

EXHIBIT A.

Georgia, Dougherty County.

The State of Georgia	}	Indictment for Murder.
v.		In Superior Court Fulton County, Georgia.
Leo M. Frank.		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.

State of Georgia,	}	Indictment for Murder.
v.		In Superior Court Fulton County, Georgia.
Leo M. Frank.		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 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.

State of Georgia,

vs.

Leo M. Frank.

} Fulton Superior Court.

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.

State of Georgia, County of Fulton.

State of Georgia,

vs.

Leo M. Frank.

} In Fulton Superior Court.

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 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.

State of Georgia,

vs.

Leo M. Frank.

} Fulton Superior Court.

Before me personally appear 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, partiality 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 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 ni si 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.

State of Georgia,

vs.

Leo M. Frank.

} Fulton Superior Court.

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 forceably 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.

State of Georgia,

vs.

Leo M. Frank.

} Fulton Superior Court.

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 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.

State of Georgia,

vs.

Leo M. Frank.

} Fulton Superior Court.

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 prior 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.

State of Georgia,

vs.

Leo M. Frank.

} In Fulton Superior Court.

} Conviction of Murder.

} July Term, 1913. 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.

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, or tend to 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.

State of Georgia,

Versus

Leo M. Frank.

} No.....
} Fulton Superior Court.

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.

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.

The State of Georgia

vs.

Leo M. Frank.

} Fulton Superior Court.

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 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.
The State of Georgia }
vs. } Fulton Superior Court.
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.
The State of Georgia }
vs. } Fulton Superior Court.
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.

EXHIBIT N.

Georgia, Fulton County.
The State of Georgia
vs.
Leo M. Frank.

} Fulton Superior Court.

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.
The State of Georgia
vs.
Leo M. Frank.

} Fulton Superior Court.

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.

EXHIBIT P.

Georgia, Fulton County.
The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

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.
The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

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 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:

State of Georgia,

vs.

Leo Frank.

} Superior Court of Fulton County
} 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
me this Sept. 16, 1913.

VIRLYN B. MOORE,

Notary Public, Fulton County, Ga.

EXHIBIT S.

Georgia, Fulton County.

State of Georgia

vs.

Leo M. Frank.

} In Fulton Superior Court.

Personally appeared J. H. G. Cochran, who being duly sworn deposes 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.

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 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 Cafe, 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 Cafe and in the Cafe, 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.

State of Georgia

vs.

Leo M. Frank.

} In Fulton Superior Court.

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.

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 Cafe 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 way to dinner. Further deposing, this Deponent says that practically the same demonstration took place on Saturday preceding the time herinbefore 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.
State of Georgia,
vs.
Leo M. Frank. } Fulton Superior Court.

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 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 Cafe; 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.

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 come out 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.

EXHIBIT Z.

Georgia, Fulton County.

Personally appeared Charles J. Moore, who on oath says that he is an attorney at law, occupying room 301 on the third floor of the Kiser Building, at the corner of Hunter and So. Pryor Streets; that on Friday, August 22, deponent was in his office and saw the jury come out of the court house entrance at about six P. M.; that soon after Mr. Dorsey appeared in the court house entrance and a great cheering and yelling occurred by the crowd immediately

opposite the entrance, and afterwards the crowd yelled "Hurrah for Dorsey," and the volume of the yells were so great that they could have been heard many blocks away; that they threw up their hats and gave other demonstrations; that at the time of the yelling the jury was just crossing the street toward the German Cafe, not fifty feet away from the entrance, and in the opinion of deponent must have heard the cheering and the words "Hurrah for Dorsey," because they could be plainly heard.

Deponent further states that he was in his office on Saturday, August 23, when the jury came out of the court house at about one o'clock, and he heard yelling and cheering when Mr. Dorsey appeared a few minutes afterwards. Deponent did not see the jury at the time of the yelling, but it occurred so soon after the jury came out of the court house that in the opinion of the deponent the jury must have heard the cheering and the words that were yelled.

Deponent further states that since the trial has been in progress he has heard several parties making threats of personal violence against the accused in the event of an acquittal; that these parties were loitering in and around the court house entrance and making threats that if the jury did not hang Frank; that they would pay the jury the compliment of sitting on the case and if the jury did not do its duty, they would; that deponent recalls the names of R. W. Milner, Richard Dutton; that Milner loitered continuously around the court house entrance and circulated among the crowd.

CHARLES J. MOORE.

Sworn to and subscribed before me
this 26th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT AA.

Georgia, Fulton County.

Personally appeared D. Rosinky, who on oath deposes and states that on Friday, August 22, and Saturday, August 23, he was standing near the corner of Hunter and South Pryor Street, in the City of Atlanta, Georgia, and that when the Solicitor-General, H. M. Dorsey, came out of the old City Hall Building, now used as a court house, there was a loud and vociferous cheering by the assembled crowd; that members of the crowd took the Solicitor in their arms and carried him across the street to the Kiser Building.

D. ROSINKY.

Sworn to and subscribed before me
this 26th day of August, 1913.
LEONARD HAAS,
Notary Public, Fulton County, Ga.

EXHIBIT BB.

Georgia, Dougherty County.
State of Georgia,
vs.
Leo M. Frank.

} In the Superior Court of Fulton County, Georgia.

— Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

MACK FARKAS.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

Georgia, Dougherty County.
State of Georgia,
vs.
Leo M. Frank.

} In the Superior Court of Fulton County, Georgia.

Before me personally appears B. W. Simon, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

B. W. SIMON.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

Georgia, Dougherty County.

State of Georgia,

vs.

Leo M. Frank.

} In the Superior Court of Fulton County, Georgia.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

SAM FARKAS.

