

# I N D E X

## FOR THE DEFENSE

J. S. Benson

Direct..... 28  
Cross..... 32  
Re-Direct..... 34  
Re-Cross..... 34  
Re-Direct..... 36  
Re-Cross..... 56

J. E. Moody

Direct..... 56  
Cross..... 61  
Re-Direct..... 64

J. H. Stewart

Direct..... 76  
Cross..... 83  
Re-Direct..... 84  
Re-Cross..... 86  
Re-Direct..... 86  
Re-Cross..... 88  
Re-Direct..... 88  
Re-Cross..... 88

K. M. Morgan

Direct..... 91  
Cross..... 96  
Re-Direct..... 97  
Re-Cross..... 97  
Re-Direct..... 98

John Sandford

Direct..... 99  
Cross..... 116  
Re-Direct..... 124  
Re-Cross..... 125  
Re-Direct..... 130  
Re-Cross..... 130

C. S. Finley

Direct..... 131  
Cross..... 143

Mark Taylor

Direct..... 152  
Cross..... 166

Travis Moseley

Direct.....169  
Cross.....175

L. C. Cole

Direct.....176  
Cross.....184  
Re-Direct.....188

Pleas Larkins

Direct.....188  
Cross.....193  
Re-Direct.....194  
Re-Cross.....195  
Re-Direct.....195

John Stapler

Direct.....196  
Cross.....203

Will Watkins

Direct.....206  
Cross.....211  
Re-Direct.....212  
Re-Cross.....212

L. C. Stapler

Direct.....212  
Cross.....217

---

Arraignment of the Prisoners.....232



## MOTION TO QUASH INDICTMENT

MORGAN CIRCUIT COURT

THE STATE OF ALABAMA,

Plaintiff,

-vs-

HAYWOOD PATTERSON, OZIE POWELL,  
 WILLIE ROBERSON, OLEN MONTGOMERY,  
 CLARENCE NORRIS, CHARLEY WEEMS,  
 ANDY WRIGHT, ROY WRIGHT,  
 and EUGENE WILLIAMS,

Defendants.

A P P E A R A N C E SFOR THE STATE

ATTORNEY GENERAL THOMAS E. KNIGHT, Jr.  
 ASST. ATTORNEY GENERAL LAWSON  
 HON. H. G. BAILEY  
 HON. WADE WRIGHT

FOR THE DEFENDANTS

HON. SAMUEL S. LEIBOWITZ  
 HON. JOSEPH R. BRODSKY  
 HON. GEORGE W. CHAMLEE

-----

This motion came on to be heard in the Circuit Court of Morgan County, Decatur, Alabama, on March 27, 1933, before the Honorable James E. Horton, Judge presiding.

The following proceedings, not otherwise of record were had,  
 to-wit:

MR. LEIBOWITZ: May it please the Court, I desire to express my thanks to the Court, and to Attorney General Knight, and Asst. Attorney General Lawson, on behalf of Counsel for the defense. Before my motion I might say there is a mistaken notion gotten abroad in the city of Decatur, that the defense counsel at any time feels that the citizens of Decatur, whom we have found to be a God fearing and decent people, will not give these defendants a fair, square deal in this trial. Whoever made such misrepresentations had no right to make them. They certainly did not make them for the defense counsel in this case. The petition is now presented to the Court, which reads as follows:

THE STATE OF ALABAMA

VS.

Haywood Patterson, Ozie Powell  
Willie Roberson, Olen Montgomery,  
Clarence Norris, Charley Weems,  
Andy Wright, Roy Wright and  
Eugene Williams, Defendants.

No \_\_\_\_\_

In the Circuit Court of  
Morgan County, Alabama.

TO THE HONORABLE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA:

Your petitioners who are the defendants above named, by the leave of the Court hereby amend their petition and motion to quash the indictment and indictments, hereinafter referred to, and aver as follows:

1. The above named defendants and petitioners

and movants herein, were indicted by the Grand Jury of Jackson County, on or about March 31, 1931, charged in one indictment jointly and in nine several indictments individually with the crime of rape. They were convicted and sentenced to be executed, all except Roy Wright whose trial resulted in a disagreement.

2. Thereafter appeals from the said conviction were taken to the Alabama Supreme Court and the said convictions were affirmed except as to the defendant Eugene Williams, whose conviction was reversed and his case remanded to the Circuit Court of Jackson County.

3. Thereafter appeals were taken from the orders of affirmance of the Supreme Court of Alabama to the Supreme Court of the United States, and the Cases of Patterson, Powell, Roberson, Montgomery, Norris, Weems, and Andy Wright, resulted in a reversal of their conviction. All of the defendants are now awaiting a retrial under the indictment and indictments originally found against them.

4. All of the above named defendants are negroes.

5. The finding of the indictment and indictments hereinbefore referred to was null and void because the said indictment and indictments were not properly found, in that persons of the negro race, duly qualified to serve as members of the Grand Jury that found the said indictment and indictments, were excluded from such service, solely because of their race as will appear more particularly

hereafter.

6. That in the year of 1930, or 1931, the duly constituted authorities of Jackson County, prepared a roll of male citizens in Jackson County, from which roll the Grand Jury that found the indictment and indictments aforesaid, was selected.

7. That at the said time when the said roll was prepared and when the said Grand Jury was drawn, there were approximately 38,000 persons who were citizens of Jackson County.

8. That at the said time when the said roll was prepared and when the said Grand Jury was drawn, there were approximately 18,000 male citizens in Jackson County.

9. That at the said time when the said roll was prepared and when the said Grand Jury was drawn, there were approximately 8,000 male citizens, over the age of twenty-one and under the age of sixty-five years, who were legally qualified under the laws of the State of Alabama, to serve as Grand Jurors in Jackson County.

10. That at the said time when the said roll was prepared and when the said Grand Jury was drawn, there were approximately 600 negroes, male citizens of Jackson County, Alabama, who were duly qualified to be enrolled on the aforesaid jury roll, and who were eligible for such enrollment and possessed all of the requirements set forth in the laws of the State of Alabama for service as Grand Jurors.

11. That at the said time when the said roll



was prepared and when the said Grand Jury was drawn there were approximately 600 negroes in Jackson County, who were male citizens over the age of twenty one years and under the age of sixty five years and who were generally reputed to be honest and intelligent men and who were esteemed in the community for their integrity, good character and sound judgment, and who were not afflicted with a permanent disease or physical weakness rendering them unfit to discharge the duties of Grand Jurors and who had never been convicted of any offense, involving moral turpitude. Among the negroes referred to there may have been some who could not read English but who possessed all the other aforesaid qualities and were freeholders or householders of Jackson County.

12 That the authorities having in charge in Jackson County of the administration of the laws of the State of Alabama with reference to the compilation of the said jury roll arbitrarily refused, omitted and neglected to place the names of any of the aforesaid Negroes, so qualified as aforesaid, upon the said jury roll, ~~from~~ from which the said Grand Jury was drawn.

13 That such refusal, omission and neglect to place the names of the aforesaid ~~Negro~~ Negroes upon said jury roll, was due solely to the fact that they were members of the African race.

14 That such refusal, omission and neglect to place the names of the aforesaid Negroes on said roll, was

76  
to the detriment, prejudice and damage of the defendants above named and in violation of their rights as guaranteed to them by the Fourteenth Amendment of the Constitution of the United States.

15 That such refusal, omission and neglect to place the names of the aforesaid Negroes on said roll, was to the detriment, prejudice and damage of the defendants above named and in violation of their rights as guaranteed to them by the Constitution and laws of the State of Alabama.

16 That the defendants have not waived their rights to plead in abatement and move to quash the indictment and indictments by reason of the failure to place the names of the said negroes on the said roll as hereinbefore alleged and the exclusion of Negroes from service as members of the Grand Jury of Jackson County, nor for any other reason whatsoever.

~~It~~ Request is hereby made of the Attorney General of the State of Alabama ~~xx~~ and the Solicitor in charge of these cases, to reply specifically to the several allegations set forth herein not later than 5 days after service of a copy of this amended petition upon them or either of them.

Notice is hereby given that leave will be asked of the court to allow proof to be furnished either ~~xxx~~ by affidavits or ~~see~~ oral testimony in support of the allegations herein contained that may be controverted. 17 That for the



7

past 25 years the duly constituted authorities of Jackson County having charge of the administration of the laws and regulations pertaining to the listing of citizens of Jackson County for Jury and Grand Jury duty have systematically arbitrarily and invariable refused, neglected and omitted to place the names of negro citizens of Jackson County on said Jury lists although said negro citizens were duly qualified under the laws of the State of Alabama to serve as such jurors and Grand Jurors and said refusal, neglect and omission was due solely and by reason that they were ~~members~~ members of the African race.

18 Upon information and belief they aver that no negro has served on any Grand Jury or Petty Jury in Jackson County in more than 25 years.

19 Petitioners ~~adopt~~ their original petition and motion to quash the indictment and indictments heretofore filed and make the same with the exhibits thereto a part of this amended petition and motion to quash the indictment and indictments.

Therefore your petitioners pray; For an order quashing the indictment and indictments aforesaid and for such other and further relief as may be just and proper in the premises, for all of which no previous application has been made.

(Signed) George W. Chamlee

(Signed) Ozie Powell

and S. S. Leibovitz  
Attorneys for Defendants.

Andy Wright

Haywood Patterson

Willie Robinson

Charlie Weems

Clarence Norris

Eugene Williams

Roy Wright

Olen Montgomery

STATE OF ALABAMA, JEFFERSON COUNTY. SS

The defendant Roy Wright makes oath that the facts as stated in the foregoing petition and motion to quash, are true to the best of his knowledge and belief.

