No sir, I did not.

Q. You made it all by yourself? A. Yes.

Q. And kept it all to yourself, did you? A. I did. I told Mr. Dorsey; Mr.Dorsey told me not to tell anybody.

Q. I understand, you told Mr. Dorsey and he requested you not to tell it. Did you call in any other chemist as representing this man, or anybody else, to see any of those things? A. No sir.

Q. When did Mr.Dorsey talk to you about making this autopsy. A. I don't remember.

Q. How long before you made the examination did he talk to you?

A. I don't recollect.

Q. Do you recollect when you made the first examination? A. It was on May 5th, if I remember correctly."

GROUNDS 2 and 3.

J. O. KNIGHT, Sworn for the Movant. On or about the 10th day of April, 1914, as a Notary Public for Fulton County, Georgia, I took the affidavit which purports to be signed by Jimmie Mayfield, in the case of the State of Georgia vs. Leo M. Frank. This affidavit was read by me to said Jimmie Mayfield and she stated that same was the truth after it had been read to her, and after so stating I swore here thereto and she thereupon signed the same. There were present when this affidavit was taken, Dan S. Lehon, C. W. Burke, Herbert Schiff, and perhaps others.

C. W. BURKE, Sworn for the Movant. On the 23rd day of March, 1914,

Mrs.Cora Falta made before me, as a notary public, an affidavit which is hereto attached and marked ~~as~~ exhibit A. I read the affidavit over to Mrs.Cora Falta before she signed it, and she stated that it was the truth and she agreed to it just as it now is in its present shape.

(Exhibit A mentioned above is as follows)

"State of Georgia vs (No. Fulton Superior Court
Leo M. Frank) Extraordinary Motion for New Trial.

Personally appeared Mrs.Cora Falta, who upon oath deposes and says that she has worked at the National pencil company, in the
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the City of Atlanta, for almost five years passed.

Further deposing, deponent says that she is acquainted with Leo M. Frank and, also R.P. Barrett, and knew Mary Phagan well, and knew the color of her hair.

Further deposing, deponent says that on Monday, April 28th, she was at the National Pencil Factory, and Magnolia Kennedy called her attention to the hair on a certain machine that R.P. Barrett was alleged to have found there, and at that time she gave it as her positive opinion that the hair on the machine was not that of Mary Phagan, as it was entirely too light to be the hair of said Mary Phagan.

Deponent now states that she is most positive that the hair she saw on the machine could not have possibly been Mary Phagan's hair and that the hair on the machine was much lighter in color than the hair of Mary Phagan.

Deponent further states that during her entire employment at the factory, she never saw Mr. Frank joking with any of the female employees or acting in any familiar manner with any of them; and deponent further states that she never heard any girl or woman say that Mr. Frank had ever made any advances toward any of them.

Deponent says that she makes this statement of her own free will and accord, and without any promise of reward. Aside from this deponent sayeth not.

(Signed) Cora Falta

Sworn to and subscribed before me
this the 23rd day of March, 1914.
(Signed) C.W. Burke,
Notary Public, Fulton County, Ga."

H. G. SCHIFF, R. W. LOEB, EULA MAE FLOWERS, Sworn for the Movant,
We were present when the affidavits of Cora Falta and Jinnie Mayfield were sworn to in the Frank case on or about the 10th day of April, 1914, before J.O. Knight, a Notary Public for Fulton County, Georgia; that the affidavits were read over to each of them and each of them said that the statements contained therein were the truth, and they signed them without making any request for any change whatever.

GROUND 5.

E. D. THOMAS, Sworn for the Movant. I am Chief Judge of the Municipal Court of Atlanta. On January 19, 1914, C. W. Burke, a Notary Public for Fulton County, Georgia called ~~me~~ at my office in the Temple Court Building in the City of Atlanta, accompanied by a negro who swore that his name was Albert McKnight. I attested the affidavit that said Albert McKnight had signed and sworn to on said date above mentioned, and said affidavit was read to said Albert McKnight, who said that every word of it was the truth. I read the affidavit referred to and identify my signature and attestation affixed thereto.

G. W. BURKE, Sworn for the Movant. It is not true that I promised Albert McKnight to get him a job at the Terminal Station where he could make \$10.00 per week and that the tips he would get around
225 there would average \$100.00 per month. I did not ask Albert McKnight

whether he would rather have a job around the Terminal Station than one just making \$28.00 per month. I did not ask McKnight if he (McKnight) could learn to drive an automobile, nor did I tell him then if you would not like the job around the terminal station I will learn you to drive the car and give you a job. McKnight did state after he made his affidavit that he believe harm would be done him by the people at the place he was working and by the detectives, and I did tell him that there was a little negro house in the rear of my house, and if Minola would consent to go to work for me, I would be glad to have her, and that I could protect McKnight if he was living that close to me. McKnight told me that he would be afraid to go back to Beck & Gregg's to work after he had told me the truth and asked me if I did not know of some place where he I could secure a job for him. I told him that I would see Ike Schoen who operated a guano plant in the city and ask Schoen if he could use another man. I did see Mr. Ike Schoen and told him the circumstances surrounding Albert McKnight and asked Mr. Schoen if he had an opening for another man, and Mr. Schoen told me to send Albert around and he would take him to the foreman and if there was any possible chance for him going to work they would as soon have Albert McKnight as anyone else, until they found out that he was worthless, and of they did find out he was not a good workman, they would discharge him. I told Mr. Schoen that of course I expected McKnight to hold the job on his merits. I then informed McKnight in accordance with the above statement and McKnight went to Mr. Schoen's place and McKnight was put to work. I never told McKnight that anyone was looking for him for the purpose of making him a witness in the Conley case. I never told McKnight to leave the city, but as a matter of fact I did not know that McKnight had left the city and did not know where he was until I read in the papers that McKnight had been hurt on a railroad crossing on McDaniel St. I did not know and do not know that McKnight had a mother living in Stockbridge, Ga. and I never told McKnight to go there. I did call on McKnight at the Fairhaven-Hospital after he was injured, and was accompanied by W. J. Burns, Herbert Haas and Dr. Hancock. Burns went over the contents of the affidavit I had taken from

226 McKnight, with McKnight and McKnight told Burns and the others

that every word he had stated in his affidavit to me was the truth. And while Burns was talking to McKnight I interrupted and asked McKnight to tell Burns and the others what, if anything I had promised him for making the affidavit, and McKnight told them I had promised him nothing, or made any inducement to him of any kind for making his affidavit, that he had simply done so because of his conscience ~~and~~ had hurt him and he was sorry he had lied about Frank. I did not ask Albert McKnight while we were at the hospital if the city detectives had beat him up, but did ask him if he had not been fighting and if it was not a fact that he had gotten injured while fighting instead of being struck by a train. After Albert McKnight made his affidavit to me, he asked me where he could locate me in the event that he, McKnight, should want to see me at any time, and I promptly gave McKnight my business card, explaining that both my office and home phones were shown thereon. But I did not tell McKnight to call me up if he got in trouble of any kind or was arrested at any time. It is true that I explained to McKnight how horrible it was for him to lie when a man's life was involved in it, and while he might fool the people here he could not fool God hereafter, and I stated that I wanted him not to answer me then but to think about it and wait until I came back and then to tell me the truth, and I went back the following day and the affidavit was made.

MINOLA MCKNIGHT, Sworn for the Movant. I was present at my home on Georgia Avenue, City of Atlanta, when C.W. Burke called upon me and my ~~my~~ husband, Albert McKnight. I saw and heard C.W. Burke secure from my husband an affidavit setting forth the fact that my husband had testified falsely at the trial of Leo M. Frank and I have carefully read the affidavit made by my husband to said C.W. Burke on January 19, 1914. I recognize in said affidavit referred to just what I heard my husband tell C.W. Burke and just what I heard him swear to on said date above mentioned. Said C.W. Burke did not make any promise of reward of any kind to my husband for making said affidavit. My husband had repeatedly told me, previous to the visit of C.W. Burke, that he had testified falsely at the trial of Leo M. Frank and that he was sorry he had done so, and my husband told me, after he had made his affidavit to said C.W. Burke that he was glad he had made the affidavit to said Burke

and told the truth, as it had relieved his mind and that he hoped the affidavit would undo the wrong that he had done to Leo M. Frank. The first time C.W. Burke called on me and my husband, the said C.W. Burke did not ask my husband to sign an affidavit, but that he had outlined to Albert the great wrong it was to lie and told him that even though it was possible to deceive the people on this earth, he could not deceive God Almighty. Mr. Burke told Albert on the occasion of his first visit, that he would again come to see him and when Mr. Burke called the second time, my husband made the affidavit referred to here.

DAN S. LEHON, Sworn for the Movant. On Tuesday, April 14, 1914, I was in an automobile with Dan MacIntyre and C. W. Burke and Fred Lynn, who was the chauffeur driving the car. When the streets of Glenn and Pulliam, in the city of Atlanta were reached, we met a negro, who said his name was Albert McKnight and who C.W. Burke said was Albert McKnight. I questioned said Albert McKnight with reference to an affidavit which he had made to C.W. Burke on January 19, 1914, and read said affidavit to him, and said McKnight stated that it was the truth in every respect and that he was ready and willing to sign the affidavit again, if desired. I was in possession of a copy of the affidavit which McKnight had sworn to before C.W. Burke on January 19, 1914; and, after it was read to McKnight it was discovered that McKnight had changed his address and place of employment, and it was decided it would therefore be necessary to write another affidavit, changing the same to his present address and place of employment, before securing McKnight's signature thereto. McKnight told me that as soon as the affidavit in question had been changed with reference to the address and place of employment, he would gladly and willingly swear to same, as it was the truth in every respect. I and the gentlemen referred to in the above part of this affidavit then left said McKnight with the understanding that they would return within a day or two for his signature, which McKnight said he would give. On Wednesday, April 15, 1914, at 11 accompanied by Dan McIntyre and C.W. Burke, I met the said Albert McKnight in the Terminal Station in the city of Atlanta, Georgia. I had with me a copy of the affidavit which McKnight made to C.W. Burke on January 19, 1914, the only changes being the address and place of employment of said McKnight, and the affidavit was read

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to McKnight, who held up his right hand and swore that every word contained therein was the truth in every respect.

DAN McINTYRE, JR., sworn for the Movant. On Tuesday, ~~May~~ April 14, 1914, I was in an automobile with Dan S. Lehon and C.W. Burke, and Fred Lynn, who was the chauffeur driving the car. When the streets of Glynn and Pulliam in the City of Atlanta were reached, we met a negro who said that his name was Albert McKnight and who C.W. Burke also said was Albert McKnight. I heard Dan S. Lehon questioning said Albert McKnight with reference to an affidavit which he had made to C.W. Burke on January 19, 1914, and I heard Dan S. Lehon read said affidavit to McKnight, and McKnight stated that it was the truth in every respect, and said that he was ready and willing to sign the affidavit again before me, who am a notary public for Fulton County, Georgia. I was in possession of a copy of the affidavit which McKnight had sworn to before C.W. Burke on January 19, 1914; and after reading it to McKnight, it was discovered that McKnight had changed his address and place of employment, and it was decided it would therefore be necessary to write another affidavit, changing the same to his present address and place of employment, before securing McKnight's signature thereto. McKnight told me that as soon as the affidavit in question had been changed with reference to the address and place of employment, he would gladly and willingly swear to same, as it was the truth in every word and respect. We then left said Albert McKnight with the understanding that we would return within a day or two for his signature, which McKnight said he would give. On Wednesday, April 15, 1914, still accompanied by Dan S. Lehon and C.W. Burke, I met the said Albert McKnight in the Terminal Station, in the City of Atlanta, Georgia. I had with me a copy of the affidavit which McKnight had made to C.W. Burke on January, 19, 1914, the only changes being made therein being the address and place of employment of said McKnight, and I read the affidavit to McKnight who held up his right hand and swore that every word contained therein was the truth in every respect.

FRANK ESKRIDGE, WM. S. ANSLEY, E. V. CARTER, JR., Sworn for the Movant. We know D. I. MacIntyre, Jr. and know his general character for truth and veracity. The same is good and we would believe him on oath.

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FRED LYNN, Sworn for the Movant. On Tuesday, April 14, 1914, I was in an automobile with Dan S. Lehon, Dan McIntyre and C.W. Burke, and I was driving said automobile. When the streets of Glenn and Pulliam were reached, we met a negro who said his name was Albert McKnight and who C.W. Burke said was Albert McKnight. I heard Dan S. Lehon questioning said Albert McKnight with reference to an affidavit which he had made to C.W. Burke on January 19, 1914, and I heard Dan S. Lehon read said affidavit to McKnight and McKnight stated that it was the truth in every respect, and said that he was ready and willing to sign the affidavit again, if desired. After reading said affidavit to McKnight, it was discovered that McKnight had changed his address and place of employment and it was decided by said Dan S. Lehon and C.W. Burke to write another affidavit, changing the address and place of employment before securing McKnight's signature thereto. McKnight told us that he was ready and willing to sign another affidavit as soon as it had been changed with reference to the address and place of employment and that he would gladly and willingly swear to same, as it was the truth in every respect. We then left the said Albert McKnight with the understanding that ~~they~~ we would return within a day or two for his signature, which said McKnight said he would gladly give.

W. J. BURNS, Sworn for the Movant. On Sunday, April 22, 1914, in company with Dr. Thomas H. Hancock, Attorney H. J. Haas, and C.W. Burke, I called on Albert McKnight, who was a patient at the colored hospital known as Fair Haven Infirmary, on West Mitchell Street, Atlanta Georgia. I questioned Albert McKnight regarding the affidavit that McKnight had given to C.W. Burke on January 19, 1914, asking him if it was the truth, and Albert McKnight stated to me that it was the truth in every way, telling me that he had lied in the testimony which he gave on the witness stand at the trial of Leo M. Frank, that he was sorry for the lies he told and that he then wanted to undo all the wrong he had done Mr. Frank, and that he made this affidavit to C.W. Burke of his own free will and accord, without any promise of reward, hoping that the affidavit would be placed in the hands of Mr. Luther Z. Rosser to be used in the interest of Leo M. Frank.

Albert McKnight stated to me, then and there, that one R. J. Craven employed at the firm of Beck & Gregg, hardware dealers in the city

Atlanta, was the man who induced him, McKnight, to swear falsely. I heard C.W. Burke tell McKnight to explain to all present what, if any, offers said Burke made to him in order to secure his affidavit and McKnight replied that Mr. Burke had made no offers to him of any kind, and further said that Mr. Burke had only talked religion to him, and that he had only told Mr. Burke the truth. Before affixing my signature hereto I have carefully read the original affidavit signed by said Albert McKnight, dated January 19, 1914, and recognize in the contents thereof precisely the same statement Albert McKnight made to me and others on the date referred to above in the first paragraph of this affidavit.

JOE THOMPSON, Sworn for the Movant. On Sunday, ^{March} ~~April~~ 22, 1914, I was a patient at the Fairhaven Infirmary, on West Mitchell Street, in the City of Atlanta, Fulton County, Georgia. I distinctly remember that Dr. Hancock, and three other gentlemen visited Albert McKnight at the hospital above referred to, where I occupied the same room with said Albert McKnight. I heard one of the men referred to above, whom I afterwards learned to be Detective Burns, talking to Albert McKnight with reference to an affidavit he had made with reference to the case of Leo M. Frank, and I heard McKnight state that the affidavit he had made to one of the men who was present at the time of the conversation referred to, was the truth in every word and respect and that the said McKnight told Detective Burns that the testimony he gave on the witness stand at the trial of Leo M. Frank was not the truth and that he had been induced to tell lies at the trial by some man with whom he was at work in the city of Atlanta previous to the trial. I also heard one of the men ask Albert to tell all that were present what promises had been made to said McKnight to make said affidavit that was the subject of the conversation referred to, and McKnight stated that he promises had been made to him at all and that he had made the affidavit referred of his own free will and accord. After the gentlemen referred to left the hospital, I talked with McKnight about the case of Leo M. Frank and about the affidavit which McKnight had made to one of the men present on the date of the conversation referred to, and

231 McKnight told me that the affidavit which he had been talking about with Detective Burns was the truth in every respect, and he also

told me that he had given false testimony at the trial of Leo M. Frank and expressed his sorrow for having done so.

DR. THOS. H. HANCOCK, Sworn for the Movant. On Sunday, March, 22nd 1914, in company with Detective W.J. Burns, Attorney H.J. Haas and C.W. Burke, I called on Albert McKnight, who was a patient at the colored hospital known as Fair Haven Infirmary, on West Mitchell Street, in the city of Atlanta, Georgia. I heard Detective Burns questioning Albert McKnight regarding the affidavit that McKnight had made to C.W. Burke on January 19, 1914, and heard the detective ask him if the affidavit was the truth, and Albert McKnight stated to us that it was the truth in every respect and he told Detective Burns that he had lied in the testimony which he gave on the witness stand at the trial of Leo M. Frank, and that he had made his affidavit to C.W. Burke of his own free will and accord, without any promise of reward. I heard Albert McKnight tell Detective Burns that one R.L. Craven, employed at the firm of Beck & Gregg, was the man who had induced him, McKnight, to swear falsely against Mr. Frank. I heard C.W. Burke tell McKnight to explain to all present what, if any offers said C.W. Burke had made to him in order to secure his affidavit, and McKnight replied that Mr. Burke had made no offers to him of any kind, and further that Mr. Burke had only talked religion to him and that he had told Mr. Burke only the truth. On March 21, 1914, while visiting the ~~Fair~~ Fair Haven Infirmary, and while in conversation with Albert McKnight, the said McKnight voluntarily told me that one R.L. Craven who was employed at the store of Beck & Gregg was the man who had come to him and induced him to swear falsely against Leo M. Frank, and in explaining to me how Mr. Craven had induced him to swear falsely, stated that Mr. Craven approached him and said "Albert, there is a large reward offered for the person guilty of Mary Phagan's murder, and you and I might as well earn the reward as anyone else. McKnight further told me that when he had made his affidavit to the said R.L. Craven, he, ~~Mr.~~ McKnight, told his wife Minola of what he had done and McKnight said his wife was very much excited over the statement which he said he had given to Craven and told him it was a lie and further told him that he had better get the statement back, that it would get him in trouble if he did not and McKnight ^{told} me that

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he asked Mr. Craven to give it back and Mr. Craven had refused and told him the statement had already been given to the detectives and if, he, McKnight, did not now stick to the story, he would surely get in trouble. McKnight told me that twice during his period of testimony on the witness stand he came very near coming right out with the truth and would have done so had Mr. Rosser kept after him a little longer. He also said that if Mr. Frank was ever tried again that he had told his wife Minola that he would tell the truth and repudiate the falsehood he had told at the trial. I have carefully read the original affidavit signed by said McKnight, dated January 19, 1914, and recognize in the contents thereof precisely the same statement ^I heard Albert McKnight repeat to Detective Burns, myself and others on the date referred to above.