Sworn to and subscribed before me
this October 21st, A. D., 1913.

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

EXHIBIT BB—(Continued)

FRANKLIN BUGGY COMPANY, INC.
 Manufacturers of the
 "Improved Barnesville Buggy"
 Barnesville, Georgia

July 8, 1913.

Ship to—Sam Farkas
 Albany, Ga.

When Ship—At Once
 How Ship

Quantity	Cat. No.	BODY		GEAR		Axle	WHEELS		Top	Trimmings	Stripe	Price Each	
		Width	Style	Spring	Color	Drop	Tread	Height					
1	44	20	R	Side	Bla	Arch	3/4	38/42	R	R	R	62.50	} Net
1	Set Rubbers for Job 44-V-7/8												
1	44	22	R	Side	Car	Arch	3/4	38/42	R	R	R	62.50	} Net
1	44	22	R	Side	Car	Arch	3/4	38/42	R	R	R	62.50	
1	Set Rubbers for Job 44-V-7/8												
1	44	23	R	Side	Bla	Arch	3/4	38/42	R	R	R	62.50	

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TERMS: Oct. 1st, 2.50 per cent. discount if paid in 30 days from date of invoice; if not discounted in 30 days buyer agrees to give note to cover the account net 90 days, from date of invoice, note to be made payable to any banker in Georgia. All goods F. O. B. Barnesville, Ga. No freight allowance. All notes due after 90 days from invoice to bear interest at 8 per cent. per annum.

All orders subject to manufacturers' contingencies. This order not subject to countermand after 5 days. No agreement considered unless same be written in face of this order.

The title of goods delivered under this contract to remain in the name of the sellers until they shall have received money for same, and upon failure to make such payments the sellers shall repossess themselves and take away such goods. Should time be taken under the terms of settlement of this contract by buyer and he should become insolvent or in default, sellers shall have the right to declare the whole amount, including all paper given, to be due and collectible. The acceptance of the goods implies the acceptance of this condition. All orders entered as regular 5 ft. Track unless other Track is specified. All prices F. O. B.

Barnesville, Ga.
 Salesman—A. H. HENSLEE.

Signature—SAM FARKAS,
 Pr B W Simon, B. K.

EXHIBIT CC.

Georgia, Walton County.

State of Georgia.

vs.

Leo M. Frank.

} In the Superior Court of Fulton County, Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appear J. J. Nunnally and W. L. Ricker, of Monroe, Georgia, who, being duly sworn, depose and say on oath as follows:

That they have seen in the public prints that A. H. Henslee, one of the jurors in the Frank case, admits having made certain statements as to Frank's guilt of the murder of Mary Phagan, but says these statements were made after the trial of Leo M. Frank, and not before.

These deponents say that, so far as they know, the said Henslee has not been in Monroe, Georgia, since the trial of Leo M. Frank, and they reiterate the statement that all the statements made in their hearing by said Henslee, and testified about by these deponents on September 27th, 1913, were made before the commencement of the trial of Leo M. Frank for the murder of Mary Phagan on July 28th, 1913; to the best of these deponents' recollection, these statements were made in June, 1913, although as to the exact month these deponents say not.

J. J. NUNNALLY,
W. L. RICKER.

Sworn to and subscribed before me
this October 10, A. D. 1913.

J. B. SHELNUTT, Clerk.
Superior Court, Walton County, Georgia.

EXHIBIT DD.

Georgia, Fulton County.

State of Georgia.

vs.

Leo M. Frank.

In the Superior Court of Fulton County, Georgia.

Before me personally appears Julian A. Lehman, who, being duly sworn, deposes and says on oath that he makes this affidavit for use in motion for new trial in above stated case.

Further deposing, he says on oath that he reiterates his statement heretofore made under oath that between the time of the murder of Mary Phagan, as reported by the newspapers, and the commencement of the trial of Leo M. Frank on July 28th, 1913, he, on two occasions, heard A. H. Henslee, a juror in said case, express himself firmly and positively as to the guilt of Leo M. Frank of the murder of Mary Phagan, in the language set forth in the affidavit heretofore made by this deponent and attached to the original motion for new trial in said case; one of said times was on or about June 20th, 1913, another time was early in the month of June, to the best of this deponent's recollection near June 2nd, but as to the exact date this deponent can not state.

JULIAN A. LEHMAN.

Sworn to and subscribed before me
this 13th day of October, A. D. 1913.

