

# W. J. Burns and Dan Lehon Summoned by Solicitor Dorsey To the Frank Retrial Hearing

Subpoenas Served Upon the Noted Detective and Assistant After Their Return From Marietta—J. E. Duffey Arrested and Held as Witness for Resumption of Hearing Monday Morning.

## STORY OF MARY RICH DENIED IN AFFIDAVIT GIVEN TO SOLICITOR

Forgery, Bribery, Trickery, Intimidating Witnesses, Threatening to Expose Scandals of Girls, All Made Against Men Who Are Working for the Defense. Prisoner's Character Attacked.

Developments in the Leo Frank case last night included the serving of subpoenas upon Detective William J. Burns and his lieutenant, Dan S. Lehon, demanding their presence before Solicitor Dorsey at the Frank new trial hearing before Judge Hill, and the arrest of J. E. Duffey, who was thrown in jail to await the resumption of the hearing Monday morning.

Lehon and Burns were served with papers in their apartments in the Piedmont hotel shortly after their return from the strenuous trip to Marietta. They were conferring with attorneys for Frank's defense at the time. The subpoenas were served by Detectives Bob Waggoner, Jim Doyal and Deputy Sheriff Newt A. Garner.

## DUFFEY PUT UNDER ARREST.

Duffey was arrested by Deputy Garner about 10 o'clock at 51 West Alexander street, where he was spending the night with a friend. He was carried to prison on an attachment issued by Judge Ben Hill Friday morning, when Solicitor Dorsey stated that Duffey was eluding the solicitor's deputies who sought to have him testify before the hearing.

Upon catching sight of the solicitor's deputy, Duffey, who was sitting upon the porch of the residence at No. 51, exclaimed:

"I was just fixing to surrender."

Duffey's testimony relates to blood spots found on the second floor of the pencil factory. He was a witness for the state at Frank's trial, and testified that when he was wounded on the hand some time before the trial, the blood did not drop on the floor.

An affidavit which he recently made for the defense, however, swears that blood did drop on the floor in the identical spots at which blood was found near the lathing machine, and which blood was contended by the state to have come from wounds on Mary Phagan's body.

## WANTS TO GET TRUTH.

It was to get at the truth of these conflicting statements that Solicitor Dorsey sought to examine Duffey before Judge Hill.

The serving of a subpoena upon Burns will necessitate the delaying of his trip to Oklahoma, where he goes to testify in a case now in the courts of that state. He wired officials there last night that he would not be able to leave Atlanta until he had appeared before Judge Hill.

The papers were issued for both Burns and Lehon by Solicitor Dorsey, Friday afternoon, shortly following adjournment of the retrial hearing. Dorsey would not state to reporters the nature of questions which he plans to put to the detectives in his proposed examination.

## SURPRISES SPRUNG.

When Solicitor Dorsey opened his fight before Judge Ben Hill yesterday on the extraordinary motion for a new trial, filed by Leo Frank's defense, sensational surprises came in clusters.

And to cap the climax subpoenas were issued from the solicitor's office demanding the presence of Detective William J. Burns and his assistant, Dan S. Lehon, to appear before the retrial hearing for an examination by Dorsey on Monday.

The subpoenas will be served some time today. Mr. Dorsey would not divulge the nature of the questions he plans to put to the sleuths. When asked by a reporter for The Constitution he merely smiled, saying:

"Oh, I merely want to ask them a few questions."

## GREAT PILE OF AFFIDAVITS.

When the retrial hearing opened at 10 o'clock, after a week's adjournment, the solicitor sat at a table that was piled high with affidavits.

A large number of these documents had been made by witnesses who are

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written by Jim Conley to Anna Maud Carter, the negress who accuses Conley of having confessed.

Judge Hill refused to admit the evidence about the clothing, saying that Burns, whose testimony would have been presented in the form of an affidavit, was merely giving his personal opinion. Judge Hill stated that the question of the condition of Mary Phagan's garments and personal belongings was a matter of record, at which the matter was brought to a close.

## FORGERY CHARGED.

Miss Ruth Robertson, a girl character witness for the state, from whom the defense purported to have an affidavit of repudiation, which was submitted in their motion for a new trial, has sworn to an affidavit for Solicitor Dorsey that she never made any such document, and that it was a forgery.