Roy Wright

Subscribed and sworn to before me, March 14, 1933

F. L. Ervin NOTARY PUBLIC, JEFFERSON COUNTY, ALABAMA.

STATE OF ALABAMA, MONTGOMERY COUNTY. SS

Haywood Patterson, Ozie Powell, Olen Montgomery, Clarence Norris, Charley Weems, Andy Wright, Willie Robinson, Eugene Williams, make oath in due form of law, that the facts as stated in their foregoing petition and motion to quash the indictments and indictments, are true to the best of their knowledge and belief.

Subscribed and sworn to before me March 14, 1933

H. H. Lindsey  
Notary Public, Montgomery County, Alabama

9  
MR. LEIBOWITZ: Next to the petition is the following certificate:

I hereby certify that I served a copy of the within and foregoing amended petition and motion to quash the indictment and indictments upon Hon. Thomas E. Knight, Jr., Attorney-General of the State of Alabama on this 15th day of March, 1933

(Signed) G. W. Chamlee  
Attorney for the Defendants

MR. LEIBOWITZ: I ask leave of the Court now to file this petition with the Court.

COURT: Let the petition be filed.

MR. LEIBOWITZ: May it also be considered as filed the original petition of which this is an amendment.

COURT: The original sets out the same grounds approximately?

MR. LEIBOWITZ: Yes sir Judge.

MR. LEIBOWITZ: I also submit to your Honor the following two affidavits, or the following several affidavits, which we ask the Court to consider as a part. I want to file as a part of the petition and as a part of the amended petition these several affidavits; one F. A. Matthews, filed and subscribed before G. W. Chamlee, Jr., Notary Public, Hamilton County, Tennessee, on the 25th day

10

of March, 1933; and the affidavit of Reverend W. C. Crutcher, of 1109 Spears Avenue, Chattanooga, Tennessee, signed and subscribed before G. W. Chamlee, Jr., a Notary Public, on the 17th day of March, 1933; the affidavit of Robert James, signed before Notary Public J. B. White, Hamilton Count, Tennessee, the date is the 24th day of March, 1933.

COURT: Are those affidavits a part of your petition?

MR. LEIBOWITZ: Yes Sir

COURT: Do you wish to read those affidavits?

MR. LEIBOWITZ: Yes Sir, I will be glad to.

The Affidavit of F. A. Matthews reads as follows:

STATE OF ALABAMA,

vs.

Haywood Patterson, et. als.

No.

In the Circuit Court of  
Morgan County, Alabama

F. A. Matthews makes oath in due form of law, that he is now a citizen of the State of Tennessee, and that he is well acquainted in Jackson County, State of Alabama, and has been for many years, and that for many years, on information he avers that for nearly or about sixty years, that Negroes have been excluded from all the Grand Juries and trial Juries in the Circuit Courts of Jackson County, and that a system of Government has been adopted there and



112

operated by the officials empowered to administer the jury laws in Jackson County, Alabama, so that Negroes were excluded from all juries in the Circuit Courts of said Jackson County, Alabama, for nearly or about sixty years, practically ever since the end of the Civil War or the war between the States when the Negroes were emancipated.

Affiant further states, that all of the defendants named in the indictment in the above ~~stylized~~ styled cause, seven in number, (with two who are reputed to be juvenile cases), are all Negroes of the African Race, and indicted for rape upon the person of a white woman named Victoria Price. That he is advised that the record in these cases show, that for the March Term of the Circuit Court of Jackson County, Alabama, that the Grand Jury was composed of white men only; To-wit; Chas. Morgan, Jas. H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, Hohn G. Hicks, Robert E. Hall, Raymond Hedges, C. D. Paul, J. N. Ragsdale and Walter Berry.

That this Grand Jury was called back into special session, for March the 30th, 1931, when the indictments were returned against the defendants in this class of cases, and in these above styled cases, as appears from the transcript certified from the Circuit Court of Jackson County, Alabama, to the Circuit Court of Morgan County, Alabama.

That he is personally acquainted with many negroes who are male citizens of Jackson County, Alabama between the ages of twenty one years and under sixty five

12

years, and that Bud Moore, a merchant of Scottsboro, and Henry Rose, and Elisha Matthews, and that he knows by reputation and by personal acquaintance many other Negro Male citizens of the said county of Jackson, in the State of Alabama, to-wit: K. D. Snodgrass, Mark Taylor, John Sanford, Travis Mozley, Lawrence Hunter, Oliver Little, with many others; that these men and each and all of them are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, and no one of them is afflicted with a permanent disease or physical weakness that renders him, or the, unfit for the discharge of the duties of jurors, and they can read and write English, and they nor either one of them has ever been convicted of ~~any offense involving moral turpitude~~, any offense involving moral turpitude, and are all householders of Jackson County, Alabama.

Affiant further states on information, that many threats have been reported in Chattanooga, against Negroes and that many of them are afraid to go to Scottsboro, or Decatur, for fear of personal violence, and that Claude Patterson, the father of Haywood Patterson reported that he was insulted, threatened and cursed at Scottsboro because he went there to attend the hearing of the motion for a new trial for his son, and that his affiant does not want to attend Court at Decatur for fear of personal violence, to him.

Affiant states on information, that Negroes serve on the Federal Juries, in Alabama, and that in his opinion, each and all of the negroes named in this affidavit, possess



13  
all the qualification required by the laws of the State of Alabama, and that they are free from all the disqualifications prescribed by the laws of the State of Alabama for Jury duty.

(Signed) F. A. Matthews

Subscribed and sworn to before me,

March 25, 1933

(Signed) G. W. Chamlee, Jr.

Notary Public, Hamilton County, Tennessee.

My commission expires Oct. 13th, 1935.

The affidavit of Reverend W. C. Crutcher,  
1109 Spears Avenue, Chattanooga, Tennessee, Reads as follows:

STATE OF ALABAMA,

VS.

HAYWOOD PATTERSON, et al,

No. \_\_\_\_\_

In THE ~~11~~ CIRCUIT COURT  
OF MORGAN COUNTY, ALABAMA.

DEFENDANTS.

Reverend W. C. Crutcher, 1109 Spears Avenue, Chattanooga, Tennessee, makes oath in due form of law that he is a minister of the Gospel and has been pastor of St. Elizabeth Baptist Church of Scottsboro, Alabama, for 28 years, and that he has resided in Chattanooga, Tennessee, three years and pastored there a month at Scottsboro, Alabama.

He further makes oath that he is personally acquainted with John Sanford Mark Taylor of Scottsboro,

14  
Alabama, L. C. Stapler of Limrock, Alabama, K. D. Snodgrase of  
Hollywood, Alabama, P. Tolliver of Hollywood, Alabama, M. F.  
Timberlake, Fackler, Alabama, Will Watkins, Fackler, Alabama,  
M. T. Talley, Stevenson, Alabama, Cam Rudder, ~~Stevenson~~, Stevenson,  
Alabama, Hugh Collier, Stevenson, Alabama, A. Joseph, Stevenson,  
Alabama, Louis Cole, Stevenson, Alabama, Ed Redd and John  
Branch of Bridgeport, Alabama, and that these men attended

his church and some of them are members thereof and that he  
has been associated with and know the above named parties  
for between 20 and 30 years and that each and all of the above  
named parties are male citizens over 21 years of age and in  
his opinion under 65 years of age, and male citizens of  
Jackson County, Alabama, and generally reputed to be honest  
and intelligent men and are esteemed in the community for  
their integrity, good character, and sound judgment and are  
not afflicted with a permanent disease or physical weakness  
or unfit to discharge the duties of a juror and on information  
and belief that neither one of them has ever been convicted  
of any offense involving moral turpitude and they are all  
householders and free holders and can read the English language.

Affiant further stated that he is personally  
acquainted with John Sanford of Scottsboro, Alabama, and that he is the  
owner of land, pays taxes and is a house holder and as  
above recited possesses all the qualifications to make him  
a juror as provided in the Act of the General Assembly of  
the State of Alabama, and is free from the disqualifications  
therein prescribed, and that Mark Taylor of Scottsboro,  
Alabama, owns land, ~~pays~~ pays taxes and operates a pressing club,  
and as above stated is a male citizen of Jackson County and  
generally reputed to be honest and intelligent and esteemed in

15  
the community for his integrity, good character, and sound judgment, and is a free holder and householder and qualified to perform jury duty under the laws of the State of Alabama.

Affiant further states that L. C. Stapler of Limrock, Alabama, owns a farm and is a married man and can read, write, and as above recited is a male citizen of Jackson County and generally reputed to be honest and intelligent and is esteemed in the community for his integrity, good character and sound judgment and is over 21 years of age and under 65 years of age and not afflicted and is free from the disqualifications prescribed by Section 8603 Alabama Code 7923 and possesses all the qualifications therein specified for jury duty in Jackson County, Alabama.

Affiant further states that K. D. Snodgrass of Hollywood, Alabama, owns land and is also a free holder and a house holder and can read and write, and as above stated is a male citizen of Jackson county ~~and is~~ and is reputed to be honest and intelligent and esteemed in the community for his integrity good character and sound judgment, and is over 21 years of age and under 65 years of age and not afflicted with a permanent disease or physical weakness and can read the English language and has never been convicted of any offense involving moral turpitude and possesses all the qualifications required by the law of the State of Alabama, and is free from the disqualifications prescribed for jury duty in the State of Alabama.