J. H. PORTER,
Notary Public, Fulton County, Ga.

TWELVE JURORS WITH WHOM LEO M. FRANK'S FATE RESTS

M. S. WOODWARD.

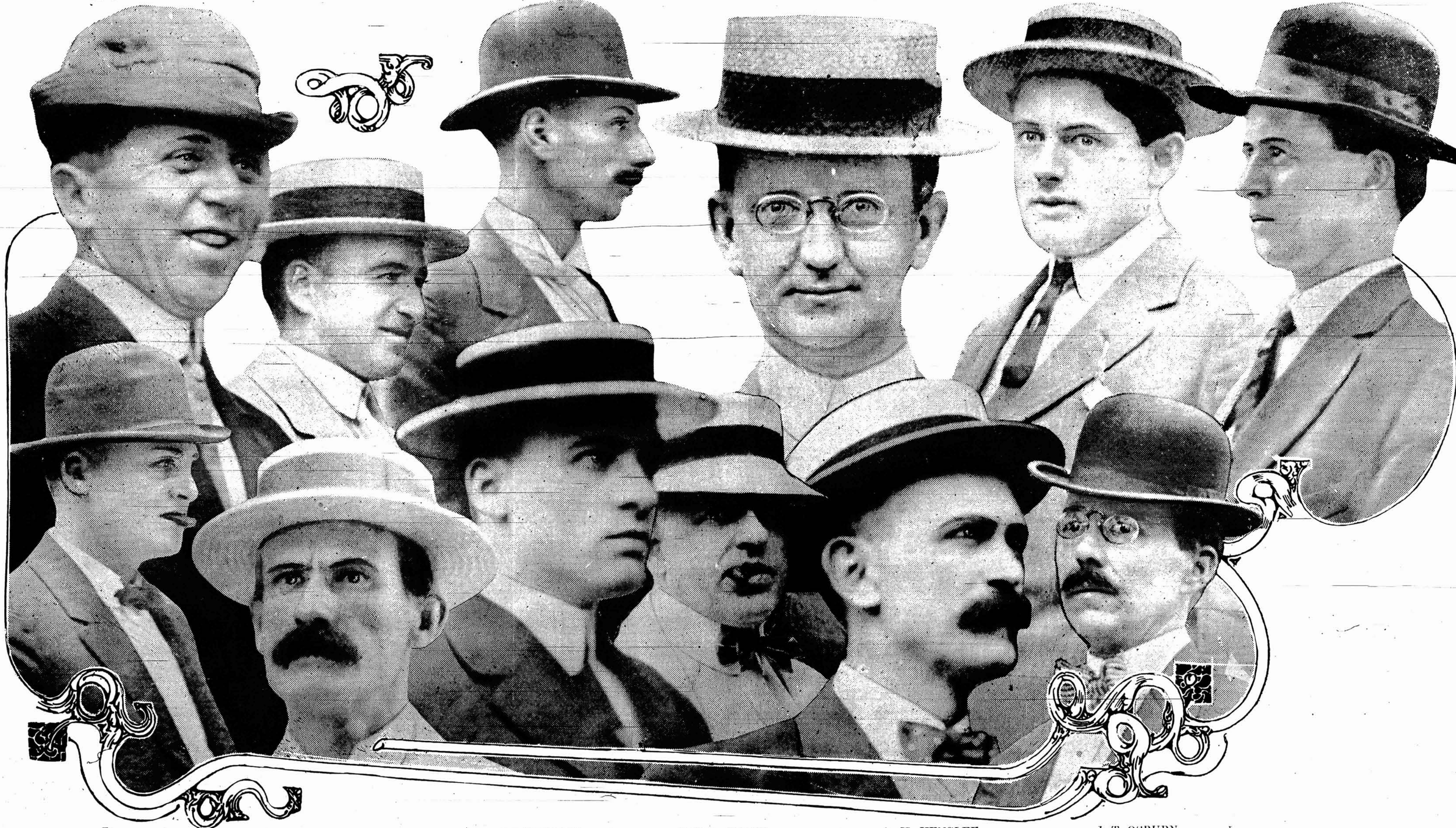
W. M. JEFFRIES.

M. JOHENNING.

F. E. WINBURN.

C. J. BOSSHARDT.

W. F. MEDCALF.



J. F. HIGDON.

A. L. WISBEY.

D. TOWNSEND.

F. V. L. SMITH.

A. H. HENSLEE.

J. T. OSBURN.

EXHIBIT GG.

Georgia, Hancock County.

State of Georgia,

vs.

Leo. M. Frank.

} In the Superior Court of Fulton County, Ga.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn, depose and say on oath:

That they are personally acquainted with Jno. M. Holmes, Shi Gray and S. M. Johnson; and that said Holmes, Gray and Johnson are each men of the highest personal and moral character and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them.

T. B. HIGHTOWER,
Sheriff Han. Co., Ga.

W. H. BURWELL.

HENRY H. LITTLE,

Ordinary.

FRANK L. LITTLE,

Chairman Bd. of Educa-
tion, Sparta.

T. M. HUNT.

H. D. CHAPMAN,

Tax Collector Han. Co.

THOS. F. FLEMING.

H. L. MIDDLEBROOKS,

Cashier First Nat. Bk.

G. W. RIVES,

Mayor of Sparta.

R. E. WHEELER,

Cashier Sparta Savings
Bank.

D. E. WILEY,

Clerk Superior Court.

A. H. BIRDSONG,

Treasurer Hancock Co.

E. A. ROZIER,

V-Pres. Bank of Sparta.

J. D. BURNETT,

Csr. Bk. of Sparta.

Sworn to and subscribed before me

this October 8th, 1913.

J. D. LEWIS,

Notary Public Hancock County, Georgia.

EXHIBIT HH.

Georgia, Fulton County.
State of Georgia,
vs.
Leo. M. Frank.

} In the Superior Court of Fulton County, Ga.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

W. F. UPSHAW.
S. E. PRUMAN.
HENRY B. KENNEDY.

Sworn to and subscribed before me
this October 16th, A. D. 1913.

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

EXHIBIT HH—Continued.

Georgia, Muscogee County.
State of Georgia,
vs.
Leo M. Frank.

} In the Superior Court of Fulton County, Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

C. W. MIZELL.
R. P. SPENCER, JR.

Sworn to and subscribed before me
this October 15th, A. D. 1913.

J. B. STEPHENS,
Notary Public Muscogee County, Georgia.

EXHIBIT II.

Georgia, Fulton County.
State of Georgia,
vs.
Leo. M. Frank.

} In Fulton Superior Court.

Personally appeared the undersigned deponents who, being duly sworn, depose and say that they are personally acquainted with C. P. Stough, of Atlanta, Fulton County, Georgia, and that they know him to be a man of high personal character, entirely trustworthy, and absolutely worthy of belief, as to any statement made by him, whether on oath or otherwise.

A. L. GUTHMAN.
L. P. STEPHENS.
A. H. VANDYKE.

Sworn to and subscribed before me
this 22d day of October, 1913.

