of witnesses to the jury, without any rule of law to govern them in determining their credibility.

68. Because the Court permitted to be read to the jury, over the objection of the defendant made at the time the testimony was offered, that same was immaterial, irrelevant, incompetent, and not binding upon Frank a part of an affidavit made by the witness Minola McKnight, as follows:

"They pay me $3.50 a week, but last week she paid me $4, and one week she paid me $6.50. Up to the time of this murder I was getting $3.50 per 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, and the next week they paid me $4. One week, I don't remember which one, Mrs. 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.' "

The Court permitted this part of the affidavit to be read to the jury over the objections above stated, and in doing so erred for the reasons stated.

This was prejudicial to the defendant, inasmuch as it permitted the affidavit of the witness Minola McKnight to be read to the jury as to transactions between herself and the Seligs, with which Frank had no connection, but which the solicitor-general insisted showed that Frank's relatives were seeking to influence this darkey by paying her money in addition to that which she earned. The
95 Seligs and Minola McKnight had been asked on cross examination if these statements in this affidavit were true, and had denied that these statements were true.

69. Because the Court erred in permitting Mr. Hooper, for the State, to argue to the jury that the failure of the defense to cross-examine the female witnesses who, in behalf of the State, had testified to the bad character of Frank for lasciviousness, was strong evidence of the fact that, if the defendant had cross-examined them, they would have testified to individual incidents of immorality on the part of Frank; that the defendant's knowledge that they would bring out such incidents was the reason for not cross-examining the witnesses; and that the jury could, therefore, reasonably know that Frank had been guilty of specific incidents of immorality other than those brought out in the record.

The defendant strenuously objected to this line of argument on the part of Mr. Hooper and urged the Court to state to the jury that the failure to cross-examine any of said witnesses justified no inference on the part of the jury that the cross-examination, if had, would have brought out anything hurtful to the general character of Frank.

This the Court declined to do and permitted the argument; and, in so doing, committed error, for which a new trial should be granted.

70. Because the solicitor-general, in his argument to the jury, stated, as follows: "The conduct of counsel in this case, as I stated, in refusing to cross-examine these twenty young ladies, refutes

effectively and absolutely that he had a good character. As I said, if this man had had a good character, no power on earth could have kept him and his counsel from asking where those girls got their information, and why it was they said that this defendant was a man of bad character. Now, that is a common sense proposition; you'd know it whether it was in a book or not. I have already shown you that under the law, they had the right to go into that character, and you saw that on cross-examination they dared not do it. * * * Whenever anybody has evidence in their possession, and they fail to produce it, the strongest presumption arises that it would be hurtful if they had; and their failure to introduce evidence is a circumstance against them. You don't need any law book to make you know that; that is true, because your common sense tells you that whenever a man can bring the evidence, and you know that he has got it and don't do it, the strongest presumption arises against him. And you know, as twelve honest men seeking to get at the truth, that the reason these able counsel did not ask those hair-brained fanatics, as Mr. Arnold called them before they had ever gone on the stand—girls whose appearance is as good as any they brought, girls that you know by their manner on the stand are speaking the truth, girls who were unimpeached and unimpeachable, the reason they didn't ask them. Why? They dared not do it. You know it; if it had never been put in the law books, you would know it."

96 This address of the solicitor was made in the hearing, and in the presence of the jury, without any protest or comment on the part of the Court.

The defendant made no objection to this argument at the time same was being had, for the reason that similar argument made by Mr. Hooper had been objected to by counsel, and their objection overruled. The objection made to the argument of Mr. Hooper was not here repeated, for the reason that the Court had stated, in the outset of the case, that objection once noted in the record need not in similar instances be repeated, but that the Court would assume that similar objections had been made and overruled.

This argument of the Solicitor was not only illegal, but prejudicial to the defendant, in that he, in substance, urged upon the jury that a cross-examination of female witnesses for the State, who testified to Frank's bad character for lasciviousness, would, upon cross-examination, have testified as to specific acts of immorality against him.

71. Because the Court permitted the solicitor, over the objection of defendant's counsel, to argue before the jury that the wife of the defendant did not speedily visit him when he was first taken under arrest, and that her failure to do so showed a consciousness on her part that her husband was not innocent.

In addressing this question to the jury, the solicitor said: "Do you tell me that there lives a true wife, conscious of her husband's innocence, that would not have gone through snap-shotters, reporters, and everything else to have seen him? Frank said that his wife never went there because she was afraid that the snap-shotters would

get her picture, because she didn't want to go through the line of snap-shotters. I tell you, gentlemen of the jury, that there never lived a woman conscious of the rectitude and innocence of her husband who would not have gone through snap-shotters, reporters, and the advice of any rabbi under the sun—and you know it."

Defendant's counsel objected to this line of argument, when the same was being made, upon the ground that the conduct of his wife could in no sense be used as evidence of Frank's guilt, and that the solicitor had no right to argue as he did.

The Court declined to stop the argument, but permitted it to continue. The solicitor impassionately argued it to the jury—that Mrs. Frank's conduct in not visiting her husband was strong evidence of his guilt.

This argument was highly prejudicial to the defendant, and the Court erred in permitting it to be made and in not reprimanding the solicitor-general for the making of such an argument.

72. Because the Court permitted the solicitor-general, in arguing the relative value of the expert testimony delivered by the physicians called for the State and defense, to intimate that the defense, 97 in calling its physicians, had been influenced by the fact that certain physicians called were the family physicians of some of the jurors. In discussing it, the solicitor said: "It would not surprise me if these able, astute gentlemen vigilent as they have shown themselves to be, did not go out and get some doctors who have been the family physicians, who are well known to some of the members of this jury, for the effect it might have upon you; and I am going to show that there must have been something besides the training of these men, and I am going to trace them with our doctors. I can't see any other reason in God's world for getting out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training on the analysis of tissues—like a pathologist has had, except upon that theory."

Objection was made to this argument of the solicitor, at the time it was being made, upon the ground that there was no evidence to support any such argument; that it was illegal, prejudicial, and highly improper.

73. Because the juror, A. H. Henslee, was not a fair and impartial juror, but was prejudiced against the defendant when he was selected as a juror, had previously thereto formed and expressed a decided opinion as to the guilt of the defendant; and, when selected as a juror, was biased against the prisoner in favor of the State. Affidavits are hereto attached and marked Exhibits A, B, C, D, E, I, BB, CC, DD, EE and JJ, KK, LL, MM, NN, which are hereby made a part of this motion for new trial. Affidavits sustaining the character of the witnesses against said Henslee are hereto attached, marked Exhibits FF, GG, HH, and II.

The conduct of this juror, as shown by the affidavits and other evidence, the condition, conduct, and state of mind of this juror is conclusive that the defendant did not have a fair and impartial jury trial, as provided by the laws and the Constitution of this

State; and a new trial should be granted. Upon failure to do so, the Court will commit error.

74. Because the juror, Johenning, was not a fair and impartial juror, in that he had a fixed opinion that the defendant was guilty prior to, and at the time he was taken on the jury and was not a fair and impartial and unbiased juror. Affidavits showing that he was not a fair and impartial juror are hereto attached and marked Exhibits E, F, G, K, and I, and made a part of this motion for new trial.

The opinion, conduct, and state of mind of this juror prior to, and at the time of, his selection as a juror shows that the defendant did not have a fair and impartial trial, as provided by the laws and the Constitution of this State; and, because of the unfairness and impartiality of this juror, a new trial should be granted, and the Court will commit error in not granting it.

98 75. Because this defendant, as he contends, did not have a fair and impartial jury trial, guaranteed to him under the laws of this State, for the following reasons, to-wit:

Public sentiment seemed to the Court to be greatly 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 inclosed 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 could 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 on 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 evi-

dent on Monday morning that the public excitement had not subsided, and that it was as intense as it was 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.

99 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 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 signaled 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.

This defendant contends that the above recital shows that he did not have a fair and impartial jury trial; that a new trial ought to be granted; and that the Court, failing to grant such new trial, will commit error.

In support of this ground of the motion movant refers to the affidavits hereto attached marked Exhibits J to AA, inclusive, and hereby made a part of this motion for new trial.

76. Because the Court erred in not leaving it to the jury to say whether or not, under the facts, the witness Conley was an accomplice.

The State insisted that Conley was watching for Frank to enable him to have connection with some girl, naturally or unnaturally; and Frank seeking to get her consent and failing killed her to insure her silence, and then employed Conley who had previously been watching for him to enable him to conceal her body.

If Conley was aiding and abetting Frank in his transactions with Mary Phagan, and if, as a natural and probable result of such transaction, Mary Phagan met her death, then Conley would be an accomplice of Frank, although he had no personal part in her killing.

The Court, under proper instructions, ought to have left it to the jury to say whether Conley was or not an accomplice of Frank; and, in failing to do, and because he failed to do so the Court committed error.

77. The Court erred in not charging the jury that if, under instructions given them, they found that Conley was an ac-
100 complice of Frank, they could not convice Frank under the testimony of Conley alone; but that, to do so, there must be a witness other than Conley or circumstances corroborating the evidence of Conley.

78. Because the Court permitted the witness, Irene Jackson, at the instance of the solicitor-general, and over the objection of the defendant, made at the time the testimony was offered, that the same was irrelevant, immaterial, illegal, and prejudicial to the defendant, to testify substantially as follows:

"I remember having a conversation with Mr. Starnes about a dressing room incident. I told him that Mr. Frank came to the door of the dressing room while Emily Mayfield was dressing. He looked and turned around and walked out—just pushed the door open and looked in. I don't know whether he smiled or not. I never noticed to see whether he smiled or not; he just kind of looked at us and turned and walked out. I didn't time him as to how long he stayed; he just came and looked and turned and walked out. At the time, Miss Emily Mayfield had off her top dress and was holding her old dress in her hand to put it on. I did not report that to the forelady, but Miss Ermilie did. I have heard remarks other than those of Miss Mayfield about Frank going into the dressing room, but I don't remember who said them. I just remember I heard something about it, two or three different times, but I don't remember anything about it, just a few times. I heard the girls talking about Mr. Frank going into the dressing room on two or three different occasions. It was the middle of the week after we started to work there; I don't remember the time. Mr. Frank also entered the dressing room when my sister was in there lying down; she just had her feet up on the table; she had them on a stool, I believe. She was dressed. I don't remember how her dress was; I didn't look. I paid no attention to him, only he just walked in and turned and walked out; looked at the girls that were sitting in the window and walked out. There was something said about this, but I don't remember. I have heard something about him going in the room and staring at them, but I don't remember exactly. Mr. Frank walked in the dressing room on Miss Mamie Kitchens. She and I were in there. I have heard this spoken of, but I don't remember. I have heard them speak of other times, when I wasn't there. Mr. Frank said nothing either time when I was there. The door was pushed to, but there was no way to fasten the door. He pushed the door open and stood in the door. The dressing room had a mirror in it.

It was all one room, except there were a few lockers for the foreladies, and there was a place where the girls changed their street dresses and got into their working dresses, and vice versa. There was no way for Mr. Frank to tell before he opened the door what the condition of the girls was in there. I do not know whether he knew they were in there or not. That was the usual time for the girls to go in the dressing room, undress and get ready to go to work, changing their street clothes and putting on their working clothes. We had all registered on before we went up there in the dressing room. Mr. Frank knew the girls had stopped there to register. The day he looked in the dressing room at Miss Mayfield, he smiled, or made some kind of a face that looked like a smile—smiling at Miss Mayfield, he didn't speak or didn't say a word."