Affiant further states that P. Tolliver of



Hollywood, Alabama, is a male citizen of Jackson County, Alabama, and generally reputed to be honest and intelligent and esteemed in the community for his integrity, good character and sound judgment and is over the age of 21 years and under the age of 65 years of age and not afflicted with a permanent disease of physical weakness such as would render him unfit to discharge the duties of a juror, and he can also read the English language and has never been convicted of any offense involving moral turpitude, and he possesses all the qualifications prescribed by the law of the State of Alabama for jury duty and is free from the disqualifications thereof as affiant is informed and believes.

Affiant further states, that he can vouch for all the parties names in the body of this affidavit, as possessing all the qualifications prescribed by the law for jury duty, and also that all of said aforementioned parties are free from the disqualifications prescribed by the laws of the State of Alabama.

(Signed) Rev. W. C. Crutcher

Subscribed and sworn to before me,  
on this the 17 day of March, 1933

(Signed) G. F. Chamlee, Jr.,  
Notary Public, Hamilton County, Tenn.  
My commission expires Oct. 13, 1935

Mr. LIEBOVITZ: The 1st affidavit I have here is one  
Robert James.

not convicted of any offense involving moral

The affidavit of Robert James reads as follows:

STATE OF ALABAMA

VS.

No. \_\_\_\_\_

IN THE CIRCUIT COURT OF  
MORGAN COUNTY, ALABAMA

HAYWOOD PATTERSON, et al,

DEFENDANTS

Robert James makes oath in due form of law that he resides at 31-1/2 W. 20th Street, Chattanooga, Tennessee, and that he formerly lived in the State of Alabama and is acquainted with a large number of citizens in Jackson County, Alabama, among the Negro race, and that he is acquainted with John Sanford of Scottsboro; L. C. Stapler of Limrock; Will Watkins of Fackler; M. T. Talley of Stevenson; Can Rudder, Stevenson; Hugh Collier, Stevenson; A. Joseph, Stevenson; Louis Cole, Stevenson; Ed Redd, Bridgeport; and John Branch, Bridgeport, and that he has been acquainted with these men for more than thirty years, and that they and each of them are generally reputed to be honest and intelligent men and ~~esteemed-in-the-~~ esteemed in the community for their integrity, good character and sound judgment and are all male citizens of Jackson County, Alabama, and over 21 years of age and on information he says they are under 65 years of age, and on information that neither one of them has ever been convicted of any offense involving moral turpitude.

and that they are all house holders, or free holders of Jackson County, and can read the ~~Englishe~~ English language and are members of the Negro race.

On information he says that neither one of them is afflicted with a permanent ~~disease~~ disease or physical weakness such as to render him unfit to discharge the duties of a juror, and that each of them bears the name of being good citizens and tax payers of said County.

Affiant would appear at Court in person, but from reports he deems it unsafe for him to do so and for that reason he ~~xxxxxx~~ sends this affidavit that he can vouch for all of these men.

Witnessed by Ella R. Moser

Robert X James  
His Mark

Subscribed and sworn to before me  
on this the 24th day of March, 1933

(Signed) J. B. White  
Notary Public, Hamilton County, Tennessee  
My commission expires Jan. 29, 1935

MR. LEIBOWITZ: Before the Attorney General replies to this petition I would like to be heard on some of the general features of the law that may save time, if your Honor will hear me.

ATTORNEY GENERAL KNEIGHT: That is rather a little bit unprecedented, in view of the fact there has been no plea, and I want to make my objection.

MR. LEIBOWITZ: I will yield to the Attorney General.

COURT: I think there should be some reply.



-19-

MR. LEIBOWITZ: I want to say also at this time we are prepared with some twenty-five witnesses, both ~~white~~ white and colored, to substantiate the allegations in this petition, and amended petition, which I have just read to your Honor.

ATTORNEY GENERAL KNIGHT: If the Court please the defense counsel has no right to require me under our law to answer specifically each ground of his motion to quash within any particular length of time, before the motion is ruled on an answer is to be made, and I now plead as follows:

STATE OF ALABAMA  
VS  
Haywood Patterson  
Clarence Norris  
Charlie Weems  
Ozie Powell  
Olin Montgomery  
Andy ~~Wright~~ Wright  
Eugene Williams  
Roy Wright  
Willie Roberson

Now comes the State of Alabama, and in answer to the motion to quash the indictment filed in said cause as amended, says: That the allegations contained in said motion, and in each and every ground thereof, are untrue.

(Signed) Thomas E. Knight, Jr.  
Attorney General of Alabama

(Signed) H. G. Bailey  
Solicitor of Circuit Court  
of Jackson County, Ala.

(Signed) Wade Wright  
Solicitor of Circuit Court  
of Morgan County, Ala.

aka- I have

ATTORNEY GENERAL KNIGHT: And further I wish to object at the first opportunity afforded, to this consideration, by this Court of the affidavits submitted in support of the allegations contained in the motion to quash, on the ground that they are incompetent and illegal testimony, in that the acts of the Jury Commissioners of Jackson County are being contested, and the State has had no opportunity as yet to cross examine the affiants in that case as to their oral testimony, and I move that this Court exclude those affidavits from consideration.

COURT: Those affidavits were a part of the petition.

MR. LEIBOWITZ: Yes sir.

ATTORNEY GENERAL KNIGHT: I would like for my objection to be noted.

COURT: Overrule the objection.

MR. LEIBOWITZ: Will your Honor please hear me on the law of the petition.

COURT: I might state this, as I understand the only reply the State has made is denying it, therefore, the State apparently does not contest the legal question.

MR. LEIBOWITZ: Very well.

ATTORNEY GENERAL KNIGHT: I don't mean to-ha- I have

demurred I am at issue with it, and if the motion is legally insufficient then that is one ground for overruling it. If he fails to prove it that is another ground.

COURT: You have joined issue.

ATTORNEY GENERAL KNIGHT: Yes sir, denied the allegations of each and every ground of the motion.

MR. LEIBOWITZ: The Attorney General doesn't contend that what I alleged there is untrue?

ATTORNEY GENERAL KNIGHT: I contend it is not true.

MR. LEIBOWITZ: Do I understand Attorney General Knight to say if we can prove the allegations in this petition are substantially true he will agree with me the indictment should be quashed?

ATTORNEY GENERAL KNIGHT: No sir.

COURT: That is a question for the Court.

ATTORNEY GENERAL KNIGHT: I haven't the power to do that. The Courts of this state have prescribed that you must present legal grounds for the quashing of the indictment.

COURT: Certainly a plea in abatement would have to be tested by demurrer or some way.

ATTORNEY GENERAL KNIGHT: I could say it wasn't



true your Honor.

form

COURT: The plea in abatement wasn't true, but if it was true, the duty of the Court would immediately follow--

motion

ATTORNEY GENERAL KNIGHT: Whether or not it was legally sufficient.

appeal

and

COURT: Any plea in abatement--but a motion to quash brings up a different thing.

it

in the

ATTORNEY GENERAL KNIGHT: It could stand on its own bottom.

it

MR LEIBOWITZ: So that we can set this thing out in a fair square manner without any prolixities, so it would be perfectly understandable by everybody, I would like to get the Attorney General's position on this motion. Does he say the allegations are insufficient as a matter of law, or he denies the allegations of it.

Knigh

best

and

ATTORNEY GENERAL KNIGHT: I deny the allegations of it and if he has adopted the improper pleadings he must fail.

of

of

of

of

of

of

MR LEIBOWITZ: I will come to that in my argument.

ATTORNEY GENERAL KNIGHT: I am not arguing to you he has done this, but if he has ~~known~~ done it he is out of court.

of

of

COURT: The Courts hold, whatever you may designate

a plea we are to consider the substance rather than the form. It appears to the Court that the matter set out in that is a matter rather for a plea in abatement, rather than a motion to quash. Ordinarily a motion to quash is some defect appearing in the record or some error in the indictment like our law requires a Foreman of the Grand Jury to indorse and indictment, indorse a true bill, and if he should fail to do it a motion to quash would be in order. Some error appearing in the record which would destroy the indictment, which kills it. Now a plea in abatement of course is a different matter, it brings up matters which would itself destroy the indictment.

MR. LEIBOWITZ: Your Honor we have been considering that very phase of the question, and under the law of the State of Alabama it is specifically provided by a section of the code that a plea in abatement may be made upon one ground, that the proper officer did not draw the Grand Jury, and it says further on no other ground.

COURT: I think our statutes have gone further and say ~~any~~ any fraud in drawing the jury would also be proper.

MR. LEIBOWITZ: The Federal Courts have gone much further, and they will not ~~be~~ be bound by any law depriving the opportunity of any citizens to attack the validity of ~~and~~ an indictment on the ground they were deprived of equal protection under the Fourteenth Amendment to the Constitution of ~~the~~ the United States. In other words the Federal Courts at

Washington said they were not bound by any law which says only one ground may go to quash the indictment. There is a similar case in Texas and I will call your attention to it and the verbiage is almost identical.

ATTORNEY GENERAL KNIGHT: With the State of Alabama.

MR. LEIBOWITZ: So far as the defense counsel is concerned we are perfectly satisfied to have this plea called anything as the Court suggests a plea in abatement or straight out motion for quashing the indictment. We wish to preserve on the record the petition, call it what you may to this Honorable Court, and to raise these questions we have cited in our petition.

COURT: I think the Court should get at the substance of that petition, or plea or whatever you may call it, a plea in abatement is primarily triable by a jury under our law.