She also swears that Frank, on one occasion, made an improper proposal to her, giving her \$7 and attempting to make an appointment with her. She says she returned the money and did not make the engagement. She also testifies that there were three girls in Frank's office at the time the proposal was made.

An affidavit from the father of the Robertson girl, W. T. Robertson, who is a farmer in Cobb county, tells of conversations with his daughter, in which she told him of Frank's alleged familiarity with Mary Phagan, and of the alleged general bad character he possessed in the pencil factory, of which he was superintendent.

A scalding attack was made upon the character of Mrs. J. B. Simmons, the Birmingham woman and former resident of Atlanta, who had made an affidavit to the effect that she had heard screaming coming from the basement of the pencil factory about 4:30 o'clock on the afternoon Mary Phagan was killed.

Numerous witnesses—Atlanta citizens and detectives of Birmingham—testified that her character was disreputable, and that she could not be believed on oath. Two affidavits by Atlanta men alleged that she had, at one time, been a "woman of the streets" in Atlanta. Birmingham detectives testified that the house in which she lives in Birmingham is a tenderloin resort.

## PROMISED REWARD.

Another sensation was created in the Simmons phase of the hearing when an affidavit from Mrs. Simmons herself was introduced by Dorsey. Mrs. Simmons swears that she was promised reward by C. W. Burke for making an affidavit for the defense, which is used in their motion for a new trial.

She says that Burke strove to have her make a false statement against Solicitor Dorsey, and that he wrote a statement for her, which she signed, but the contents of which she was not fully acquainted with. There were numerous falsehoods in it, she now says. Burke, she swears, brought her a basket of fruit, telling her that "it would not do at the time, but, later on, he would send her 'something.'"

Another angle of the attack on C. W. Burke was based on testimony by Nellie Wood, the sister-in-law to the witness, Annie Mae Pettis, who accuses Burke of seeking to approach her under assumed identity, assisted by Jimmie Wrenn, an assistant investigator, who is said to have been working with Burke.

Coupled with the Nellie Wood affidavit was one made by Charley A. Isom, who told of frequently seeing Burke and Jimmie Wrenn conferring with Attorney Luther Z. Rosser in the entrance to the Grant building, on the seventh floor of which Rosser's offices are located.

Mrs. Mamie Edmonds, who was formerly Miss Mae Kitchens, testifies in an affidavit of a visit by Burke, who told her he was a representative of Luther Rosser, and that he had been sent to interview her by Mr. Rosser, the latter of whom had said she had "an honest face."

## NOT CONTAINED IN STATEMENT.

She swears that Burke had her statement prepared by a stenographer of the National Pencil factory offices, out of her presence, and that Burke had misled her. She says she told Burke of an incident that occurred at the pencil plant, when Frank had invaded the girls' dressing room, opening the door and gazing upon a group of girls only partly clad, but which, she states, was not contained in the statement Burke prepared for her.

Miss Carrie Smith, a telephone operator, has sworn to an affidavit which Mr. Dorsey introduced, to the effect that she has never repudiated her testimony on the stand, and that she still upholds the character evidence which she gave at the trial.

She also tells of a visit by a man who posed under the name of Maddox, and who said he was writing a book on the Frank case, offering her \$20 if she would sign an affidavit which he had prepared. She refused the offer, she swears, and, later, upon going to the offices of Rosser, in the Grant building, saw this man, whom she presumes was Burke, sitting in the place.

A charge of an attempt to lure him into repudiation of his testimony is made against Burke and Jimmy Wrenn by R. P. Barrett, the state witness who discovered the hair and blood spots on the lathing machine in the pencil plant. Barrett's affidavit created general surprise.

"Not long after the trial, on one Sunday morning," Barrett swears, "Jimmie Wrenn met me near Marietta and Forsyth streets and entered into a conversation on the Frank case. As we separated, he said: 'Barrett, you are in a good position to make a barrel of money if you'll go to New Orleans and change your statement in the Frank case.'"