H. J. HAAS, Sworn for the Movant. On Sunday, ^{23rd day of} ~~March 22, 1914~~, in company with Detective W. J. Burns, Dr. Thos. H. Hancock and C. W. Burke, I called on Albert McKnight, who was a patient at the colored hospital known as Fair Haven Infirmary, on West Mitchell Street. I heard detective Burns questioning Albert McKnight regarding the affidavit McKnight had made to C. W. Burke on January 19, 1914, and heard the detective ask him if the affidavit was the truth and Albert McKnight stated to us that it was the truth in every way and that he had lied in the testimony which he gave on the witness stand at the trial of Leo M. Frank, and that he had made his affidavit to C. W. Burke of his own free will and accord, without any promise of reward. I heard Albert McKnight tell Detective Burns that one R. L. Craven, employed at the firm of Beck & Gregg, was the man who had induced him to swear falsely against Frank. I heard C. W. Burke tell McKnight to explain to all present what, if any, offers said C. W. Burke had made to him in order to secure his affidavit, and McKnight replied that Mr. Burke had made no offers of any kind to him and further said that Mr. Burke had only talked religion to him and that he had only told Mr. Burke the truth. I have carefully examined the original affidavit signed by Albert McKnight, dated January 19, 1914, and recognize ⁱⁿ the contents thereof precisely the same statement I heard Albert McKnight repeat to Detective Burns, myself and

233 others on the date referred to above.

JOHN MINOR, Sworn for the ^{Movant} State. I am a reporter for Hearst's Sunday American, and as such on the night of February 21, 1914, I

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interviewed one Albert McKnight in the Gould Building, in the City of Atlanta, Georgia, and the result of my interview with Albert McKnight appeared in the Sunday issue of the Hearst's Sunday American of February 22, 1914, and said interview correctly appeared therein. I closely questioned Albert McKnight regarding the affidavit referred to, and McKnight stated to me that the affidavit made to C. W. Burke, a notary public, for Fulton County, Georgia, on January 19, 1914, was in every way the truth. I asked him if C. W. Burke or any other person offered him any inducement or reward for the making of said affidavit, and McKnight stated to me that he made the affidavit of his own free will and accord, without any promise whatsoever from C. W. Burke or any other source, and made it simply because it was the truth. C. W. Burke was present and did not in any way interfere with my examination of said Albert McKnight. McKnight stated to me repeatedly that he regretted that he had uttered lies against Mr. Frank and expressed himself as anxious at that time to rectify the wrong he had done Mr. Frank and set himself straight in the eyes of the world. I have read a copy of Albert McKnight's affidavit, dated January 19, 1914, which is hereto attached and marked Exhibit A, and identify it as an exact copy of the original affidavit which I read to said Albert McKnight and which McKnight identified as his own affidavit.

(Exhibit A referred to above is as follows)

"State of Georgia,) Fulton Superior Court
 vs.) Conviction of Murder, July Term, 1913.
 Leo M. Frank) Extraordinary Motion for new trial.

Personally appeared Albert McKnight, 21 years of age, residing at rear of 17 Georgia Avenue, in Atlanta, Fulton County, Georgia, who deposes and said:

That he is at the present time employed at the store of Beck & Gregg, and deponent says he was at work through most of the month of April, 1913.

Deponent says he was a witness for the State in the case of ~~the~~ State of Georgia vs. Leo M. Frank, and testified to a story that had been prepared for him by R. L. Gravens, a white man employed by Beck & Gregg.

Deponent says that the story prepared by R. L. Gravens was not the truth and that the evidence deponent gave at the above named trial was not the truth; deponent now says that it is true that his wife Minola was employed at the home of Mr. Selig where Leo M. Frank resided, and it is true that on Saturday, April 26, he called at the Selig home to see his wife, but deponent says that he reached the Selig home a little before 12 o'clock noon and that he heard the 12 o'clock whistle blow at the Southern Railway Shops, and also heard the 12:30 o'clock whistle blow while he was talking with his wife; and deponent says when he heard the 12:30 whistle blow he left the Selig home and walked up Georgia Avenue to Pulliam Street, then up Pulliam Street to Bass Street and to his own home, which at this time was located in the rear of 351

Pulliam Street.

Deponent says that when he reached the Selig home on Saturday, April 26th, that his wife was preparing the noon time meal, but had not yet served it, and that she did not serve the meal before he left the house.

Deponent says that he did not see Mr. Frank at all on April 26, 1913 and that his evidence at the trial of Mr. Frank was the result of a plan perfected by R.L. Craven and others to collect the reward offered for the arrest and conviction of the murderer of Mary Phagan.

Deponent says he told Mr. R.L. Craven that he did not want to tell any lies on Mr. Frank, but Mr. Craven would tell him to go right ahead and do what he told him to do, and that he would get the reward already referred to above, and he was weak enough to do as Mr. Craven told him to do.

Deponent says he is sorry for all the wrong he has done to Mr. Frank, and that he wants this true statement of facts placed in the hands of Mr. L.Z. Rosser, to be used by him with the hope that same can in some way undo the great wrong he was lead to do, by the white people he was working with at the store of Beck & Gregg.

Deponent again says that he did not see Leo M. Frank at any time, or place, on Saturday, April 26, 1913, and that he will so testify when called upon at any time.

(S) Albert McKnight

Subscribed and sworn to
before me the 18th day of January, 1914

(S) C.W. Burke,
Notary Public, Fulton County.

Sworn to and subscribed, signature acknowledged before
me Jan. 19, 1914

(S) E.D. Thomas, Chief Judge,
Municipal Court of Atlanta.

CHARLES T. PHILLIPS, JR., Sworn for the Movant. I am a reporter of the Atlanta Journal, and as such on the night of February 21, 1914, I interviewed one Albert McKnight, in the Gould Building, in the City of Atlanta, Georgia, and the result of my interview with Albert McKnight appeared in the Sunday issue of the Atlanta Journal of February 22, 1914, and said interview correctly appeared therein. I closely questioned Albert McKnight regarding the affidavit referred to, and McKnight stated to me that the affidavit made to C.W. Burke a Notary Public for Fulton County, Georgia on January 19, 1914, was in every word ~~the~~ the truth. I asked him if C.W. Burke or any other person, offered him any inducement or reward for the making of said affidavit and McKnight stated to me that he made the affidavit of his own free will and accord, without any promises whatsoever from C.W. Burke or any other source and made it simply because it was the truth. C.W. Burke was present, but did not in any way interfere with ~~my~~ ^{my} examination of Albert McKnight. He stated repeatedly to me that he regretted the fact that he had uttered lies against Mr. Frank and expressed himself as anxious at that time to rectify the wrong he had done Mr. Frank and set himself straight in the eyes of the world.

GROUND 9.

C. W. BURKE, DAN S. LEHON, Sworn for the ~~State~~ ^{Movant.} We have been employed in investigating the Frank case. On or about the 9th day of April, 1914, each of us, together with J.O.Knight, went to the then boarding house of Miss Ruth Robinson, on Capitol Avenue. The affidavit purporting to be signed by said Miss Ruth Robinson, on the 9th day of April, 1914, before J.O.Knight, Notary Public, for Fulton County, and which has been introduced in evidence in this case, was signed in our presence, and said J.O.Knight swore Miss Robinson, after he had read the same to her and she said it was true and then signed it. C.W.Burke had previously thereto acted as Notary Public in taking Miss Ruth Robinson's affidavit, but that inasmuch as that affidavit was taken sometime ago and that there might be no doubt about the correctness of the affidavit, it was decided that it would be again submitted to Miss Robinson for her approval and affidavit, and that was done as above outlined.

T. J. FREER, Sworn for the Movant. I am a court reporter and reported the case of the State vs. Leo M. Frank in Fulton Superior Court at the July Term, 1913. I reported the testimony of Miss Ruth Robinson, and said testimony is as follows:

"Direct examination by the Solicitor General:

- Q. Miss Robinson, did you ever work at the National Pencil Company's place of business? A. Yes sir.
Q. Did you know Mary Phagan? A. Yes sir.
Q. Did you know Leo M. Frank? A. Yes sir.
Q. Did you or not, ever see Leo M. Frank talking to Mary Phagan? A. Yes sir.
Q. Tell when and where and how he was talking to her? A. Well, he was talking to her about her work, when she was at work.
Q. At work? A. Yes sir.
Q. How much or how often did you see him there talking to her? A. Not very often.
Q. Well, how often, and describe to the jury how he did, what he did? A. Well, he just talked to her about her work, told her about her work.
Q. How would he stand and what did he do? A. Well, he didn't do anything, only he would just tell her about her work, two or three times a day, maybe.
Q. Not maybe, what he did? A. Two or three times a day, that is all he done.
Q. Where did he stand, and what did he do? A. Well, he would stand by her.
Q. Stand by her? A. Yes sir.
Q. How close to her? A. Well, just close enough to her to tell her about her work.
Q. Close enough to tell her about her work; what did he do when he talked to her, what did he show her about the pencils, and how did he show it to her? A. Well, when she put plugs in the pencil, when I worked there, she put rubbers in pencils when I worked there.
Q. What floor was she working on then? A. She was working on the 4th floor.
Q. The fourth floor; all right, and she put rubbers in pencils or what? A. That was all.
Q. That was all? A. Yes.

Q. Now - (Mr. Rosser: Don't lead). Q. What would he do and what would she do, when he would be talking to her and she would be putting the rubbers in pencils. A. Well, she seemed to be all right, she would do ~~just~~ as he said about it.

Q. What would he ~~show her~~ do when he would put those rubbers in pencils? A. He would just show her.

Q. How would he show her? A. He would just take up the pencils and show her how to do it.

Q. Show her, how would he show her? A. He would take up a pencil or two or three of them and put rubbers on them; he would pick up the pencils and show her how to put them in.

Q. Take that pencil now, and show, see if you can show me how he told her? A. There isn't any tip on it.

Q. Well, take that one, (tendering a pencil to witness). A. Well, you see the rubbers were down here in a box and he would pick them up and of course, they are made so that he would have to screw them in, you know, before they went to the packing machine.

Q. Show exactly everything Mr. Frank would do there? A. That was everything I saw him do.

Q. That is everything you saw him do? A. Yes sir.

Q. Who had hold of the pencil? A. Mary.

Q. Mary, and where would Mr. Frank be? A. Well, he would pick up some more pencils, and show her, stand there and show her.

Q. The time that Mary had hold of the pencil, where would Mr. Frank's hands be? A. I don't know, he would have some of the pencils himself, I suppose.

Q. How often did you see this, and how long a period did it cover?

A. Mary ~~quit~~ didn't work there so very long before I quit.

Q. Before you quit; did you ever heard him call her name or not?

Q. Yes I heard him speak to her.

Q. What did he call her? A. Called her Mary.

Q. Called her Mary?

Gross examination by Mr. Rosser:

Q. Did you hear that, did you really hear him call her name or are you just telling that from impression. A. I heard it.

Q. How long ago was that? A. That was last summer.

Q. Last summer, you just saw him helping her? A. It was about this time."

J. O. KNIGHT, Sworn for the Movant. On or about the 9th day of April 1914, I went, together with C.W. Burke and Dan S. Lehon to #34 Capitol Avenue, Atlanta, Ga., the then boarding house of Miss Ruth Robinson; I went there for the purpose of swearing Miss Ruth Robinson to an affidavit which has already been to the court shown, signed by Miss Robinson, and sworn to by Miss Ruth Robinson before me as notary public on the 9th day of April, 1914. I read this affidavit over to Miss Ruth Robinson. She said it was the truth and I ~~swore~~ swore her to it. She signed it in the presence of myself and C.W. Burke and Dan S. Lehon.

AUSTIN G. DENNISTON, Sworn for the Movant. I reside at 600 West 161st Street, Borough of Manhattan, State of New York. On the 20th day of November, 1913, I was in the City of Atlanta, State of Georgia, and on that day Ruth Robertson, who gave her address as 74 Walton Street, Atlanta, Ga., personally appeared before me in my sitting room at the Weineoff Hotel, and related to me all of
237 the facts and statements contained in a certain affidavit signed and

sworn to by the said Ruth Robertson before G.W.Burke, Notary Public of Fulton County, a copy of which affidavit is hereto annexed and made a part of this affidavit. When the said Ruth Robertson related the facts and statements contained in the affidavit, she and I were the only persons in my rooms at the said Hotel Weincoff. I personally wrote out her statement of facts in long hand as she talked and later dictated them to a stenographer in the form of the affidavit that she later executed. The said Ruth Robertson met me in the evening of the 20th of November, 1913 in a drug store, the name of the proprietor I cannot give, nor the street address of the drug store, though I could go to it and designate the place where she met me. I at this time called the notary public, C.W.Burke, and in his presence the said Ruth Robertson carefully read over the typewritten statement which she then and there executed and swore that the same was true. The said C.W.Burke was not at any time present in my rooms at said Hotel Weincoff during the visit of the said Ruth Robertson when she related the facts of this said affidavit, nor was he present during the time that I dictated from my longhand notes of her statement to the stenographer who later transcribed his stenographic notes as signed and sworn to by said Ruth Robertson.

(The affidavit above mentioned is as follows)

"State of Georgia,
County of Fulton.

Personally appeared Miss Ruth Robertson, residing at 74 Walton Street, in the City of Atlanta, State of Georgia, who upon oath deposes and says:

I was a witness in the case of the People against Leo Frank, and on the morning of the day that I testified in the case a police detective whose name I believe to be Bass Rosser, came to my house and conducted me to the office of Solicitor Dorsey. This was my first meeting with Mr. Dorsey. The meeting was in a room in a building that I believe is opposite, or in the vicinity of the building in which the trial was conducted. After being introduced to Mr. Dorsey by the detective, Mr. Dorsey greeted me very effusively. He said he was glad I had come down to see him, and he was sure I would make a good witness and would help him out in the Frank case. He questioned and talked to me in the room alone for about a half an hour, beginning at about eight thirty o'clock. As I remember it there was no proceedings in court on that day until later in the forenoon, at nine o'clock I believe; it was on Wednesday, but the date I do not recall. In the beginning of the conversation with Mr. Dorsey, he asked me to go ahead and tell him all I knew about Mr. Frank and Mary Phagan. I told him I knew nothing against or about Mr. Frank, except that I worked for him, and so far as I knew he was a gentleman in every respect, or words to that effect. He asked me if I knew Mary Phagan and I told him I did. He insisted that as I had worked at the National Pencil Company for a considerable time, that I must know something against the character of Mr.

Frank and asserted that he was a very bad man. I told him that I knew absolutely nothing against Mr. Frank's character. Mr. Dorsey insisted that I did, and persisted in the statement that he was of bad character. He asked if I had ever been in Mr. Frank's office. I told him that I had on several occasions, always on business errands connected with the work I was performing at the factory. He then asserted that I had been in Mr. Frank's office, with him alone, to keep dates for purposes other than business, to which I replied that it was not true. He finally openly insulted me by affirming that I had had sexual intercourse with Mr. Frank in his office, or some room or place in the factory which Mr. Frank kept for the purpose of meeting girls, and he insisted that I knew the location of such room and that I knew of other girls that had been to this room with Mr. Frank. I was shocked by the ~~large~~ broad insinuation and affirmative statement of Mr. Dorsey, and I told him that all such statements and illusions were lies, and that I had never heard of any such thing ever occurring in the factory, or elsewhere, in which Mr. Frank and any girl employee of the factory were parties to; and I state now, after mature deliberation and thought that I have never heard such insulting language by direct speech and innuendo, by any of the commonest laborers in and about the National Pencil Factory, as was used to me by Solicitor General Dorsey, when in his private room. He being the Solicitor General I, being in his office, believed at the time that he possessed some sort of right to thus accuse me and insult me; and, under this belief, I was obliged to take his insults and listen to his scandalous statements, by direct speech and innuendo, without openly resenting them further than to deny every single one of them.

I wish to refer to my evidence, as given on the stand at the trial of Mr. Frank, as to my answers to questions of Mr. Dorsey wherein I was made to say that I had heard Mr. Frank call Mary Phagan by her first name, "Mary". Upon reflection, I wish to explain that my answer, as above repeated, was due entirely to my nervousness because of the badgering that I had been subjected to by Mr. Dorsey; and, as a matter of fact, I cannot recall one single incident wherein I ever heard Mr. Frank address Mary Phagan by any name, and this is the various truth. I could not recall, or cannot recall now, under calm deliberation that I ever heard Mr. Frank address Mary Phagan by any name, as I have never seen him speak with her at any time or place, except when instructing her how to perform her work better and more rapidly while at her work in the factory.

Referring back to my first call on Mr. Dorsey and where he had questioned and talked to me for about a half an hour, at the conclusion of which I was directed to another large room, adjoining I believe where Mr. Dorsey talked to me, in which there were twelve or fifteen other girls and women - all witnesses in the Frank case, and called by Mr. Dorsey, according to my understanding. Among these girls, I remember one Carrie Smith, Myrtie Cato, Maggie Griffin and Dewey Hewell. I remained there until about 12 o'clock when I went to the courthouse and took the witness stand.