This evidence was objected to for the reasons above stated, and for the further reason that statements tending to show the conduct of Mr. Frank with girls, in going into the dressing rooms
101 with girls, was intended to create prejudice in the minds of the jurors against the defendant; and, not to illustrate the question of whether he was or was not the murderer of Mary Phagan. The Court overruled these objections and let the testimony go to the jury; and in doing so movant contends, erred for the reasons above stated.

79. Because the Court permitted the witness, Harlee Branch, at the instance of the solicitor-general, to testify to incidents at the pencil factory, wherein Conley, after having made the third affidavit, purported to re-enact the occurrence of the murder between himself and Frank, wherein the body of Mary Phagan was taken from the office floor to the cellar of the factory, the testimony permitted by the Court being substantially as follows:

"I will have to give you the time of Conley's arrival at the factory, approximately. I was up there at twelve o'clock, and I was a few minutes late. Conley had not arrived there then. We waited until they brought him there, which was probably ten or fifteen minutes later. The officers brought Conley into the main entrance of the factory here and to the stair-case—I don't know where the stair-case is here—yes, here it is (indicating on diagram) and they carried him up here and told him what he was there for, and questioned him, and made him understand that he was to re-enact the pantomime. After a few minutes' conversation, and a very brief conversation, Conley led the officers back here and turned off to his left to a place back here; I guess this is it (indicating on diagram), right where this is near some toilets, and he was telling his story as he went through there, and he said when he got up there, he went back and found this body in that place. He was talking constantly—all the time; I don't know how he made out a part of his story. Well, when he got back— After reaching this point at the rear left side of the factory, describing the position of the body, as he stated it, he stated the head was lying towards the north and the feet towards the south, as indicated, and there was a cord around the neck. He didn't state how long it took for the various movements. I didn't time it; I know the time I arrived there and the time I left the fac-

tory. Conley said when he found the body he came up to Mr. Frank—called to him some point along here I should judge (indicating on the diagram). I don't understand this diagram exactly. And he told him the girl was dead, and I don't know just exactly what Frank said. I will try to eliminate as much of that conversation as I can. Anyhow, he said he came on up to where Mr. Frank was, and that he was instructed to go to the cotton room, which he showed us; I don't know, it must be on the same side of the building about here, I judge (indicating) and he went in there. He showed us the cotton room, and he said he went back, and he did go back, led us back, and told about taking up the body, how he brought it up on his shoulder, and then, in front of a little kind of impression on the wall, he said he dropped it, and he indicated the place, and then he come up and told Mr. Frank about it—that he would have to come and help him or something like that—and that Mr. Frank came back and took the feet, I believe he said, and he took the head, and they brought the body up to the elevator and put it on the elevator. He was enacting this all the time and talking all the time. He described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went down on the elevator. On this trip he went down in the elevator to the basement, and he said

Mr. Frank helped to take the body out, and they dropped it
102 there, and Mr. Frank told him to take it up and carry it back,
and he put the body on his shoulder and carried it back to

this sawdust which is away back here, and that he came on back, and he said there was some things in here which he threw on this trash pile, and Mr. Frank, he said, was up in the cubby hole, he said—somewhere back there—and later he led us up there—and that Mr. Frank told him to run the elevator up; so Conley and the officers and the rest of us who were with him came up in the elevator; and when they got to the first floor, just before getting to the first floor, he said this was where Mr. Frank got on the elevator. Mr. Frank was waiting there for him. Then they brought the elevator on up to the second floor, and he had them to stop the elevator, just, I suppose, a foot or a little more below the landing; and he said Mr. Frank jumped off when the elevator was about that point, and after getting up, he said Mr. Frank went around the elevator to a sink that he showed us back of the elevator, to wash his hands; and he waited out in front and he said he shut off the power while Mr. Frank was gone around there; and when Mr. Frank came back, they went in the office, and he led us on in the office through—there is an outer office there, and he came in this way and come through in this office back here, this inner office, and he indicated Mr. Frank's desk and a desk right behind it:—I presume this is the two desks (indicating); that Mr. Frank sat down in the chair at that desk, and he told him to sit at the other desk, and Mr. Frank told him to write some notes; and he was asked by some of the officers to write what Mr. Frank told him to write, and he sat down there and wrote one note, and I believe—I know the note he wrote, and I don't know whether he wrote one or two, and that Mr. Frank handed him some money and that later he took it back, and I don't remember whether he gave

him the cigarettes and money before or after this, I don't recall. Anyway, when he was in here, after he had written the notes for the officers, I found it was time for me to get in the office with my copy. He hadn't finished; he was still sitting there; and I telephoned in to the office for relief—some one to relieve me—and I went to the office and I left him there in the office, and I went in. I judge it was about a quarter past twelve when Conley got there. I must have gotten there five minutes before that time. I left about one o'clock. They rushed Conley right up the steps and, probably two or three minutes after he got up there, he began this enactment, and he went very rapidly—we sort of trotted to keep behind him. Questions were constantly asked him by four or five of the officers. I have cut out a good deal of Conley's talking; just how much, I have no way of indicating. He was talking constantly, except when interrupted by questions. I didn't time it when I got there. When got to the office from the police station it was ten minutes after twelve and I walked down just about a block and a half. Conley got there, I should say, about five minutes after I did. I left a little after one, probably five or ten minutes. It would be a difficult thing for me to estimate how much time it took Conley to enact what he did, leaving out the conversation he had with different men. While he was acting, he was acting very rapidly; he kept us on the trot. There is no way for me to give you my opinion as to how long it took Conley to go through that demonstration; there was no way to disassociate the time and find out the difference between the two—between the time he was acting and talking. I didn't attempt to do that."

The defendant objected to this testimony, because:

(*a*) This so-called experiment made with Conley was solely an endeavor on their part to justify his story.

103 (*b*) The sayings and actings of Conley, as aforesaid, not under oath, had and made without cross-examination, and reported by the witness to the Court, the net result of which is a repetition of Conley's statement, without the sanction of an oath.

(*c*) That Conley went to the factory immediately after making his last affidavit; that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand; at least differently in many particulars; that it can not help the jury for Conley to go to illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding upon this defendant.

The Court overruled the objection and admitted the testimony to the jury; and, in doing so, committed error, for the reasons above stated.

80. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Maggie Griffin, to make the following answers:

Q. Are you acquainted with the general character of Leo M. Frank for lasciviousness; that is his relations with women?

A. Yes, sir.

The Court admitted the above question and answer, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

81. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Myrtie Cato, to make the following answers:

Q. Miss Cato, I want to ask you one other question, also. Are you acquainted with the general character of Leo M. Frank for lasciviousness; that is, his relations towards women?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

82. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Mrs. H. R. Johnson, to make the following answers:

Q. Now, are you acquainted with his (Frank's) general character for lasciviousness; that is, his general character towards women generally?

A. No, sir, not very much.

104 Q. Not very much? Well, answer the question: yes or no; are you acquainted?

A. All right, she said, not very much.

The Court admitted the above questions and answers, over the objection of defendant as above stated, and thereby erred, for the reasons stated.

83. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Marie Carst, to make the following answers:

Q. Bad; now, Miss Carst, I will ask you if you are acquainted with his (Frank's) general character for lasciviousness; that is, his attitude towards girls and women?

A. Yes, sir.

Q. Is that character good or bad?

A. Bad.

The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

84. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted

the solicitor-general to ask the follówing questions, and the witness, Miss Nellie Pettis, to make the following answers:

Q. Are you acquainted with his (Frank's) general character for lasciviousness; that is, with women prior to that time?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

85. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss May Davis, to make the following answers:

Q. I want to ask you another question. Are you acquainted with the general character of Leo M. Frank, prior to April 26, 1913, as to lasciviousness; that is, his relations with girls and women?

A. Yes.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

86. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was im-
105 material, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Mrs. Mary E. Wallace, to make the following answers:

Q. I will ask you now if you are acquainted with his general character for lasciviousness; that is, as to his (Frank's) attitude towards girls and women?

A. Yes, sir.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

87. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Estelle Winkle, to make the following answers:

Q. Are you acquainted with his (Frank's) general character for lasciviousness; that is, his relations with girls and women?

A. Yes, sir.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over ob-

jection of defendant, made at the time the evidence was offered, and thereby erred, for the reasons stated.

88. Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness, Louis Ingram, to testify as follows:

"I am a conductor for the Georgia Railway & Power Co. I come to town ahead of them cars coming in on English Avenue going to Cooper Street, known as the English Avenue car. I have seen them come in and been on it when it come in, the English Avenue car due at the junction of Marietta and Broad Streets according to schedule at 12:07. I have seen the car due at Marietta and Broad streets according to schedule at 12:07, the English Avenue car, several times come in ahead of the car I was coming in on, as much ahead as four minutes. I saw a car that came in this morning that was due in town at 8:30 and it got in at 8:24. I know the Motorman Matthews. I have seen his car ahead of time. I could not say how often."

The Court permitted this testimony over the objection before stated, and in doing so erred for the reasons stated. This was prejudicial to the defendant because it tended to show that at times other than on the day of the murder, the English Avenue car, which on that day was run by the witness, Motorman Matthews, had reached Marietta and Broad Streets four minutes ahead of time. It became material to determine what time this English Avenue car reached Broad Street on the day of the murder. The Motorman Matthews and the conductor, swore that on that
106 day the English Avenue car reached Broad Street at 12:07.

The Court permitted this and other like testimony to be introduced as tending to discredit their statements that the car was on schedule time that day. In doing this the Court erred, for the fact that the English Avenue car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

89. Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness, W. D. Owens, to testify as follows:

"I run on what is known as Route Eight, White City to Howell Station, for the Georgia Railway & Power Co. We were due in town at 12:05. My schedule is ahead of the Cooper Street and English Avenue schedule two minutes. I have known the English Avenue and Cooper Street car to get to the junction of Marietta and Broad Streets ahead of my car. The English Avenue car is due there at 12:07; my schedule at 12:05. I have known the English Avenue car to get there as much as two minutes ahead of us. That would make the English Avenue car four minutes ahead of time. I have known this to occur after April 26th. I don't know whether it occurred prior to that time."

The Court permitted this testimony over the objection before stated, and in doing so errod for the reasons stated. This was preju-

dicial to the defendant because it tended to show that at times other than on the day of the murder, the English Avenue car, which on that day was run by the witness, Motorman Matthews, had reached Marietta and Broad Streets four minutes ahead of time. It became material to determine what time this English Avenue car reached Broad Street on the day of the murder. The Motorman Matthews and the conductor, swore that on that day the English Avenue car reached Broad Street at 12:07. The Court permitted this and other like testimony to be introduced as tending to discredit their statements that the car was on schedule time that day. In doing this the Court erred, for the fact that the English Avenue car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

90. Because of the following colloquy which occurred during the trial and while the witness, John Ashley Jones, was on the stand, during the cross-examination of Jones by the solicitor:

Q. You never heard anybody down there say anything about Mr. Frank's practices and relations with the girls?

A. Not in the Pencil Factory.

Q. Not at all? You never did talk to any of these young girls, did you?

A. No, I don't happen to know any of them.

Q. Or any of the men?

A. No.

Q. You don't know what kind of practices Mr. Frank may have carried on down there in the Pencil Factory?

A. No.

107 Q. You don't know, you never heard anybody say that Mr. Frank would take girls in his lap in his office here?

A. No.

(Here objection was made by Mr. Arnold.)

The COURT: On cross examination he can ask him if he has heard of certain things.