## WANTED ME TO TAKE TRIP.

"I asked him what he wanted me to do. He replied that he simply wanted me to go to New Orleans and change my testimony. I asked him who he was working for. He replied for a Mr. Burke. At the time, I did not know Burke. A little later, he came to my home early one morning and walked with me to the car line. He asked if I had told anybody about his offer. I told him, 'No.'"

"He then asked me to let him know before I told anybody—if I intended telling it—so he could leave town in time. In February of this year we met again at the postoffice. He asked if I wouldn't like to make \$4 a day and my expense on a trip to New Orleans and return. He said he was working for a press agent who was writing a story on the Frank trial.

"He said that this press agent wanted to get a statement from every witness of the Frank case. I told him I would go under these conditions. He asked me to meet him at 3:30 o'clock at the

Terminal station. I agreed, and he met. He had bought tickets to New Orleans for the both of us. I didn't intend to leave so early, and we postponed the trip.

"In the meantime I communicated with Mr. Stephens, assistant solicitor, and he advised me to see Mr. Dorsey before I left the city. I again saw Jimmy Wrenn, and we walked down Whitehall street to Mitchell. I told him then that I could not make the trip. He then informed me that Mr. Kelly, the press agent, would be in town Monday, and we would go to him and talk it over.

"The following Monday I again met Wrenn by appointment, and we went to the Kimball hotel to talk with this Mr. Kelly. We went up to a room in the Kimball and Wrenn introduced me to a 'Mr. Kelly,' whom I afterward learned was C. W. Burke. This man told me he wanted to get my statement. I referred him to the court record. He dissented against this, saying he wanted all testimony direct from the witness.

## SAID HE CAUGHT MURDERER.

"While we were talking, 'Kelly'—or Burke—told me that he was the man who caught the murderer of Pearl Bryant, in New Castle, Pa. He told me all about his plan to write a book on the case, and told me that if I followed his instructions I would be rewarded with enough money to buy a handsome house and lot.

"But Burke tricked himself. He saw that I was suspicious of him, and said: 'Barrett, I believe you think we are trying to trick you. If I were to put down a lie and send it to my house they would write back here and say: 'Burke, what in hell—' then he stopped without finishing the sentence, for he realized he had given himself away.

"Then I started to leave the room. He pleaded with me to let him write the statement that he wanted from me, and let me go over the statement and check out whatever there was about it I didn't like. I told him to write what he pleased and check what he pleased, but I would have absolutely nothing to do with it. I left him."

The affidavit of Miss Marie Karst is, perhaps, the most sensational introduced. She accuses Burke of trickery and underhand methods. She is the girl who swears she was employed by Burke in the capacity of female detective, and that she became associated with him because of a threat to expose a girlhood scandal.

## AFFIDAVIT INVOLVES QUINN.

She is now a student at a local business college. Previous to the Frank trial she was employed in the National Pencil factory. She was a character witness for the prosecution. She had been connected with the pencil plant for a considerable while before the trial of Frank. Her affidavit also involves Lemmie Quinn, a foreman in the factory, and a leading witness for the defense.

"Quinn telephoned me a short time after the trial," the Karst girl swears, "and asked me to meet him in front of the Piedmont hotel, which I did. He told me that Frank's side had got

hold of that scrape in the pencil factory which I was mixed in, and said that if I would see Burke and give him a statement he would keep the scandal out of court.

"He said that unless I did this, they would bring it up in court against me. I told him that he was foreman of the pencil factory and that he ought to have known whether I got drunk or not. He said he didn't know anything about it. The incident in question happened at the pencil factory when I was about fifteen years old. Another girl and I slipped a pint of whisky out of the pocket of one of the workmen and we and two other girls drank some of it.

"The other girls who drank with me were not more than fifteen—some were younger, I suspect. The whisky was stolen as a joke—pure and simple—and we drank it publicly. Everyone knew it was a joke, and most of the people around the factory knew about it. There was no secret about it. None of the girls became under the influence of it. It was just a bit of fun.

## QUINN FRIGHTENED ME.

"But when Lemmie brought it up in connection with Burke, it had the effect of frightening me, because I did not want my name to be involved with scandal, and I feared it would be exaggerated. Lemmie Quinn ended his talk by insisting that I go to see C. W. Burke or let him come to see me. He then went to the telephone in a soda fount to which we had walked, and called up Burke.