MR. LEIBOWITZ: Your Honor, in the Ragland case, in the State of Alabama, that went up to the Court of Appeals, that is the ~~Supreme~~ Supreme Court here, the motion, it was made by motion, that is 187 Alabama, page 5, Judge Mayfield wrote the opinion.

COURT: A motion is tried by the Court.

MR. LEIBOWITZ: This point was raised by motion.



and in that case Judge Mayfield wrote the opinion, 187 Alabama, page 5.

COURT: We travel just a little bit further, the point is whether or not the proof of that motion, whether or not it joined issue, the petition doesn't admit the proof of it, that is where we started out. You have joined issue on it.

ATTORNEY GENERAL KNIGHT: Yes sir, that is what is before the Court now, there has been no ~~plea~~ plea in abatement filed.

COURT: The Court will look upon that petition in substance rather than the form of it. There is no, as I understand it, there is no insistence on either side for any trial by jury upon this preliminary motion.

MR. LEIBOWITZ: No sir, we submit it entirely to the Court. In the Neil vs. Delaware, 103rd United States 370, by the constitutional laws of Delaware negroes were excluded from juries. The accused, a negro, was indicted under the constitution of Delaware for rape, and appeals were made to transfer the case to the Federal Court on the ground that negroes were by virtue-----

ATTORNEY GENERAL KNIGHT: I am sorry to interrupt you, but I was under the impression the argument of the motion would be given after the introduction of the evidence and proof.

MR. LEIBOWITZ: The Attorney General denies

the sufficiency of the petition as made of law.

ATTORNEY GENERAL KNIGHT: I would suggest without attempting to dictate, and don't mean to be discourteous, that all facts and the law be argued after the conclusion of the introduction of the testimony.

COURT: Either way you wish, the two questions, both the sufficiency and the proof of it.

MR. LEIBOWITZ: I would rather recite the law now and follow with the proof.

COURT: Very well, I will permit you to do that.

(Mr. Leibowitz here argues the law to the Court)

MR. LEIBOWITZ: I offer the affidavit of Marie Owen, Director of the State Department of Archives and History.

(The above affidavit reads as follows:)

STATE OF ALABAMA )  
MONTGOMERY COUNTY )

I, Mr. Marie B. Owen, Director of the Alabama State Department of Archives and History, do hereby certify that said Department is designated as an official depository for all government documents, including the reports of the United States Census Bureau, and further certify that the 15th CENSUS OF THE UNITED STATES- 1930,

POPULATION VOLUME 111 - PART I, REPORTS BY STATES - ALABAMA-  
MISSOURI, COMPOSITION AND CHARACTERISTICS FOR COUNTIES,  
CITIES AND TOWNSHIPS, on file and of record in said Depart-  
ment, at the Capitol, in the City of Montgomery, pages 130  
and 135 respectively, discloses the following information:

|                | Total population | Males  | Females | Whites | Negro |
|----------------|------------------|--------|---------|--------|-------|
| Jackson County | 36,881           | 18,801 | 18,080  | 34,192 | 2,688 |
| Morgan County  | 46,176           | 23,122 | 23,054  | 37,865 | 8,311 |

(Signed) Marie B. Owen  
Director, Alabama State Department  
Of Archives and History

Subscribed and sworn to before me this 22nd day of  
March, 1933

(Signed) Mr. Vencile B. Sayers  
Notary Public, Montgomery County,  
Ala.

THE STATE OF ALABAMA  
DEPARTMENT OF STATE

I, PETE B. JARMAN, Jr., SECRETARY OF STATE, of the STATE  
of ALABAMA, having custody of the Great and Principal Seal of  
said State, do hereby certify that, as disclosed by the records  
of this office Mr. Vencile B. Sayers was, on October 22, 1932, duly  
commissioned as a Notary Public in and for the county of  
Montgomery for a term of four years. I further certify that by  
virtue of such appointment she is authorized by law to administer  
oaths, take acknowledgments and proofs of instrument in writing,  
and I further certify that her signature to the instrument



hereto attached is, to the best of my knowledge, information and belief genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, the Capitol, in the City of Montgomery, this 22nd day of March One Thousand Nine Hundred and Thirty-Three.

~~(Signed) Pete B. Jarman, Jr.~~  
(Signed) Pete B. Jarman, Jr.  
Secretary of State

-----  
J. S. BENSON, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. SAMUEL S. LEEBOVITZ

Q Mr. Benson, your business is what please?

A Newspaper business.

Q You live in Scottsboro?

A Yes Sir.

Q That is in Jackson County, State of Alabama?

A Yes sir.

Q How many years have you lived in the town of Scottsboro?

A I have lived in Scottsboro about fourteen years.

Q How many years in the County?

A I have lived there about thirty-five years.

ATTORNEY GENERAL KNIGHT: The object, that is

Q You have followed the Court proceedings at  
Scottsboro?

X Yes sir.

Q With regularity?

A Yes sir.

Q As Editor of the Jackson County Sentinel?

A No sir, the Progressive Age.

Q During all of those years you have lived in  
Scottsboro and Jackson County, and in the courts have you ever known  
of one single instance where any negroes were put on the  
jury roll, or on the roll from which the Grand Jury was drawn,  
or from which the Petit Jury was ~~drawn~~ drawn?

A No sir, I don't remember it.

Q In all of that time?

A No sir.

Q That is to the best of your knowledge, you  
can not ~~recall~~ recall that any negroes were ever called or ever served?

ATTORNEY GENERAL KNIGHT: We object to his leading.

COURT: Overrule the objection.

A I never heard of it or never noticed one.

Q Has it been the practice not to call negroes  
in Jackson County on juries?

A Well they haven't called them.

Q Has it been the practice, has it been the  
uniform practice?

ATTORNEY GENERAL KNIGHT: We object, that is

clearly a conclusion of the witness.

COURT: Sustain the objection.

MR. LEIBOWITZ: ~~Exhibit~~ I except.

Q Do you know the persons that were in authority to draw the juries in the years 1930 and 1931?

A I think Mr. Jeff Moody, as chairman of it, and I don't know but I think Mr. Rush is one of them, and there is one other I don't know.

Q Did you ever talk to Mr. Jeff Moody about the jury question?

A I never have.

Q Have you ever talked with them any pertaining to negroes serving on juries, being put on jury rolls?

A I never heard it much.

Q Did you ever speak to the commissioners, or to the officials whose names you ~~mentioned~~ mentioned about it?

A No sir.

Q You never discussed it with either of them?

A No sir.

Q Have you ever discussed it with the citizens of Jackson County, the service of negroes on juries--

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection, confine ~~it~~ it to those in authority.



Q Mr. Benson, You have with you a census have you not, of Jackson County?

A I think I have it haer (indication).

Q Give it to us.

A Well the ~~inher~~ total, the populati on is 36,881; you want the populat on, all over twenty-one years old, 8,801; 666netroes.

Q 666 negroes?

A 666 negroes over the age of twenty-one.

Q And under the age of ~~xxxxx~~ sixty-five?

COURT: Is that both male and female?

A No sir, just male.

MR. LEIBOWITZ: Within ght ages provided by law.

COURT: How many males of both colors.

A The male population over twenty-one was approximately 8,801.

COURT: Including both, 8,801 negroes and whites both.

A Yes Sir.

Q 666 negroes?

A Subtract that from it and it leaves 8, 136 whites.

Q Whites?

A Yes Sir.

-----  
CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q You are the Editor of the Progressive Age?

A Yes Sir.

Q Did y u ever serve as a jury commissioner for Jackson County?

A No sir.

Q Or have anything to do with the making of the jury rolls for Jackson County?

A No sir I have not.

Q Did you have anything ~~tax~~ to do with selecting the people who were qualified to serve as jurors in Jackson County?

A No sir.

Q Did you ever sit on--serve as a jury commissioner when they were selected?

A I don't believe I did.

Q Did you ever see, or do you know, and can you tell whether or not there are negroes in that jury box now or not--can you tell this Court whether or not there are negroes in that box?

A No sir

Q I will ask you, do you know whether or not as a matter of fact, within your own knowledge, whether or not there are negroes in the jury box?

A At present?

Q Yes sir at present.

A No sir, I do not know from my own knowledge.

Q And were there in March 1931, any negroes in the jury box of your own knowledge.

A Not to my knowledge.

Q Have you been to Mr. Chamlee's office in Chattanooga any?

A I never was in his office.

Q Haven't you been to Chattanooga to confer with Mr. Chamlee?

A No sir.

Q When was the first time you talked to Mr. Chamlee in this case?

COURT: Sustain the objection to that.

ATTORNEY GENERAL KNIGHT: I am showing the bias of the witness.

A If you wish to show bias, I will make a statement, I don't think it is legal--

Q Tell me your connection with Mr. Chamlee?

A I have never seen Mr. Chamlee in the office.

Q Don't you know you were with him at the time of the motion for a change of venue?

A I was getting some news items that is all.

-----



11  
RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Do you know General Chamlee?

A Yes sir.

Q Do you know of any other h man being in the State of Alabama who you ever talked to who ever knew of any single negro who ever served on any jury or as getting any call for jury duty?

A I have never heard of any.

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

ATTORNEY GENERAL KNIGHT: I didn't understand the last answer Mr. Leibowitz.

COURT: In my opinion this should be confined to Jackson County.

Q Is that sufficient to confine your testimony to Jackson County?

A Yes Sir.

Q You have been all over the State looking at juries?

A No sir.

COURT: I am going to confine that to Jackson County.

Q Do you know of any negroes in Jackson County qualified to sit on a jury?

MR. LEIBOWITZ: I object to that question because

it is calling for a conclusion of the witness.