I will also state that before Mr. Dorsey went over to the court house, he came into the room where the girls above described and I, myself, were, and gave us a lecture and told us all that, when we went on the stand to go right ahead and tell everything we knew and answer his questions right off sharp. After the lecture I didn't see Mr. Dorsey again until I went on the witness stand in the court room.

While remaining in the large room with the twelve or fifteen girls, before I was called to go to the court house, there was a great deal of talk and gossip among the girls there, some of whom said they knew nothing against Mr. Frank and that they were timid and were afraid that they would be scared when they went into court. Maggie Griffin, however, appeared to welcome and relish the idea of going on the witness stand and told several times how she was going to just tell everything that Mr. Dorsey wanted to know, when she went on the stand. Dewey Hewell said she did not know anything about Mr. Frank or Mary Phagan, or anything concerning the case, and Maggie Griffin volunteered, with enthusiasm, to tell her what she had to say, and did tell her and rehearsed her at one side of the room. I heard Maggie Griffin tell Dewey Hewell that she must say that she knew Mr. Frank and knew that he was of bad character, and that she knew Mary Phagan, and to tell everything bad she could think of about him, and to say that she had seen Mr. Frank with

his hands on Mary Phagan, and that she had seen him whisper to her or talk to her with his face close to hers. Maggie Griffin and Dewey Hewell left the large room described two or three times together, and returned together and I heard Dewey Hewell say repeatedly that she was afraid she would forget all Maggie had told her to say when she went into the court house, and Maggie said, "We will go over it again, so you won't forget it". This was repeated several times. I recall hearing Dewey Hewell say pointedly that she did not know where Mary Phagan worked and that she did not know her by name; but she was rehearsed to know her by Maggie Griffin, in that room, and to say whatever she did say on the witness stand. I have seen the evidence as reported as being given by Dewey Hewell, and recognize in her answers precisely what I heard Maggie Griffin tell her to say. I don't believe either of these girls appreciated what it was to swear ~~to~~ falsely, as they were giggling and laughing over the evidence they were to give when they went on the witness stand.

I have read this statement, and subscribe my name hereto under oath. "

G. W. BURKE, Sworn for the Movant. I am acquainted, and have been for years, with Austin G. Denniston. On or about the 20th day of November, 1913, the said Denniston was in Atlanta, and as I understand, was engaged in doing some special work in the Frank case. On that day I was asked by Denniston, as a notary public, to swear Miss Ruth Robertson to an affidavit, which affidavit is hereto attached, marked Exhibit A, and made a part of this affidavit. This affidavit was presented to Miss Robertson, and I read the same over to her and she swore to the same in the presence of the said Denniston and myself. I had nothing to do with writing the affidavit, nor anything to do with taking the affidavit, except act as Notary Public. When said affidavit was read to Miss Ruth Robertson she said it was the truth.

(Attached as exhibit a is an exact copy of the affidavit attached to the preceding affidavit, signed by Miss Ruth Robertson)

GROUND 10.

D. I. MACINTYRE, Sworn for the Movant. I am a Notary Public in and for the County of Fulton. As such Notary Public, I took an affidavit from Mrs. Mamie Edwards, formerly Miss Mamie Kitchens, dated April 13, 1914, I read the affidavit over to Mrs. Edwards before she signed it, and she stated that it was true. After reading it over to her she signed it and I swore her to it. Dan S. Lehon was present with me when the affidavit was read to her and heard Mrs. Mamie Edwards say that it was true and saw her sign it. The affiant made no protest as to the substance or words of the affidavit, and after hearing it read, she signed it without protest saying that the same is true. Said affidavit was changed in accordance with the statements made at the time by Mrs. Mamie Edwards.

CONFIDENTIAL

DAN S. LEHON, Sworn for the Movant. I was present when Mrs. Mamie Edwards made an affidavit, dated April 13, 1914, before Daniel Irwin McIntyre, which affidavit was taken in the Leo M. Frank case to be used upon application for new trial. I heard said McIntyre read the affidavit to Mrs. Mamie Edwards, heard her say that it was true and saw her sign it.

GROUND 11.

LEMMIE QUINN, Sworn for the Movant. On the 26th day of January, 1914, I introduced Marie Karst to C.W. Burke, while they were in the store of J.H. Nunnally on Peachtree Street in Atlanta, Georgia, and the said C.W. Burke then and there told Miss Karst that he wanted to talk with her regarding the testimony she gave at the trial of Leo M. Frank. I heard the entire conversation between Marie Karst and C.W. Burke and heard Miss Karst give to Mr. Burke the affidavit, of which a copy is attached to this affidavit. Miss Marie Karst made the affidavit of her own free will and I heard her tell Mr. Burke that every word of same was the truth, and Mr. Burke did not hold out any inducements to Miss Karst or offer her reward of any kind for making affidavit referred to.

(The following is the affidavit referred to above)

Georgia, Fulton County.

"Personally appears Miss Marie Karst, of 195 Kelly Street, Atlanta, Fulton County, Georgia who upon oath deposes and says that she worked at the National Pencil Company about eighteen months previous to January 1912 and that she knew Mr. Leo M. Frank.

Deponent says that she was a witness for the State of Georgia at the trial of Leo M. Frank, who was charged with the murder of Mary Phagan. Deponent says that she testified that Mr. Frank's character was bad and that she was not cross examined.

Deponent now says that she had been asked as to how she knew Mr. Frank's character was bad, and she could only have said because she had heard girls at the factory say that they were afraid to have Mr. Frank catch them loafing.

Deponent says that no girl or woman ever told her that Mr. Frank had ever in any way insulted them, and deponent says that Mr. Frank never did in any way act in an unbecoming manner toward her. Deponent also says that she never at any time saw any woman in Mr. Frank's office; and she never heard any other girl or woman say that they ever saw any woman in Mr. Frank's office drinking or acting in any way unbecoming to ladies.

Deponent says that she was brought into the case against Mr. Frank by city detective Bass Rosser and that she was subpoenaed to the office of Mr. Hugh Dorsey, in the Kiser Building, twice before the trial, and questioned very closely by Mr. Dorsey. Deponent says that Mr. Dorsey told her to say that Mr. Frank's general character was bad; and, illustrating to her how he desired her to state that Mr. Frank's character was bad, he said: "I want you to state that his character is bad, just as you would say that Mayor Woodward's character is bad"; at the same time saying to her: "You have heard that Mayor Woodward is a man of bad character, and in the same manner you have heard that Mr. Frank is a man of bad character. That is the way I want you to testify and I want you to answer my questions right off sharp and quick. Deponent also says that when Mr. Dorsey was

prompting her and questioning her in his office, he did not at any time use the word lasciviousness, but when she went on the witness stand, he did use the word, and did ask her if Mr. Frank's character for lasciviousness was good or bad, and she answered bad in the face of the fact that she did not know the meaning of the word "lasciviousness", and never had it explained to her until today; and since the explanation has been made, and since she understands the words, she most emphatically denies that Mr. Frank's character or reputation so far as she knew or knows, is bad for lasciviousness.

Deponent says that Mr. Frank always made the girls at the factory attend strictly to business, and that he was not generally liked by them on account of his strictness with them in his dealings with them regarding their work.

(Signed) Marie Karst"

C. WEURKE, Sworn for the Movant. I never told Marie Karst, or any one else, that I had taken Miss Lillie Pettis out to see her sister, Miss Nellie Pettis, ~~or any~~ ^{or any} that I told Marie Karst or any other person that Miss Nellie Pettis had admitted to me and her sister-in-law, Mrs. Lillie Pettis, that what she had sworn on the hearing before the coroner and on the trial of the case of the State against Leo M. Frank was untrue.

S. O. KNIGHT, Sworn for the Movant. I am a Notary Public for Fulton County, Georgia, and as such took an affidavit from Miss Marie Karst on the 9th day of April, 1914. I, C. W. Burke and Dan S. Lehon, together, went to the home of Miss Marie Karst and met her in her parlor, and while there in the presence of the parties named, the affidavit dated as aforesaid was read to said Miss Marie Karst and she said it was true, and without making any objection to it, swore to it and signed it.

C. W. BURKE, DAN S. LEHON, Sworn for the Movant. Together, with J. O. Knight, a notary public, we went to the home of Miss Marie Karst, on the 9th day of April, 1914, and saw her in the parlor of her home. While there an affidavit, dated April 9th, 1914, in the Frank case, was read to said Marie Karst by the Notary Public, J. O. Knight, and after it was read to her, she stated that it was the truth, whereupon said J. O. Knight swore her and she signed it in our presence.

GROUND 13.

RABBI DAVID MARK, Sworn for the Movant. Between one thirty and two o'clock P.M. on Tuesday, April 14, 1914, accompanied by Dan S. Lehon, Mrs. Leo M. Frank and C. W. Burke, ^I ~~we~~ called on Mary Rich, who conducts a small lunch wagon on the sidewalk located on West Hunter Street between Forsyth Street and Madison Avenue, said wagon being situated near the alley that runs at the rear of the National Pencil Com-

pany's factory. I read the attached blank affidavit to Mary Rich, which affidavit is hereto attached and marked Exhibit A, and asked Mary Rich if same was the truth, and Mary Rich said, "Yes sir, it is true, except the time should be two thirty P.M. instead of two fifteen P.M." explaining that the reason she was positive about the time was because she remembered that a white man passed her, with a grip in his hand going toward the Terminal Station; that she asked for the time of day and she said he looked at his watch and replied that it was two thirty o'clock. She further said that this happened just after Jim Conley had left her, but that she did not know where he (Jim Conley) went. Mary Rich stated that she had sworn to God not to sign anything and on this account and because of the newspaper notoriety that had been given her had hurt her trade, she would not sign anything. She said she was telling the truth and that was all she would ever tell.

DAN S. LEHON, Sworn for the Movant. Every thing word that is outlined above is the truth. I heard Mary Rich tell Dr. Marx every word as sworn to in this affidavit and heard Dr. Marx read Exhibit A to her.

(The following is Exhibit "A" referred to above)

Georgia, Fulton County.

Mary Rich of 24 Walnut St., Atlanta, Fulton County, Georgia, deposes and says that she knows Jim Conley, and that at about 2:15 o'clock P.M. Saturday, April 26, 1913, Jim Conley came to her lunch wagon located on Hunter Street near the alley between Madison Avenue and Forsyth Street, being the same alley that runs at the rear of the National Pencil Factory building. Deponent says that at the time and hour referred to the said Jim Conley purchased a twenty cent lunch from her and she did not see said Conley that day any more."

GROUND 14.

O. W. BURKE, Sworn for the Movant. I know G.B. Dalton and met him at Fort Myers, Fla. about two months ago and secured from said Dalton an affidavit. I met him while at work in an orchard and told him that I would like to have a talk with him in my room at the Bradford Hotel that night at eight o'clock. Dalton agreed to meet me, and I sent a boy after him, when we talked over the Frank case for about two hours. I told Dalton frankly that I did not believe the testimony he had given at the trial to be the truth, also that I didn't believe Dalton even knew Leo M. Frank. Dalton

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stated to me that owing to the fact that I had been a former employer of his brother in law, W.N.Barber, and further because of the fact that said Barber had spoken very highly of me that he (Dalton) would tell me the truth about his testimony at the trial of Leo M. Frank. He then and there proceeded to freely give me the information contained in the affidavit which has been presented at this hearing. I wrote out Dalton's statement in long hand at the time he gave it, and on the following morning I gave the long hand copy to John M.Cameron, a stenographer at Fort ~~My~~ Myers and instructed said Cameron to typewrite said statement verbatim, which Cameron did. I then secured the services of a Mr.Hendry an attorney and a notary public, and in an automobile went to the country where Dalton was at work. Dalton at once came down to the automobile and I introduced him to Mr. Hendry. Hendry read over very carefully the affidavit ~~and~~ I had had prepared and asked Dalton if the statements therein contained were true, and if it was his affidavit. Dalton answered it was true and that it was his affidavit, and then and there Dalton held up his right hand and swore to the same and signed it across the fender of the automobile. When Dalton stated he would like to meet me at Fort Myers that night at 7 o'clock, I agreed to meet him there. However, I did not know when I made that appointment with Dalton that the only train by which I could leave Fort Myers that day was scheduled to leave that point at 3 P.M/ and after ascertaining that to be a fact, I left there on said train, returning to Atlanta and I have never seen Dalton since. On the night I took Dalton's affidavit in long hand, Dalton asked me if I had any influence with some of the various master mechanics in charge of some railroads running out of Atlanta, stating that he would like very much to secure a position as railroad fireman. I told ~~and~~ Dalton that I knew one or two master mechanics, but owing to the fact that Dalton was a witness in the Frank case and to the further fact that I was working on that case, it would be impossible for me to intercede with anyone to try to secure Dalton a position, and Dalton then agreed that he understood the situation. Dalton wanted to know if I was still connected with any railroad company, and I told him I was not. Dalton also wanted to know if I did not have some influence with officials of the Southern Railroad

by which I could secure him a pass from Jacksonville to Atlanta, and return, stating that he had a daughter or sister in law whom he desired to visit. I explained to Dalton that while I had friends with the Southern Railway, it would be impossible for me to secure a pass for him or even for myself, owing to the present pass laws. I explained to Dalton that it would be impossible for me to do him a favor of any kind while the Frank case was pending, and Dalton acknowledged to me that he understood that for that reason I could not do anything for him. There never was any conversation which took place between me and Dalton with reference to the Pardon Board of Georgia, and I positively never offered Dalton any money in any amount. At the time Dalton made his affidavit, same was read over to him by Mr. Hendry, and not by me, and Mr. Hendry said nothing about said affidavit being taken to be used before the Pardon Board. Dalton had plenty of time and took plenty of time to listen to the reading of the entire affidavit, and Dalton did not ask me or Mr. Hendry when he would get any money, and there was no mention made of any money at any time during the conversation with Dalton.

GROUND 14th

HENRY A. ALEXANDER, Sworn for the Movant. The facsimile photograph of the yellow murder note appearing in the pamphlet issued and distributed by me in February, 1914, in reference to these notes, is identical with the facsimile of said note appearing in the original brief of evidence in this case, filed in Fulton Superior Court, and approved October 31, 1913 by Judge Roan as a true, correct and complete brief of the evidence in said case; It is also identical with the facsimile of said note appearing in the certified copy of said brief of evidence on file in the Supreme Court of Georgia, ^{and} is also identical with the facsimile copy of said note appearing in the printed copy of the Brief of Evidence filed in the Supreme Court. A copy of said note is hereto attached, marked Exhibit "A".

(The exhibit attached to said affidavit consists of a photographic copy of one of the notes found by the body of Mary Phagan, the same having been designated on the original trial as State's Exhibit 2.)

HERBERT G. SCHIFF, Sworn for the Movant. I have been employed at the National Pencil Factory since 1908. I worked at the National Pencil Company during the year 1912 and was in the city continually during the year 1912. I know Henry F. Becker, who was the

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master mechanic of the pencil company. I know that Becker resigned his position during the month of December, 1912. Becker's office was on the fourth floor of the pencil company's place of business, and I know that Becker issued orders on order blanks from his office, and there were in Becker's desk at the time of his resignation duplicate order blanks, both in tablet forms and in loose leaves/

At the time that Becker resigned a ~~xxx~~ change was made in the office and dressing room space on the fourth floor, the part where Becker's office was being changed to a men's dressing room, so as to enlarge the box room capacity. In making this change, Becker's desk was emptied into the room wherein it was located on the fourth floor. Becker's desk contained a number of blue prints which were very valuable, and these blue prints, which belonged to the company, were taken from Becker's desk and put into the steel cabinet which was in the room occupied by Becker as his office on the fourth floor. The other contents of the desk were emptied out on the fourth floor and put into trucks to be hauled into the basement. I personally remember the sweepers getting the trash out of the way. After the desk was emptied, it was taken from the fourth floor to the stenographer's office on the second floor, where I personally used the same for several weeks until my departure on the road. On the day I left for the road, in January, 1913, this desk was in the stenographer's office and not in Frank's private office. I herewith attach invoice from the Cotton States Belting & Supply Company which said invoice is in response to order blank #1018 and #1019 issued by H.F. Becker, said order blank #1018 being the one upon which the notes found by the body of Mary Phagan was written by Conley. It was the custom of Becker to issue requisitions on these order blanks and for the same to be acknowledged by invoice when the goods were shipped.

(Attached to the foregoing affidavit was the following invoice: "Cotton States Belting & Supply Company, Sold to National Pencil Company, Atlanta, Ga., 9/16-12 09. Your order No. 1018 & 1019, 1 Pc 1-1/8 x 2 1/2 X 18 Mch Steel, 1 Pc 5/8 x 5 x 6 Bo - - \$2.00")

F. ZIGANKI, JOSEPH STELKER, HERBERT G. SCHIFF, Sworn for the Movant.

We know when H.F. Becker's desk on the fourth floor of the National Pencil Company's place of business was cleaned out and removed from the fourth floor. This occurred about that time that H.F.

Becker resigned as master mechanic of the National Pencil Company in

246 the month of December, 1912. The desk was emptied of its contents

which were thrown on the floor in the trash and certain blue prints found in the desk were placed in the steel cabinet on the fourth floor.

GROUND 15.