Mr. ARNOLD: Up to April 26th?

The COURT: Yes, sir.

Mr. DORSEY: I am not four-flushing or any such thing; I am going to bring the witnesses here.

Q. You never heard of Frank going out there to Druid Hills and being caught did you, before April 26th?

A. No, but our reporter, it was his business to find out, and if he had found it out, he certainly would not have issued such a policy.

Q. Now, about twelve months ago, you never heard of Frank kissing girls and playing with their nipples on their breast around there?

A. No, I never heard such a thing.

Q. You never heard of that at all?

A. I never heard that. I had been in Mr. Frank's——

Q. You never talked to Tom Blackstock, then, did you?

A. I haven't the pleasure of Mr. Blackstock's acquaintance.
Q. Did you ever know Mrs. L. D. Coursey?
A. I can't say that I ever heard of her.
Q. Miss Myrtie Cato, you never heard of her, and that he would go into the——
A. Mr. Dorsey, I have been down there.

By the COURT: He wants to know if you ever heard of that before.

Q. He made no apology and no explanation, but just walked right on in there when they were lying on the couch?
A. I never heard that.
Q. Did you ever hear of his putting his arms around Myrtie Cato in the office?
A. No, sir.
Q. Did you ever hear about the time he went in on little Gertie Jackson that was sick, lying in the dressing room with her dress up, and stood up there and looked at her, and hear any talk of the girls there about his attitude?
A. No, sir.
Q. Did you ever hear about his frequently going into the dressing room with Vernie McDaniel?
A. No, sir.
Q. Did you ever hear of the time it was said that Miss Pearl Darlson—about five years ago, when he held out the money in one hand and put his hand on the girl, that she threw the monkey wrench at him? You never heard of that time?
A. No, sir.
Q. Did you ever talk to Mrs. Martin Donegan?
A. No, sir, not that I know of.
Q. Did you ever hear them say that he paid special attention to the girls, and winked and smiled at them, and had nude pictures hung up in his office, and walked around and slapped the girls on the seat?
A. No, sir.
Q. Miss Wingate, 34 Mills Street, did you ever talk to her about Frank?
A. No, sir, I don't know her.
108 Q. Did you ever hear C. D. Donegan talk about Frank?
A. No, sir.
Q. You never heard any of these factory people talk about him?
A. No, sir.

The Court erred in permitting the solicitor, although the witness denied hearing all of the remarks referred to, to say in the presence of the jury that he was not four-flushing, but that he was going to bring the witnesses there, thereby improperly saying to the jury that he had such witnesses and meant to bring them in.

The Court erred in not withdrawing this whole subject from the jury and in not rebuking the solicitor-general for injecting the questions in the case and asserting that he had witnesses to prove the things asked about.

These suggestions and intimations of the solicitor-general were exceedingly prejudicial to the defendant, and for making them he ought to have been severely rebuked by the Court, and failure of the Court to do so was cause for a new trial.

91. Because the Court erred in charging the jury as follows:

"Is Leo M. Frank guilty? Are you satisfied on that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth?"

The Court erred in putting the proposition of the defendant's guilt or innocence to the jury in this manner, because the effect of the same was to put the burden upon the defendant of establishing his plea of not guilty, and the further effect was to impress upon the jury that unless they believed that the defendant's plea of not guilty was the truth that they could not acquit. The tendency of this charge was to impress upon the jury that they were to consider only upon the one side as to whether they believed Leo M. Frank guilty or upon the other side they were to consider only the question of whether they believed his plea of not guilty, and there was no middle ground in the case. And movant says that the error in this charge is that it leaves entirely out of view the consideration of the third proposition which the jury had the right to consider, and that is as to whether, even though they did not believe his plea of not guilty the truth, still if they had a reasonable doubt in their minds of his guilt they should acquit him.

92. Movant further says that a new trial should be granted because of the following:

Mr. Dorsey, the solicitor-general, in the concluding argument, made the following statement:

"Now, gentlemen (addressing the jury) Mr. Arnold spoke to you about the Durant case. That case is a celebrated case. It was said that that case was the greatest crime of the century. I don't know where Mr. Arnold got his authority for the statement that he made with reference to that case. I would *you* like to know it."

Whereupon the following colloquy occurred:

109 Mr. ARNOLD: I got it out of the public prints, at the time, Mr. Dorsey, published all over the country, I read it in the newspapers, that's where I got it.

Mr. DORSEY (resuming): On April 15, 1913, Mr. C. M. Pickett, the district attorney of the City of San Francisco, wrote a letter——

Mr. ARNOLD: I want to object to any communication between Mr. Pickett and Mr. Dorsey—it's just a personal letter from this man, and I could write to some other person there and get information satisfactory to me, no doubt, just as Mr. Dorsey has done, and I object to his reading any letters or communications from anybody out there.

Mr. DORSEY: This is a matter of public notoriety. Here's his reply to a telegram I sent him, and in view of his statement, I have got a right to read it to the jury.

Mr. ARNOLD: You can argue a matter of public notoriety, you can argue a matter that appears in the public prints—my friend can, but as to his writing particular letters to particular men, why that's

introducing evidence, and I must object to it; he has got a right to state simply his recollection of the occurrence, or his general information on the subject, but he can't read any letters or telegrams from any particular people on the subject.

Mr. DORSEY: Mr. Arnold brought this in, and I telegraphed to San Francisco, and I want to read this telegram to the jury; can't I do it?

Mr. ARNOLD: If the Court please I want to object to any particular letter or telegram,—I can telegraph and get my information as well as he can, I don't know whether the information is true, I don't know who he telegraphed about it; I have got a right to argue a matter that appears in the public prints, and that's all I argued,—what appears in the papers,—it may be right or wrong, but if my friend has a friend he knows there, and writes and gets some information, that's introducing evidence, and I want to put him on notice that I object to it. I have got the same right to telegraph there and get my own information. And besides, my friend seems to know about that case pretty well, he's writing four months ago. Why did he do it?

Mr. DORSEY (resuming): Because I anticipated some such claim would be made in this presence.

Mr. ARNOLD: You anticipated it, then, I presume, because you knew it was published; that's what I went on.

Mr. DORSEY (resuming): I anticipated it, and I know the truth about that case.

Mr. ARNOLD: I object to his reading any communication unless I have the right to investigate it also; I am going only on what I read in the public press. April 15th is nearly two weeks before the crime is alleged to have been committed. I want to record an objection right now to my friend doing any such thing as that, reading a telegram from anybody picked out by my friend Dorsey, to give him the kind of information he wants for his speech, and I claim the right to communicate out there myself and get such information as I can, if he's given the right to do it.

The COURT: I'll either have to expunge from the jury what you told the jury, in your argument, or——

Mr. ARNOLD: I don't want it expunged. I stand on it.

The COURT: I have either got to do one of the two——

Mr. DORSEY: No, sir, can't I state to this jury, what I know about it, as well as he can state what he knows?

Mr. ARNOLD: Certainly he can, as a matter of public notoriety, but not as a matter of individual information or opinion.

110 The COURT: You can state, Mr. Dorsey, to the jury, your information about the Durant case, just like he did, but you can't read anything—don't introduce any evidence.

Mr. DORSEY (resuming): My information is that nobody has ever confessed the murder of Blanche Lamont and Minnie Williams. But, gentlemen of the jury, as I'll show you by reading this book, it was proved at the trial, and there can be no question upon the fact, Theodore Durant was guilty, the body of one of these girls having been found in the belfry of the church in question, and the other in

the basement. Here's the book containing an account of that case, reported in the 48 Pacific Reporter, and this showed, gentlemen of the jury, that the body of that girl, stripped stark naked, was found in the belfry of Emanuel church, in San Francisco, after she had been missing for two weeks. It shows that Durant was a medical student of his standing, and a prominent member of the church, with superb character, a better character than is shown by this man, Leo M. Frank, because not a soul came in to say that he didn't enjoy the confidence and respect of every member of that large congregation, and all the medical students with whom he associated. Another thing, this book shows that the crime was committed in 1895, and this man Durant never mounted the gallows until 1898, and the facts are that his mother took the remains of her son and cremated them, because she didn't want them to fall into the hands of the medical students, as they would have done in the State of California, had she not made the demand and received the body. Hence, that's all poppy-cock he was telling you about. There never was a guiltier man, there never was a man of higher character, there never was a more courageous jury or better satisfied community, than Theodore Durant, the jury that tried him, and the people of San Francisco, where he lived and committed his crime and died.

Movant says that a new trial should be granted, because of the fact that the Court did not squarely and unequivocally rule that the jury should not consider the statement Mr. Dorsey made as to the letter C. M. Pickett, the district attorney, had written, and that a new trial should be granted because the argument was illegal, unwarranted, not sustained by the evidence, and tended to inflame and unduly prejudice the jury's mind. Neither the letter from Pickett, nor the telegram was read further than is shown in the foregoing statement.

93. The movant says that a new trial should be granted because of the following ground:

The solicitor-general having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows, to-wit:

"The jury are instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced."

94. Movant says that a new trial should be granted because of the following ground:

111 The solicitor-general having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows, to-wit:

"The jury are instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced."

95. Because the Court should have given in charge the instruc-

tion set forth in the preceding ground, because of the following argument made by the solicitor-general, in his concluding argument to the jury, said argument being a discussion of the facts of other cases, and requiring such charge as was requested, the remarks of the solicitor-general, in conclusion, being as follows:

"Oscar Wilde, an Irish knight, a literary man, brilliant, the author of works that will go down the ages—Lady Windemere's Fan, De Profundis, which he wrote while confined in jail; a man who had the effrontery and the boldness, when the Marquis of Queensbury saw that there was something wrong between this intellectual giant and his son, sought to break up their companionship; he sued the Marquis for damages, which brought retaliation on the part of the Marquis for criminal practices on the part of Wilde, this intellectual giant; and wherever the English language is read, the effrontery, the boldness, the coolness of this man, Oscar Wilde, as he stood the cross-examination of the ablest lawyers of England—an effrontery that is characteristic of the man of his type—that examination will remain the subject matter of study for lawyers and for people who are interested in the type of pervert like this man. Not even Oscar Wilde's wife—for he was a married man and had two children—suspected that he was guilty of such immoral practices, and, as I say, it never would have been brought to light probably, because committed in secret, had not this man had the effrontery and the boldness and the impudence himself to start the proceeding which culminated in sending him to prison for three long years. He's the man who led the æsthetic movement; he was a scholar, a literary man, cool, calm, and cultured, and as I say, his cross-examination is a thing to be read with admiration by all lawyers, but he was convicted, and in his old age, went tottering to his grave, a confessed pervert. Good character? Why, he came to America, after having launched what is known as the 'æsthetic movement' in England, and throughout this country lectured to large audiences, and it is he who raised the sunflower from a weed to the dignity of a flower. Handsome, not lacking in physical or moral courage, and yet a pervert, but a man of previous good character. Abe Ruef, of San Francisco, a man of his race and religion, was the boss of the town, respected and honored, but he corrupted Schmitt, and he corrupted everything that he put his hands on, and just as a life of immorality, a life of sin, a life in which he fooled the good people when debauching the poor girls with whom he came in contact, has brought this man before this jury, so did eventually Abe Ruef's career terminate in the penitentiary. I have already referred to Durant. Good character isn't worth a cent when you have got the case before you. And crime don't go only with the ignorant and the poor. The ignorant, like Jim Conley, as an illustration, commit the small crime, and he doesn't know anything about some of this higher type of crimes but a man of high
112 intellect and wonderful endowments which, if directed in the right line, bring honor and glory; if those same faculties and talents are perverted and not controlled, as was the case with this man, they will carry him down. Look at McCue, the mayor of