"Burke came right over and we had soft drinks at a table. Burke asked me to come to see him in the offices of Rosser, Brandon, Slaton & Phillips, on the seventh floor of the Grant building. I didn't go, however. Afterward, Burke met me on the street and asked me to go to work for him. I consented. I was not a stenographer, I told him, and he said that he only wanted me to work during the afternoons and that he would pay me \$2 a day.

"Burke wanted me to go around and see the girls who had sworn for the state in the trial of Frank as character witnesses, and his principal object was

for me to see if they had changed their testimony. He told me that what I had sworn on the stand did not amount to anything, as I was not cross-examined, and that for this reason my statement did not even go into the record.

"I began working for Burke and went to see a number of the girl witnesses, among them Helen Ferguson and Carrie Smith, but they told me that they would not change their evidence, because what they said was the truth. I did not tell them I was employed by Burke. I merely 'felt them out.'"

"One day Burke wanted me to go

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## W. J. BURNS AND LEHON ARE CALLED

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alleged to have made affidavits for Frank's counsel, and which affidavits are contained in the defense motion for a new trial. One of these, an affidavit made by Mary Rich, denies in whole an affidavit submitted by the defense in which she is purported to swear that she saw Jim Conley at 2:15 o'clock on the afternoon of Mary Phagan's murder.

The Rich woman swears in the prosecution's affidavit that she had never made any such affidavit as was presented by Frank's lawyers. She says that Mrs. Lucile Frank, wife of the convicted man, in company with Rabbi David Marx, approached her with tears in her eyes, pleading with her to help save Frank from the gallows.

This affidavit was not submitted Friday. It will be put before Judge Hill Monday morning, however, when the hearing will be reconvened, after having been adjourned at 2 o'clock Friday afternoon.

Testimony pertaining to actual incidents of immorality were introduced against Frank in affidavits by girl and women employees of the pencil factory. A number of girls who are alleged by the defense to have made affidavits repudiating testimony at the trial deny the documents, saying they have never made them and that they are forgeries.

## BURKE ASSAILED

Numerous attacks were made upon C. W. Burke, the private investigator attached to the offices of Luther Z. Rosser. Witnesses accused him of coercion, trickery and criminal tactics. One girl, Marie Karst, who was a witness for the state in the trial, swears that she was inveigled into assisting Burke in his work of gathering evidence by threats of exposure of a girlhood scandal.

Miss Karst testifies in her affidavit that she had been employed in Burke's office by Burke and that he had sought to have her go secretly into the home of Monteen Stover, another girl witness, live with the Stover girl and seek to reverse the Stover girl's evidence. Miss Karst says she also investigated a number of girl and women witnesses who gave character testimony against Frank.

Mrs. Maggie Nash, who formerly was Maggie Griffin, a character witness at the trial, swears in an affidavit that she had frequently seen Frank accompany a certain woman who worked in the pencil factory, into the ladies' dressing room, where they would stay for a time ranging anywhere from fifteen to thirty minutes.

## IN ROOM TOGETHER.

"I don't know, of course," she swears, "what Frank and this woman were doing in there, but I do know that they were in the room which was supposed to be used by only the girls as a dressing room, and I don't know of any business that could have been carried on in that room. The key to the room was carried always by the woman who went with Frank into it."

A new phase of the solicitor's evidence were two affidavits made by W. T. Tucker and his son, I. V. Tucker, who swear they heard screams at ten minutes after 12 o'clock on the day of the Phagan tragedy coming from the pencil factory building, evidently in the rear somewhere. They were standing, they swear, at Forsyth and Hunter streets, on a trip uptown.

"We were startled by the screams," the father and son testify, "and looked up. They came apparently from the rear of the building, and were traceable to the pencil factory building. We walked on, however, when I. V. Tucker said that he suspected it was only some of the girls in the factory playing."

Mr. Dorsey won a point at the opening of the hearing, when counsel for the defense sought to introduce some of the evidence accumulated by Detective Burns, which consisted of the detective's report on the condition of Mary Phagan's clothing and effects, and on the letters alleged to have been

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over and see Monteen Stover and see if I could not get her to change her testimony. Later, he told me he was coming to my house to see if my mother about letting me go down and work on a street car case which he was to investigate.