J. W. WRENN, Sworn for the Movant At the instructions of C.W. Burke I called on Ivey Jones at the railroad freight depot. I ~~represented~~ ^{information} represented to Ivey Jones that I was seeking/about an accident and that the injured man had given his (Ivey Jones') name as a witness to the alleged accident. I asked Ivey Jones what he knew regarding the accident that had taken place on April 26, 1913, and Jones replied that he had witnessed no accident on that date. I told Jones that I could not understand why the injured man had used his name as a witness and asked Jones if he would not detail to me his entire movements on Memorial Day and to describe each person with whom he came in contact. This pretense of looking into an accident was adopted for the reason that I believed that if Ivey Jones' mind was taken away from all matters connected with the Frank case, he would tell the truth as to his movements on that day. Thereupon Jones made the statement set out in his affidavit, I taking notes of his statement and carried them to C.W. Burke. Burke dictated from said notes the affidavit already introduced, dated February 6, 1914. The affidavit as written was then carried to Ivey Jones and read over to him and Ivey Jones swore to it in the presence of said Burke signing his name to it. The paper signed by Ivey Jones did not have big letters at the top like a grocery store heading, and it is not true that Jones signed it with a pencil, but he did sign it with a fountain pen. No pretense was practiced on Jones to get him to sign the paper, but on the contrary, Ivey Jones signed the paper voluntarily after he knew just what it contained.

C. W. BURKE, Sworn for the Movant. On or about the 5th day of February, 1914, I instructed J. W. Wrenn to locate one Ivey Jones, a negro truck driver who appeared as a witness for the State in the trial of Leo M. Frank. I instructed Wrenn to pretend to Jones that
247 he was one of the claim agents of one of the railroads; that the railroad had been sued by a man who gave the name of Ivey Jones as a witness who had seen the accident, which occurred on Memorial

day. I instructed Wrenn to learn from Jones his entire movements on that day and the name of each person whom he met that day.

Wrenn afterward returned to me and stated that he had interviewed Jones; that Jones did not witness an accident of any kind on Memorial Day and that he very readily gave his movements on ~~that~~ that day, in detail. From the notes furnished me by Wrenn I dictated the affidavit which was signed by Jones on February 16, 1914. After writing the affidavit we located Jones at the corner of Decatur and Collins Street. I read the affidavit over very carefully to Jones, who stated that it was alright, with one exception, which referred to that part, which said that he and Buddy Perry went to a ball-game, Jones stating that they both went ~~to~~ to a ball game, but not together. I correct^{ed} the affidavit in pen and ink and Ivey Jones then and there held up his hand, swore to it and signed it, using my fountain pen.

C. W. BURKE GROUND 16.
XXXXXXXXXXXX, Sworn for the Movant. I know nothing about any attempt being made to induce Helen Ferguson to leave the city, nor about any young man offering to marry the said Helen Ferguson. I never at any time met Helen Ferguson on any street corner of Atlanta with Jimmie Wrenn. I never at any time talked with said Helen Ferguson about the Frank case on the streets. It is true Jimmie Wrenn brought Helen Ferguson to see me at the office of J. H. Porter located on the 7th floor of the Grant Building, but I did not at any time ask her to change her statement in the Frank case. I did ask her for an affidavit regarding Jim Conley attacking her in the factory of the pencil company and said Helen Ferguson readily gave said affidavit. It is true that I asked Helen Ferguson if she had told the truth at the trial of Leo M. Frank and she insisted that she had. Helen Ferguson did ~~not~~ not remain in the office of J. H. Porter at the time above mentioned, exceeding thirty minutes.

GROUND 17.

DAN S. LEHON, Sworn for the Movant. I was present on the 10th day of April, 1914 when Jesse E. Duffy swore to an affidavit before J. O. Knight, Notary Public. Said affidavit was read over to Duffy by said Knight and after it was read over to him said Duffy stated it was the truth. Said Knight then swore Duffy to the affidavit Duffy signing it.

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B. WILDAUER, OTTO SCHWAB, A.L.GUTHMAN, ALBERT HAAS, ISAAC HAAS,
HERMAN J. HAASM, H. REGENSTEIN, Sworn for the Movant. On Friday,
May 1, 1914, we met J.E.Duffy at the office of the Capital City
Chair Company between 8 and 9:30 P.M. Herbert J. Haas was also
present. The affidavit of J.E.Duffy executed April 10, 1914, before
J.O.Knight was shown ~~and~~ to Duffy and Duffy acknowledged the sig-
nature to the affidavit as his and that at the time of signing
the affidavit, he was properly sworn by the notary J.O.Knight;
that he received no money or promise of reward or position to make
this affidavit by C.W.Burke or anyone else; that every statement
contained in said affidavit is the truth. The affidavit was read
to Duffy and he acknowledged each and every statement to be the
truth, with the explanation only that the \$7.60 referred to in
said affidavit was for two days time as witness and railroad fare,
and that the same was paid to him by the County Commissioner's
office upon the order of the solicitor General, who gave said order
to Duffy and that with this explanation each and every statement
therein is true.

G. W. BURKE, Sworn for the Movant. I know Jesse E. Duffy and knew
him several years before the murder of Mary Phagan. I also knew
L.P.Eubanks and Mell Arnold, all of whom were working for the Sou-
thern Railway at the time I was employed by the said company.
Said Duffy and 32 other men were involved in car stealing charges
with the Southern Railway, all of which cases were not pressed, with-
out any influence being exerted in that direction by me. Quite a
number of these ~~men~~ arrested were given their positions back,
and I was asked by Duffy and others to assist them to regain their
positions, and I have done all in my power to have them reinstated,
and did succeed in having M.Y.Arnold, and attempted to have Duffy,
A.L.Jessie, B.C.Duffy and J.R.Miles reinstated. These efforts were
began before the murder of Mary Phagan and had nothing to do with
matters growing out of this murder. I severed my connection with
the Southern Railway on July 1, 1913 and on July 20, 1913, at the
instance of Mr.L.Z.Rosser I went to work investigating the Frank
case. Several months after the trial I met said Duffy at the home
of L.P.Eubanks. In the presence of Eubanks and M.Y.Arnold, Duffy
made an affidavit in the exact words of the affidavit dated April
10, 1914, before J.O.KNIGHT, a notary public. At that time nothing

was paid to Duffy, nor did I promise to give him a job at \$15. per week, or any other job. to make the affidavit aforesaid. On the contrary, Duffy made it freely and voluntarily and he stated at the time that it was the truth. Dan S. Lehon was also present when the affidavit was taken by Knight. Knight read the affidavit over to Duffy and Duffy stated it was true, held up his right hand and swore to it and signed it before J.O. Knight, notary Public.

H. O. KNIGHT, Sworn for the Movant. I am a Notary Public for Fulton County and did swear Jesse E. Duffy to an affidavit dated April 10, 1914. I read the affidavit to Duffy and asked him if it was true. Duffy stated it was true, whereupon I had Duffy raise his right hand and swear to the affidavit and sign it. Duffy not only made no objection to it, but said it was the truth.

JNO. R. BYINGTON, M. ANGIER, E.A. ANGIER, D. I. MACINTYRE, W. R.

MASSENGALE, Sworn for the Movant. We know H. O. Knight and know his general character for truth and veracity, and the same is good, and we would believe him on oath.

3RD AMENDMENT

OTTO SCHWAB, ISAAC SCHOEN, ISAAC HAAS, B. WILDAUER, DAVID MARK,

Sworn for the Movant. We met Mrs. Maud Bailey and Mrs. May Barrett on Thursday, April 23, 1914, between the hours of 7 and 8 P.M. in the office of Messrs. Herbert J. and Leonard Haas. The affidavits of said Mrs. May Barrett and Mrs. Maud Bailey were exhibited and read over to said Mrs. May Barrett and Mrs. Maud Bailey, and the said affiants acknowledged their signatures, and stated that at the time of signing their respective affidavits they were properly sworn by a notary public; that they had received no money or promise of reward of any nature whatsoever for making said affidavit, nor had any threats, intimidations or coercion of any character been used in order to force them to make said affidavits. They further stated that the contents of their said affidavits were true in every particular.

4TH and 5TH AMENDMENTS.

J. O. KNIGHT, ISAAC SCHOEN, ISAAC HAAS, B. WILADUER, OTTO SCHWAB,

DAVID MARK, Sworn for the Movant. Thursday, April 23, 1914, we were in the office of Messrs. Herbert J. and Leonard Haas in the 4th National Bank Building and were present when one Annie Maud Carter

made an affidavit, of date April 23, 1914. Said affidavit was read aloud by said Annie Maud Carter and she thereupon signed it and was duly sworn by the notary J.O. Knight. Some of us questioned the said Annie Maud Carter and asked her whether she had received any money or promise of reward of any character and she answered that she had not, and that she had not been coerced or intimidated in any way to make said affidavit. She further stated that every statement contained in said affidavit was true.

Movant also introduced the following testimony:

GEORGE EPPS, Sworn for the Movant. I am at present at the Reformatory in Millidgeville, Ga. In August 1913, I was witness for the State in the case against Leo M. Frank. I was also a witness before the Coroner's inquest. Both at the Coroner's inquest and the trial of Leo M. Frank I swore falsely. I was persuaded to give the false testimony in both of the hearings by police detective John Black. The only statements in my testimony at either the coroner's inquest or at the trial that is of truth is that I knew Mary Phagan and that I rode on a street car with her on the 26th day of April, 1913. My home is in the neighborhood in which Mary Phagan lived and most of the neighborhood knew her, and it was known that John Black was making inquiries there for boys or girls or neighbors that knew her. — In May 1913, I was employed at the Hirsch & Spitz Spring Bed Factory, and one day I was told somebody wanted to see me. The man who wanted to see me said he was detective John Black, and that he understood I knew something about the Mary Phagan case. In reply to his further questions, I admitted that I knew Mary Phagan, and also told him that I rode down town on the same car with her on April 26, 1913. I told him it was between ten and fifteen minutes to twelve when I boarded the car. I told him I had seen a clock in Mr. Bryant's store at the corner of Oliver and Bellwood Avenue. I do not know that this clock is not reliable as to time. Sometimes it don't run at all, but it is the only clock I saw. Being Saturday, I did not work at the factory on Saturdays but went down town and sold newspapers, and I generally left home to go down town about 11:00 o'clock, and I was afraid I would be late

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this day, April 26th. I told Black that Mary Phagan sat in the front seat on the left hand side facing forward and I sat three seats behind her. I did not speak to Mary while on the car, but when we got off the car at Marietta and Forsyth Streets, Mary got off ahead of me and I then said "Hello Mary, where are you going." Mary answered "I am going to get my money and go to see the parade, this being Decoration day and a holiday. This was all of the conversation I had with Mary on that day. I last saw Mary as she was going over the viaduct south on Forsyth Street and I went under the viaduct to the Journal Building and immediately got my papers and went to Five Points where I sold them. To fix the time I must have arrived at the Journal Building, the "Extra" generally comes out about from 12:20 to 12:30. I told all of these circumstances to Black when I first met him. Black wanted me to say that I sat in the seat with Mary on the car, but I told him that this was not true, but Black said "that will be all right, you do as I tell you". Detective Black asked to come down to his office the next day to see him. He handed me a subpoena and told me how much I would have to pay or go to jail if I didn't come. I did show the subpoena to my boss and the next day went to Black's office at Police Headquarters, at about 2:30 He at once carried me to another room where he and I were alone and again questioned me about coming down town on the car with Mary and told me that I got on the car at 10 minutes to 12 o'clock and that I sat on the seat with Mary and talked to her on the car and that we got off the car at about five to seven minutes after 12 at Marietta and Forsyth Streets. I again told him that was not true and he told me that was all right, "you go ahead and tell it just like I tell you" / I told him I didn't know anything about what time we got off the car and he said "Oh, you was raised in the country and could tell the time by the sun and it was about five or seven minutes after twelve". He made me agree to tell it as he told me and said "you do as I tell you and I will give you some money ~~and~~ when this trial is over and you can leave town if you want to". He told me to say that I talked to Mary on the car coming down town and that I deviled Mary about her sweethearts and that she must have a sweetheart at the pencil factory, and that Mary said, she didn't have any sweetheart, but Mr. Frank down

there acted suspicious toward her; that he came out ahead of her at nights when she would leave the factory and would look at her and wink at her and that she was "afraid of Frank" and asked me to come to the pencil factory every night to meet her. After this talk with Detective Black he gave me a nickel to buy a coca cola and told me to come back to the inquest, which was being held on the second floor in police headquarters building. I did as he told me and after a few minutes Mr. Donehoo and detective Black came out to where I was. Mr. Donehoo is blind and Black told him who I was and that "he knows something about the Phagan case" and Mr. Donehoo said I would be the next witness. In a minute or two my name was called and I was sworn and took the witness stand and told the story that Detective Black had told me to tell, which I knew was mostly a lie. When I went out into the hall, detective Black saw me there and said "George you done all right, now stick to that story, there may be other men come out there to see you and question you, and you tell them that you don't know anything about it and that you have been told not to say anything about the Phagan case." One evening Detective Black came out to where I lived and told me to come to Solicitor Dorsey's office the next morning at 10:30. When I arrived there the next morning, after a few minutes, Black came out and called me in Mr. Dorsey's office. Mr. Dorsey said to me "George, we have got you down here to refresh your mind on the testimony that you have given at the coroner's inquest. He questioned me and I told him at Detective Black had directed me to say that I got on the car at 10 minutes to 12. I told him I sat three seats behind Mary Phagan. While I was being questioned by Mr. Dorsey he and Detective Black would have private conversations between them, and after one of them, Mr. Dorsey said, "You sat on the seat with her, and I told him "yes", that I had changed my seat and sat with her. He asked me about my conversation with Mary Phagan, and I told him that it was just like I said at the coroner's inquest and he said "that is all right, George you stick to that". After this conversation, detective Black followed me out in the hall and told me to be sure about the time and to stick to it as about 7 minutes after 12 as it supported Jim Conley's story as to time and he wanted my time to be the same as the time Conley had said it was, and to agree with it. I promised

Black that I would do as he told me to. The next day I went directly to the court house. In the court house I met detective Black and he told me to go ahead and when I got on the stand to "do just as well as I had done up to his office". On the stand I was only allowed to tell about riding on the car with Mary at the time that I got on the car as instructed by Black and the time I got off the car. When I was cross examined by Mr. Rosser I was asked practically the same questions and I gave practically the same answers.

B. BERNARD, Sworn for the Movant. Until this affidavit is being made, I have never met Mr. C. W. Burke and never saw over five times before. I never saw George Epps until last Saturday night when I was waiting for a street car to go home. He was sitting upon the city hall steps. It has been eight years since I went through Birmingham and I was never in Birmingham with George Epps, Mr. Burke or Jimmie Wrenn and I would not Wrenn if he were to walk into the room. I went to Solicitor Dorsey's office and assured him that Epps was lying and urged him to investigate and see that I was not the

man Epps was talking about.

STILES HOPKINS

STILES HOPKINS, Sworn for the Movant. Sometime during the month of February or March, 1914, I went to Milledgeville, Georgia, for the purpose of exhibiting and reading to one George Epps an affidavit and asking him to sign the affidavit if its contents were true. I did not draw said affidavit and do not know who did draw it, but same was handed to me by one of counsel for Mr. Frank with the request that I go to Milledgeville and secure the signature of George Epps, if possible. I secured a letter of introduction to Mr. Lovvorn the superintendent of the institution where George Epps was confined. I called at the court house and asked Mr. J. Cleveland Cooper, the clerk to go with me to the reformatory. Mr. Cooper and I went to the reformatory and went into Mr. Lovvorn's room. Mr. Lovvorn was at the time sick in bed and the whole transaction took place in Mr. Lovvorn's room and in his presence. Before I said anything to George Epps, Mr. Lovvorn asked George Epps whether he, Epps, had testified in the Frank case and asked if he told the truth or something which was not the truth, and Epps told Mr. Lovvorn that he had testified in the Frank case and that he had told an untruth at the trial. Mr. Lovvorn asked Epps if he now wanted to tell a different story, and Epps said that he did. I handed Epps the affidavit and from a copy of same I commenced reading same to Epps. Mr. Cooper,

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the Clerk, looked over my shoulder and following the whole time I was reading the affidavit to Epps. One or twice there were small mistakes^{to} which Epps called my attention and Epps followed in the minutest manner the whole affidavit, which he afterwards signed. The Clerk, Mr. Cooper then asked Epps if he was willing to swear to the contents of the paper which he had read. Epps then help up his right hand and swore in Mr. Cooper's presence the the affidavit was the truth and nothing but the truth, so help him God. Epps signed the affidavit in the presence of Mr. Lovvorn, Mr. Cooper and myself. Mr. Cooper thereafter affixed his signature and upon returning to his office in the court house put his seal on the affidavit/

I am associated with the law firm of Rosser, Brandon, Slaton and Phillips, but am not a member of said firm. I have assisted Mr. Rosser and H. J. Haas from time to time in connection with matters in detail which have come up in the court of the Frank case, but have never been employed by Leo M. Frank or had any part whatever in the conduct of his case. I have read the affidavit of C. A. Isom, a witness for the State, and those parts which relate to my being in Chicago, Ill., in April 1914. Shortly before the date mentioned, Mr. H. J. Haas asked me if I would go to Chicago for the purpose of examining certain affidavits which it was expected would be taken in Chicago. I did go to Chicago and did meet and talk with C. W. Isom in the office of W. J. Burns in said place. Some operatives of Mr. Burns told me that they had talked with Aaron Allen, also a Mr. Jacobs, Isom talked with Allen and so did Mr. Burns and all stated to me that the statements made by Allen had no bearing whatever on the extraordinary motion for new trial. I told Isom that since he and others had talked with Allen and there was nothing to be gotten from Allen I saw no reason why I should talk to Allen and declined to see Allen or talk with him at all. The only affidavit taken in my presence was an affidavit of the negro Calhoun, and as the contents were of doubtful relevancy to the issue involved, this affidavit was not used by counsel for Frank. I have read that part of Isom's affidavit in which he stated that Burns used certain profane language, and if such language was used, it was not in my presence of hearing. Said Isom is mistaken in his recollection as to what Mr. Burns' son said about Allen desiring to speak to me.