COURT: Sustain the objection.

ATTORNEY GENERAL KNIGHT: Here is a man who has given us the cinsus. Here is a man who has testified he hasn't seen negroes on juries in Jackson County, and now I ask him if he knows of any that possess the qualifications.

COURT: You haven't shewn he knows the qualifications.

ATTORNEY GENERAL KNIGHT: "The Jury Commission shall place" -- these are the qualifications of jurors. The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person may be selected who is under twenty-one or over sixty-five years of age, or who is a habitual drunkard, or, who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box." Do you know of any negroes in Jackson County possessing those qualifications.

MR. LEIBOWITZ: We object. There is no evidence here your Honor that Mr. Benson was ever charged with the

duty of examining any of the colored people as a jury commissioner.

COURT: Overrule the objection.

A I know some good negroes as far as negroes go.

Q Do you know of any that possess the qualifications prescribed by the statute I just read you?

MR. LEIBOWITZ: Same objection.

COURT: Overrule the objection.

A I think that sound judgment would get it, I think that sound judgment part, there are some negroes with good reputation there, just as good as anywhere.

Q The question of their judgment?

A I don't think there are.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q You don't know every negro in Jackson County?

A No, nearly all of them I suppose.

Q Do you know of any doctors in Jackson County?

A No sir, they have no doctors.

Q In the entire Jackson County?

A Not a doctor.

Q Do you know of any ministers?

A Yes sir.

Q Would you say his judgment is ~~xxxx~~ sound, as sound as the average citizen of the community.



A I don't think so.

Q Do you say a minister of the gospel hasn't got as much sound judgment as the man of poorest sound judgment of the jury list?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

Q What is it please that you base your opinion on so far as sound judgment, what do you mean by sound judgment?

A In the first place I don't think negroes have been trained for that.

Q I didn't ask you that question.

A I don't think they have been trained and have studied that proposition, I might say the same thing about women, I don't think they have been trained for it; the negroes I know haven't been trained for jury duty in our county there, and I don't think their judgment--you could depend on it all together, you might depend on it in some cases ~~xx~~ but they haven't made a study of jury duty and law and equity and justice and so forth, that is just my opinion.

Q You take a man that plows a team on a farm with mules, you have several of those on the juries.

ATTORNEY GENERAL KNIGHT: I object.

(No ruling)

Q Would you say a man who is illiterate, and could not read ~~xxxx~~ and write English, and had never gone to school,

39 38

would you say his judgment is any less sound--

ATTORNEY GENERAL KNIGHT: I object.

Q Would you say his judgment is less sound than  
a man who has gone through a divinity college?

ATTORNEY GENERAL KNIGHT: I object.

A We haven't a divinity.

COURT: Sustain the objection.

MR. LEIBOVITZ: I except.

Q Will you make a fair statement that no negro  
is qualified to sit on a jury by reason of the fact that negroes  
as a class and invariable haven't that sound judgment you have  
in mind?

A I don't believe there are any negroes in our  
county that I would risk on a case where I was interested in  
it, there there is any law and justice and so forth. We  
have no divinity students up there--that is colored.

Q You have a minister there?

A Yes sir, but he isn't--I don't know whether  
he is a doctor of divinity, just a common negro preacher, they  
fill their place honorably and all of that.

Q They have studied the gospel haven't they?

A Yes sir, I suppose.

Q Studied the Bible?

A Yes sir.

Q And you wouldn't consider that a sufficient education for a man to be able to sit on a jury?

A Some of them has got education enough.

Q Then what do you complain about?

A But, as a matter of fact, I think they wouldn't have the character.

Q What do you mean by character as to what, you mean they wouldn't be honest.

A Yes sir, they will nearly all steal.

Q Including the minister, you wouldn't even exclude the minister.

A I know some of them that wouldn't.

Q You said they all would steal, would you include the minister in that category?

A I wouldn't exclude any of them.

Q I am speaking of ministers.

A I am talking about negro ministers.

Q Yes, you said he would steal too?

A Some of them will.

Q I am speaking of the negro minister you knew, would you say he would steal?

A I know one or two that wouldn't steal.

Q I am speaking about the man you have in mind, please answer the question.

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.



Q In Jackson County?

COURT: Sustain the objection.

A I don't know whether I could call any right now.

Q Are there any negro merchants in Jackson County?

A One or two.

Q Please name them.

A I believe Bud Moore is one.

Q Who else.

A He has a little store there, I don't know, there one or two little merchants at Stevenson, that is all I know.

Q Are they man of decent reputation?

A Bud Moore is a pretty good negro.

Q Would you say Bud Moore is an honest man?

A I don't know whether he is honest?

Q You don't know?

A No sir.

Q Have you ever caught him stealing?

A No sir.

Q Would you give him the benefit of the doubt?

A Yes sir;

Q With every negro in your mind it is a matter giving them a doubt, are you doubtful about them in your mind?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

Q That Bud Moore, he is a reputable man?



A I think he is.

Q Did you ever talk to him?

A I don't know whether he knows me or not.

Q You ~~don't~~ don't know him?

A Just passing around.

Q There is nothing about him that he isn't an honest man?

A Yes sir, he has the reputation of being honest.

Q So far as Bud Moore is concerned you never discussed questions of national affairs, or state affairs, or public questions, with him?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Overrule the objection.

A No sir, I never ~~talked~~ <sup>talked</sup> with him on public affairs except at public meetings, or something like that, where we all met in clean up campaigns, or something like that, and might have heard him say something.

Q What he said was nothing specifically important was it?

A No sir, he just followed what we told him to do.

Q You don't know of your own knowledge, whether Bud Moore is or isn't a man of good sound judgment and intelligence, and comes within the qualifications of that statute, answer yes or not?

A No sir, he isn't as a juror.

Q I didn't ask you that, you don't know whether  
he is a man of sound judgment?

A No sir.

Q You don't know?

A No sir.

Q You are excluding Bud Moore from that  
category aren't you?

A As a juror, yes sir.

Q Are you excluding him from your statement  
as a man disqualified, because you are just saying you don't  
know of your own knowledge?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

COURT: As I understand he didn't know any that  
possessed the qualifications, he answered that.

A I don't know much about Bud Moore.

Q So far as you know Bud Moore may be perfectly  
qualified under that statute to serve as a juror, yes or no?

A No.

Q You can't know.

ATTORNEY GENERAL KNIGHT: He said no, he didn't  
say he didn't know.

Q He wouldn't be qualified because he is a  
negro, isn't that so, yes or no?

A Because he isn't trained.

Q What do you mean by trained?

A He never studied and made it his life.

Q How many men have you ever known in Jackson County that ever studied to be jurors?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

MR. LEIBOWITZ: I except.

Q What do you mean by studied, studied what?

A Studied justice and such as that.

Q What do you mean by studying justice?

A They talk it at the cross roads store, and talk it everywhere, and go to Court and fill the Court House.

Q You mean white people?

A Yes sir.

Q You see negroes in this court room?

A Yes sir.

Q Turn around and look at them?

A Yes sir.

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

Q Have you seen them at Scottsboro, negroes in the Court House?

A Yes sir.

Q You have heard them talking about cases in the



Court House haven't you?

A Yes sir/

Q That of course eliminates one objection, that they haven't discussed the cases.

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

MR. LEIBOWITZ: I except.

Q What else do you mean by studying for jury duty?

ATTORNEY GENERAL KNIGHT: I never have seen counsel take his own witness and put him through cross examination.

A I just make the statement, I ~~think~~ didn't believe any negro up there in Jackson County would be suitable for jury duty I don't think, they don't want to be jurors and I never heard ~~any~~ one say so.

MR. LEIBOWITZ: I move to strike that out.

COURT: Grant that motion.

Q What other negroes do you know that are merchants?

A That fellow A. Joseph has been a merchant up there.

Q How many years?

A I wouldn't say he is not or not.



Q He used to be?

A I think so.

Q How many years?

A I couldn't tell you.

Q Several years though?

A I think so, yes sir.

Q What town did he live in?

A He lived in Stevenson.

Q About how long?

A About forty-five years.

Q Is he a family man?

A I think so and a preacher to o.

Q An honest man?

A I answered I don't know, I couldn't tell you.

Q You wouldn't say he is kishonest?

A No sir.

QQ Have you ever talked to him?

A Yes sir, I have talked to him a ~~little~~ little.

Q You talked to him about what?

A I think he has been in my office about  
getting minutes or something that ~~xxx~~ way printed, something  
like that.

Q You talked to him?

A I could be mistaken about him being the man.

Q You just spoke to him?

A Yes sir.

Q And he answered your questions intelligently?

A Yes sir.

Q Nothing wrong with his mentality?

A I don't think so.

Q And has sober judgment?

A In some things.

Q Have you ever seen him drunk?

A No sir.

Q You don't know that he is suffering from any venereal disease or permanent disease that might affect his mentality?

A No sir.

Q And a man of good reputation?

A Yes sir.

Q Under sixty-five?

A Under sixty-five.

~~XX~~

Q. In the years 1930 and 1931?

A. I am pretty sure that he was.

Q He was a free holder or house holder, did he have a house, was he a tax payer?

A I don't think he was a tax payer, but he had a family.

Q Has he ever been convicted of any crime?

A I don't know of it.

Q You never heard of him being convicted of any crime?

A No sir.

Q ~~XXXXXXXXXXXXXXXXXXXX~~ Have you left out this man you just ~~refer~~ referred to in your catagory as being disqualified, have you left hi

out or do you want to exclude him?