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

EXHIBIT JJ.

State of Georgia,
County of Muscogee.

Personally appeared before me, an officer duly authorized by law to administer oaths, the undersigned who, being sworn, deposes and says that he was head clerk at the New Albany Hotel (Albany Hotel Company, proprietors), located at Albany, in said state and county, all during the months of June, July and August, 1913, and for several years prior to that time; and that attached hereto, marked "Exhibit A," is the register of guests at said hotel from the 20th day of June, 1913, to the 31st day of August, 1913; and that there was no other register of guests used at said hotel during the period above stated.

And deponent says further that on the third page of said register of guests, under date of July 8th, 1913 (Contd 7/8/13), on the second line from the top, is the signature of A. H. Henslee, address "Atlanta, U. S. A., assigned to room 79 in said hotel; and deponent says further that he was the clerk on duty at said hotel at the time the said Henslee registered his said name on said register, and was a guest at said hotel during that day; and deponent says further that he is personally acquainted with the said Henslee.

And deponent says further that he is aware and has knowledge that this affidavit is to be used as evidence in the hearing of the motion for a new trial in the case of the State of Georgia versus Leo M. Frank, which is now pending in the superior court of Fulton County, Georgia.

W. M. LITTLE.

Sworn to and subscribed before me
this October 23rd, 1913.

H. K. GAMMON, J. P.,
Muscogee County, Ga.

EXHIBIT KK.

State of Georgia, Fulton County.

State of Georgia,

vs.

Leo. M. Frank.

} No..... Murder. Fulton Superior Court.

Personally appears Leo M. Frank, who on oath deposes and states that he is the defendant above named; that he did not know nor has he ever heard, until the end of his trial in the above stated case, that A. H. Henslee and Marcellus Jochenning had any prejudice or bias against deponent nor that they or either of them had ever said or done anything indicating that they believed in deponent's guilt, or had any prejudice or bias against deponent.

LEO M. FRANK.

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

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

EXHIBIT LL.

Georgia, Fulton County.
State of Georgia,
vs.
Leo. M. Frank.

} In the Superior Court of Fulton County, Georgia.

To the Honorable George L. Bell,
Judge of the Fulton Superior Court:

This application is presented to the Court by Leo M. Frank, the defendant in the above stated case, and shows to the Court the following facts:

The above stated case of the State of Georgia vs. Leo M. Frank, indictment for murder, has been tried, a verdict found, and this defendant sentenced; and a motion for a new trial in said case is now pending before Honorable L. S. Roan, Judge of the Stone Mountain Circuit, and hearing set for October 4, 1913.

It is shown to this Court that there is a certain party in the City of Atlanta, one C. P. Stough, whose affidavit is desired by this defendant to be used as evidence on the motion for new trial, and that said C. P. Stough refuses to give said affidavit; and it is desired to take testimony of said C. P. Stough under Section 5918 of the Code of 1910 of the State of Georgia.

Wherefore, the premises considered, this application is made for the purpose of having this Court name a Commissioner to take said testimony and for the purpose of having subpoenas issued as provided in said section of the Code, requiring said C. P. Stough to be and appear before said Commissioner at a date and place named, to answer certain questions to be propounded to him by Counsel for said defendant.

This September 29th, 1913.

R. R. ARNOLD,
L. Z. ROSSER,
Defendants' Attorneys.

The foregoing application read and considered. It is ordered that Sig Teitlebaum act as commissioner in said case, in accordance with Section 5918 of the Code of Georgia of 1910.

This September 29th, 1913.

GEO. L. BELL,
Judge of Superior Court,
Atlanta Circuit.

EXHIBIT LL—(Continued).

Georgia, Fulton County.
State of Georgia,
vs.
Leo. M. Frank.

} In Fulton Superior Court.

Written questions to be propounded to C. P. Stough, a witness for the defendant in the motion for new trial pending in said case, set for hearing October 4, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

1. Q. Do you know A. H. Henslee, who served on the jury in the above stated case at the trial commencing July 28, 1913?
A. Yes.
2. Q. How long have you known him?
A. About 6 or 7 years.

3. Q. During the time between the murder of Mary Phagan, as reported in the newspapers, to-wit: on April 26, 1913, and the commencement of the trial of the above case, what statements, if any, did you hear juror Henslee make in connection with Leo M. Frank, or as to who murdered Mary Phagan, or as to who was guilty of this murder; or as to how the trial of Leo M. Frank for this murder would terminate.
- A. About the time that Conley was reported to have made a statement, I was coming into the city on a street car from the home of my daughter. Henslee was also on the car. I heard him say this, in reference to Leo M. Frank's guilt of the murder of Mary Phagan: "I think he is guilty and I would like to be in a position where I could help break his damned neck."
4. Q. How were these statements made?
- A. This statement was most positive. He was as positive as I was, and I was as positive as I could be in what I said in the conversation.
5. Q. When and where was this?
- A. On a College Park street car, coming into the city.
6. Q. What is your business?
- A. Inspector for the Mason's Annuity.

C. P. STOUGH.

Georgia, Fulton County.

Personally appeared C. P. Stough, who having been duly sworn made answer as above indicated and shown, to the foregoing written questions 1-6 inclusive; said answers executed, sworn to and subscribed before me this September 29th, 1913.

SIG TEITLEBAUM,
Notary Public Fulton County, Georgia, and Commissioner to Take Testimony.

EXHIBIT MM.

Georgia, Hancock County.

State of Georgia,

vs.

Leo M. Frank.

} In Superior Court of Fulton County, Georgia.