Mr. Burns's son brought me no such message. He did tell ~~me~~ however, that he, Burns, desired me to talk to Allen. I told said Burns that it would be presumptuous for me to attempt to talk with Allen after he, Burns, several of his operatives, Jacobs, Isom had talked to Allen with identical results and for this reason I declined to talk to Allen. No affidavit was made by a Salvation Army man in my presence.

JOSEPH W. CONROY, Sworn for the Movant. I am a Notary Public in and for the County of Hamilton, State of Ohio. On February 5, 1914 I met C.W. Burke of Atlanta, and went with said Burke to the home of the Good Shepherd, in Cincinnati, Ohio, and interviewed Dewey Hewell, an inmate of said home. She was brought to the visiting room of the home by one of the Sisters in charge and left alone with us, and Mr. Burke explained that he had called on her for the purpose of getting her to tell the truth regarding her testimony at the trial of Leo M. Frank. Burke had only talked to Dewey a short time when she started crying and told Mr. Burke that she had not testified to the truth. Before affixing my signature hereto I have carefully read over the affidavit of February 25, 1914, to which I administered the oath to Dewey Hewell, and Dewey Hewell testified that the affidavit referred to was every word the truth and C.W. Burke did not hold out any inducements to Dewey or promise her reward of any kind for her affidavit, but that she gave her affidavit freely and of her own accord.

GEORGE WRENN, Sworn for the Movant. I never did tell the negroes Fred Perkerson and Frank Reese that they had a good chance to make money, nor did I ever tell them they both could go into Conley's cell and then come out and say that Conley had confessed that he had killed the girl, that the Jews would pay them if they would do this, nor that they would get out of jail after ~~Christmas~~ Christmas and would have no money and that this was their chance to get money, or that Conley was no relation of theirs. I never at any time was talking to Conley in the presence of either of these parties and told Conley that the thing for him to do was when he got his sentence was for him to take the murder on himself and in this way free Frank, or that he (Conley) would only get about six or twelve months sentence and that he never could be tried again. No such

conversation was had with Conley and hence Conley had no chance to decline it. I was in Conley's cell once or twice for the purpose of giving him medicine, but sometimes in there by myself. Neither of the parties aforesaid told me that I had as much opportunity to go into Conley's cell as they had and that I could swear that Conley had confessed to me as well as to them, nor did I say to either of them "You are a damn fool; I am not going to mix in it." I knew Annie Maud Carter while she was in jail, but never tried to induce her to get any confession from Conley, nor did I ever seek to bring Annie Maud Carter and Conley together. No one ever sought to have me influence Annie Maud Carter with reference to Conley, nor did I know anything about the statements that Annie Maud Carter is said to have made in this case until after it was made. As to this statement, I had nothing to do with it.

J. W. WRENN, Sworn for the Movant. It is not true that I ever sought to have John Shields made an affidavit stating that Jim Conley had been down on him or that ^I he had asked ~~him~~ him to let Conley go down on him, or that if he (Shields) would swear to this lie for me I would dress him up and send him to Cincinnati or anywhere else. I never said anything to Shields about Conley being a cock sucker, or that I said to Shields a few weeks ago "John, I am in a hell of a fix; I have got to get something good; don't you know a negro woman I can get who will swear that Jim Conley went down on her". I never wanted Shields to hunt up a negro woman for me, and never had any such conversation with John Shields at any time.

C. E. BURKE, Sworn for the Movant. I have read the affidavit of R.P. Barrett, dated April 28, 1914. It is true that Jimmy Wrenn was working for me and that Jimmie Wrenn introduced R.P. Barrett to me under the assumed name of J.W. Kelly, and that I posed as a magazine syndicate press agent and endeavored to secure an affidavit from Barrett in a room in the Kimball House and that Barrett told me that he did not believe Leo M. Frank guilty, but did believe that Mary Phagan was killed on the second floor of the pencil factory, and that he, Barrett, was entitled to the reward for making the discovery. Barrett explained to me that he was preparing a history of the case and I offered to assist Barrett, and asked Barrett to bring his notes and all records he had accumulated to me, but Barrett did not do so. U

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I endeavored to get an affidavit from Barrett, but Barrett stated that he would sign no affidavit for any one. I impressed it upon Barrett that I only wanted the truth, and would be very glad to go with Barrett before Hugh Dorsey, or Madison Bell, his (Barrett's) attorney before asking him to affix his signature thereto, but Barrett refused. I did not authorize Jimmie Wrem or any other person to secure railroad passes for the purpose of taking Barrett out of the city. I did tell Barrett that if I should put a lie of any kind in an affidavit and send it into the house I was representing that they would discharge me. I did not tell Barrett that I had a brother who was the master mechanic at the Southern Railroad shops or that I could secure Barrett a good job in Hutchinson, Kan. I did not offer Barrett a reward of any kind, or that he would be rewarded with enough money to buy a house and lot. ^{Barrett} I did tell me ~~Barrett~~ that he could make enough money of the sale of his book to buy him a house and lot.

NELLIE WOOD, Movant introduced the following testimony of Nellie Wood, delivered before the Coroner's inquest, before Paul Donehoo,

Coroner:

Q. What is your name? A. Nellie Wood.

Q. Where do you live? A. No. 8 Corput Street.

Q. Do you know Mr. Frank? A. I don't know him personally. I worked for him two days is all that I know about him.

Q. Two days? A. Yes sir.

Q. Did you observe his conduct towards his employees? A. Yes sir.

Q. What was it? A. Well he employed me to be a forelady for him.

Q. Well, did you observe his conduct towards the girls? A. His conduct didn't suit me very much.

Q. Well, tell us what it was. A. Well, he would come around and put his hands on me when it was all uncalled for.

Q. Did you ever see him put his hands on any of the other girls?

Q. No, I never did.

Q. You say that he put his hands on you; is that all that he did?

A. Well, he asked me one evening - I didn't work but the first day, and he would bring the orders out to me and take hold of me, and that didn't suit me much, about him talking hold of me, and the next evening, he asked me to come to his office, that he wanted to talk business with me, and I went in and his subject was he wanted to know if I was going to stay, he didn't care to take me and train me without I was going to stay, and he wanted to close the door and I asked him not to and he told me that I need not be afraid, there wasn't anybody coming in his office, and he got too familiar with me, and one thing I was I thought he got too close to me and I didn't like that.

Q. Now, you speak of his putting his hands on you, how did he put his hands on you, how did he put his hands on you -- anywhere about your body? A. Yes sir.

Q. What part of your body? A. Well, as well as I remember I didn't let him complete what he started.

Q. Well, where did he put his hands, that is what I want to find out? A. Like that (illustrating) but I resisted him so he didn't overpower me in any way; just put his hands kind of, (illustrating), and he acted like it was a joke, still I was too old for that.

Q. Did he put his hands on your breast at all? A. No, but he tried to, and I guess he would if I hadn't resented it.

Q. On your hips at all? A. No.
 Q. Well, did he make any effort at all to pick up your lower limbs?
 A. Yes sir.
 Q. And your dress? A. Yess, sir, while I was sitting down talking to him.
 Q. How long ago was that? A. It has been two years ago in March.
 Q. What did you say after staying there? A. What did I say?
 Q. Yes, A. Why, I just quit. I didn't go back any more until Saturday, and I went back for my money and I told him it didn't suit me, I thought he had the wrong girl.
 Q. Have you ever had any experience in this work? A. No sir, he had to learn me.
 Q. What department did he make you forelady over? A. On the fourth floor, as well as I remember, but there was a foreman there - I don't remember his name, I didn't remember Mr. Frank's name until his picture came out in the paper, I didn't think about his name any more; it passed my mind.

JIMMY WRENN, Sworn for the Movant. I know R.P. Barrett and worked with him at the National Pencil Factory. It is true that I met Barrett near the corner of Marietta and Forsyth Streets not long after the trial of Leo M. Frank and talked to him about the case and other matters. It is not true that I told Barrett that I was in a position to make a barrel of money if he would go to New Orleans and change his statement in the Frank case. At the time of the conversation Barrett complained that he was out of work and hard up and asked me to induce Burke to get his job back at the factory, and I told him that I would speak to Burke about it but did not think Burke would undertake to do ~~any~~ anything of that kind. At the time of the conversation, I told Barrett that I was ^{thinking of} going to New Orleans and that I would like Barrett to go with me, as I did not like to go by myself, and Barrett stated he would be glad to go as there was nothing to do in Atlanta. I made arrangements to meet Barrett at the Terminal Station within a day or two and Barrett met me there and told me that his wife would not permit him to leave the city. I again conversed with Barrett at a later date about going to New Orleans for the purpose of securing work, and we met at a certain appointed time, but Barrett again stated that it would be impossible for him to leave the city at all, as his father and wife ~~threatened~~ objected. At a later date I met Barrett on the street and he told me that he was engaged in writing a history of the Frank case, but complained that his lack of education hampered him, and I told Barrett that I had a friend named Kelly writing up a history of the case, who would in all probability assist him. I told Burke of this, who rented a room at the Kimball House and I brought Barrett to Burke's room and introduced him as "Mr. Kelly" and I was present during the entire conversation. I heard Barrett tell Burke that

he believed Leo M. Frank innocent, but that he believed the murder had been committed on the second floor of the factory; that he also believed the hair taken from the lathe machine was that of Mary Phagan's, and that he was entitled to the reward which had been offered for the conviction of the murderer of Mary Phagan. Burke was ~~desiring~~ desirous of seeing the notes of Barrett in getting up the book that Barrett intended getting up on the case and promised to let Burke have them the next morning. Burke explained that it would be impossible for him to help Barrett, unless he could see the notes, or unless Barrett would make Burke an affidavit with reference to his information on the subject. At this point Burke produced a paper and starting making an affidavit from Barrett, when Barrett stated that he would not make an affidavit of any kind. Burke told Barrett that to prove to him that he (Burke) was not trying to "trick" him he would be willing to go with Barrett before Hugh Dorsey, or Barrett's attorney with the affidavit, but Barrett refused. I never told Barrett not to tell any conversation that ever took place between me and Barrett or that Barrett should give him a few days to leave the city if he ever should tell. There were no reason for doing so as nothing wrong had taken place between us. I never promised to secure passes to New Orleans for Barrett. I am not in the employ of the Railroad and have no way of securing passes. It is true I loaned Barrett \$1.00 because he said he was hungry and had no car fare and Barrett begged so hard that I let him have it to get rid of him. I heard the conversation between Burke and Barrett with reference to blood spots alleged to have been found by Barrett, but Burke passed lightly over this part of their conversation. Burke did not at any time mention reward for evidence with reference to any evidence of any kind.

C. W. BURKE, Sworn for the Movant. On two occasions I took affidavits from Miss Lillie Pettis, one on the 29th day of October, 1913, hereto attached, marked Exhibit A and one on the 30th day of Oct., hereto attached marked Exhibit B. These affidavits were read over

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to Miss Pettis and she signed the same voluntarily and that not one word was added therein that Miss Pettis did not state to be the truth. The exhibits hereto attached were not entitled in

CONFIDENTIAL

the case, and on April 9, 1914, I, together with Dan S. Lehon and J.O. Knight, retook the affidavits, hereto attached, marked Exhibits C and D. When affidavit Exhibit D was being taken by J.O. Knight, a Notary Public, Miss Lillie Pettis declined to testify that she did not believe her sister was telling the truth about Mr. Frank winking at her, and that statement was stricken out of the affidavit

(The following are the exhibits attached to the above affidavit.)

"Georgia, Fulton. Personally appeared Mrs. Lillie May Pettis, of No. 43 Gizzard Street, in the City of Atlanta, Fulton County, Georgia, who upon oath, deposes and says that she worked at the National Pencil Company's factory in this city for three years, off and on, leaving the services of the factory about three weeks previous to the murder of Mary Phagan.

Deponent says that she knows one Jim Conley, colored, who used to be employed at the factory as a sweeper, also stating that she is acquainted with Mr. Leo M. Frank.

Deponent states that never, during her employment at the Pencil Factory, did she see Mr. Frank act in any way unbecoming to a gentleman, and that, at no time during her employment at the factory, did Mr. Frank ever say anything to her approaching familiarity, or of an insulting nature. Deponent further says that, through the capacity in which she was employed at the pencil factory, she was thrown in contact with Mr. Frank several times every day and that she never saw him laughing and joking with any of the girls and that his demeanor and actions at all times was business-like in every way.

Deponent further says that never, during her employment at the factory, has any girl or woman ever remarked in her presence that Mr. Frank had been familiar with them, or had in any manner insulted them, and she never heard any of the employees at the factory make any complaint regarding any attempts at familiarity on the part of Mr. Frank toward them.

Deponent further states that she and other girls have worked at the factory as late as nine o'clock at night and that Mr. Frank was present with them; and, aside from certain directions that he was obliged to give them concerning their business and their work, he had nothing whatever to say to them, and that he never committed any acts that anyone could take exception to.

Deponent also says that she is a sister-in-law of Nellie Pettis, who, she says, has stated that Mr. Frank on one occasion while she was at the factory, winked at her and asked her the question "how about it". Deponent says that she does not believe her sister in law Nellie Pettis is telling the truth when she makes this statement; that she does not believe Mr. Frank ever winked at Nellie Pettis or made any of the remarks referred to by her.

Deponent also says that on one occasion, before the murder of Mary Phagan, she, in company with one Catherine Christian, another girl who was employed at the factory were entering the building from the street and met the negro sweeper, Jim Conley, standing at the foot of the ~~the~~ stairs near some old boxes, near the elevator and that he accosted them and said: "I understand you girls have quit your position", and they told him that he was mistaken, that they had not quit, and had no intention of doing so at that time. Then Conley said: "I am sure glad to hear that you are not going to leave, as I am going to buy both of you girls a Christmas present, because you are both such pretty girls."

Deponent says that, on another occasion, she was standing near the elevator on the second floor of the factory, and that Conley approached her and said: "Miss Lillie, you are sure a good looking girl" and I sure am sorry that I am not a white man."

Deponent further states that she was always afraid of Jim Conley, and that she made it a point never to place herself in such a position as she would be caught alone with Conley.

Deponent further says that once, before the trial of Leo M. Frank, and three times during the trial, that detective Bass Rosser

and a very large fat man, whose name she does not know, called on her at her home, and that Bass Rosser tried in every way possible to make her state that Mr. Frank had been familiar with her at the factory and that she had seen him acting in a familiar way with other girls at the factory; that the said Bass Rosser coaxed her, plead and even got mad with her because she would not swear to these things for him. Deponent further states each time that he called on her, she always stated that she had always found Mr. Frank to be a perfect gentleman and never knew him to commit any of the acts which Mr. Rosser was trying to make her swear that she had seen and heard.

Deponent makes this affidavit of her own free will and accord without any promises of reward whatsoever.

(Signed) Lillie Pettis

Sworn to and subscribed before me
this 20th day of October, 1913,
C.W. Burke,
Notary Public, Fulton County, Ga."

(Exhibit B is an exact copy of the above affidavit, except that it is entitled in the case, is signed before J.O. Knight and has the following stricken: "Deponent also says that she is a sister-in-law of Nellie Pettis, who she says has stated that Mr. Frank on one occasion while she was at the factory, winked at her and asked her the question "How about it?" Deponent says that she does not believe her sister in law, Nellie Pettis is telling the truth when she makes this statement; that she does not believe Mr. Frank ever winked at Nellie Pettis or made any of the remarks referred to by her.")

Exhibit B.

Georgia, Fulton County:

Personally appeared Mrs. Lillie Mae Pettis of No. 43 Gurrard Street, Atlanta, Fulton County, Georgia, who, upon oath deposes and says that on three occasions while she was employed at the National Pencil factory, in this city, and for various reasons, she sent her sister-in-law Miss Nellie Pettis, to the Pencil factory for her pay, each occasion on which she went her sister-in-law, Miss Pettis, to the factory being Saturday, which was the regular factory pay-day.

Deponent says that on each occasion she sent Miss Pettis to the factory for her pay, she gave Miss Pettis a written order for her salary, addressed to Miss Eula May Flowers, deponent's fore-lady.

Deponent further says that, on each occasion when she sent Miss Nellie to the factory for her pay, deponent's place of residence was then at the home of Miss Nellie Pettis and her mother, which was No. 9 Oliver Street, in this city.

Deponent also says that when Miss Nellie delivered her salary on the first two occasions that deponent had sent her after same, deponent asked Miss Nellie what Miss Flowers had said to her with reference to deponent and her absence from the factory, and that Miss Nellie replied that Miss Flowers had not said anything whatever regarding deponent, but that Miss Flowers simply handed her deponent's money without remarks.

Deponent also says that on the third occasion when Miss Nellie went to the factory for deponent's pay, she accompanied Miss Nellie as far as Forsyth and Hunter Streets and waited there while Miss Nellie went in the factory after deponent's pay; and deponent says that Miss Nellie was not in the factory exceeding five minutes. Deponent says that as soon as Miss Nellie got out of the factory with deponent's pay, she asked her if Miss Flowers had asked her any questions regarding deponent, and Miss Nellie again replied that Miss Flowers did not ask her any questions, but had gone into the office, secured deponent's pay, and handed it to her.

Deponent says that Miss Nellie never said anything to her about meeting, or seeing, Mr. Frank, on any of the occasions she had been sent to the factory, and deponent further says that Miss Nellie was never at the factory but four times, three of these times being described in the above statement. The fourth occasion was more than a year ago, when Miss Nellie accompanied deponent to the factory for the purpose of seeking a position in the factory under Miss Eula Mae Flowers; that Miss Nellie asked Miss Flowers for a position, and that the application for this position took place at about 7:10 a.m., and before Mr. Frank had come to the factory, deponent being familiar with the fact that Mr. Frank did not

reach the factory until about 8 A.M. Deponent says that, after making application to Miss Flowers for a position, Miss Nellie immediately left the factory; and deponent is sure that Miss Nellie did not at any time come in contact with Mr. Frank and is further sure that if she had seen him in the factory, she would not have known him, as deponent had never at any time pointed out Mr. Frank to her, and Miss Nellie had never told her that she knew Mr. Frank.

