

901144F

(5th A M E N D M E N T T O M O T I O N .)

GEORGIA, FULTON COUNTY.

And now comes the movant, the defendant in the above stated cause, Leo M. Frank, and amends his extraordinary motion for new trial, and for cause of amendment says:

1-a. Because of the newly discovered evidence of Georgia Denham which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit A.

The movant hereto, Leo M. Frank, did not, at the date of the original trial nor at the date when his motion for new trial was overruled, know of the facts in said Exhibit A set out; nor did he know that Georgia Denham would make an affidavit as set out and shown by said affidavit; nor did he have any reason to know, nor any means by which he could know, that Georgia Denham knew and would testify to the facts set out in said Exhibit A.

Said testimony, in said Exhibit A set out, is of the highest importance to this movant. Jim Conley one of the main witnesses against this movant, upon movant's trial, testified that he was engaged by Frank to move the body of Mary Phagan from the metal room of the pencil factory down to the basement.

Movant denied, on said trial, that Mary Phagan was killed in the metal room and that Conley, through Movant's instigation carried the body from the metal room to the basement, but contended through his counsel that Conley, himself, was the slayer of the little girl, and that the wounds and bruises upon the little girl's body was made by Conley and not by movant.

The witness Conley admitted the washing of the shirt, as in said affidavit testified to, but alleged that the apparent stains on the shirt were rust stains.

Movant did not know, and had no opportunity to know, that this witness, Georgia Denham, would testify that Conley told her that the stains upon the shirt were blood stains and not