**MOTHER MADE ME STOP WORKING.**

"He also said that he wanted to see mother about letting me do down and live in the house with Monteen Stover for a week and 'pick her' to ascertain whether or not Monteen would alter or change her statement. He came out to see mother, but she refused, and consequently made me stop working with Burke.

"I met Burke and had my talks with him in the private office of Governor John M. Slaton, in the office of Rosser, Brandon, Slaton, & Phillips. One day I asked Carrie Smith, a friend of mine, and a witness in the Frank case, to meet me in Governor Slaton's office. I told her to go up to the seventh floor and turn to the left.

"Burke wanted Carrie to change her testimony. He told me that if Carrie didn't give what evidence he wanted, that he had a friend in an assignation house who knew Carrie, and that Carrie came down to this resort frequently, and that she always called him up every time Carrie went down there to notify him, and that if Carrie didn't 'come across' with the right kind of evidence, he would expose her.

"I have known Carrie Smith since she was a baby. We were little tots together. Her reputation is smirchless. She has never been guilty of immorality. I did not say anything while he told me this, but just listened. I asked Carrie about it all, and she branded Burke a liar."

**MOTION POSTPONED.**

The motion to set aside the verdict of guilty because of constitutional rights, presented by John L. Tye in behalf of Frank's defense, was postponed Friday morning because of At-

torney Tye's inability to be present. It will be taken up some time next week.

Charges that Detective Burke, in investigating the case for the defense, had posed in the various identities of newspaper reporter, press agent, author, detective and other professionals of an investigating type, were made by various witnesses. It was even stated in an affidavit by one of the character witnesses that he had been assisted by George Wrenn, the youth who recently served a twelve months' sentence for participation in the noted Gilsey \$5,000 diamond robbery.

**Dorsey's Answer.**

Following is the solicitor general's reply to the amendments to the extraordinary motion for a new trial: State of Georgia.—Answering the several amendments to the extraordinary motion for a new trial, as filed by movant, Leo M. Frank, and taking them up in the order in which they were presented to the court, says:

I. As to the amendment claiming that J. W. Boozer, on the afternoon of April 25, 1913, at about 4:15 o'clock, met Jim Conley on Peters street near Castleberry street: The state says that, in the first place, the said Boozer is absolutely mistaken as to the date that he saw said Jim Conley. The state submits that said Jim Conley did see Boozer on several occasions, and probably the day before, and that the defendant, Leo M. Frank, was looking after, for the said Jim Conley, the payment of certain dues, which Jim Conley owed on a certain watch. The said Boozer, the state submits, is not sustained by any other witness, so far as this record shows, in his claim as to seeing Conley at the time and place stated, and is flatly contradicted by said Conley, who is sustained as to his whereabouts by Ivey Jones and other witnesses.

But the state submits that at best, even if the affidavit of the said Boozer should be true, that it merely amounts to impeaching evidence, in so far as Jim Conley is concerned, and, under the law, furnishes no ground for setting aside the verdict of guilty, as rendered against said Frank. This would be true, even if the said Boozer had contradicted the said Conley as to his whereabouts at an hour which would have rendered it impossible for the said Conley to have aided the said Frank in the manner and form as testified to by said Conley on the trial of the case of the State v. Leo M. Frank. As a matter of fact, the said Conley could have assisted the said Leo M. Frank in the disposition of the body of Mary Pha-

gan, as testified to, and have been seen by the said Boozer. In other words, the testimony of the said Boozer, even if true, is that the state denies— is with reference to immaterial matter.

**Second Amendment.**

State of Georgia, answering the second amendment, says that C. B. Ragsdale has read and this affidavit, and insists that he was sworn to swear to the falsehoods as contained in the allegations as embodied in this amendment, and says that he was paid money to swear as he did. The true history of of this transaction is well known to the agents of one William J. Burns, a detective in the employ of Frank or some of Frank's friends, who has been co-operating with the defense in getting up evidence to overturn the verdict of guilty, and the particulars of the transaction, the state alleges, are fully known by one Lehon, an agent of the William J. Burns detective agency.