Deponent also says that Miss Nellie never stated to her that she had ever been insulted at the factory by Mr. Frank, or anyone else, and says, further, that the first time she ever heard Miss Nellie say that Mr. Frank had insulted her was on the occasion of the first visit of Detective Bass Risser at her home at No. 9 Oliver Street, when Mr. Rosser had called upon deponent asking her to swear against Mr. Frank; and says, that during the conversation between deponent and Mr. Rosser, that Miss Nellie was present and interrupted the conversation by stating to Mr. Rosser that she could tell something against Mr. Frank. Deponent says that Mr. Rosser immediately dropped his conversation with her and applied his attention to Miss Nellie. Deponent says that she heard Miss Nellie tell Mr. Rosser that, on one occasion when she had been sent by deponent to the Pencil Factory to get deponent's salary, that Mr. Frank had winked at her and asked her: "How about it?" Deponent says that there was another man with Mr. Rosser, on the occasion of the conversation referred to; that she does not know who this man was, but that he took a statement from Miss Nellie, which was signed by Miss Nellie in deponent's presence. Deponent further says that after detective Bass Rosser and the man with him left their home, she said to Miss Nellie: "It is very peculiar that you never before mentioned about Mr. Frank, or anyone else, had insulted you while at the Pencil Factory." Deponent says that Miss Nellie replied that she had decided to keep the matter to herself and admitted that she never mentioned it before telling it to detective Bass Rosser.

(Signed) Lillie Pettis

Sworn to and subscribed before me
this 0th day of October, 1913,
(Signed) C.W. Burke,
Notary Public, Fulton County, Ga."

(Exhibit C is an exact copy of the above affidavit, except that it is entitled in the case and is signed before J.O. Knight, on April 9, 1914.)

C. W. BURKE, Sworn for the Movant. I have read the affidavit of Carrie Smith, known as No. 2 9410, dated April 20, 1914, and sworn to before W.F. Young, Notary Public. Never at any time since I was engaged upon the case of Leo M. Frank have I promised any person or persons money, or a fee of any kind, for giving evidence or making affidavits of any nature whatever, or that at any time I have used assumed names. I never at any time used the assumed name of Maddox and while I have taken affidavits from Carrie Smith, I did so under my own name, and most positively did not promise her anything or offer her any reward for making the affidavits referred to.

J. W. WREN, Sworn for the Movant. I have never been in the employ of Leo M. Frank or Frank's counsel, and never until today have I ever been in the private office of L.Z. Rosser, or spoken to Mr. Rosser about the Frank case until this day, nor did either Mr. Rosser or Mr. Brandon know me by sight until this day. I have

done certain work for C.W.Burke, and when he employed me to work in this case, he instructed me that nothing was to be done in this case, except to seek the truth, and I have never done anything except at Burke's direction, and I have never done anything except what was just and fair. I have never offered to pay anybody anything to testify in this case, nor ever offered to reward them in any way.

The hearing of said extraordinary motion for new trial came to an end on the 6th day of May, 1914, which was during the May Term of said Superior Court, and on said 6th day of May, 1914, the court rendered a judgment denying said motion for new trial and overruling the same. To this judgment and decision of the Court, movant, Leo M. Frank, then and there excepted, and here and now excepts, and assigns the same as error, and specifies as the error that the Court erred in not granting a new trial upon each and every ground contained in said extraordinary motion for new trial and in each and all of the amendments thereto, and hereby refers specifically to each ground in said extraordinary motion and its amendments, and says that each of said grounds demanded a new trial.

The above and foregoing contains a full and complete recital of all of the evidence adduced on said hearing and necessary to a clear understanding of the errors complained of.

As material to a clear understanding of the errors complained of, defendant, Leo M. Frank, specifies the following portions of the record:

1. The indictment.

2. The plea of not guilty.

3. The brief of evidence, *original and amended motion for new trial* approved by the Court on the 31st day of October, 1913, thereby made a part of the record of the case of the State vs. Leo M. Frank, and which ~~was~~ ^{was} certified and sent to the Supreme Court as part of the record in the case of the State vs. Leo M. Frank, decided by the Supreme Court on February 17, 1914.

4. The extraordinary motion for new trial, together with the order and the entries thereon, filed on the 16th day of April, 1914.

5. The 1st amendment to the extraordinary motion for new trial, together with the order and entries thereon, filed on the 4th day of May, 1914.

6. The 3rd amendment to the extraordinary motion for new trial, together with the order and entries thereon, filed on the 4th day of May, 1914.

7. The 4th amendment to the extraordinary motion for new trial, together with the order and entries thereon, filed on the 28th day of April, 1914.

8. The 5th amendment to the extraordinary motion for new trial, together with the order and entries thereon, filed on the 8th day of May, 1914.

9. The 6th amendment to the extraordinary motion for new trial, together with the order and entries thereon, filed on the 9th day of May, 1914.

10. *The order of court striking the second amendment to extraordinary motion for new trial, together with the order and entries thereon, filed on the 9th day of May, 1914.*
~~10. The 7th amendment to the extraordinary motion for new trial, together with the order and entries thereon, filed on the 9th day of May, 1914.~~

11. The response of the State to the extraordinary motion for new trial, filed April 23, 1914.

12. The response of the State to amendments 1, 2, 3, and 4, filed May 1, 1914.

13. The response of the State to the 5th amendment, filed May 8th, 1914.

14. The judgment of the Court overruling said extraordinary motion for new trial, dated the 6th day of May, 1914.

And now within the time provided by law and within twenty days of the entry of the judgment overruling said motion for new trial, comes the defendant and tend^{er}s this his Bill of Exceptions, and prays that the same may be certified as provided by law in order that the errors complained of may be considered

and corrected by the Supreme Court of Georgia.

Rosser & Peraudon
Herbert R. Arnold
Herbert J. Haas
Leonard Haas
Attorneys for Leo M. Frank.

Post Office Address:
Atlanta, Georgia

I do certify that the foregoing bill of exceptions is true, and contains and specifies all of the evidence, and contains and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the Supreme Court of Georgia at such time and in such manner as the law regulating bills of exceptions in cases of this character requires, that the errors complained of may be considered and corrected.

This 26th day of May, 1914.

Bing H. Hill
J. C. A. C.

Due and legal service of the within bill of exceptions is hereby acknowledged. This 30th day of May, 1914.

W. A. Stephens
Hugh M. Barley
Solicitor General Atlanta Circuit

File
No. ³² Criminal Docket,
March Term, 19*14*
SUPREME COURT OF GEORGIA.

Frank

vs

THE STATE.

BILL OF EXCEPTIONS

Filed in office. JUN 30 1914

W. E. Dalley, D.

C. S. C. Ga.

Case No. _____ Atlanta Circuit,
Superior Court.
Term, 191__

Lee M. Frank.

VERSUS

The State of Ga.

Bill of Exceptions

Filed in office *June 9th* 191__
Hubert G. Gentry Clerk.

Filed in office _____ 191__
Clerk.

GEORGIA, Fulton County.

I Hereby Certify, That the foregoing Bill of Exceptions, hereunto attached, is the true original Bill of Exceptions in the case stated, to-wit:

Geo. M. Frank

Plaintiff in Error.

vs.

The State of Georgia

Defendant in Error.

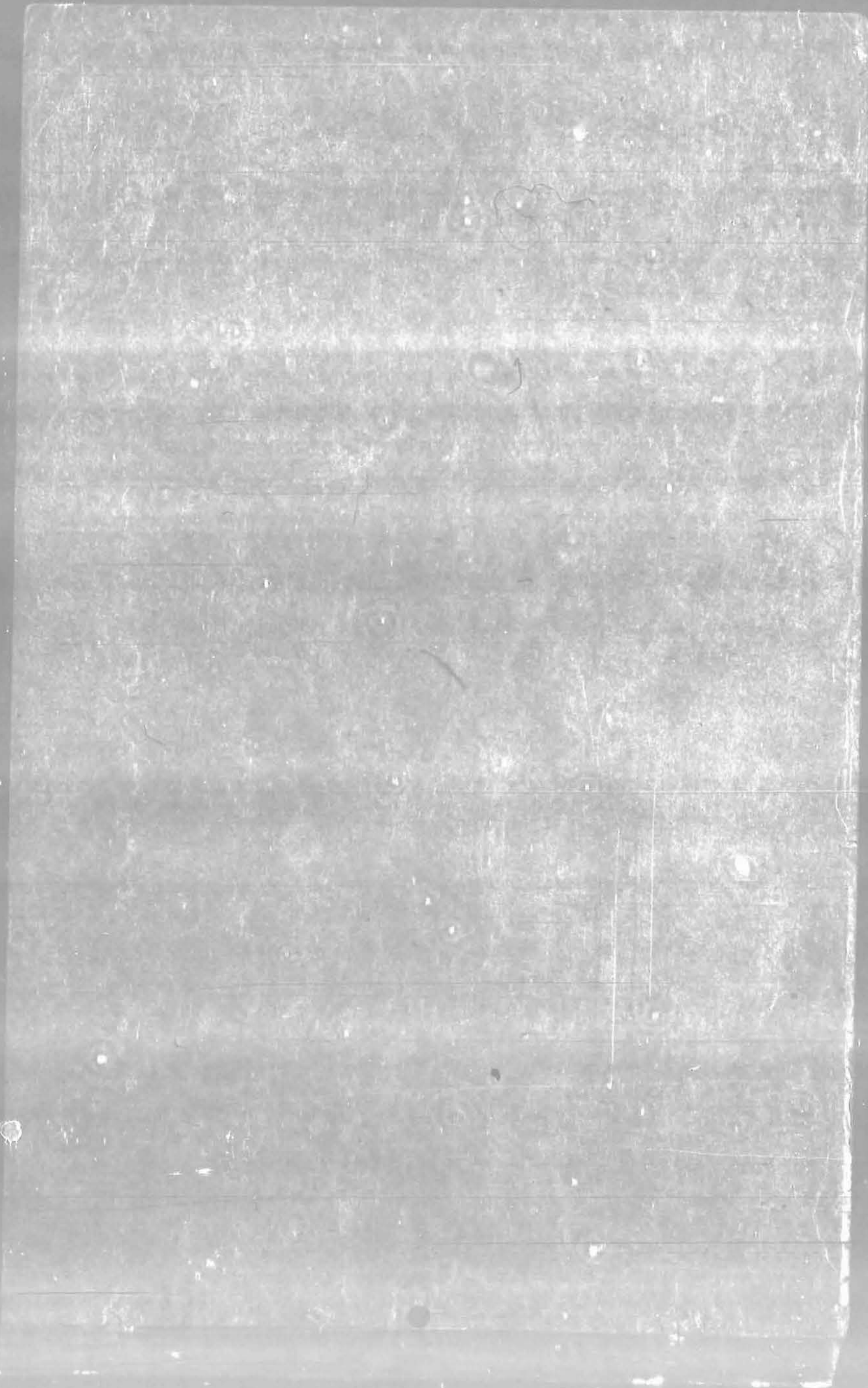
and that a copy hereof has been made and filed in this office.

Witness my signature and the seal of Court affixed
this the *30* day of *June* 191*4*

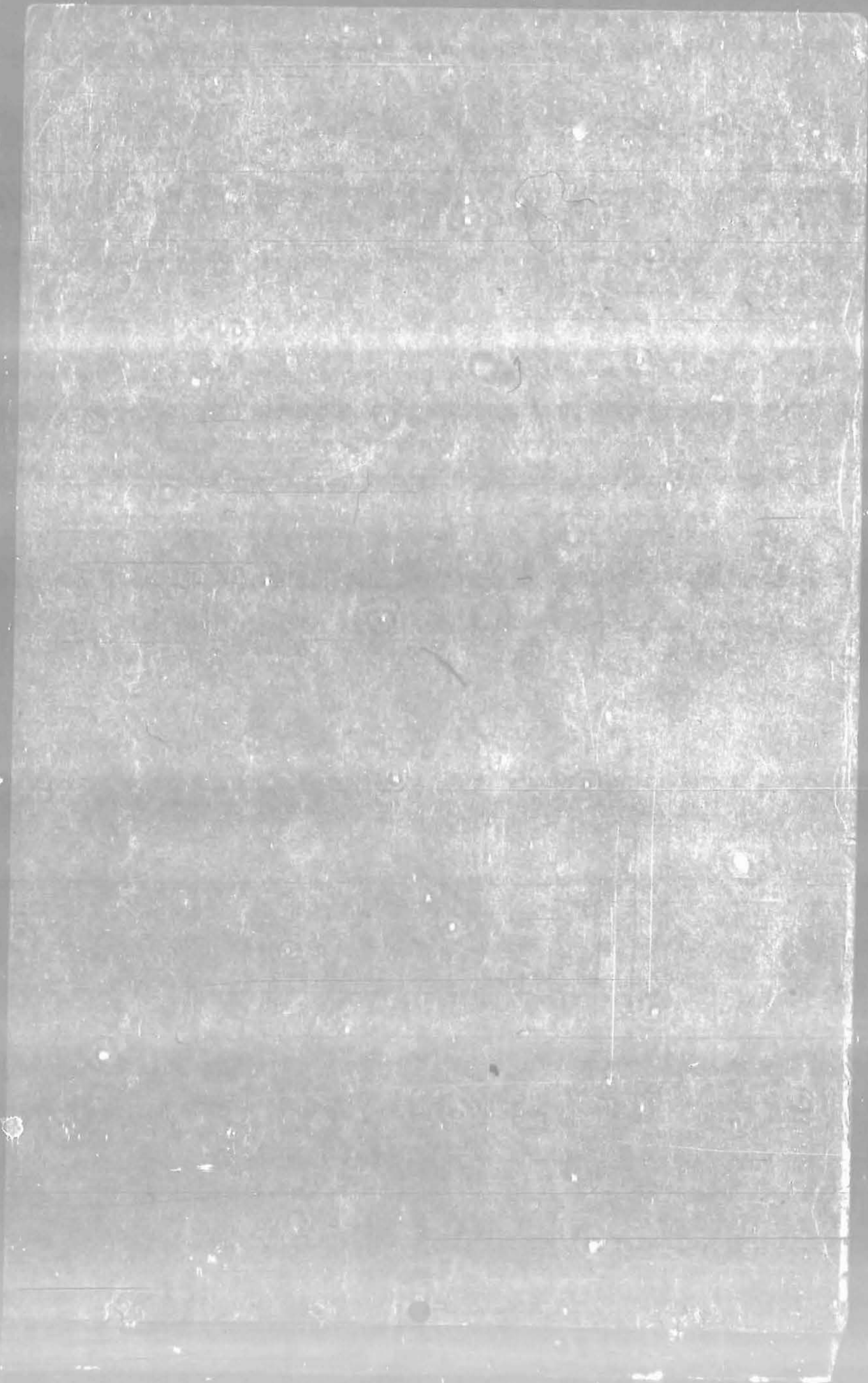
Anna B. Boyles

Clerk Superior Court Fulton County, Georgia,
Ex-Officio Clerk City Court of Atlanta.

001793



001793



First Division

(A-1)

3 CRIMINAL
October Term, 1914.

STATE OF GEORGIA,
COUNTY OF FULTON.

Be it remembered that at the May Term 1914 of the Superior Court of said County, there came on to be heard before Hon. B. H. Hill, Judge of said Court presiding, in the case of the State of Georgia vs. Leo M. Frank, the motion in writing, as amended, of the said Frank, upon the grounds therein set forth, to set aside the verdict of guilty of murder rendered against him in said cause. To the said motion the State of Georgia, by its Solicitor General, interposed its demurrer in writing, upon grounds both general and special.

The said hearing was had upon said demurrer, and at the conclusion thereof, during said term and on June 6, 1914, judgment was rendered by the Court sustaining said demurrer upon each and every ground thereof and dismissing the said motion of said Frank. To the said judgment the said Leo M. Frank then and there excepted and now excepts and assigns the same as error. And for more specific assignment of error he says:

That said judgment was erroneous in sustaining the first ground of the general demurrer because the ground of demurrer therein set up presents no good and sufficient reason in law why the same should be sustained and the motion dismissed; that said judgment was erroneous in sustaining the second ground of the general demurrer, because the ground of demurrer therein set up presented no good and sufficient reason in law why the same should be sustained and the motion be dismissed; that said judgment was erroneous in sustaining the third ground of the general demurrer, because the ground of demurrer therein set up presented no good and sufficient reason in law why the same should be sustained and the motion be dismissed; that said judgment was erroneous in sustaining the fourth ground of the general demurrer, because the ground of demurrer therein set up presents no good and sufficient reason in law why the same should be sustained and the motion be dismissed; that the said judgment was erroneous in sustaining the fifth ground of the general demurrer, because the ground of demurrer therein

set up presented no good and sufficient reason in law why the same should be sustained and the motion be dismissed; that said judgment was erroneous in sustaining the sixth ground of the general demurrer, because the ground of demurrer therein set up presented no good and sufficient reason in law why the same should be sustained and the motion be dismissed; that said judgment was erroneous in sustaining the seventh ground of the general demurrer, because the ground of demurrer therein set up presented no good and sufficient reason in law why the same should be sustained and the motion be dismissed; and that the said judgment was erroneous in sustaining the eighth ground of the general demurrer, because the ground of demurrer therein set up presented no good and sufficient reason in law why the same should be sustained and the motion be dismissed.

And for further assignment of error, the said Leo M. Frank, now plaintiff in error, says that the said judgment was erroneous in sustaining any and in sustaining all of the said grounds of general demurrer because none of said grounds presented, nor did all of said grounds present, any good and sufficient reason in law why his motion should be dismissed.