To the Honorable Clerk of the Superior Court of Hancock County, Ga.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Sparta, Hancock County, Georgia, to-wit: John M. Holmes, Esq., Shi Gray, Esq., and S. M. Johnson, Esq., whose affidavits are desired by the movant as evidence on said motion; and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the Clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before J. W. Lewis, Esq., a notary public of said Hancock County, Georgia, and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,

L. Z. ROSSER,

Attorneys for Leo. M. Frank, Movant.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,

vs.

Leo. M. Frank.

} In Superior Court of Fulton County, Georgia.

Questions to be propounded to Shi Gray, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?

A. Yes.

2. Q. Are you personally acquainted with A. H. Henslee?

A. Yes.

3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?

A. Yes.

4. Q. To the best of your recollection what did he say in this conversation?

A. In a conversation in Walker & Holmes Insurance office, some one asked Henslee whether he, Henslee, thought Frank was guilty of the murder of Mary Phagan. Henslee answered in the affirmative. The answer given by Henslee was stated positively and firmly. The conversation lasted for about 20 minutes to half an hour. All of us were talking, Henslee and Mr. Holmes and Mr. Johnson, and others. The whole conversation at the time with Henslee was on the proposition as to whether or not Leo M. Frank was guilty of the murder of Mary Phagan.

5. Q. Where and when did this take place, and who else was present?

A. It was before the trial of Frank, and it was in the insurance office of Walker & Holmes.

6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?

A. Yes.

7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?

A. I heard him say he was summoned as a juror in the same conversation already testified about.

8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?

A. I am a dealer in live stock.

H. SHI GRAY.

Georgia, Hancock County.

Before me personally appeared H. Shi Gray, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,

Notary Public, Hancock County, Georgia.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,

vs.

Leo. M. Frank.

} In Superior Court of Fulton County, Georgia.

Questions to be propounded to T. M. Johnson, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
A. Yes.
2. Q. Are you personally acquainted with A. H. Henslee?
A. I know him by sight.
3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
A. Yes.
4. Q. To the best of your recollection what did he say in this conversation?
A. Several parties were talking. Some said they thought Leo M. Frank was guilty of the murder of Mary Phagan, others said they did not. Henslee stated his conviction that Frank was guilty of the murder of Mary Phagan. He did this firmly and positively.
5. Q. Where and when did this take place, and who else was present?
A. Walker & Holmes office, about the last of June, 1913.
6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
A. Yes.
7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
A. He said he had been drawn as a juror and might have to serve.
8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
A. Work for Walker & Holmes.

T. M. JOHNSON.

Georgia, Hancock County.

Before me personally appeared T. M. Johnson, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth, said answers executed, sworn to and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN,

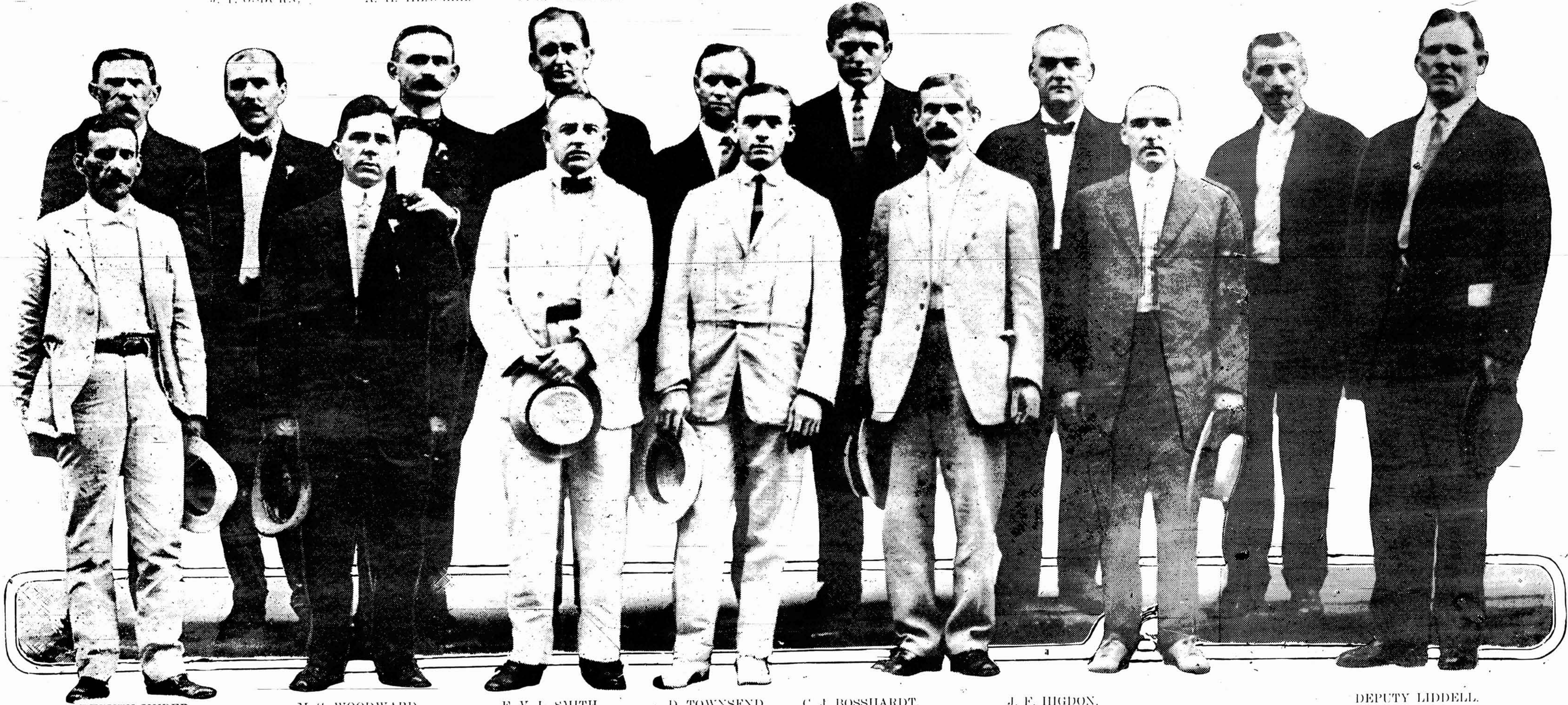
A. H. HENSLEE,

F. E. WINBURN,

W. F. MEDCALF,

A. L. WISBEY,

W. M. JEFFRIES, M. JOHNNING.



DEPUTY HUBER.