In addition to this, the said Ragsdale is absolutely unworthy of belief, being impeached, as the state will show, by the affidavits of many reputable citizens who knew the said Ragsdale, in the county of Cherokee, state of Georgia, where he formerly resided, and in the city of Atlanta. Also the state says that one R. L. Barber, who is alleged to corroborate and sustain the story as told by said Ragsdale, is a notorious worthless character, and the said Barber's general reputation for veracity is impeached by many affidavits, which will be submitted on the hearing. In addition, the said Barber has absconded and cannot be found, and the information given the officers and officials who knew the said Barber of the management of this case is, that the said Barber has absconded for the purpose of evading punishment for the willful and deliberate lies he has sworn in connection with this transaction, and the state alleges that the said Barber was able to make said false affidavits, submitted by the attorneys for the defendant, Leo M. Frank. These allegations the state will prove by affidavits to be submitted herewith.

This well illustrates the methods, the state is informed and believes, being pursued and followed in reference to other matters in connection with this extraordinary motion for new trial in behalf of the defendant, Leo M. Frank. The state will be able to show that this transaction is in keeping with other similar transactions, viz., the Mincey incident and the Fisher incident, not to mention other transactions in the course of this case of less importance. Hence the state submits that under no circumstances should a new trial be granted by reason of these perjured affidavits.

**Third Amendment.**

A third amendment embodies a claim on the part of the defendant, set forth through affidavits signed by Mrs. May Barrett and her daughter, Mrs. Maud Bailey.

It will be noted that the contention of the state originally was that Jim Conley was sitting in the area near the elevator downstairs. The state introduced the evidence of Jim Conley, to that effect, and showed by Mrs. Conley White that a negro man was seated exactly where Jim Conley claimed he was seated at about the time the murder was committed. Furthermore, it was shown by William A. Graham, two unimpeachable white men, that a negro man was sitting at the place where Conley claims he was sitting, waiting for the defendant, Leo M. Frank. By an abundance of circumstantial evidence the state was able to show a state of facts which the state submitted corroborated Jim Conley in his evidence, but it remained for the defendant himself to produce in the affidavit of Mrs. Maud Bailey conclusive evidence that the negro Jim Conley was sitting at this particular place, as he contends. This said witness, in her affidavit, says: "Deponent further says that when she entered the pencil factory, that day, Jim Conley was sitting on a box between the stairway and the elevator on the first floor. Deponent says she would not have noticed Conley but for the fact that he made a noise with his foot upon the box upon which he was sitting, which attracted her attention and caused her to look up and see him." But the state insists that the affidavit of the said Bailey, as to seeing Jim Conley there, is unworthy of belief, because the state will show that among the first people sent for and examined fully as to everything that they knew about this transaction was this said Mrs. Maud Bailey and her mother, Mrs. May Barrett. If Mrs. Maud Bailey and Mrs. May Barrett, who was an employee of the pencil factory at the time this thing occurred, really knew what she now would have this court believe that she does know, then she was deliberately making misstatements as to her knowledge, and as the state believes and charges, for the purpose of protecting Leo M. Frank, who saw the importance of keeping the officers ignorant that Jim Conley was where he said he was, and where the state insists he was.

The state submits that the contention of the defendant, Leo M. Frank, as disclosed by the affidavits of these two women, is untrue. In addition to having the evidence of statements made to the solicitor general immediately following the murder, the state submits other affidavits from reputable people, showing that at no time, though the matter was frequently discussed, did either of these women ever give any intimation of knowing any such facts as are now brought forward at the eleventh hour.

**Fourth Amendment.**

Answering the fourth amendment in reference to the claim of Annie Maud Carter:

First, the state says that Annie Maud Carter is a worthless character, unworthy of belief.

Second, the evidence, even if true, under the law could not be heard on the trial of Leo M. Frank, under the precedents of the supreme court. The opportunity to defend the case by this kind of evidence would open the door for all kinds of fraud and enable a man with sufficient wealth to have someone confess to the crime, send them away to the uttermost parts of the earth and then acquit, as is sought to be done in this case, the real culprit and murderer.