Charlottesville; a man of such reputation that the people elevated him to the head of that municipality, but notwithstanding that good reputation, he didn't have rock-bed character, and becoming tired of his wife, he shot her in the bath-tub, and the jury of gallant and noble and courageous Virginia gentlemen, notwithstanding his good character, sent him to a felon's grave. Richeson, of Boston, was a preacher, who enjoyed the confidence of his flock. He was engaged to one of the wealthiest and most fascinating women in Boston, but an entanglement with a poor little girl, of whom he wished to rid himself, caused this man, Richeson to so far forget his character and reputation and his career as to put her to death. And all these are cases of circumstantial evidence. And after conviction, after he had fought, he at last admitted it, in the hope that the governor would at last save his life, but he didn't do it, and the Massachusetts jury and the Massachusetts governor were courageous enough to let that man who had taken that poor girl's life to save his reputation as the pastor of his flock, go, and it is an illustration that will encourage and stimulate every right-thinking man to do his duty. Then, there's Beattie. Henry Clay Beattie, of Richmond, of splendid family, a wealthy family, proved good character, though he didn't possess it, took his wife, the mother of a twelve-months'-old baby, out automobiling, and shot her; yet that man, looking at the blood in the automobile, joked, joked, joked! He was cool and calm, but he joked too much; and although the detectives were abused and maligned, and slush funds to save him from the gallows were used in his defense, a courageous jury, an honest jury, a Virginia jury, measured up to the requirements of the hour and sent him to his death, thus putting old Virginia and her citizenship on a high plane. And he never did confess, but left a note to be read after he was dead, saying that he was guilty. Crippen, of England, a doctor, a man of high standing, recognized ability and good reputation, killed his wife because of infatuation for another woman, and put her remains away where he thought as this man thought, that it would never be discovered; but murder will out, and he was discovered, and he was tried, and be it said to the glory of old England, he was executed."

96. Movant further says that a new trial should be granted because of the following ground:

The solicitor-general, in his concluding argument, spoke to the jury as follows:

"But to crown it all, in this table which is now turned to the wall, you have Lemmie Quinn arriving, not on the minute, but to serve your purposes, from 12:20 to 12:22 (referring to a table which the defendant's counsel had exhibited to the jury giving, as was claimed by counsel, in chronological order, the happening of events as to defendant on April 26) but that, gentlemen, conflicts with the evidence of Freeman and the other young lady, who placed Quinn by their evidence, in the factory before this time."

Whereupon the following occurred:

Mr. ARNOLD: There isn't a word of evidence to that effect; those ladies were there at 11:35 and left at 11:45, Corinthia Hall and

Miss Freeman, they left there at 11:45, and it was after they had eaten lunch and about to pay their fare before they ever saw Quinn, at the little cafe, the Busy Bee. He says that they saw Quinn over at the factory before 12, as I understood it."

Mr. DORSEY: Yes, sir, by his evidence.

113 Mr. ARNOLD: That's absolutely incorrect, they never saw Quinn there then, and never swore they did.

Mr. DORSEY (resuming): No, they didn't see him there; I doubt if anybody else saw him there, either.

Mr. ARNOLD: If a crowd of people here laughs every time we say anything how are we to hear the Court? He has made a whole lot of little misstatements, but I let those pass, but I am going to interrupt him on every substantial one he makes. He says those ladies saw Quinn—says they say Quinn was there before 12, and I say he wasn't there, and they didn't say that he was there then.

The COURT: What is it you say, Mr. Dorsey?

Mr. DORSEY: I was arguing to the jury the evidence.

The COURT: Did you make a statement to that effect?

Mr. DORSEY: I made a statement that those two young ladies say they met Holloway as he left the factory at 11:05—I make the statement that as soon as they got back down to that Greek café Quinn came in and said to them, "I have just been in and seen Mr. Frank."

Mr. ARNOLD: They never said that, they said they met Holloway at 11:45, they said at the Busy Bee Café, but they met Quinn at 12:30.

Mr. DORSEY: Well, get your record—you can get a record on almost any phase, this busy Quinn was blowing hot and blowing cold, no man in God's world knows what he did say, but I got his affidavit there.

Mr. ARNOLD: I have found that evidence, now, Mr. Dorsey, about the time those ladies saw Quinn.

Mr. DORSEY: I'll admit he swore both ways.

Mr. ARNOLD: No, he didn't either. I read from the evidence of Miss Corinthia Hall: Then Mr. Dorsey asked her: "Then you say you saw Lemmie Quinn right at the Greek café at five minutes to twelve, something like that?" A. "No, sir, I don't remember what time it was when I saw him, we went into the café, ordered sandwiches and a cup of coffee, drank the coffee and when we were waiting on the change he came in." And further on, "All he said (Quinn) was he had been up and had seen Mr. Frank, that was all he said?" A. "Yes, sir," and so on. Now the evidence of Quinn: "What sort of clock was that?"—he's telling the time he was at De Foor's pool parlor—"What sort of clock was that? A. Western Union clock. Q. What did the clock say when you looked at it? A. 12:30." And he also swore that he got back to the pencil factory at 12:20, that's in a half dozen different places.

The COURT: Anything contrary to that record, Mr. Dorsey?

Mr. DORSEY: Yes, sir, I'm going to show it by their own table that didn't occur—that don't scare anybody and don't change the facts.

The Court erred, under the foregoing facts, in not restraining the solicitor-general from making the erroneous statements of fact objected to by defendant's counsel, which the evidence did not authorize, and in permitting him to proceed, and in not rebuking the solicitor-general, and in not stating to the jury that there was no such evidence as the solicitor-general had stated, in the case, and defendant says that for this improper argument, and for this failure of the Court, there should be granted a new trial.

97. Movant further says that a new trial should be granted because of the following:

In his concluding argument Solicitor-general Dorsey, referring to the defendant's wife, and referring to the claim made by
114 the solicitor-general that the defendant's wife had not visited him for a certain time after he was first imprisoned, told the jury:

"Do you tell me that there lives a true wife, conscious of her husband's innocence, that wouldn't have gone through snap-shotters, reporters and everything else, to have seen him."

Whereupon the following colloquy ensued:

Mr. ARNOLD: I must object to as unfair and outrageous an argument as that, that his wife didn't go there through any consciousness of guilt on his part. I have sat here and heard the unfairest argument I have ever heard, and I can't object to it, but I do object to his making any allusion to the failure of the wife to go and see him; it's unfair, it isn't the way to treat a man on trial for his life.

The COURT: Is there any evidence to that effect?

Mr. DORSEY: Here is the statement I have read.

Mr. ARNOLD: I object to his drawing any conclusions from his wife going or not going, one way or the other—it's an outrage upon law and decency and fairness.

The COURT: Whatever was in the evidence or the statement I must allow it.

Mr. DORSEY (resuming): Let the galled jade wince——

Mr. ARNOLD: I object to that, I'm not a "galled jade," and I've got a right to object. I'm not galled at all, and that statement is entirely uncalled for.

The COURT: He has got the right to interrupt you.

Mr. DORSEY: You've had your speech.

Mr. ROSSER: And we never had any such dirty speech as that either.

Mr. DORSEY: I object to his remark, your Honor, I have a right to argue this case.

Mr. ROSSER: I said that remark he made about Mr. Arnold, and your Honor said it was correct; I'm not criticising his speech, I don't care about that.

Mr. DORSEY (resuming): Frank said that his wife never went back there because she was afraid that the snap-shotters would get her picture,—because she didn't want to go through the line of snap-shotters. I tell you, gentlemen of the jury, that there never lived a woman, conscious of the rectitude and innocence of her hus-

band, who wouldn't have gone to him through snap-shotters, reporters and advice of any Rabbi under the sun. And you know it.

Movant says that the Court erred in not taking positive action, under the circumstances aforesaid, and in not restraining the Solicitor-General from making his unfounded and unjust inferences from the alleged failure of the defendant's wife to visit him, which was not authorized by the evidence in the case, and erred in allowing the Solicitor-General to argue upon this subject at all, and erred in not admonishing the jury that such argument could not be considered and should have no weight with the jury, and the Court erred in not rebuking the Solicitor-General for making the reply which he made to the interruption, to the effect "Let the galled jade wince," and erred in not rebuking the Solicitor-General for such unjust comments upon a merited interruptoin,—and because of such failures of the Court, and because of the aforesaid erroneous, unjust and unfounded arguments of the Solicitor-General, movant says that a new trial should be granted.

115 98. Movant says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument to the jury, spoke as follows:

If there be a negro who accuses me of a crime of which I am innocent, I tell you, and you know it's true, I'm going to confront him, even before any attorney, no matter who he is, returns from Tallulah Falls, and if not then, I will tell you just as soon as that attorney does return, I'm going to see that that negro is brought into my presence, and permitted to set forth his accusations. You make much here of the fact that you didn't know what this man Conley was going to say when he got on the stand. You could have known it, but you dared not do it.

Whereupon the following coloquy ensued:

Mr. ROSSER: May it please the Court, that's an untrue statement; at that time when he proposed to go through that dirty farce, with a dirty negro, with a crowd of policemen, confronting this man, he made his first statement,—his last statement he said, and these addendas, nobody ever dreamed of them, and Frank had no chance to meet them; that's the truth. You ought to tell the truth; if a man is involved for his life; that's the truth.

Mr. DORSEY (resuming): It don't make any difference about your addendas and you may get up there just as much as you want to, but I'm going to put it right up to this jury——

Mr. ROSSER: May it please the Court, have I got the right to interrupt him when he mis-states the facts?

The COURT: Whenever he goes outside of the record.

Mr. ROSSER: Has he got the right to comment that I haven't exercised my reasonable rights?

The COURT: No, sir, not if he has done that.

Mr. ROSSER: Nobody has got a right to comment on the fact that I have made a reasonable objection.

Mr. DORSEY: But I'm inside of the record, and you know it, and

the jury knows it. I said, may it please your Honor, that this man, Frank, declined to be confronted by this man Conley.

Mr. ROSSER: That isn't what I objected to, he said that at that meeting that was proposed by Conley, as he says, but really proposed by the detectives, when I was out of the city, that if that had been met, I would have known Conley's statement, and that's not true; I would not have been any wiser about his statement than I was here the other day.

. The COURT: You can comment upon the fact that he refused to meet Frank or Frank refused to meet him, and at the time he did it, he was out of the city.

Mr. ARNOLD: We did object to that evidence, Your Honor, but Your Honor let that in.

The COURT: I know; go on.

Mr. DORSEY (resuming): They see the force of it——

Mr. ROSSER: Is that a fair comment, Your Honor, if I make a reasonable objection, to say that we see the force of it.

The COURT: I don't think that, in reply to your objection, is a fair statement.

116 Mr. DORSEY (resuming): Now, may it please Your Honor, if they don't see the force of it, you do——

Mr. ROSSER: I want to know, is Your Honor's ruling to be absolutely disregarded like that?

The COURT: Mr. Dorsey, stay inside of the record, and quit commenting on what they say and do.

Mr. DORSEY: I am inside of the record, and Your Honor knows that's an entirely proper comment.

Mr. ROSSER: Your Honor rules—he says one thing and then says your Honor knows better.

Mr. DORSEY: Your Honor knows I have got a right to comment on the conduct of this defendant.