And for further assignment of error he says: The said judgment, in sustaining the first ground of the special demurrer, was erroneous, because said ground of demurrer presented no good and sufficient reason in law for striking that portion of the motion of plaintiff in error in said first ground of special demurrer pointed out, the said portion of the motion, as movant contends, being material and being relevant to the right of movant as set up and contended for in his said motion, and in paragraph 6th thereof, and the question set up in said 6th paragraph not having been adjudicated in the decision of the Supreme Court of Georgia as contended in said ground of special demurrer.

And for further assignment of error he says: The said judgment was erroneous in sustaining the second ground of

Tye, Peoples & Jordan

the special demurrer, because said ground of demurrer presented no good and sufficient reason in law for striking that portion of the motion of plaintiff in error in said second ground of the special demurrer pointed out, the said portion of the motion, ~~amovant~~ contends, being material and relevant to the assertion of the rights of movant as set forth in paragraph 7 of his said motion.

And plaintiff in error specifies as all the record material to a clear understanding of the errors complained of, the following:

1. The motion of plaintiff in error, Leo M. Frank, to set aside the verdict of guilty of murder rendered against him, together with the order of the Court thereon of April 16, 1914, the entry of filing thereon, and the acknowledgment of service made on behalf of the State of Georgia by Hon. Hugh M. Dorsey, its Solicitor General.
2. The amendment to said motion, allowed by the Court and filed June 6, 1914.
3. The demurrer, both general and special, to the said motion.
4. The judgment of the Court sustaining the demurrer and dismissing the motion.

And now, within twenty days from the date of the rendition of said judgment, and at the term of the Court at which the same was rendered, comes Leo M. Frank, as plaintiff in error, and presents this his bill of exceptions and prays that the same may be signed and certified, that the errors alleged to have been committed may be considered and corrected.

Tye, Peoples & Jordan
W. H. Tye
W. H. Peoples
W. H. Jordan
W. H. Alexander
Attorneys at Law for
Plaintiff in Error. - Residing at
Atlanta Ga.

I do certify that the foregoing bill of exceptions is true and specifies all of the record material to a clear

Tye, Peoples & Jordan

understanding of the errors complained of; and the Clerk of the Superior Court of Fulton County, Georgia, is hereby ordered to make out a complete copy of such parts of the record as are in this bill of exceptions specified and certify the same as such, and cause the same to be transmitted to the Supreme Court of Georgia, now in session, that the errors alleged to have been committed may be considered and corrected.

This June 25th 1914.

Benj. H. Hill

Judge Superior Court,
Atlanta Circuit.

[The main body of the document contains several paragraphs of text that are extremely faint and illegible due to the quality of the scan. The text appears to be organized into sections, possibly separated by horizontal lines, but the specific words and sentences cannot be discerned.]

No. 3
Superior Court of Georgia
STATE OF GEORGIA
1914

vs.
LEO H. FLYNN
(Verdict of Guilty of
Murder.)

Geo M Frank

Plaintiff in Error

The State of Georgia

Defendant in Error

Original file of execution
to prison sustained by
the state to be held in
prison in office

June 6th 1914

John W. Flynn
Attorney

TYE, PEEPLES & JORDAN

ATTORNEYS-AT-LAW

Atlanta, Ga.
John W. Flynn
Attorney

The legal copies on this bill of execution
are kept in the copy room. This file
should be carefully
checked for legal correctness
as per dept in error.

GEORGIA, Fulton County.

I Hereby Certify, That the foregoing Bill of Exceptions, hereunto attached, is the true original Bill of Exceptions in the case stated, to-wit:

Les M. Frank

Plaintiff in Error.

vs.

State of Georgia

Defendant in Error.

and that a copy hereof has been made and filed in this office.

Witness my signature and the seal of Court affixed

this the *15* day of *July* 191*4*.

Amos D. Boyles

Clerk Superior Court Fulton County, Georgia,
Ex-Officio Clerk City Court of Atlanta.

Case No. _____
Atlanta Circuit,
Shubert *Case*
Term, 191_

See Mr. Starnes

VERSUS

State of Georgia

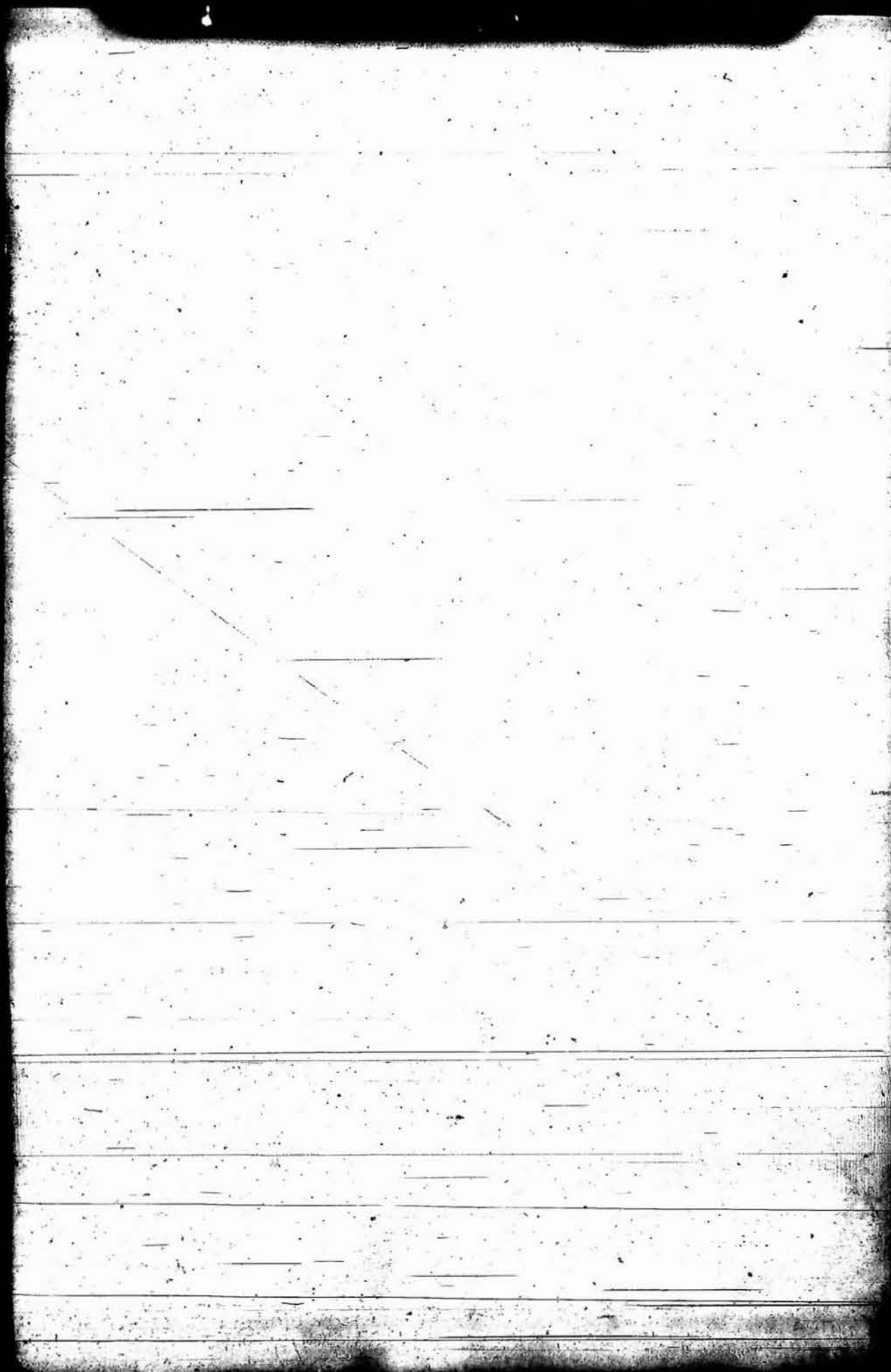
Bill of Exceptions

Filed in office _____ 191_

W. H. Starnes
Clerk.

Filed in office _____ 191_

Clerk.



File
No. 3 Criminal Docket,
Cetser Term, 1914
SUPREME COURT OF GEORGIA.

Frank

THE STATE.

BILL OF EXCEPTIONS

Filed in office JUL 15 1914

W. B. Valley, Jr.

GEORGIA

LEO W. FRANK,
Plaintiff in error.

Vs.

THE STATE OF GEORGIA,
Defendant in error.

(I N D E X .)

Motion to set aside Verdict.....	1
Amended Motion.....	10
Demurrer.....	11
Order on Demurrer.....	16

(M O T I O N T O S E T A S I D E V E R D I C T .)

State of Georgia, (). No. 9410.
 Vs. (). Fulton Superior Court.
Leo W. Frank. ().

:-----:

GEORGIA, FULTON COUNTY.

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA.

CONVICTION OF MURDER.

MOTION TO SET ASIDE VERDICT.

Now comes Leo W. Frank, the defendant in the above stated cause, against whom in said cause a verdict of guilty of murder was received by the Court on August 25th, 1913, and moves the Court to set aside said verdict for the following reasons:

1.

Because at the time that said verdict was received, and the jury trying the cause was discharged, this defendant was in the custody of the law and incarcerated in the common jail of said County. He was not present when said verdict was received, and the said jury was discharged, as he had the right in law to be, and as the law required that he should be. He did not waive said right, nor did he authorize anyone to waive it for him, nor consent that he should not be present. He did not even know that said verdict had been rendered and said jury discharged, until after the reception of the verdict and discharge of the jury, and until after sentence of death had been pronounced upon him.

3.

Because while in point of fact the statements above made are true, yet the presence of this defendant at the reception of said verdict was a legal right of defendant and a requirement of law which could not be waived even by this defendant himself, the charge upon which this defendant was tried being a charge of murder, subjecting him to possible deprivation of his life, and such

waiver would be not only a renunciation of a right which the law established in his favor but would be a renunciation affecting the public interest.

3.

Because on the day said verdict was rendered, and shortly before Hon. L. S. Roan, the Judge who presided upon the trial of said cause, began his charge to the jury, the said Judge in the jury room of the court house wherein the trial was proceeding, privately conversed with L. Z. Rosser and Reuben R. Arnold, two of the counsel of this defendant, and in said conversation referred to the probable danger of violence that this defendant would be in if he were present when the verdict was rendered in the cause, if said verdict should be one of acquittal, and after said Judge thus expressed himself, he, the said Judge, requested said counsel to agree that this defendant need not be present at the time the verdict was rendered and the said jury polled. Under these circumstances the said counsel did agree with the said Judge that this defendant should not be present at the rendition of said verdict.) In the same conversation the said Judge expressed the opinion, also, to said counsel that even counsel of this defendant might be in danger of violence if they should be present at the reception of said verdict. Under these circumstances defendant's counsel, said Rosser and said Arnold, did agree with the said Judge that this defendant should not be present at the rendition of the verdict. This defendant was not present at said conversation and knew nothing about the same or of any agreement made, as above stated, until after the verdict was received and the jury discharged, and until after sentence of death was pronounced upon him.

Pursuant to the conversation above stated, neither the said Rosser, nor the said Arnold, nor Herbert J. Haas, nor Morris Brandon who were ^{the} sole counsel of this defendant in said cause, were present when the said verdict was received and said jury discharged; nor was this defendant present when said verdict was rendered and the said jury discharged. Defendant says: (1) He did not give to said counsel, the said Rosser and the said Arnold nor to anyone else, any authority to waive or renounce the right.

of this defendant to be present at the reception of said verdict, or to agree that this defendant should not be present thereat; and the relation of attorney and client did not give them such authority, though said counsel acted in the most perfect good faith and in the interest of the personal safety of this defendant. Neither the said conversation, with Judge Roan, nor the purport thereof, was communicated to said Haas, nor did said Haas know thereof until after sentence was pronounced on defendant. (2). Defendant did not give to said Rosser, nor to said Arnold, nor to said Haas or Brandon any authority themselves to be absent when said verdict was received, nor did he agree that they or either of them might be so absent. (3). The said agreement, made by the said Rosser and the said Arnold, even if otherwise it could be of any binding force and effect, upon this defendant, was of no legal force and effect, so far as the presence of this defendant at the ^{reception} ~~receipt~~ of said verdict was concerned, because the same was made under and because of the said statement, made as above stated to the said Rosser and the said Arnold by the Judge who was presiding upon and at said trial, that there was probable danger of violence to this defendant should he be present when said verdict was rendered, should the verdict be one of acquittal and because they, the said Rosser and the said Arnold were induced to make said agreement because of said statement so made to them, believing the same to be true and believing that for this defendant to be so present, if the verdict should be one of acquittal, might subject this defendant to serious bodily harm and even to the loss of his life.

4.

Defendant says upon and because of each of the grounds above stated and, also, upon and because of all of them, the said verdict was and is of no legal force and effect and the same is void.

(1) That the reception of said verdict, in the involuntary absence of this defendant, while he was so, as aforesaid, in the custody of the law and incarcerated in jail, was contrary to law and was in violation of the legal rights of this defendant. (2) Defendant says that the reception of said verdict in the involuntary absence

of this defendant while he was so confined in jail, was in violation of and contrary to the provisions of Art. 1, Sect. 1, Par. 3 of the Constitution of the State of Georgia, providing that "no person shall be deprived of life, liberty or property, except by due process of law", the said reception of said verdict during the involuntary absence of this defendant and while he was confined in jail depriving the proceedings against him of the character of a trial to which he was entitled under the law and depriving him of the hearing and the opportunity to be heard, in his own defence to which he was entitled under the law and to which he was entitled under the said provision of the Constitution of the State of Georgia. (3). Defendant says that the said reception of said verdict in the involuntary absence of this defendant

while he was so confined in jail, was in violation of and contrary to the provisions of Art. 6. Sec. 18, Par. 1 of the Constitution of the State of Georgia, that "The right of trial by jury, except where it is otherwise provided in the Constitution, shall remain inviolate", because the right of trial by jury under the laws of the State of Georgia extended to and covered with its protection the right of this defendant to be present in person at the reception of the verdict against him in said cause, and because the reception of said verdict during the involuntary absence of this defendant and while he was so confined in jail was in violation of the right of trial by jury to which this defendant was entitled, said right including the right of this defendant to be present at the reception of the said verdict and to be then and there heard in his own defense.

(4) Defendant says that the said reception of said verdict in the involuntary absence of this defendant, while he was so confined in jail, tended to deprive him of his life and liberty without due process of law, and that the same denied to him the equal protection of the laws, contrary to and in violation of the provisions of the (14th) Fourteenth Amendment to the Constitution of the United States, to-wit: "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws", the said reception of said verdict during the

involuntary absence of this defendant and while he was confined in jail depriving the proceedings against him of the character of a trial to which he was entitled under the law and depriving him of the hearing and the opportunity to be heard in his own defense to which he was entitled under the law and to which ^{he} was entitled under the said provision of the Constitution of the United States; and this defendant claims the protection of said provision.

5.

Defendant says that the said reception of said verdict in the involuntary absence of this defendant and while he was so incarcerated in jail, and in the said absence of this defendant's counsel under the circumstances as above stated, ~~was contrary to~~ and in violation of the provisions of Art. 1, Sec. 1, Par. 5 of the Constitution of the State of Georgia, to-wit: "Every person charged with an offense against the laws of this State shall have the privilege and benefit of counsel," because this defendant ~~under and because of the said circumstances as above set forth~~ was deprived of the presence of his counsel and of the benefit of counsel at the reception of said verdict, to which he was in law and under said constitutional provision entitled; and for and because of the same said conditions and circumstances the reception of said verdict was in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States: "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws" in that this defendant was under the said conditions and circumstances deprived of the right to the benefit of counsel and of the presence of his counsel at the reception of said verdict, and defendant claims the protection of the said amendment.

6.

Because the said Judge Hon. L. S. Roan, upon considering the motion for a new trial made by this defendant, after the reception of said verdict as above stated, rendered his judgment denying said motion and in rendering said judgment stated that the jury had found the defendant guilty; that he, the said Judge

had thought about this cause more than any other he had ever tried; that he was not certain of the defendant's guilt; that with all the thought he had put on this case, he was not thoroughly convinced that Frank was guilty or innocent, but that he did not have to be convinced; that the jury was convinced; that there was no room to doubt that; that he felt it to be his duty to order that the motion for a new trial be overruled. This defendant says that under the provisions of the Fourteenth Amendment to the Constitution of the United States, no State could deprive this defendant of his life or liberty without due process of law, nor deny him the equal protection of the laws, and that he has not been afforded due process of law, and that he has been denied the equal protection of the laws, in that the said Judge, in so as aforesaid denying to him a new trial in said cause, did not, as shown by his said statement, give to this defendant the judicial determination of said motion to which defendant was entitled by law; that said Judge being constituted by law as one of the triors did not afford to this defendant the protection which the law guarantees, the law being that defendant is entitled to the benefit of every reasonable doubt, the presumption of innocence being in defendant's favor, and the trial judge, though entertaining the doubt which he felt as to this defendant's guilt, and nevertheless denying to him a new trial, by said action denied to this defendant the fair and lawful trial he is entitled to, and thereby this defendant has been denied the due process of law.

7.