M. S. WOODWARD.

F. V. L. SMITH.

D. TOWNSEND.

C. J. BOSSHARDT.

J. F. HIGDON.

DEPUTY LIDDELL.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,

vs.

Leo M. Frank.

} In Superior Court of Fulton County, Georgia.

Questions to be propounded to John M. Holmes, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
A. Yes.
2. Q. Are you personally acquainted with A. H. Henslee?
A. Yes.
3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
A. Yes.
4. Q. To the best of your recollection what did he say in this conversation?
A. Several men were in my office. Mr. Henslee was asked the question whether or not he believed Leo M. Frank was guilty of the murder of Mary Phagan. He stated that he did. He stated this positively and firmly.
5. Q. Where and when did this take place, and who else was present?
A. Walker & Holmes insurance office on the morning of June 27th, 1913.
6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
A. Yes.
7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
A. He stated that he had been summoned as a juror.
8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
A. Member of the firm of Walker & Holmes, real estate and insurance.
JOHN M. HOLMES.

Georgia, Hancock County.

Before me personally appeared John M. Holmes, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

EXHIBIT NN.

Georgia, Fulton County.

State of Georgia,

vs.

Leo M. Frank.

} In Superior Court of Fulton County.

To the Honorable Clerk of the Superior Court of Walton County, Ga.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Monroe, Walton County, Georgia, to-wit: J. J. Nunnally, Esq., Virgil Harris, Esq., and W. L. Ricker, Esq., whose affidavits are desired by the movant as evidence on said motion and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before Orrin Roberts or Clifford Walker, notary publics of said Walton County, Ga., and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,

L. Z. ROSSER,

Attorneys for Leo M. Frank, Movant.

Georgia, Walton County.

State of Georgia,

vs.

Leo M. Frank.

} In the Superior Court of Fulton County, Georgia.

Written questions to be propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and _____, residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?

A. Yes, I have.

2. Q. Do you know A. H. Henslee?

A. I do.

3. Q. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, to-wit, July 28, 1913?

A. He was.

4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?

A. I did. He talked for some time in the store of Nunnally & Harris, and stated that Leo M. Frank was guilty of the murder of Mary

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Phagan. He denounced Frank bitterly and vehemently and made this statement about Frank in my hearing: "They are going to break that Jew's neck." This was stated most bitterly and positively.

5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?
A. Yes, he said that Frank was guilty.
6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?
A. Yes; he was bitter.
7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so, what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.
8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?
A. I was only present about 20 minutes. He was talking all the time I was there and stating that Frank was guilty of the murder of Mary Phagan.
9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?
A. J. J. Nunnally and some others whose names I do not now recall.
10. Q. State in full what is your business occupation, or occupations.
A. Dentist. Practicing about seven years. Am graduate of Atlanta Dental College.

W. L. RICKER.

Georgia, Walton County.

Before me personally appeared W. L. Ricker, who being first duly sworn true answers to make to the above and foregoing questions, answered same as above set forth; said answer executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

EXHIBIT NN—(Continued).

Georgia, Walton County.

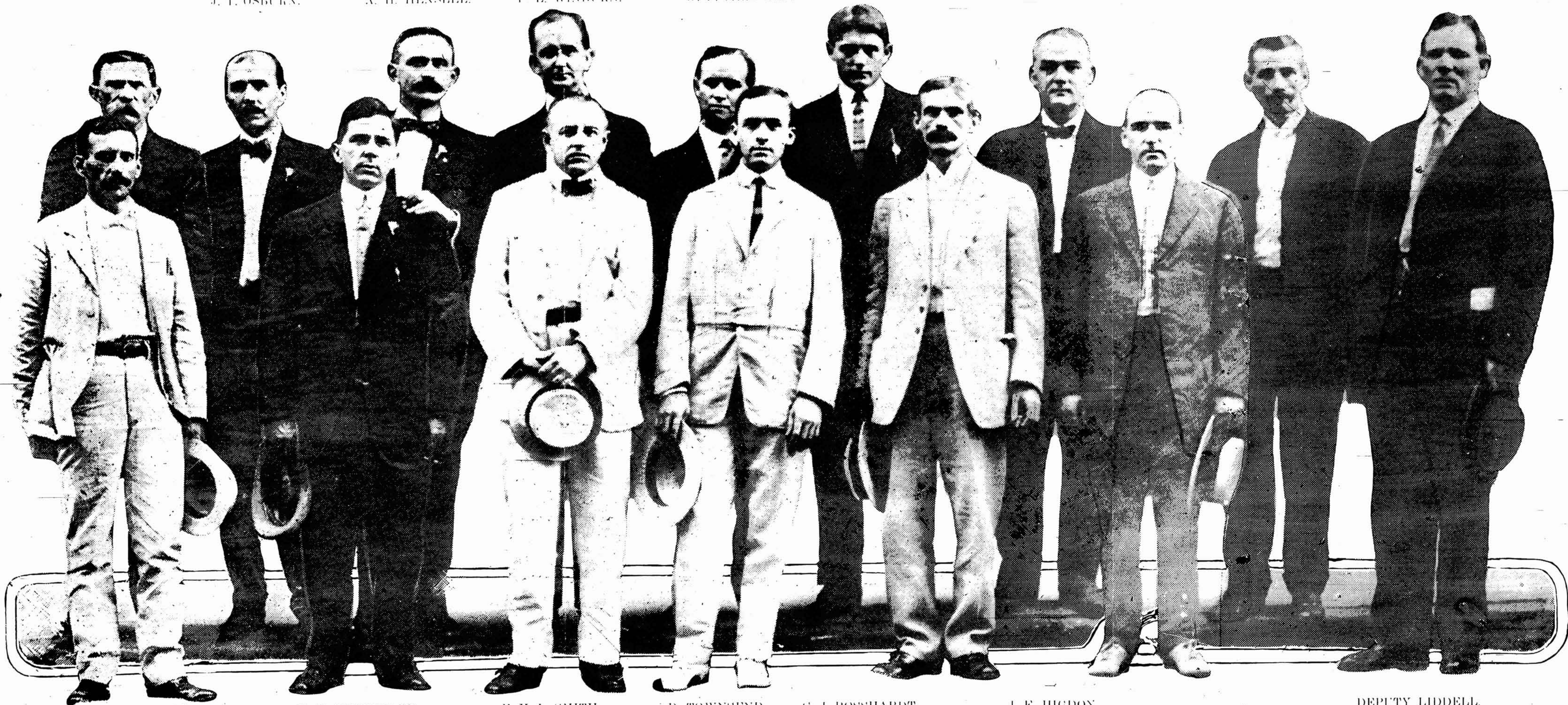
State of Georgia,
vs.
Leo M. Frank. } In the Superior Court of Fulton County, Georgia.