The COURT: Of course, you have, but when they get up and object, I don't think you have any right to comment on their objections as they are making them to the Court.

Mr. DORSEY: I don't?

The COURT: No, I don't think so.

Mr. DORSEY: Isn't everything that occurs in the presence of the Court the subject matter for comment?

The COURT: No, I don't think you can comment on these things. You can comment on any conduct within the province of this trial, but if he makes an objection that's sustained, why, then you can't comment on that.

Mr. DORSEY: Does your Honor say I'm outside of the record?

The COURT: No, I don't, but I say this, you can comment on the fact that Frank refused to meet this man, if that's in the record, you have the right to do that.

Mr. DORSEY (resuming): This man Frank, with Anglo-Saxon blood in his veins, a graduate of Cornell, the superintendent of the pencil factory, so anxious to ferret out this murder that he 'phoned Schiff three times on Monday, April 28th, to employ the Pinkerton Detective Agency, this man of Anglo-Saxon blood and intelligence,

refused to meet this ignorant negro, Jim Conley. He refused upon the flimsy pretext that his counsel was out of town but when his counsel returned, when he had the opportunity to know at least something of the accusations that Conley brought against this man, he dared not let him meet him.

Movant says that the Court erred in allowing the Solicitor-General to comment upon an alleged failure of the defendant to meet the witness, Conley and erred, when the defendant's counsel objected and interrupted him, the same not being authorized by the evidence, and erred in not stopping the Solicitor-General, and erred in not making a decisive and unequivocal ruling that such comment was improper, and should not influence the jury, and further erred in allowing the Solicitor-General to comment, as he did in the foregoing statement of facts, upon the interruption; and the Court expressly erred in ruling that the Solicitor-General could comment upon the fact that Frank refused to meet Conley; and because of such failures and errors on the Court's part, and because of such improper and prejudicial argument by the Solicitor-General, the movant says that a new trial should be granted him.

99. Movant further says that a new trial should be granted because of the following:

117 The Solicitor-General, in his concluding argument, referring to the visit of the defendant to Bloomfield's undertaking establishment, on April 27, made the following remarks to the jury:

Frank says that he visited the morgue not only once but twice. If he went down there and visited that morgue, and saw that child and identified her body, and it tore him all to pieces, as he tells you it did, let any honest man, I don't care who he be, on this jury, seek to fathom the mystery of this thing; tell me why it was, except for the answer I give you, he went down there to view that body again. Rogers says he didn't look at it; Black says he didn't see him look at it.

Whereupon the following occurred:

Mr. ROSSER: He is mis-stating the evidence. Rogers never said he didn't look at the body, he said he was behind him, and didn't know whether he did or not; and Black says he didn't know whether he did nor not.

Mr. DORSEY: Rogers said he never did look at that body.

Mr. ARNOLD: I insist that isn't the evidence. Rogers said he didn't know, and couldn't answer whether he saw it or not, and Black said the same thing.

Mr. DORSEY (resuming): I am not going to quibble with you. The truth is, and you know it, that when that man Frank went down there to look at that body of that poor girl, to identify her, that he never went in that room, and if he did look at her long enough to identify her, neither John Black nor Rogers nor Gheesling knew it. I tell you, gentlemen of the jury, that the truth of this thing is that Frank never looked at the body of that poor girl, but if he did, it was just a glance, as the electric light was flashed on and immediately turned and went into another room.

Mr. ROSSER: There isn't a bit of proof that he went into another room, I object again, sir, there isn't a particle of proof of that.

The COURT: Look it up and see what was said.

Mr. DORSEY: I know this evidence.

Mr. ROSSER: If your Honor allows it to go on, there's no use looking it up. He never said anything about going into another room.

The COURT: What is your remembrance about that.

Mr. ROSSER: It isn't true, your Honor.

Mr. DORSEY: I challenge you to produce it.

Mr. ROSSER: There's no use to challenge it, if he goes on and makes the argument they make, those deductions for which there's no basis, but when he makes a mis-statement of the evidence, it's perfectly useless to go on and look it up, and we decline to look it up.

Mr. DORSEY: I insist that they look it up. I insist that I am sticking to the facts.

Mr. ROSSER: No, your are not.

The COURT: Well, if you'll give me the record, I'll look it up. Mr. Haas, look that up, and see what is the fact about it.

Mr. DORSEY: I know what Boots Rogers said myself.

The COURT: The jury knows what was said.

Mr. DORSEY: That's quibbling.

Mr. ARNOLD: Is that correct, your Honor?

The COURT: No, that's not correct; whenever they object, Mr. Dorsey, if you don't agree upon any record, have it looked up, and if they are right and you know it, and you are wrong, or if they are wrong and you also know it, if they are wrong they are quibbling, and if they are right they are not quibbling. Now, just go on.

118 Mr. ROSSER: Now, the question of whether Boots said he went into that room is now easily settled. (Mr. Rosser here read that portion of the cross examination of the witness Rogers, stating that when Frank left the door of the undertaking room, he went out of his view.)

Mr. DORSEY: Well, that's cross examination, ain't it?

Mr. ROSSER: Yes, but I presume he would tell the truth on cross examination, I don't know; he passed out of his view, he didn't say he went into a room.

Mr. DORSEY: Correct me if I'm wrong. Boots Rogers said he didn't go where the corpse lay, and that's the proposition we lay down.

Mr. ROSSER: That isn't the proposition either; now you made a statement that isn't true, the other statement isn't true. Rogers said that when he left "he went out of my view," he was practically out of his view all the time. I was just trying to quote the substance of that thing.

Mr. DORSEY (resuming): He wanted to get out of the view of any man who represented the majesty and dignity of the law, and he went in behind curtains or any old thing that would hide his countenance from these men. And he said on the leading examination——

Mr. ROSSER: I don't know what you led out of him, but on the cross he told the truth.

Movant shows that under the foregoing facts, the Court erred in not making any ruling at all, and erred in allowing the Solicitor-General to proceed with his illegal argument, which was not founded on the evidence, and erred, and in not rebuking the Solicitor-General, and in not stating to the jury that the Solicitor-General had mis-stated the evidence in the particulars objected to, and erred in not telling the jury that there was no evidence in the case that Rogers had sworn that defendant did not look at the body of Mary Phagan, or that Frank went into another room; and because of the aforesaid errors in acting and failing to act, on the part of the Court, and because of such illegal and improper argument of the Solicitor-General, a new trial should be granted.

100. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, spoke as follows to the jury, the subject under discussion being the whereabouts of the key to the elevator box on Sunday morning, April 27, the language of the Solicitor-General being as follows:

"Why don't they bring the fireman here who went around and gave such instructions? First, because it wasn't necessary, they could have cut the electricity off and locked the box. And second, they didn't bring him-because no such man ever did any such thing, and old Holloway told the truth before he came to the conclusion that old Jim Conley was his nigger, and he saw the importance of the proposition that when Frank went there Sunday morning the box was unlocked and Frank had the key in his pocket."

Whereupon the following occurred:

Mr. ROSSER: You say Mr. Frank had the key in his pocket? No one mentioned it, that isn't the evidence; I say it was hung up in the office, that's the undisputed evidence.

119 Mr. DORSEY: Holloway says when he got back Monday morning it was hung up in the office, but Boots Rogers said this man Frank—and he was sustained by other witnesses—when he came there to run that elevator Sunday morning, found that power box unlocked.

Mr. ROSSER: That's not what you said.

Mr. DORSEY: Yes, it is.

Mr. ROSSER: You said Frank had the key in his pocket next morning, and that isn't the evidence, there's not a line to that effect.

The COURT: Do you still insist that he had it in his pocket?

Mr. DORSEY: I don't care anything about that; the point of the proposition, the gist of the proposition, the force of the proposition is that old Holloway stated, way back yonder in May, when I interviewed him, that the key was always in Frank's office; this man told you that the power box and the elevator was unlocked Sunday morning and the elevator started without anybody going and getting the key.

Mr. ROSSER: That's not the point he was making; the point he was making, to show how clearly Frank must have been connected with it, he had the key in his pocket. He was willing to say that, when he ought to know that's not so.

The COURT: He's drawing a deduction that he claims he's drawing.

Mr. ROSSER: He doesn't claim that. He says the point is it was easily gotten in the office, but that's not what he said."

The COURT: You claim that's a deduction you are drawing?

Mr. DORSEY: Why, sure.

The COURT: Now, you don't claim the evidence shows that?

Mr. DORSEY: I claim the power box was standing open Sunday morning.

The COURT: Do you insist that the evidence shows he had it in his pocket?

Mr. DORSEY: I say that's my recollection, but I'm willing to waive it; but let them go to the record, and the record will sustain me on that point, just like it sustains me on the evidence of this man Rogers, which I'm now going to read.

Movant says that the Court erred in not rebuking the Solicitor-General for the foregoing improper argument which was not warranted by the evidence, and erred in not stating to the jury that there was no evidence that Frank had the key in his pocket, and in allowing the Solicitor-General to proceed unrebuked and uninterrupted with said illegal argument, and in not making a square and decisive ruling, upon the objection of the defendant, and in allowing the Solicitor-General to proceed with said claim that Frank had the key in his pocket, as a deduction, the same being totally unwarranted; and for said illegal and erroneous actions, and failures to act, by the Court, and for said illegal and improper argument, a new trial should be granted.

101. Movant says that a new trial should be granted, because of the following:

The Solicitor-General, in his concluding argument, in referring to the testimony of the physicians introduced by the defendant, spoke as follows:

"It wouldn't surprise me if these able, astute gentlemen, vigilant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect it might have upon you."

120 Whereupon the following colloquy occurred:

Mr. ARNOLD: There's not a word of evidence as to that, that's a grossly improper argument, and I move that that be withdrawn from the jury.

Mr. DORSEY: I don't state it as a fact, but I am suggesting it.

Mr. ARNOLD: He has got no right to deduct it or suggest it, I just want your Honor to reprove it, reprimand him and withdraw it from the jury; I just make the motion, and your Honor can do as you please.

Mr. DORSEY (resuming): I am going to show that there must have been something besides the training of these men, and I'm going to contrast them with our doctors.

Mr. ARNOLD: I move to exclude that as grossly improper. He

says he's arguing that some physician was brought here because he was the physician of some member of the jury, it's grossly unfair and it's grossly improper and insulting even, to the jury.

Mr. DORSEY: I say it's eminently proper and absolutely a legitimate argument.

Mr. ARNOLD: I just record my objection, and if your Honor lets it stay in, you can do it.

Mr. DORSEY: Yes, sir; that wouldn't scare me, your Honor.

The COURT: Well, I want to try it right, and I suppose you do. Is there anything to authorize that inference to be drawn?

Mr. DORESY: Why, sure, why the fact that you went out and got general practitioners, that know nothing about the analysis of the stomach, know nothing about pathology.

The COURT: Go on, then.

Mr. DORSEY: I thought so.

Mr. ARNOLD: Does your Honor hold that is proper, "I thought so?"

The COURT: I hold that he can draw any inference legitimately from the testimony and argue it, I don't know whether or not there is anything to indicate that any of these physicians *was* the physicians of the family.

Mr. ROSSER: Let me make the suggestion, your Honor ought to know that before you let him testify it.

The COURT: He says he don't know it, he's merely arguing it from an inference he has drawn.

Mr. DORSEY (resuming): I can't see any other reason in God's world for going out and getting these practi-oners, who had never had any special training on stomach analysis, and who have not had any training with the analysis of tissues, like a pathologist has had, except upon that theory.