A I don't think he would know anything about it.

Q About what?

A Jury duty.

Q You mean he wouldn't know how to dit in the jury chair?

COURT: I think you should confine it to the qualifications under the law.

Q That is just your opinion?

A I don't think he would make a good juror.

Q ~~Explain~~ That other merchants do you know?

A I don't know any other merchants--I know some of them fellows that come in.

Q Do you know any doctors in Jackson County?

A Negro doctors?

Q Yes.

A No sir, never was one there--there was a quack doctor there but we put him in jail.

Q Do you know any real good legitimate doctors?

A Negro dontors?

Q Yes.

A No sir, I don't think a negro doctor was ever there.

Q Are there any negro lawyers?

A No sir.

Q Do you know of any negroes in Jackson County  
that own any real estate?



A Yes sir.

Q Name them please sir, and tax payers?

A I think that fellow Stabler.

Q Do you know him?

A Yes sir, I know him.

Q Speak to him?

A Yes sir.

Q Speak to him about different matters.

A Yes sir.

Q Did he answer you questions always intelligently?

A Yes sir, ~~xxxxxxx~~ pretty intelligent.

Q You found nothing wrong with his mentality?

A I imagine he is over sixty-five years old.

Q I didn't ask you whether you imagined that--

are you trying to knock him out on that score?

A I could knock him out.

Q Just because he is a negro?

A He not all together, that is partly it.

Q That enters into it, the fact he is a negro?

A The fact is, he is a negro and hasn't had

at training.

Q That training do you refer to?

A About his judgment being good.

COURT: I think the questions along this line  
the individual negroes, I will let you ask the questions  
regard to individual negroes and let you ask questions in  
and to their qualifications under our law.



ATTORNEY GENERAL KNIGHT: I ask that you have him confine his inquiries to whether or not within his knowledge, the witness' knowledge, whether the persons he named possess the general reputation, a good general reputation, and are esteemed ~~in the community~~ in the community in which they reside as men of sound judgment.

COURT: Yes sir.

Q Mr. Benson, would you say this man here that owns real estate has had as much training--I want to know whether this man you just referred to, this negro, who is a real estate owner, and which you have talked to, whether he has had just as much training for jury duty as the man who was first called to serve on his first jury?

A No sir he hasn't, I never served on any jury in my life.

Q Your business takes you into court as a newspaper man?

A Yes sir.

Q That wouldn't apply to the average body of citizens?

A No sir, a good many never served on a jury but they have studied and make good jurors.

Q You have seen jurors who have never served on juries and who have never been in Court rooms before?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

MR. LEIBOWITZ: I except.

Q What other negroes do you know who are property owners?

A I don't know, I think that man Timberlake, he has some property.

Q Is he a man of good reputation?

A Yes-sir.

Q A decent citizen and law abiding?

A Yes sir, he is law abiding.

Q How old a man do you think he is?

A I think he is about sixty-five.

Q You have never known him to be ~~xxxx~~ drunk?

A No sir.

Q Never seen him drunk?

A No sir.

Q He never has had the reputation of being a drunkard?

A I never inquired about it.

Q You never heard about it along that line?

A No sir.

Q As far as you know he is well thought of in the community in which he lives?

A Well thought of.

Q A man of sound judgment in the community as standards go there?

A Among the negroes.

Q You will exclude him too?

-- 512 --

A Yes sir.

Q Simply because he never served on a jury and never had experience at jury duty?

COURT: I don't think that would be a proper question.

MR. LEIBOWITZ: I except.

Q On that basis do you exclude him.

A Well sound judgment.

ATTORNEY GENERAL KNIGHT: No object.  
(No ruling)

Q Have you ever tested his judgment, yes or no?

(No answer)

Q What is there about his judgment you find fault with, this particular man's judgment?

A I don't know him much.

ATTORNEY GENERAL KNIGHT: That Mr. Benson might find fault with a person's judgment is not the question, it is whether he is esteemed in the community.

Q Do you know the definition of esteemed?

COURT: I think the question should be confined to their qualifications as jurors.

Q Speaking about his judgment, because the statute refers to his judgment, sound judgment, what is there about that man's sound judgment that you questioned?



52  
A ~~Yakovlev~~ I don't know about that man.

Q From what you know he may be a man of sound judgment, isn't that so?

A Oh possibly he could be, but I don't think so.

Q You wouldn't say one way or the other.

A About Timberlake, no.

Q You wouldn't say about Timberlake, that he wasn't qualified, under that statute the Attorney General read to you, to serve on a jury?

A I don't know much about Timberlake?

Q You wouldn't say he wasn't qualified?

A I would say I wouldn't think he would be qualified.

Q Because he is a negro?

ATTORNEY GENERAL KNIGHT: We object.

Q I want to know why you say that?

COURT: Ask him the question in regard to his qualifications.

Q What is there about that man's sound judgment you complain of?

A I couldn't tell you.

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

MR. LEIBOWITZ: I except.



Q What other negroes you know that own property?

A I don't know of any more than own property.

Q Do you know of any negroes in that County over twenty -cent and under sixty-five?

A I know Mark Taylor.

Q Do you know him well?

A I know him about as well as any.

Q How many year have you known him?

A Ten or twelve years

Q What business is he in.

A He is a dry cleaner there.

Q Deal with people, people bring their clothes to his store and have them dry cleaned?

A Yes sir.

Q Has he got a reputation of ~~being a good cleaner~~ being an honest man?

A He has the reputation of being a good cleaner.

Q And an honest man?

A I don't know as I ever heard that discussed.

Q You never heard of him being arrested and convicted?

A No sir.

Q Of ever being in jail?

A I never heard of it, he is a pretty good negro.

Q Nobody ever complained about his honesty to you?

A No sir.

Q Has he ever been charged with stealing?

A No sir I never heard of t.

Q Is he a married man?

A I think so.

Q And Children?

A I Mon't think so.

Q How many years had he lived in Jackson County?

A He was living there when I went there, he has been there about fifteen or sixteen years.

Q Can ~~him~~ he read or write?

A Yes sir he can.

Q Do you know what education he has had?

A No sir I don't know.

Q Do you know where he learned to read and write, who taught him?

A He came from up in your part of the country I think.

Q He went to school there?

A I think so.

Q He speaks intelligently?

A Pretty intelligently for a negro.

Q What do you mean by that phrase, unusually intelligent, isn't that so?

ATTORNEY GENERAL KNIGHT: We object.

COURT: ~~Sustain the objection.~~ Sustain the objection.

MR. LEIBOWITZ: I except.

A You can tell the difference in the way they talk.

Q Have you ever discussed matters with him?

ATTORNEY GENERAL KNIGHT: We object, what has that got to do with it?

MR. LEIBOWITZ: A man's sound judgment.

COURT: Overrule the objection.

Q About various matters.

A I have talked to him about church of course, and such as that.

Q In connection with what?

A He would ask me advice about things in the church over there, I am not a preacher; he would get me to help them out.

Q He is a religious man ~~not~~ and a man faithful to his God?

A Yes sir faithful to his church.

Q Don't you think it is a matter of sound judgment to look to you for advice?

A No sir I don't.

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

Q You don't consider that sound judgment, in other words a man that looks to you for advice is a man of unsound judgment?

A No.



RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q You have heard him examine you about Moore, Joseph, Stapler and Timberlake, you don't know whether they are in the jury box or not?

A I don't know whether they are in the jury box, I never looked to see in the jury box in my life.

-----

J. E. MOODY, witness called on behalf of the defense after being first duly sworn testified as follows;

DIRECT EXAMINATION BY HON. SAMUEL S. REIBOWITZ

Q Mr. Moody you are a resident of Jackson ~~County~~ County?

A Yes sir.

Q What is your official position of Jackson County?

A President of the Jury Board.

Q In 1930?

A No sir.

Q What was your official position in 1930?

A I didn't have any except a farmer.

Q When were you appointed?

A March 1932.

Q Were you a jury commissioner in 1930, ~~xxxx~~ or have anything to do with the selection of jurors in 1931, anything at all?

A No sir.

Q Or 1930?

A No sir.

Q Do you know Charles Morgan of Jackson County?

A Whereabouts does he live?

Q He was on the Grand Jury that indicted these defendants, member of that Grand Jury.

A I know one Charles Morgan.

Q Is he white?

A Yes sir.

Q Do you know H. H. Rogers?

A Where does he live?

Q I don't know, he served on this Grand Jury, do you know him?

A I don't know as I do.

Q Do you know J. H. Cox?

A I think so.

ATTORNEY GENERAL KNIGHT: We object. We have gotten to one of the questions that has been carefully decided by practically every case the gentleman read. He is calling a list of ~~xxx~~ names, as I understand, of the Grand Jury, and attempting to prove they are white. The Courts have repeatedly held that a defendant is neither entitled to members of his ~~race~~ on a Grand Jury or Petit Jury. The only thing that this inquiry should be assigned to is a systematic exclusion of negroes from both.

MR. LEIBOWITZ: The Attorney General is quite

right, I am not seeking to prove the point he is calling to the Court's attention, I ~~am~~ am offering to prove this Grand Jury was ~~all~~white, and will proceed from that that every man that was on the jury roll was white.

ATTORNEY GENERAL KNIGHT: Why prove that every man on the Grand Jury was white?

MR. LEIBOWITZ: Will you concede that?

ATTORNEY GENERAL KNIGHT: I don't concede anything.

MR. LEIBOWITZ: Let us prove it then.

Q G. J. Minton is a white man.

A I don't know him.

Q George B. Phillips and William Rash are white men?