Because that fair and impartial trial was not accorded defendant which is guaranteed to him by the Constitution of the United States, as contained in the Fourteenth Amendment to said Constitution, to-wit: "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." In support of this ground movant alleges that the court room wherein this trial was had had a number of windows on the Pryor Street side looking out on a public street of Atlanta, and furnishing easy access to any noises that might occur upon the street; that there is an open alley way running from Pryor Street on the side of the court house, and there

are windows looking out from the court room into this alley, and that crowds collected therein, and any noises in this alley could be heard in the court room; that these crowds were boisterous, and that on the last day of the trial after the case had been submitted to the jury, a large and boisterous crowd of several hundred people were standing in the street in front of the court house, and as the Solicitor General came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the street into a building wherein his office was located; that this crowd did not wholly disperse during the interval between the giving of the case to the jury and the time when the jury reached its verdict, but during the whole of such time a large crowd was gathered at the junction of Pryor and Hunter streets; that several times during the trial the crowd in the court room, and outside of the court room, which was audible both to the court and jury, would applaud when the State scored a point; a large crowd of people standing on the outside cheering, shouting and hurraing, and the crowd within the courtroom signifying their feelings by applause and other demonstrations, and on the trial, and in the presence of the jury, the trial judge in open court conferred with the Chief of Police of Atlanta, and the Colonel of the Fifth Georgia Regiment stationed in Atlanta, which had the natural effect of intimidating the jury, and so influencing them as to make impossible a fair and impartial consideration of defendant's case; indeed, such demonstrations finally actuated the Court in making the request of defendant's counsel, Messrs Rosser and Arnold, as detailed in paragraph three of this motion, to have defendant, and the counsel themselves to be absent at the time the verdict was received in open court, because the Judge apprehended violence to defendant and his counsel; and the apprehension of such violence naturally saturated the minds of the jury so as to deprive this defendant of a fair and impartial consideration of his case, which the Constitution of the United States in the Fourteenth Amendment hereinbefore referred to, entitled him to.

On Saturday, August 23rd, 1913, previous to the rendition of the verdict on August 25th, the entire public press of Atlanta appealed to the Trial Court to adjourn court from Saturday to

Monday, owing to the great public excitement, and the Court adjourned from Saturday, 12:00 o'clock M., to Monday morning, because he felt it unwise to continue the case that day, owing to the great public excitement, and on Monday morning the public excitement had not subsided, and was as intense as it was on Saturday previous. And when it was announced that the jury had reached a verdict, the trial judge went to the court room and found it crowded with spectators, and fearing violence in the court room, the Trial Judge cleared it of spectators, and the jury was brought in for the purpose of delivering their verdict. When the verdict of guilty was announced, a signal was given to the crowd on the outside to that effect. The large crowd of people standing on the outside cheered and shouted as the jury was beginning to be polled, and before more than one juror had been polled the noise was so loud and confusion so great that the further polling of the jury had to be stopped so as to restore order, and so great was the noise and cheering and confusion from without that it was difficult for the court to hear the responses of the jurors as they were being polled, though the court was only ten feet distant from the jury, All of this occurred during the involuntary absence of this defendant, he being at the time in the custody of the law and incarcerated in Fulton County jail, his absence from the court room having been requested by the Court on account of fear of violence to said defendant as herebefore recited.

Wherefore the premises considered, the defendant prays that the said verdict be set aside and go for naught. Defendant prays that a rule be granted calling upon the State of Georgia, by its Solicitor General, to show cause at a time to be fixed by the Court, why the prayers of this petition should not be granted, and that in the meantime and until the further order of this Court the execution of the sentence of death which has been pronounced against this defendant be stayed.

Tye, Peoples & Jordan,
Henry A. Alexander,
Leonard Haas,
Herbert J. Haas.
Counsel for Leo W. Frank.

STATE OF GEORGIA,

COUNTY OF FULTON.

In person appeared before me Leo W. Frank, who being duly sworn says; He has read the motion above set forth and is familiar with the contents thereof. Deponent says that each and all of the statements thereof as to anything which was done or said by this deponent and as to anything within the knowledge of this deponent are true. Deponent says that all the other statements made in said motion he is informed and believes are true.

Leo W. Frank.

Sworn to and subscribed before me,
this 15th day of April, 1914.

Montefiara Selig,

N. P. Fulton County, Ga.

The above motion being presented and read, it is ordered that the same be filed and a copy thereof be served upon Hugh W. Dorsey, Esq., as Solicitor General of the Atlanta Circuit, and, that the State of Georgia, by its said Solicitor General, show cause before me on the 23rd day of April 1914, at 10 o'clock A. M. or as soon thereafter as the hearing can be had, why the prayers of said motion should not be granted. In the meantime and until the further order of the Court, the execution of the sentence of death which has been passed upon the defendant be and it is hereby stayed.

This April 16, 1914.

Benj. H. Hill,

Judge Fulton Superior Court.

Filed in office this the 16th day of April 1914 At 10:40 A. M.

John H. James
Deputy Clerk
Service acknowledged. April 18th, 1914.

E. A. Stephens,

Hugh W. Dorsey,

Sol. Gen'l.

(A M E N D E D M O T I O N .)

GEORGIA, FULTON COUNTY.

Now comes Leo W. Frank, and, with leave of the Court, amends his above stated motion as follows: By inserting between the word "and" and the words "until after sentence of death," in the last sentence of the paragraph numbered one of said motion, the words "did not know of any waiver of his presence made by his Counsel", so that said sentence as amended will read:

"He did not even know that said verdict had been rendered and said jury discharged until after the reception of the verdict and discharge of the jury, and did not know of any waiver of his presence made by his counsel until after sentence of death had been pronounced upon him."

Tye, Peeples & Jordan,

H. A. Alexander,

Leonard Haas,

Herbert J. Haas.

Attys. for Leo W. Frank.

The above amendment allowed. This June 6, 1914.

B. H. Hill,

Judge Superior Court, Atlanta Circuit.

Service above amendment acknowledged. Copy received.

This June 6, 1914.

Hugh W. Dorsey,

Solicitor General, Atlanta Circuit.

Filed in office this the 6th day of June, 1914.

John H. Jones, D. Clk.

(D E M U R R E R .)

GEORGIA, FULTON COUNTY.

The State of Georgia responding to the motion to set aside verdict in the above stated case says by way of demurrer:
GENERAL DEMURRER.

1. Said motion should be dismissed because a motion to set aside a verdict or judgment of the Court should be under the law predicated upon some defect appearing on the face of the pleadings or record, and the motion filed is not one predicated upon any defect appearing on the face of the pleadings or the record.

2. Said motion should be dismissed because it affirmatively appears from paragraph 6 of the motion to set aside the verdict, that the Defendant Leo W. Frank made a motion for a new trial, which said motion was denied by the Court, and as a matter of law if said verdict was rendered at a time when this defendant was not present in Court, such irregularity should have been included among the grounds of the motion for a new trial, and as a matter of law is conclusively presumed to have been incorporated and embodied in said motion for a new trial, which said motion as aforesaid was heard and denied, as is shown by this petition.

3. Said motion should be dismissed because same shows a course of conduct on the part of the Defendant Leo W. Frank which amounts to an estoppel.

4. Said motion should be dismissed because this petition and the record of the decision of the case of Leo W. Frank against the State of Georgia rendered by the Supreme Court of Georgia, affirmatively shows a course of conduct that amounts to and constitutes an estoppel.

5. Said motion should be denied because the same affirmatively discloses that counsel ^{for} ~~he~~ said Leo W. Frank agreed with the Court that said Defendant should not be present at the rendition of the verdict. This agreement on the part of counsel was and

is binding on the said Leo M. Frank, and effectively constitutes a waiver.

6. Said motion should be dismissed because this petition in conjunction with the decision of the Supreme Court of Georgia in the case of Leo M. Frank against the State of Georgia, affirmatively shows that said Frank after a knowledge of this waiver on the part of his counsel acquiesced in the same and took steps affirmatively ^aindicting a waiver of such conduct on the part of his counsel.

7. Said motion should be dismissed because it affirmatively appears from the same that the jury rendering the verdict in question were polled, and the presence of the defendant is necessary for himself mainly in order to exercise his right to poll the jury.

The presence of said Defendant Frank in the Court room could not have secured or obtained for him any right whatsoever beyond the mere matter of polling the jury, which this petition affirmatively discloses on its face was done.

8. Said motion should be dismissed because this petition and the decision of the Supreme Court of Georgia in the case of Frank against the State affirmatively discloses that the verdict of guilty was received in open Court and a poll of the jury demanded on behalf of this Defendant, and that said poll of said jury was in conformity with every requirement of law.

Wherefore, by reason of the above and foregoing general demurrer the State insists that this motion to set aside the verdict should be dismissed.

SPECIAL DEMURRER.

Further, the State demurs specially to the following parts of the petition as aforesaid, and moves the Court to strike the same because they are wholly immaterial and irrelevant to any right which the Defendant Leo W. Frank might have even if he was denied any right, and has not been estopped or did not waive the same.

Said parts demurred to specially are as follows:

1. In paragraph 6 of said petition the following language, viz: "Because, Hon. L. S. Roan, stated that the jury had found the defendant guilty; that he, the said Judge, had thought about this cause more than any other he had ever tried; that he was not certain of the Defendant's guilt; that with all the thought he had put on this case, he was not thoroughly convinced that Frank was guilty or innocent, but that he did not have to be convinced; that the jury was convinced; that there was no room to doubt that"

This Defendant says that under the provisions

Amendment to the Constitution of the United States, no State could deprive this Defendant of his life or liberty without due process of law, nor deny him the equal protection of the law, and that he has not been afforded due process of law, and that he has been denied the equal protection of the laws, in that the said Judge, in so, as aforesaid, denying to him a new trial in said cause, did not, as shown by said statement, give to this Defendant the judicial determination of said motion to which the Defendant was entitled by law; that said Judge being constituted by law as one of the triors did not afford to this Defendant the protection which the law guarantees, the law being that Defendant is entitled to the benefit of every reasonable doubt, the presumption of innocence being in the Defendant's favor, and the Trial Judge, though entertaining the doubt which he felt as to this Defendant's guilt, and nevertheless denying to him a new trial, by said action denied to this Defendant the fair and lawful trial he is entitled to, and there by this defendant has

been denied the due process of law."

The State insists that in no event could this paragraph be pertinent or material, this question having been adjudicated in the decision of the Supreme Court of the State of Georgia in head note 19 in the case of Leo W. Frank against the State of Georgia, adversely to the said Frank's contention as aforesaid, said adjudication being now the law of the case and not susceptible of being again reviewed and called in question here or elsewhere.

3. The following portions of paragraph 7 should be stricken because the same are wholly immaterial and unnecessary to any legal rights that the said Defendant Leo W. Frank may have.

"In support of this ground, movant alleged that the Court Room wherein this trial was had, had a number of windows on the Pryor Street side looking out on a public street of Atlanta, and furnishing easy access to any noises that might occur upon the street; that there is an open alley-way running from Pryor Street on the side of the Court House, and there are windows looking out from the Court Room into this alley, and that crowds collected therein, and any noises in this alley could be heard in the Court Room; that these crowds were boisterous, and that on the last day of the trial, after the case had been submitted to the jury, a large and boisterous crowd of several hundred people were standing in the street in front of the Court House, and as the Solicitor General came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the street into a building wherein his office was located; that this crowd did not wholly disperse during the interval between the giving of the case to the jury and the time when the jury reached its verdict, but during the whole of such time a large crowd was gathering at the junction of Pryor and Hunter streets; that several times during the trial, the crowd in the court room and outside of the court room, which was audible both to the Court and the jury, would applaud when the State scored a point, a large crowd of people standing on the outside cheering, shouting and hurrahing, and the crowd

within the court room signifying their feelings by appluse^a and other demonstrations; and on the trial, and in the presence of the jury, the trial Judge in open court conferred with the Chief of Police of Atlanta, and the Colonel of the Fifth Georgia Regiment, stationed in Atlanta, which had the natural effect of intimidating the jury, and so influencing them as to make impossible a fair and impartial consideration of Defendant's case; indeed, such demonstrations finally actuated the Court in making the request of Defendant's counsel, Messrs. Rosser and Arnold, as detailed in paragraph three of this motion, to have Defendant, and the counsel themselves to be absent at the time the verdict was received in open court, because the Judge apprehended violence to Defendant and his counsel; and the apprehension of such violence naturally saturated the minds of the jury so as to deprive this Defendant of a fair and impartial consideration of his case, which the Constitution of the United States in the Fourteenth Amendment hereinbefore referred to, entitled him to.

On Saturday, August 23, 1913, previous to the rendition of the verdict on August 25th, the entire public press of Atlanta appealed to the Trial Judge to adjourn Court from Saturday to Monday, owing to the great public excitement, and the Court adjourned from Saturday, 12:00 o'clock P., to Monday morning, because he felt it unwise to continue the case that day, owing to the great public excitement, and on Monday morning the public excitement had not subsided, and was as intense as it was on Saturday previous. And when it was announced that the jury had reached a verdict, the Trial Judge went to the Court Room and found it crowded with spectators, and fearing violence in the Court Room, the Trial Judge cleared it of spectators, and the jury was brought in for the purpose of delivering their verdict. When the verdict of guilty was announced, a signal was given to the crowd on the outside to that effect."

Wherefore the State insists that said special demurrer should be sustained, and said quoted paragraphs stricken from the petition of said Leo W. Frank, herein referred to, if and in the event the Court refuses to dismiss the entire petition, as the State insists should be done under and by reason of the general

demurrer herein previously referred to.

E. A. Stephens,
Hugh W. Dorsey,
Solicitor General.

Filed in office this the 5th day of June, 1914.

John H. Jones, D. Clk.

(O R D E R O N D E M U R R E R .)

— Upon considering the above and foregoing demurrer and after argument the same is hereby sustained on each and every ground and the motion to set aside the verdict Vs., said Leo M. Frank is dismissed.

This June 6, 1914.

Benj. H. Hill,
Judge Superior Court.

**STATE OF GEORGIA,
County of Fulton.**

I Hereby Certify, That the foregoing pages, hereunto attached, contain a true Transcript of such parts of the record as are specified in the Bill of Exceptions and required, by the order of the Presiding Judge, to be sent to the

Supreme Court in the case of

Leo W. Frank

Plaintiff in Error.

vs.
State of Georgia

Defendant in Error.

Witness my signature and the seal of Court affixed

this the 15 day of July 1914

Arnold Douglas

Clerk Superior Court Fulton County, Georgia
Ex-Officio Clerk City Court of Atlanta.

File
No. *Shubert*
Atlanta Circuit,
Term, 191—

Geo W. Sturdevant

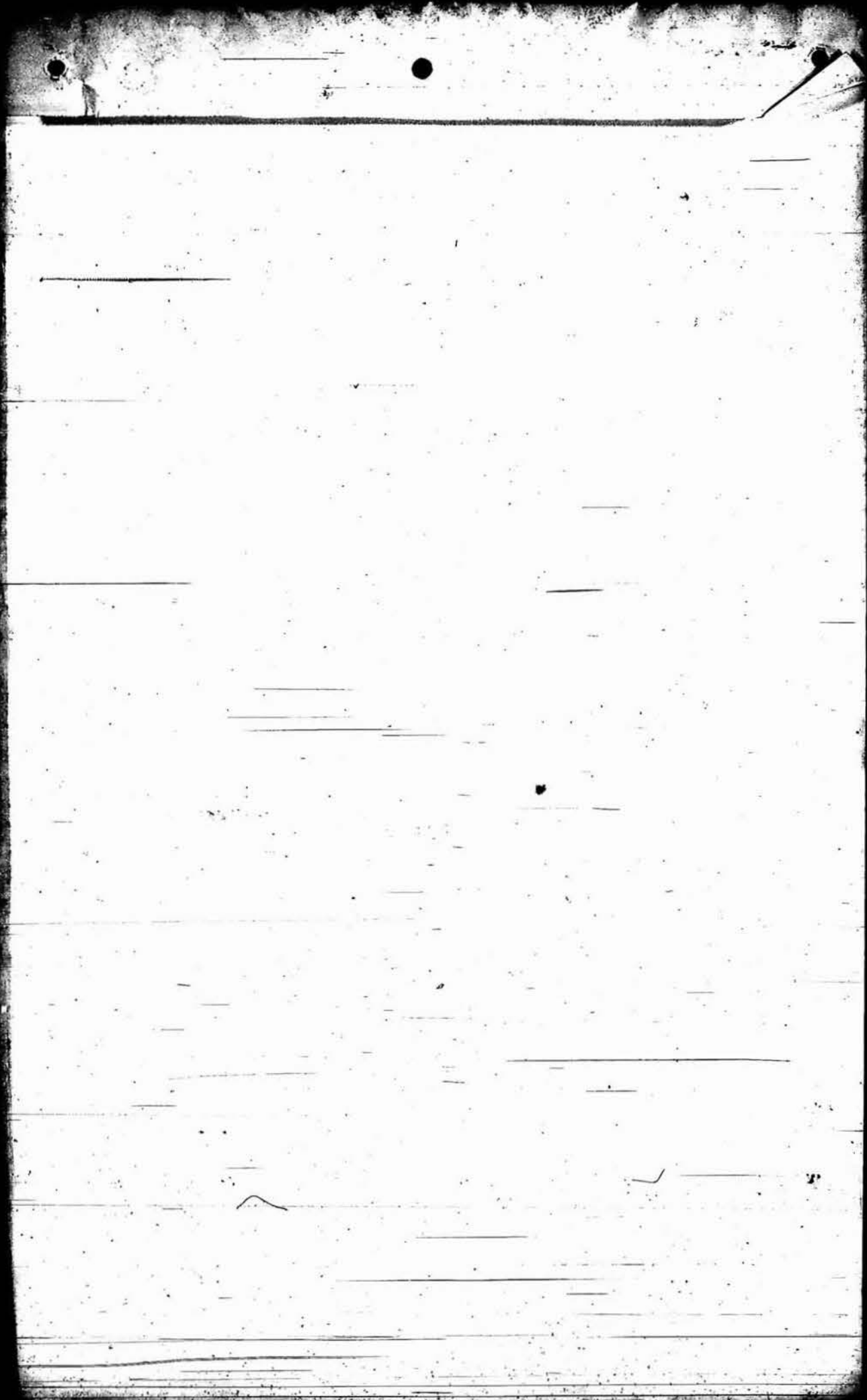
VERSUS

State of Georgia

Transcript of Record

Filed in office _____ 191—

Clerk.



File **11567**
No. **3** Criminal Docket,
October Term, 19**04**
SUPREME COURT OF GEORGIA.

Frank

11567

THE STATE.

TRANSCRIPT OF RECORD

Filed in office JUL 15 1914

W. E. Talley, D.