Movant shows that the Court erred in not rebuking the Solicitor-General for making such improper argument which was not authorized by the evidence, and in not stating to the jury that there was not a particle of evidence to the effect that any of the physicians were family physicians of any of the jurors, or that any of the physicians were put upon the stand for the effect it might have upon them for such reason; and the Court erred in allowing the Solicitor-General to proceed with such improper, unwarranted and highly prejudicial argument, and erred in allowing the Solicitor-General to comment, as the foregoing colloquy shows, upon the well-merited interruptions by defendant's counsel; and for such erroneous actions, failures to act, by the Court, and for such illegal, unfounded and prejudicial argument, the defendant says that a new trial should be granted.

121 102. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, in referring to act of Judge Roan discharging the witness, Conley, from custody, stated:

"Judge Roan did it, no reflection on the Sheriff, but with the friends of this man, Frank, pouring in there at all hours of the night,

offering him sandwiches and whiskey and threatening his life, things that this Sheriff, who is as good as the Chief of Police but no better, couldn't guard against because of the physical structure of the jail, Jim Conley asked, and His Honor granted the request, that he be remanded back into the custody of the honorable men who manage the police department of the City of Atlanta."

Whereupon the following occurred:

Mr. ROSSER: No, that's a mistake, that isn't correct, your Honor discharged him from custody, he said that under that petition your Honor sent him back to the custody where you had him before, and that isn't true. Your Honor discharged him, vacated the order, that's what you did.

Mr. DORSEY: Here's an order committing him down there first—you are right about that, I'm glad you are right one time.

Mr. ROSSER: That's more than you have ever been.

Mr. DORSEY (resuming): No matter what the outcome of the order may have been, the effect of the order passed by His Honor, Judge Roan, who presides in this case, was to remand him into the custody of the police of the City of Atlanta.

Mr. ROSSER: I dispute that, that isn't the effect of the order passed by his Honor, the effect of the order passed by his Honor was to turn him out, and they went through the farce by turning him out on the street and carrying him back. That isn't the effect of your Honor's judgment. In this sort of case, we ought to have the exact truth.

The COURT: This is what I concede to be the effect of that ruling: I passed this order upon the motion of State's counsel, first, is my recollection, and by consent of Conley's attorney.

Mr. ROSSER: I'm asking only for the effect of the last one.

The COURT: On motion of State's counsel, consented to by Conley's attorney, I passed the first order, that's my recollection. Afterwards, it came up on motion of the Solicitor-General, I vacated both orders, committing him to the jail and also the order, don't you understand, transferring him; that left it as though I had never made an order, that's the effect of it.

Mr. ROSSER: Then the effect was that there was no order out at all?

The COURT: No order putting him anywhere?

Mr. ROSSER: Which had the effect of putting him out?

The COURT: Yes, that's the effect, that there was no order at all."

Mr. DORSEY (resuming): First, there was an order committing him to the common jail of Fulton county; second, he was turned over to the custody of the police of the city of Atlanta, by an order of Judge L. S. Roan; third, he was released from anybody's custody, and except for the determination of the police force of the City of Atlanta, he would have been a liberated man, when he stepped into this Court to swear, or he would have been spirited out of the State of Georgia, so his damaging evidence couldn't have been adduced against this man.

The Court erred in allowing the Solicitor-General to make the foregoing argument, over objection, which was not authorized by the

evidence, and in not rebuking and correcting the Solicitor-General; and because of such failures to act and erroneous actions, by
122 the Court, and because of such improper and illegal argument, movant says a new trial should be granted.

103. Because the Court erred in failing to charge the jury, in reference to the witness, Jim Conley, that if the witness wilfully and knowingly swore falsely as to a material matter, his testimony ought to be disregarded entirely, unless corroborated by the circumstances, or the testimony of other unimpeached witnesses.

The Court erred in failing to charge the jury that, if they believed from the evidence, that Conley watched for Frank, and that his purpose in watching was to assist in the commission of the crime of sodomy by Frank upon the person of Mary Phagan, sodomy being a felony, that then, Conley as to any alleged murder committed in the progress of any such attempt to commit sodomy, would be an accomplice; and the jury could not give credit to his testimony, unless corroborated by the facts and circumstances, or by other witnesses.

ROSSER & BRANDON,
HERBERT J. HAAS,
REUBEN R. ARNOLD,
Movant's Attorneys.

123 EXHIBIT A.

GEORGIA,
Dougherty County:

In Superior Court, Fulton County, Georgia.

STATE OF GEORGIA
v.
LEO M. FRANK.

Indictment for Murder.

Motion for New Trial.

Before me personally appeared R. L. Gremer, who being duly sworn deposes and says that he makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is a resident of Albany, Ga., that he is acquainted with Mack Farkas, who works with Mr. Sam Farkas, who operates a livery stable and sale barn in Albany.

Further deposing, he says that between the time of the murder of Mary Phagan, and the trial of Leo M. Frank, the exact date this deponent can not state, deponent was standing in front of Mr. Sam Farkas's place of business on Broad Street in Albany, in the presence of Mack Farkas and others, including a party by the name of A. H. Henslee; said Henslee is the same party whose picture appears on page 2 of the Atlanta Georgian issue of August the 26th,

and on page 2 of the issue of the same paper of August 23rd, as a juror in the Frank case.

At said time and place, deponent heard the said Henslee express his conviction that Frank was guilty of the murder of Mary Phagan; his exact language was "there can be no doubt that Frank is guilty. I know he is guilty," referring to the murder of Mary Phagan.

Further deposing he says, he stated to said Henslee "It is queer that a man of Frank's standing could be guilty of such a crime." Henslee said, "Without a doubt he is guilty." Deponent said "What do you mean by without a doubt?" Henslee said positively, "Without a doubt to my mind or to anyone else."

R. L. GREMER.

Sworn to and subscribed before me Sept. 4th, 1913.

L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT B.

GEORGIA,
Dougherty County:

In the Superior Court, Fulton County, Georgia.

STATE OF GEORGIA
v.
LEO M. FRANK.

Indictment for Murder.

Motion for New Trial.

Before me, personally appeared Mack Farkas, who being duly sworn makes this affidavit, to be used on the motion for a new trial in the above case.

Deposing, he says that he is a resident of Albany, Ga., and is connected with Sam Farkas, Esq., who runs a livery stable and sale barn in Albany; further deposing, he says that between the time of the murder of Mary Phagan, and the trial of Leo Frank, he heard a party discussing the case in front of the place of business of the said Sam Farkas, in Albany, Ga., in the presence of this deponent and others, including one R. L. Gremer, also a resident of Albany, Ga., said party, whom this deponent recollects as being named Henslee, and whose picture appears on page 2 of the Atlanta Georgian of August 23rd, and on page 2 of the Atlanta Georgian of August 26th, as being one of the Frank jury, expressed himself as being convinced of Leo M. Frank's guilt of the murder of Mary Phagan; the exact language used by said party, deponent does not recollect, but his recollection is that he

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used the words "I believe Frank is guilty," referring to the murder of Mary Phagan.

MACK FARKAS.

Sworn to and subscribed before me this September 4, 1913.

L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT C.

GEORGIA,
Fulton County:

Fulton Superior Court.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appears Julian A. Lehman, who being duly sworn makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is personally acquainted with A. H. Henslee, one of the jurors in the above case; that on June 2, 1913, between Atlanta, Ga., and Experiment, Ga., the said Henslee expressed his opinion that Frank was guilty of the murder of Mary Phagan, and that this was in deponent's presence and hearing; and in the hearing of other persons on the train at the time; the words used to the best of deponent's knowledge and recollection were "Frank is as guilty as a damned dog, and ought to have his God damned neck broke;" this was in reference to Leo M. Frank, and before the trial.

Again, on June 20, 1913, the said Henslee made practically the same statement of and concerning the connection of Leo M. Frank with the murder of Mary Phagan in deponent's hearing.

On both occasions the said Henslee showed great feeling, he expressed the aforesaid conviction firmly and positively and vehemently.

JULIAN A. LEHMAN.

Sworn to and subscribed before me, this the 12th day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT D.

GEORGIA,
County of Fulton:

In Fulton Superior Court.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Before me, the undersigned officer authorized by law to administer oaths, personally appeared Samuel Aron, who being first duly sworn, deposes and says on oath as follows:

Deponent says that just after the indictment of Leo M. Frank for murder, as near as he can recall about two days after the indictment, this deponent was at the Elks Club on Ellis Street, Atlanta, Georgia; that at that time he saw one A. H. Henslee, not then known to this deponent by name, but now known
125 and recognized by this deponent as one of the jurors who tried the Frank case and returned a verdict of guilty; said A. H. Henslee was at said Elks Club at the time mentioned, and made the statement in this deponent's hearing: "I am glad they indicted the God dam Jew. They ought to take him out and lynch him. And if I get on that jury I'd hang that Jew sure." This statement was made in connection with the indictment of Leo M. Frank for the murder of Mary Phagan, and made in this deponent's hearing by the said A. H. Henslee, who afterwards served on said jury and brought in a verdict of guilty.

At this time this deponent left the Club, not caring to get into the argument, which was becoming heated and which was very condemnatory of Leo M. Frank by the said A. H. Henslee.

SAMUEL ARON.

Sworn to and subscribed before me this 3rd day of October, A. D. 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT E.

STATE OF GEORGIA,
County of Fulton:

Fulton Superior Court.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Before me personally appeared L. Z. Rosser, Morris Brandon, R. R. Arnold, and H. J. Haas, who, being duly sworn, depose and say that they are the sole counsel of defendant in the above case, and they make this affidavit to be used as evidence on the motion for new trial in said case.

Further deposing, they say that, since the trial of said case and the verdict and sentence therein, it has come to their knowledge that two of the jurors who sat on said case, to-wit: M. Johenning and A. H. Henslee were prejudiced, partial and biased against Leo M. Frank, the defendant, as evidenced by affidavits attached to motion and hereinafter referred to; that said prejudice, partially and bias were present on their part, when said Johenning and Henslee qualified as jurors in said case as shown by said affidavits, but that the facts were unknown to these deponents at the time of the trial of said case, and at the time said jurors qualified on the voir dire of said case; and these deponents had no means of knowing said facts until after said trial.

Further deposing, they say that not until after the trial of said case did they know or have any means of knowing that said Johenning and Henslee, or either of them, had made any statement of any kind to, or in the presence of, any of the following persons, to-wit: H. C. Lovenhart, Mrs. J. G. Lovenhart, Miss Mariam Lovenhart, S. Aron, Mack Farkas, R. L. Gremer, Jno. M. Holmes, Shi Gray, S. M. Johnson, J. J. Nunnally, W. L. Ricker, J. A. Lehman, C. P. Stough, or any other person, of and concerning said Leo Frank in connection with the murder of Mary Phagan, or in connection with said trial, or the possible outcome of said trial.

Further deposing they say that they have been guilty of no laches in this matter, but that they have used every means of obtaining the facts in connection with statements made by said persons, and all of them, and all of said statements have come to their knowledge since the rendition of the verdict and sentence in said case, as is shown by the dates mentioned in the jurats to
126 each affidavit, and deponents have brought same to the attention of the Court at the earliest possible moment at which the Court could take cognizance of said affidavits after the trial, which is the date on which the rule nisi is on return that is October 4, 1913, same being on that day presented to the Court as part of the motion for new trial.