A I don't know them.

Q J. P. Brown, do you know him?

A I don't know him by his initials.

Q Do you know Arthur Gamble?

A I don't think so.

Q Do you know C. A. Mason and do you know Nash Manning?

A No sir.

Q J. M. Tidewell?

A Yes sir.

Q Is he a white man?

A Yes sir.



Q Do you know A. E. Chambliss?

A I don't know ~~him~~ him by his initials.

Q Do you know John G. Hicks?

A No sir.

Q Robert E. Hall?

A I know a Robert Hall, but I don't know whether it is Robert E.

Q Raymond Hodges?

A No sir.

Q C. D. Pole?

A No sir.

Q J. M. Ragsdale?

A Yes sir.

Q Is he a white man?

A Yes sir.

Q Walter Berry?

A Yes sir.

Q Is he white?

A Yes sir.

Q How long have you lived in Jackson County?

A Born and raised there.

Q How old are you?

A Thirty-eight.

Q Have you ever known of a single instance where a negro was called to serve as a juror in any case, civil or criminal, in Jackson County?

A No sir.

Q Do you know of any instance where a negro was on any jury roll at any time in Jackson County?

A I don't know anything about that.

Q Are there any negroes on the jury roll at the present time--let me withdraw that. Your duties started in 1932?

A Yes sir, March, 1932.

Q Did you prepare a jury roll?

A Yes sir.

Q You were chairman of the board?

A President.

Q Is there a single negro on the jury roll that you prepared, yes or no?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

MR. LEIBOWITZ: I except.

Q Who are the members of the board that served in the year 1930, that drew up the list from which the jurors and grand jurors were selected in 1931, who were the ~~MEMBER~~ members of that board?

A I couldn't say who they were, I have been told who they were, I don't know who they were.

Q Who were the members of the jury board?

A Hunt Stewart.

Q Where is he from?

A Scottsboro.

Q Who else?

A Will Jenkins, and he is from Scottsboro. I don't recall the other names but Mr. Morgan was the Clerk.

Q You knew who these gentlemen were?

A Yes sir.

Q Just the three are all of them.

A All three of them.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q Do you know A. B. Moore?

A No sir, I don't think I do.

Q Do you know A. B. Joseph?

A No sir.

Q Do you know Moore?

MR. LEIBOWITZ: He said he didn't.

A I don't know him by the name of A. B., where he is from.

Q He is a merchant at Scottsboro.

A Is his name Bud?

Q Yes.

A Yes sir.

Q Do you know the qualifications a juror is supposed to possess?

A I think so.

Q You are a jury commissioner?



A Yes sir.

Q Would you consider him qualified to serve as a juror?

MR. LEIBOWITZ: Let him state the qualifications.

ATTORNEY GENERAL KNIGHT: I will read them to him.

MR. LEIBOWITZ: I want to know how much he knows about the qualifications.

ATTORNEY GENERAL KNIGHT: He is your witness.

MR. LEIBOWITZ: I want to see if your Honor please, and I think in the interest of justice we should see how much the jury commissioner knows as to the qualifications of jurors.

ATTORNEY GENERAL KNIGHT: He is presumed to know the duties he is to perform.

Q The question was did Bud Moore possess the qualifications of a juror in your opinion?

A No sir.

COURT: Overrule the objection.

MR. LEIBOWITZ: We except.

MR. LEIBOWITZ: Tell us what the qualifications are for a juror of Jackson County, recite them.

ATTORNEY GENERAL KNIGHT: I am examining the witness.

MR. LEIBOWITZ: I beg your pardon, I thought

you were through.

Q Do you know his general reputation?

A Yes sir.

Q Is he esteemed in the community in which he resides as a man of sound judgment?

A No sir.

Q Is he esteemed for his high character?

A No sir.

Q Do you know Stapler?

A ~~Yankelux~~ L. C. Stapler?

Q Yes sir.

A Yes sir.

Q At Limrock?

A Yes sir.

Q Do you know his general reputation.

COURT: Is he a negro?

A Yes sir.

Q Is he esteemed in the community in which he resides as man of sound judgment?

A No sir.

Q Is he esteemed for his ~~high~~ high character?

A No sir.

Q As a matter <sup>of</sup> fact, do you even know whether he is in the jury box?

A No sir.

Q Do you know Timberlake?

A No sir.

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Have you ever gone into the community where Stapler lives, or in the negro community?

A I wouldn't call it a negro community, two or ~~three~~ three negro families live there.

Q Have you ever gone around getting information about Stapler, to find out his reputation?

A I have known Cass Stapler for fifteen or eighteen years personally.

Q Have you ever gone in the community to inquire what his reputation is?

A I don't know as I have gone in the community, but I have heard outside the community.

Q I am speaking of the community--you are a jury commissioner.

A Yes sir.

Q ~~And~~ And president of the Board?

A Yes sir.

Q Can you recite to us what the law says about qualifications of ~~jurors~~ jurors?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Overrule the objection.

A Well a man has got to have a good character.

Q What is the matter with Timberlake's character?

ATTORNEY GENERAL KNIGHT: I object.



(No ruling)

Q Good character, go ahead?

A And got to be a man of good judgment, intelligent, honest, and not to be afflicted with any disease.

Q What kind disease suppose he has, consumption?

A Contagious disease.

Q Consumption is a contagious disease, would it disqualify him?

A I don't know.

Q What does the law say with reference to disease?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

Q Tell us the qualifications you would apply with reference to disease in excluding a man, when he has disease, what kind of disease?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

MR. REIBOVITZ: I except.

Q Does a disease that is contagious and doesn't affect his mentality exclude a juror under the law?

(No answer)

Q You ~~kn~~ don't know do you?

COURT: Sustain the objection to that question.

MR. LEIBOWITZ: ~~object~~ May I be heard on that? If I can show this jury commissioner doesn't know the qualifications in ~~selection~~ selection of jurors, and he is the President of the Jury Board, isn't that going to affect your Honor as to whether there were any of these negroes that came within those rules or didn't. If I can show that he doesn't know.

ATTORNEY GENERAL KNIGHT: He has stated he didn't have a good reputation.

MR. LEIBOWITZ: I am speaking of disease

COURT: Sustain the objection to that.

Q Suppose I told you Mr. Moody, that no man is disqualified because he is diseased if his disease isn't permanent and tends to affect his mentality, is that something new to you?

ATTORNEY GENERAL KNIGHT: I object.

Court: Sustain the objection.

MR. LEIBOWITZ: I except.

Q What other qualifications are there?

A He has to be over twenty-one and not over sixty-five, and be a house holder or a free holder.

Q He has to be a house holder or a free holder.

A I think so.

Q Suppose I told you the law is as to this--

ATTORNEY GENERAL KNIGHT: We object.

COURT: Wait a minute.

Q Suppose I told you the law doesn't require a man shall be a house holder of free holder, suppose I tell you only in cases where a man can not read English must he be a householder or a free holder, would that change your statement?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Overrule the objection.

A If I understand it, if a man cannot read English it doesn't bar him from serving on a jury.

Q Suppose he isn't a house holder or a free holder, would you still put him on your jury list, if he couldn't read English?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

Q If he could not read English and was not a house holder or a free holder, would he be qualified to serve?

A If he couldn't read English and wasn't a house holder or free holder?

Q Yes sir.

A No sir.

Q Could he serve on a jury if he couldn't read English, if he was a free holder, could he serve?



A If the other ~~qualifications~~ qualifications made him competent he could.

ATTORNEY GENERAL KNIGHT: That is right.

MR. LEIBOVITZ: We have some bleachers with some rosters in them.

Q DO you know of any negroes at the present time on your jury roll--you made up the jury roll didn't you?

A Which roll?

Q The jury roll from which--

A Since 1932.

Q You made them up since 1932, and you ~~don't~~ don't know of any negroes on any jury roll you have made up?

ATTORNEY GENERAL KNIGHT: We object because that is illegal and immaterial.

COURT: I think it would be prior to or up to that time, sustain the objection.

MR. LEIBOVITZ: I offer to prove not only prior to the trial, but since the trial, that the custom has been maintained, and I offer to prove it as a custom.

COURT: I will let you prove it up to the time but not since the time.

MR. LEIBOVITZ: We except.

Q Is Timberlake a man of good character?

A I don't know him.

Q Do you know Mark Taylor?

A Yes sir.

Q Is he a man of good character?

A No sir.

Q Has he ever been convicted of any crime?

A I couldn't tell you.

Q You don't know?

A No sir.

Q Has he ever been charged with any crime?

A I don't know.

Q You don't know either way?

A No sir.

Q Do you know him intimately?

A I know him--I have known him I guess about  
ten years.

Q Have you had any business relations with him?

A Yes sir.

Q In what way?

A Pressing.

Q Had your shirt pressed?

A Yes sir.

Q You never did have any fault to find with the  
way he did his work?

COURT: That wouldn't be evidence.

Q What is there about this negro that you say

70  
he isn't good enough to serve on the jury?

ATTORNEY GENERAL KNIGHT: He object.

COURT: Overrule the objection.

A Well, I always understood he was living in adultery with his wife before he married her.

Q You ~~has~~ don't know that of your own knowledge?

A General talk of the town.

Q How long has he been married?

A I couldn't tell you.

Q How long have you known him to live with his wife?

COURT: I think you are extending it too far on his reputation.

Q What else do you have against his character?

A I think that is ~~sufficient~~ enough.

Q Besides that have you got anything else to complain about, has he ever stolen from you?

A No sir.

Q Do you know of any body else he has ever stolen from?