Written questions to be propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and —, residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?
A. Yes.
2. Q. Do you know A. H. Henslee?
A. Yes.
3. Q. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan: to-wit—July 28, 1913.
A. He was.
4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?
A. What impressed me was that Henslee was the most vehement in his expressions as to the guilt of Leo M. Frank of the murder of Mary Phagan, of any person I had heard talk about it. The Phagan murder was, at the time, the particular topic of conversation generally; a great many people were discussing it, and many men denouncing Frank as guilty, particularly traveling men. Henslee was the most bitter of any. For about two and one-half hours in my place of business Henslee argued Frank's guilt in the murder case; in talking about the outcome of the case, he made the statement, which to the best of my recollection was, that if the jury should turn Frank out, he (Frank) would not get out of Atlanta alive.
5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?
A. Yes, he believed him guilty.
6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?
A. He was very vehement as stated; there was no doubt from what he said that it was his conviction that Frank was guilty.
7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so,

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN. A. H. HENSLEE. F. E. WINBURN. W. F. MEDCALF. A. L. WISBEY. W. M. JEFFRIES. M. JOHENNING.



DEPUTY HUBER.

M. S. WOODWARD.

F. V. L. SMITH.

D. TOWNSEND.

C. J. BOSSHARDT.

J. F. HIGDON.

DEPUTY LIDDELL.

SECRET

what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.

- A. I only recall that, to the best of my recollection, he said that if the jury did turn Frank a loose, Frank would never get away alive.
8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?
- A. About two and one-half hours, according to my recollection. He made the statements repeatedly; it might have been only two hours.
9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?
- A. Dr. W. L. Ricker, and at times during the period there were others, but their names I don't recall. My partner, Mr. Harris, was out of the city.
10. Q. State in full what is your business occupation, or occupations.
- A. A member of the firm of Nunnally & Harris, composed of J. J. Nunnally and Virgil Harris, dealers in buggies, wagons, and live stock. Also vice-president W. H. Nunnally Co., general supplies and merchandise.

J. J. NUNNALLY.

Georgia, Walton County.

Before me personally appeared J. J. Nunnally, who, being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

The recitals of fact contained in the original motion for new trial, and in the one hundred and three grounds of the foregoing amended motion for new trial (the same being all the grounds of said original and all the grounds of said amended motion) are hereby approved as true, and the Court has identified all the exhibits and they are made part of said motion for new trial.
October 31, 1913.

L. S. ROAN,
J. S. C., St. Mt. Ct.

After considering the above and foregoing motion and amended motion and affidavits submitted by the State the motion for a new trial is hereby overruled and denied.

This October 31, 1913.

L. S. ROAN,

Judge Superior Court, Stone Mountain Circuit, Presiding.

Recorded Writs M. G. page 796,

31st October, 1913.

JOHN H. JONES, Deputy Clerk.

CHARGE OF THE COURT.

State of Georgia,)
) Murder.
) Fulton Superior Court.
vs.) Trial: July 28 to Aug. 21, 1913.
Leo M. Frank.

Gentlemen of the Jury:

This bill of indictment charges Leo M. Frank with the offense of murder. The charge is that Leo M. Frank, in this county, on the 26th day of April, of this year, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the grand jury of this county recently empanelled Leo M. Frank, the defendant, files a plea of not guilty. The charge as made by the bill of indictment on the one hand and his plea of not guilty filed thereto form the issue, and you, gentlemen of the jury, have been selected, chosen and sworn to try the truth of this issue.