Further deposing, deponents say that, had they known at the trial of any of the facts or statements of the jurors, which would disqualify, or tend to disqualify, said jurors, or either of them, when said jurors were put upon the voir dire in said case, these deponents would have brought the same to the attention of the Court at said time.

L. Z. ROSSER.
MORRIS BRANDON.
REUBEN R. ARNOLD.
HERBERT J. HAAS.

Sworn to and subscribed before me, by each of the above four-named deponents, this October 22, 1913.

E. D. THOMAS,
Notary Public, Fulton County, Georgia.

EXHIBIT F.

GEORGIA,
Fulton County:

Fulton Superior Court.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared Mrs. Jennie G. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Johenning, one of the jurors who served in the trial of Leo M. Frank for the murder of Mary Phagan.

Further deposing she says that during May, 1913, said M. Johenning met deponent and deponent's daughter on Forsyth Street, Atlanta, Georgia, and then and there the said M. Johenning expressed to the deponent and deponent's daughter his firm belief that Leo M. Frank was guilty of the murder of Mary Phagan. This statement was made by M. Johenning forçeably and positively as his profound conviction.

MRS. JENNIE G. LOEVENHART.

Sworn to and subscribed before me this 26th day of September, 1913.

C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT G.

GEORGIA,
Fulton County:

Fulton Superior Court.

STATE OF GEORGIA,
vs.
LEO M. FRANK.

Before me personally appeared H. C. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath he says that for some eighteen months prior to July, 1913, he was connected with the Hodges Broom Works in the city of Atlanta; that he is personally acquainted with
127 M. Johenning, one of the jurors in the above stated case, and that during the month of May, 1913, said M. Johenning had a conversation with this deponent, in which he discussed the death of little Mary Phagan.

Further deposing he says that in said conversation the said juror, M. Johenning, expressed his opinion to deponent that Frank was guilty of the murder of Mary Phagan, and that it was his profound conviction.

H. C. LOEVENHART.

Sworn to and subscribed before me this 2nd day of September, 1913.

C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT H.

GEORGIA,
Fulton County:

Fulton Superior Court.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Before me personally appeared Miss Miriam Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Johenning, a juror, who served in the above stated case; she says that pror to the trial of Leo M. Frank, said juror, M. Johenning, had a conversation with this deponent and deponent's mother, and

in their presence expressed his profound conviction that Leo M. Frank was certainly guilty of the murder of Mary Phagan.

Further deposing she says that said M. Johenning made this statement, positively, almost vehemently, and that his exact language, which was in response to a remark from this deponent in reference to the case was, as near as deponent recalls, "I know that he is guilty," referring to Leo Frank. Said M. Johenning made this statement more than once to this deponent before the commencement of the trial of Leo M. Frank for murder.

MIRIAM LOEVENHART.

Sworn to and subscribed before me this 2d day of September, 1913.

C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT I.

GEORGIA,
Fulton County:

In Fulton Superior Court, July Term, 1913.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Conviction of Murder.

Motion for New Trial.

Personally came before the undersigned, Leo M. Frank, who upon oath says that he is the defendant in the above stated case, and that his sole counsel in said case were L. Z. Rosser, Morris Brandon, R. R. Arnold and H. J. Haas.

128 Affiant further says that at and before said trial was entered on, and during the whole of said trial that affiant had no knowledge whatsoever as to M. Johenning and A. H. Henslee, two of the jurors, being prejudiced, partial and biased in said case, as evidenced by the affidavits of H. C. Lovenhart, Mrs. J. C. Lovenhart, Miss Marian Lovenhart, S. Aron, Max Farkas, R. L. Grener, John W. Holmes, Shi Gray, S. M. Johnson, J. J. Nunnally W. L. Ricker, J. A. Lehman, and C. P. Stough. Affiant did not know either of said jurors and had never seen or heard of them before.

Further deposing, affiant says that he did not know until after the trial, and did not have any means of knowing until after said trial, that said Johenning and said Henslee, or either of them, had made any statement of any kind to or in the presence of any of the persons hereinbefore named. Affiant further says that before said trial, at the time of entering upon said trial, and during said

trial, he had no knowledge or means of knowing that said persons were prejudiced, partial or biased as is shown by the affidavits or depositions of the persons named, and the facts stated in said affidavits and depositions were unknown to this affiant until after the verdict and sentence in this case. He further says that he has been guilty of no laches in this matter, and has, together with his counsel, used all the means at hand to obtain the facts and circumstances in connection with the statements made by said parties and all of them. The said facts were discovered after the verdict and sentence of the court in the case above stated, and the affidavits of said witnesses were taken on the dates shown in the jurat to each affidavit, and the same are brought to the attention of the Court by being presented on the day for the return of the rule nisi, which is October 4th, 1913, and which is the earliest time at which such affidavits could be brought to the attention of the Court.

Affiant further says that had he known at the trial of any facts or statements which would disqualify, said jurors, or either of them, when said jurors were upon their voir dire in said case, that this affiant would have had his counsel bring the same to the attention of the Court promptly at that time.

LEO M. FRANK.

Sworn to and subscribed before me this 3rd day of October, 1913.
SAML. H. BREWTON,
Notary Public, Fulton County, Georgia.

EXHIBIT J.

GEORGIA,
Fulton County:

No. —.

Fulton Superior Court.

STATE OF GEORGIA
versus
LEO M. FRANK.

Personally appeared W. P. Neill, who makes this affidavit to be used on a motion for new trial in the above stated case.

Deposing he says on oath that he was present in the court-room during the trial of Leo M. Frank for the murder of Mary Phagan, for two full days during the trial, and from time to time on other days; that at the time of the facts hereinafter stated, deponent was sitting just where the jury passed by going from the jury box to the rear end of the court-room, he was sitting on the front row of the spectators' benches.

129 During the course of the trial deponent saw the jury pass to the jury box from the rear of the court room, the jury

passed immediately by this deponent and also by a man, whose name is unknown to this deponent, but who was a spectator in the court room, who was sitting about three feet from this deponent, just across the aisle, no one being between this man and deponent; as the jury passed this man, at the time specified, this man took hold of one of the jurors, he took the juror by the hand with one hand and grasped his arm with the other hand and made a statement to him, said something to the juror which this deponent did not understand sufficiently to be able to quote, but this deponent says that he made some statement to the juror while he had him thus by the hand and arm.

Further deposing he says that this act was witnessed by Plennie Minor, so this deponent believes, for the reason that as soon as this happened, the said Plennie Minor immediately came back to this man and threatened to put him out of the court.

Plennie Minor told this man that he, Plennie Minor, saw him, the man, take the juror by the hand and say something to him; the man remonstrated with Plennie Minor, and this deponent heard Plennie Minor repeat to him that he, Plennie Minor, saw him, the man, speak to the juror.

Deponent further says that on two occasions, while he was sitting in the court-room, at the trial, at one time while he was about six to ten feet from the jury, this deponent heard shouts and cheering on the outside of the house from the crowds collected outside. One of said times was during Dorsey's speech.

While this deponent does not say whether or not the jury heard this cheering, he does say that he, the deponent, heard it, plainly and distinctly and was within a few feet of the jury at the time he heard it.

W. P. NEILL.

Sworn to and subscribed before me this September 9, 1913.

VIRLYN B. MOORE,
Notary Public, Fulton County, Georgia.

Further deposing he says that on an occasion he heard cheering in the court-room; the Judge said that unless the cheering stopped he would have to clear the court-room; and to this, Deputy Sheriff Minor replied that that would be the only way he could stop the cheering in the court-room.

W. P. NEILL.

Sworn to and subscribed before me this September 9, 1913.

VIRLYN B. MOORE,
Notary Public, Fulton County, Georgia.

EXHIBIT K.

GEORGIA,
Fulton County:

Fulton Superior Court.

THE STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared before the undersigned, a Notary Public in and for said county, B. M. Kay, who on oath says that he is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent says further that on Saturday evening, August 23, 1913, about 8 or 8:30 o'clock, p. m., he was driving in his father's automobile down South Pryor Street, going south, there being in
130 the automobile with him his mother, Mrs. Rose Kay, and his brother, Sampson Kay; that as the automobile approached the corner of South Pryor and East Fair Streets, he observed the Jurymen in the Frank case turn into South Pryor from the east, out of East Fair Street, and deponent stopped his automobile to look at the jury, and upon doing so noticed that walking alongside the jury were some six or seven other men. Deponent was on the west side of South Pryor Street while the jury in the above entitled case was walking north along the east side of Pryor Street. Deponent's brother Sampson Kay got out of the automobile stating to deponent that he was going to follow the jury.

B. M. KAY.

Sworn to and subscribed before me this 4th day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT L.

GEORGIA,
Fulton County:

Fulton Superior Court.

THE STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared before the undersigned, a Notary Public in and for said county, Miss Martha Kay, who on oath says that on the last day of the trial of Leo M. Frank in above stated case, August

25th, 1913, she was present in the court room and when the audience applauded Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied, "Your Honor, that is the only way it can be stopped."

MARTHA KAY.

Sworn to and subscribed before me this 3d day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT M.

GEORGIA,
Fulton County:

Fulton Superior Court.

THE STATE OF GEORGIA
VS.
LEO M. FRANK.

Personally appeared before the undersigned, a Notary Public in and for said county Mrs. A. Shurman, who on oath says that on the last day of the trial of Leo M. Frank in above stated case, August 25th, 1913, she was present in the court room when the audience applauded. Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied "Your Honor, that is the only way it can be stopped."

MRS. A. SHURMAN.

Sworn to and subscribed before me this 3d day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

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EXHIBIT N.

GEORGIA,
Fulton County:

Fulton Superior Court.

THE STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared before the undersigned, a Notary Public in and for said county, Mrs. A. Shurman, who on oath says that she is a resident of the city of Atlanta, living at No. 240 Central Avenue. Deponent says that on Monday morning, August 25th, 1913, the last day of the trial of the said Leo M. Frank, in the above stated cause, she was present in the court room in company with Miss Martha Kay, of No. 264 South Pryor Street, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor-General of said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey," all of which was loud and long continued and plainly audible to any one in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

MRS. A. SHURMAN.

Sworn to and subscribed before me this 3d day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT O.

GEORGIA,
Fulton County:

Fulton Superior Court.

THE STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared before the undersigned, a Notary Public in and for said county, Miss Martha Kay, who on oath says that she is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent says that on Monday morning, August 25th, 1913,

the last day of the trial of the said Leo M. Frank in the above stated case, she was present in the court room in company with Mrs. A. Shurman of No. 240 Central Avenue, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor-General of said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey," all of which was loud and long continued and plainly audible to anyone in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

MARTHA KAY.

Sworn to and subscribed before me this 3d day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

GEORGIA,
Fulton County:

Fulton Superior Court.

THE STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared before the undersigned a Notary Public in and for said county, Sampson Kay, who on oath says that he is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent further says that on Saturday evening, August 23rd, 1913, about 8 or 8:30 o'clock p. m. he saw the jury in the above entitled case walking along South Pryor Street with a deputy sheriff in front and another walking in the rear of said jury, said jury turning into South Pryor Street from East Fair Street, and thence up South Pryor Street to the Kimball House. Deponent followed the jury some 15 or 20 feet in the rear thereof, from E. Fair Street up South Pryor Street to near the corner of E. Mitchell and S. Pryor, when he passed ahead and waited on the corner of said streets until the jury had passed, and then continued to follow them up to the Kimball House. This deponent says that there were some six or seven men walking alongside the jurymen talking to them all the way from the corner of E. Fair and S. Pryor Streets, up to the Union Station just north of the corner of East Alabama and S. Pryor Street, when the men left them, and the jury went on and entered the Kimball House through the Wall Street entrance.