Third, when the case of the State of Georgia v. Leo M. Frank was on trial, evidence was introduced of a paper drawn by William Smith, attorney for Conley, who endeavored to have His Honor Judge Roan, previous to the trial, permit him to remain away from the Fulton county jail. Among other things, Conley alleged in his petition that the condition of the county jail was such that he could not be safeguarded and his interests protected as they could be elsewhere; and in paragraph 11 of said paper, which was introduced on the trial of the original case, said Conley said, responding to said rule:

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

requested or desired; that among those visitors was one whom this respondent has every reason to believe was working in the interest of the defendant; that this party presented respondent with sandwiches which this respondent did not eat; that this same party also offered to present respondent with whisky; that deponent was threatened with physical harm while in the county prison to the extent of the possibility of taking his life; that he was denounced as a liar, relative to his testimony in this case; and this respondent is sure without the knowledge or through the neglect of the sheriff or any of his men, but directly attributable to the construction physically of the county prison and the inadequate force allowed the sheriff to oversee and care for it; that respondent is advised and believes that one of the parties friendly to the defendant is already priming himself to swear that respondent made certain admissions while he was in the county prison, which this respondent did not make, and which testimony will be false, but will be given, if given, to help the defendant and damage this respondent."

**Effort to Poison Conley.**

In this respect the state submits that the said James Conley was a prophet, because the state will show by affidavits that an effort was made to poison said Jim Conley, and they have, through convicts, men unworthy of belief, so shaped and directed matters as to make it appear that this respectable woman, Annie Maud Carter, who was convicted of highway robbery, did get such an admission from said Conley, and the state insisted that the entire transaction is merely in keeping with the Ragsdale incident, and that the whole thing is founded upon falsehood.

Fourth, the said Annie Maud Carter, after making said affidavit, was, as the state insists, it will be able to show, placed in hiding, where not only the state's officers and officials cannot see her or interview her with reference to the matters and things to which she has sworn, but her whereabouts is being kept concealed from her own family, a circumstance which the state submits in and of itself should demand at the hands of this court a judgment overruling and denying this application for a new trial, because the state insists that if the transaction referred to in this amendment was worthy of belief there would be no occasion or necessity for the said Annie Maud Carter to be spirited away and beyond the jurisdiction of the court, as the state is informed and believes said Annie Maud Carter to be, and rendered inaccessible to the officers.

That the contention of the movant, Leo M. Frank, is false is furthermore shown by a statement on the part of the said Annie Maud Carter, made in the shape of an affidavit, in which it will be shown that she made many contradictory statements to what is alleged by movant to have been the facts.

**In Reference to Letters.**

With reference to the letters contended by said Frank to have been written by the said Conley: The said Conley denies the authorship of said letters. The circumstances indicate that Jim Conley never wrote any such letters, and the state insists that the letters produced, containing vulgar and obscene language and referring to indecent matters, are forgeries. If affidavits, as the state submits will be shown in this case, attributed to certain witnesses, were forged, then the state submits that it is not a far step to forged letters, and the state submits that such is the truth with reference to the same.

At the time of drawing this answer the state is not informed as to what notary attested said alleged affidavit of Annie Maud Carter. But the state says that the prosecution read affidavits either witnessed or attested by C. W. Burke, alleged to have been made by Ivey Jones, which the state insists is a forgery, and furthermore the state insists that another affidavit witnessed by said Burke, viz., the affidavit of Miss Ruth Robison, is a forgery, and in this connection the state calls the attention of the court to the fact that one C. W. Burke attested, not only some of the affidavits of the defendant, Leo M. Frank, but witnessed the affidavit of Dewey Hewell, who is in Cincinnati, Ohio, and not accessible, and likewise witnessed the affidavit of C. Burtis Dalton, who is in Florida and inaccessible, and the affidavit of Mary Rich was attested by C. W. Burke.

Wherefore, the state insists that the extraordinary motion be overruled, as under no circumstances could a different result obtain by virtue of any of

the various contentions as set up in either the original or the several amendments to the original extraordinary motion for new trial. Respectfully submitted.

HUGH DORSEY,  
E. A. STEPHENS.