Leo M. Frank, the defendant, commences the trial with the presumption of innocence in his favor, and this presumption of innocence remains with him to shield him and protect him until the State shall overcome it and remove it by evidence offered to you, in your hearing and presence, sufficient in its strength and character to satisfy your minds beyond a reasonable doubt of his guilt of each and every material allegation made by the bill of indictment. I charge you, gentlemen, that all of the allegations of this indictment are material and it is necessary for the State to satisfy you of their truth by evidence that convinces your minds beyond a reasonable doubt of his guilt before you would be authorized to find a verdict of guilty. You are not compelled to find, from the evidence, his guilt beyond any doubt, but beyond a reasonable doubt, such a doubt as grows out of the evidence in the case, or for want of evidence, such a doubt as a reasonable and impartial mind would entertain about matters of the highest importance to himself after all reasonable efforts to ascertain the truth. This does not mean a fanciful doubt, one conjured up by the jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Murder is defined to be the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow-being, which is manifested by external circumstances capable of proof.

Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart.

There is no difference between express and implied malice except in the mode of arriving at the fact of its existence. The legal sense of the term "malice" is not confined to particular animosity to the deceased, but extends to an evil design in general. The popular idea of malice in its sense of revenge, hatred, ill will, has nothing to do with the subject. It is an intent to kill a human being in a case where the law would neither justify nor in any degree excuse the intention, if the killing should take place as intended. It is a deliberate intent unlawfully to take human life, whether it springs from hatred, ill will or revenge, ambition, avarice or other like passion. A man may form the intent to kill, do the killing instantly, and regret the deed as soon as done. Malice must exist at the time of the killing. It need not have existed any length of time previously.

When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the State to make out its case, or from the evidence offered by the defendant or the defendant's statement.

Gentlemen of the jury, you are made by law the sole judges of the credibility of the witnesses and the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empanelled and sworn in this case—to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth? The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence.

Direct evidence is that which immediately points to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case. It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which would otherwise be clear. However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised by his good character, and to acquit him. (Stephens case, 81 Ga. 589).

The word "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good. When a defendant has put his character in issue, the State is

allowed to attack it by proving that his general reputation is not good, or by showing that the witnesses who have stated that his character is good, have untruly reported it. Hence, the Solicitor-General has been allowed to cross-examine the witnesses for the defense who were introduced to testify to his good character. In the cross examination of these witnesses, he was allowed to ask them if they had not heard of various acts of misconduct on the defendant's part. The Solicitor-General had the right to ask any questions along this line he pleased, in order thoroughly to sift the witnesses, and to see if anything derogatory to the defendant's reputation could be proved by them. The Court now wishes to caution you that, although the Solicitor-General was allowed to ask the defendant's character witnesses these questions as to their having heard of various acts of alleged misconduct on the defendant's part, the jury is not to consider this as evidence that the defendant has been guilty of any such misconduct as may have been indicated in the questions of the Solicitor-General, or any of them, unless the alleged witnesses testify to it. Furthermore, where a man's character is put in evidence, and in the course of the investigation any specific act of misconduct is shown, this does not go before the jury for the purpose of showing affirmatively that his character is bad or that he is guilty of the offense with which he stands charged, but is to be considered by the jury only in determining the credibility and the degree of information possessed by those witnesses who have testified to his good character. (Henderson's case, 5 Ga. App. 495 (3)).

When the defendant has put his character in issue, the State is allowed to bring witnesses to prove that his general character is bad, and thereby to disprove the testimony of those who have stated that it is good. The jury is allowed to take this testimony, and have the right to consider it along with all the other evidence introduced on the subject of the general character of the defendant, and it is for the jury finally to determine from all the evidence whether his character was good or bad. But a defendant is not to be convicted of the crime with which he stands charged, even though, upon a consideration of all the evidence, as to his character, the jury believes that his character is bad, unless from all the other testimony in the case they believe he is guilty beyond a reasonable doubt.

You will, therefore, observe that this is the rule you will be guided by in determining the effect to be given to the evidence on the subject of the defendant's character: If, after considering all the evidence pro and con, on the subject of the defendant's character, you believe that prior to the time of Mary Phagan's death he bore a good reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's guilt, if it so impress your minds and consciences, after considering it along with all the other evidence in the case; and if it does you should give the defendant the benefit of the doubt and acquit him. However, though you should believe his general character was good, still if, after giving due weight to it as one of the facts in the case, you believe from the evidence as a whole that he is guilty beyond a reasonable doubt, you would be authorized to convict him.

If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say "We, the jury, find the defendant guilty." Should you go no further, gentlemen, and say nothing else in your verdict, the Court would have to sentence the defendant to the extreme penalty for murder, to-wit: to be hanged by the neck until he is dead. But should you see fit to do so, in the event you arrive at the conclusion and belief beyond a reasonable doubt from

the evidence that this defendant is guilty, then, gentlemen, you would be authorized in that event, if you saw fit to do so, to say: "We, the jury, find the defendant guilty, and we recommend that he be imprisoned in the penitentiary for life." In the event you should make such a verdict as that, then the Court, under the law, would have to sentence the defendant to the penitentiary for life.

You have heard the defendant make his statement. He had the right to make it under the law. It is not made under oath and he is not subject to examination or cross-examination. It is with you as to how much of it you will believe, or how little of it. You may go to the extent, if you see fit, of believing it in preference to the sworn testimony in the case.

In the event, gentlemen, you have a reasonable doubt from the evidence, or the evidence and the statement together, or either as to the defendant's guilt as charged, then give the prisoner the benefit of that doubt, and acquit him; and in the event you do acquit him the form of your verdict would be: "We, the jury, find the defendant not guilty." As honest jurors do your utmost to reach the truth from the evidence and statement as you have heard it here, then let your verdict speak it.

Examined and approved as my charge in this case, Nov. 1, 1913.

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

SECRET

0009187

In the Supreme Court of Georgia
FALL TERM, 1913

LEO M. FRANK,
PLAINTIFF IN ERROR,

VS.

STATE OF GEORGIA,
DEFENDANT IN ERROR

In Error from Fulton Superior Court
at the July Term, 1913

BRIEF OF THE EVIDENCE

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