SAMPSON KAY.

Sworn to and subscribed before me this 3d day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT Q.

STATE OF GEORGIA,
Fulton County:

Fulton Superior Court.

THE STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared Samuel A. Boorstin, who being duly sworn, on oath says: That on Friday evening, on the 22d day of August, 1913, at about 5 or 5:30 p. m., he was present at the court-room of Fulton Superior Court, Judge L. S. Roan, presiding, during the trial of the State versus Leo M. Frank; and, after adjournment, and when the jury had been taken from the court-room, and shortly thereafter, the Solicitor-General, Hugh M. Dorsey, had passed out of the court-room, there was a large crowd waiting outside, through which the jury passed, comprising, perhaps, no less than two or three thousand people; that this crowd did tumultuously and noisily applaud and cheer the Solicitor-General, and did congregate around the court-room on the outside, standing in great numbers, both on the street and on the sidewalks; that deponent, upon adjournment of court, was walking up Pryor Street from said court-room in a northerly direction, and when he reached Pryor and Alabama Streets, he saw two persons peering out of the third floor corner window in the Kimball House, looking in a southward direction at the large crowd congregated between the Kiser building and the court-
house; that, as deponent continued walking northward and
133 reached the restaurant in the Union car shed, corner Pryor
and Wall Streets, he still observed one of the figures in the jury-room peering southward, with both hands upon the window sill, whom he recognized as being Juror Smith, one of the jurors in the case of the State versus Leo M. Frank, then being on trial. The other person, who had his head through the window peering southward, had by this time stuck his head back into the room, and deponent could not tell who he was.

SAML. A. BOORSTIN.

Sworn to and subscribed before me this 3d day of October, 1913.

J. H. LEAVITT,
Notary Public, Fulton County, Georgia.

EXHIBIT R.

GEORGIA,
Fulton County:

Superior Court of Fulton County.

STATE OF GEORGIA
VS.
LEO FRANK.

Charged with Murder.

Personally appeared before the undersigned officer, W. B. Cate, who being duly sworn deposes and says; That on September the 1st, 1913, in the afternoon, I was standing at the corner of Alabama Street and S. Pryor Street, and had intended to go down S. Pryor Street to the Court House where the Frank trial was being conducted but was unable to get any closer to the Court House on account of the crowd that had gathered in the street, I was in about one block of the Court House. While I was standing at this place I heard a great deal of cheering and shouting, the street being full of men most of whom were making noise and cheering. I saw some one come out of the court house, whom I understood was Hugh Dorsey, the Solicitor, and he was picked up by some of the crowd and carried across the street on the shoulders of the men who had him. I could not see the man that was carried on the shoulders of the men very well but was told that it was Dorsey. There was at this time fully three thousand men gathered around the Court House, filling the streets on all sides of the court house. I only know Col. Dorsey by sight.

W. B. CATE.

Sworn and subscribed to before me this Sept. 16, 1913.
VIRLYN B. MOORE,
Notary Public, Fulton County, Ga.

EXHIBIT S.

GEORGIA,
Fulton County:

In Fulton Superior Court.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared J. H. G. Cochran, who being duly sworn depo-es and says that he is a resident of Atlanta, Georgia, remembers the close of the trial of Leo M. Frank, and was present in front of the Court House in Atlanta, Georgia, on the day that the case closed and on the day that the jury returned the verdict of guilty in said case.

134 On the day aforesaid, to-wit:—that the jury returned the verdict, Mr. Cochran was standing in front of the Court House at the time the jury came out of the Court House to go to dinner; at just about the same time or near that time, and while the jury were in the vicinity of the Court House, Solicitor-General Hugh M. Dorsey came out of the Court House and went across the street to the Kiser building.

Deponent says that at the appearance of Solicitor Dorsey on the street coming from the Court House the crowd in the street, numbering between five hundred (500) and one thousand (1,000) people, to the best of this deponent's estimate, broke into loud and tumultuous cheering of the Solicitor, the jury being at the time near the Court House and proceeding up Pryor Street and being within sight of this Deponent at the time the cheering commenced, and that said cheering lasted the whole time that the Solicitor-General was crossing the street and until he had entered the Kiser building.

This Deponent knows that this cheering which took place in the presence of the jury, or in their hearing, and while they were on Pryor Street a short distance from the Court House, was cheering for the Solicitor, and he *re-* remembers the Solicitor's stopping at the entrance of the Kiser Building and taking off his hat and bowing to the crowds who were cheering; not only were the crowds cheering him but people in the windows of the Kiser Building were also cheering and waving their hands and handkerchiefs at the Solicitor; all of which was practically in the presence of the jury, at least within their hearing, before they proceeded up Pryor Street. Further deposing he says that on said day the jury took dinner at the German Café, on South Pryor Street, a distance of approximately one hundred fifty (150) to two hundred (200) feet from the Kiser Building, and that both outside of the Café and in the Café, the cheering of the Solicitor-General could be heard by any person.

J. H. G. COCHRAN.

Sworn to and subscribed before me this September 15th, 1913.
J. H. PORTER,
Notary Public, County of Fulton, State of Georgia.

EXHIBIT T.

GEORGIA,
Fulton County:

In Fulton Superior Court.

STATE OF GEORGIA
VS.
LEO M. FRANK.

Personally appeared H. G. Williams, resident of Atlanta, Georgia, who deposes and says that on the day the Frank trial closed, and verdict of guilty was found by the jury against Leo M. Frank, accused of the murder of Mary Phagan, this Deponent was on South Pryor Street in front of the Court House.

This Deponent saw Solicitor Dorsey come from the Court House and cross the street to the Kiser Building in the presence of exceeding five hundred (500) people, who cheered his appearance at the entrance of the Court House with loud and continued cheering, which cheering continued until he had entered the Kiser Building across the street, and which cheering was acknowledged by Solicitor Dorsey at the entrance of the Kiser Building where he turned and raised his hat to the people who were cheering him.

135 Just preceding Solicitor Dorsey, the jury had come out of the Court House and had gone a short way up the street to the German Café for lunch; at the time of this cheering, which could be heard for a great distance on all sides of the Court House, the jury were in easy hearing distance of the noise during the whole time when the crowd was cheering Solicitor Dorsey.

Said demonstration over the Solicitor-General occupied not less than three (3) minutes, and perhaps not exceeding five (5) minutes, and took place on the last day of the trial, immediately after the jury had come from the Court House on their *awy* to dinner. Further deposing, this Deponent says that practically the same demonstration took place on Saturday preceding the time hereinbefore specified, at the time when Solicitor Dorsey came from the Court House to go to his office and when the jury were proceeding from the Court House; said demonstration on Saturday being in the presence of the Solicitor and in the hearing of the jury, and being a demonstration over the Solicitor General.

H. G. WILLIAMS.

Sworn to and subscribed before me this September 15th, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, State of Georgia.

EXHIBIT U.

GEORGIA,
Fulton County:

Fulton Superior Court.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared before the undersigned a Notary Public in and for said county, E. G. Pursley, who on oath says that he is a resident of the City of Atlanta, residing at No. 50 Ponders Ave., with office at No. 700 Temple Court.

Deponent says that on Friday noon, before the above stated case went to the jury on Monday, he was present in the court room where the trial of Leo M. Frank was being held; that when court adjourned and the jury had left and gone to lunch he came out of the court house and there was loud cheering for "Dorsey," which lasted for several minutes. Deponent walked from the Court House to his office on the seventh floor of the Temple Court Building, and when he reached his office some one asked deponent what all the racket or fuss was about down the street.

E. G. PURSLEY.

Sworn to and subscribed before me this 13th day of September, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton Co., Ga.

EXHIBIT V.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared Marano Benbenisty, who on oath says that he was standing outside of the court house on Friday afternoon, August 22nd, at about 12:20, and I saw the jury come out of the court room.

Soon after the jury came out of the court room, Mr. Dorsey
136 came out, and the crowd set up cheering and yelling "Hurrah for Dorsey." At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building. That in the opinion of the deponent there was about a thousand people crowding about the court room.

MARANO BENBENISTY.

Sworn to and subscribed before me this 29th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT W.

STATE OF GEORGIA
VS.
LEO M. FRANK.

Personally appeared Isaac Hazan, who on oath says that he was standing outside of the court house on Friday afternoon, Aug. 22d, at about 12:20, and I saw the jury come out of the court room. Soon after the jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah," "Hurrah." At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building. That in the opinion of the deponent there was about a thousand people crowded about the court room.

Deponent further states that as the jury reached the other side of Pryor Street in front of the Barbers' Supply Company, deponent heard ten or fifteen men in front of the court house yelling toward the jury that unless they brought in a verdict of guilty, that they would kill the whole damn bunch; that in the opinion of your deponent, the jury must have heard them, because one of the jurors turned his face toward the yelling just when that occurred.

ISAAC J. HAZAN.

Sworn to and subscribed before me this 29th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT X.

GEORGIA,
Fulton County:

Personally appeared John H. Shipp, who on oath says that on Friday, August 22, he was in room 301 of the Kiser Building, corner Hunter and So. Pryor Streets; that he saw the jury come out of the court house about six P. M.; that a few minutes after the jury came out of the court house, Mr. Dorsey appeared in the entrance, whereupon a great cheer arose from the people crowding in the streets and around the court house entrance; that at that time deponent saw the jury about fifty feet from the entrance of the court house, the jury at that time crossing diagonally toward the German Café; that in the opinion of deponent the yells and cheers could have been heard several blocks away; that the crowd yelled "Hurrah for Dorsey," and that the words were plainly audible.

137 Deponent further states that he was in room 301 of the Kiser Building, on Saturday, August 23; that he saw the jury emerge from the court house entrance at about one o'clock; that a few minutes after the jury came out, Mr. Dorsey came out and immediately a great crowd around the court house door set up a yell and cheer, saying "Hurrah for Dorsey," taking off their hats and throwing them in the air and otherwise exhibiting their enthusiasm; that at the time of the yelling, the jury was not in sight of deponent, but deponent is of the opinion that they were within easy hearing of the yelling and must have heard all that transpired.

Deponent further states that while he has been around the court house, during the progress of the trial, he has heard numerous threats of violence to the accused in case of an acquittal; that deponent knows that one of the persons making threats was armed, that he exhibited his weapon at time of making threat.

JOHN H. SHIPP.

Sworn to and subscribed before me this 26th day of August, 1913.

C. A. STOKES,
Notary Public, Fulton County, Ga.

Exhibit Y.

THE STATE OF GEORGIA
vs.
LEO M. FRANK.

Personally appeared B. S. Lipshitz, who on oath says that he was out in front of the Court House, mingling with the crowd, at about one P. M. on Saturday, August 23, immediately after court adjourned; that deponent saw the jury [illegible]ut and about one or two minutes thereafter, Mr. Dorsey came out, whereupon there was great cheering and yelling by the crowd; that at the time the yelling and cheering took place, the jury could not have been more than one minute's walk away from the court house, and in the opinion of deponent, they could have heard the cheering and yelling.

Deponent further states that he was also present at the court house on Friday evening, August 22nd, when Mr. Dorsey left the court house, and heard the cheering and heard the crowd yelling "Hurrah."

B. S. LIPSHITZ.

Sworn to and subscribed before me this 26th day of August, 1913.

C. A. STOKES,
Notary Public, Fulton County, Ga.