A No sir.

Q Is that why you would disqualify him for serving as a juror yes or no?

A I would disqualify him for that.

Q Just on that basis?



A Yes sir.

Q Simply because somebody said he had lived with his wife in adultery before he was married to her, that is the basis?

A That is the general talk of the town.

Q That is the basis you would disqualify him for?

A That is his character.

Q That is what you would disqualify him on?

A ~~xxxxxxx~~ I would disqualify him on his character.

Q Is he intelligent?

A Well I don't know.

Q Is he honest?

A I have never found him any other way.

Q Is he over twenty-one?

A Yes sir.

Q Under sixty-five?

A Yes sir.

Q You don't know of any disease he has such as affects his mentality, or any permanent disease, do you?

A No sir.

Q Do you know L. C. Stapler?

A Yes sir.

Q How long have you known him?

A About fifteen years.

Q What is his business?

A Farmer.

Q How many acres does he own?

-- 72 --  
-- 73 --  
COURT: I don't think that is material.

Q How long has he been a farmer?

A Ever since I have known him.

COURT: I don't think that would be material,  
sustain the objection.

Q How old a man is he?

A I don't know.

Q Is he over twenty-one and apparently under  
sixty-five?

A I couldn't tell you that.

Q Have you ever had any business relations  
with him.

A No sir.

Q Do you know where he lives?

A Yes sir.

Q Where does he live?

A Limrock, Alabama.

Q Do you know other people that know him?

A Yes sir.

Q Have you ever discussed him with other people?

A Yes sir.

Q How long ago?

A Oh, I couldn't say that.

COURT: I think that is going too far afield,  
can't go into every particular matter.

MR. LEIBOWITZ: I want his reputation in the community where he lives.

COURT: I will have to confine you to the qualifications as stated under the law.

Q Mr. Moody, do you know of any people that know Mr. Stapler in the community where he lives?

A Yes sir.

Q What is there about his character you object to?

A Well I don't know now, but he has been living in adultery.

Q You ~~know~~ don't know that of your own knowledge?

A I only know it from other people.

Q Outside of that is it?

A I couldn't tell you that, I have been knowing him a long time.

Q That is all you know about him, is that really your objection to him?

COURT: I don't think that would be a proper question, I think it should be confined to the particular qualifications as ~~stated in the statute.~~ stated in the statute.

MR. LEIBOWITZ: I am speaking of the general reputation, of the prospective juror, in the community.

COURT: I will let you ask whether he is reputed to be of that character.



Q Tell us the names of the people you have talked to about L. C. Stapler?

COURT: I wouldn't permit that.

MR. LEIBOWITZ: I except.

Q Do you know P. Toliver?

A No sir.

Q Do you know Will Watkins?

A No sir.

Q M. T. Talley and Ed Redd?

A No sir.

Q John Branch?

A No sir.

Q Do you know A. Joseph?

A No sir.

Q E. K. Snodgrass?

A I don't know him by that initial.

Q He is from Hollywood.

A I don't know him.

Q Do you know Mr. Collier at Stevenson?

A No sir.

Q Cole from Stevenson?

A Know of him.

Q Do you know Dave Stevens, where does he live?

A Packler.

Q Do you know John Staples?

A I don't know whether I do or not.

Q Do you know Bud Moore?

COURT: I think you asked him about Bud Moore.

Q Do you know C. S. Finley?

A Yes sir.

Q What is his business?

A I Couldn't tell you.

Q Where does he live?

A He lives at Scottsboro?

Q How often have you seen him?

A I couldn't tell you that.

Q You know him very slightly?

A No sir, a long time.

Q He is a barber isn't he?

A I don't know.

Q Do you know Travis Mozley?

A Yes sir.

Q What is his business?

A I think he is a porter on the Southern  
Railroad.

Q Pullman porter, is that right?

A I don't know about him being a Pullman porter.

Q He lives in Scottsboro?

A I don't know where he lives.

Q You don't know much about him?

A Not much.

Q Do you know Pleasant Larkin?

A Yes sir.

Q What is his business?

A He hasn't got any.

Q Out of work?

A Yes sir.

Q Do you know Elisha Matthews?

A Yes sir.

Q At Scottsboro?

A Yes sir.

Q What is his business?

A I think he is working in a hardware store.

Q Clerk?

A No sir.

Q What is He?

A Sweeps the floor and builds fires.

-----

J. H. STEWART, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Mr. Stewart, were you an official and had charge of the selection of the names you put on the jury roll for the year 1930, from which the Grand Jury, that was drawn in the case of Haywood Patterson and others, was drawn?

A I was on that commission in 1930.

Q Do you know these men that were drawn, that



served on the Grand Jury; Charles Morgan, H. Rogers, J. H. Cox, G. F. Minton, William Rash, Arthur Gamble, C. A. Mason, Rash Manning, John P. Hicks, Robert Hall, Raymond Hodges, C. D. Pose and Walter ~~Berry~~ Berry?

A No sir, I don't know but one or two personally.

Q Did you select those names to make up the jury roll?

A Yes sir, I helped to do it.

Q How did you go about selecting those names, from what?

A We called in men from different parts, different precincts, and read the roll to them and he checks the names of the qualified jurors, he checks those names.

Q He gives a list of names?

A Yes sir, off of our roll?

Q You take the people's work for it, the men who come in?

A Yes sir, the law gives us that right.

Q I want to know this, you ~~personally~~ personally did not check over these qualifications did you, you and the Jury Commissioners?

A Yes sir.

Q And you took these men that fit the statute?

A Yes sir.

Q After the name of each citizen of Jackson County there is the word "col." written, isn't that right, to designate his color, for instance, John Jones, if he is a colored man there will be "col."?

A I HAVE seen names where it wasn't.

Q That was an exception to the rule?

A You take the Tax Assessor's books, we were supposed--we could get the name from the Tax Assessor's books, or the City Directory, or Telephone Directory, anywhere we could get them. But, you take the Tax Assessor's Books, maybe John Smith, it don't say whether he is colored or white?

Q You mean when he pays his taxes they take his money whether he is colored or white?

A Yes sir.

Q But when they take him for jury duty the names are designated "col." when they are colored?

A Yes sir if it is down there colored.

Q It doesn't make any difference when you take negroes taxes, you don't care whether he is white or colored?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

Q Do you know of any negro, was there any negro on any list your commission prepared from which this Grand Jury was drawn, the name of any negro on that jury, yes or no?

A State the question.

(Question read by the stenographer)

A Yes sir.

Q Was there any negro on the jury roll from

which the Grand Jury was drawn?

A Negroes on the list.

Q What list?

A On the list these different parties we would call on.

Q I ask you if there was any negro on the jury list from which this grand Jury was drawn?

A I don't remember.

Q Do you know of any?

A The names of negroes, the negroes names are on the voting list.

Q I am not asking you about the voting list.

A On the jury roll?

Q Speaking of the jury roll?

A The Clerk copied the jury roll from the voting list.

MR. LEIBOWITZ: I move to strike that out.

( No ruling)

Q Of your own knowledge do you know of any, as a member of the Jury Board, from which this jury was drawn, in the indictment of these negroes in these cases, do you know the name of any negro on that jury roll, were those names put in the box, do you know of anyone that was a ~~man~~ negro, answer that yes or no?

A I know of some negroes names on there.

Q Is that of your own knowledge?



A Yes sir.

Q When you make up this jury roll, is the list you make up the names of the people that serve on juries?

A We try to make a list of the male population.

Q You know about men who are qualified to serve and jurors, you first make up a list of people that are qualified?

A Make up a list of qualified and unqualified.

Q How do the names of the ~~jury~~ jurors get in the jury box, what are the steps you proceed to?

A We first make us out a list of all the names, all male citizens, and try to get them all, then, we call in different parties from different precincts of the county, men we absolutely know to be all right, and ~~show~~ <sup>show</sup> that to them, and they then check this list in their precinct where they are supposed to know all of these parties. There may be two or three in the same precinct.

Q Then what else?

A Then after we get all of these precincts covered, we take the names of those that are qualified and the Clerk writes them on a card, the name and address and Post Office and occupation, and places them in the box.

Q That box is sealed?

A Yes sir.

Q And opened only in the presence of the Court?

A Yes sir.

Q How many names were placed in the box

under your regime, about how many names of qualified jurymen?

A Different amounts, I think the last time I served the best I remember there was six or seven hundred names.

Q Were those new jurymen?

A Yes sir.

Q How many during the entire year?

A We just fill it one a year.

Q How many names were in the jurybox from which this Grand Jury was drawn?

A I expect there was fifteen hundred or two thousand names in it.

Q Do you know the name of any negro in that box?

A I don't know.

Q Of your own knowledge do you know of one?

A I couldn't swear whether there was or wasn't because I didn't personally know all of these names.

Q Is there a list of those names somewhere ~~outside the mere slip of paper in the box, the~~ names taken down on the list?

A The list ought to be--it shows on the jury roll.

Q The jury roll is where, kept where?

A In the Probate Judge's office.

Q It is ~~xx~~ a list?

A No sir, a well bound book.

Q Every name in that book is certified to by you, as a member of the Jury Commission, and that is now in the Probate Judge's office?

A Yes sir supposed to be locked in the vault.

Q Did Judge Mooney send that book with you?

A No sir.

MR. LEIBOWITZ: We asked for that book, but Judge Mooney said he would send the book by somebody.

Q Do you know where that book is now, is it here?

A I don't know anything about it since 1930, August 18th is the last time I served, that is when we wound up ~~here~~ the last time.

Q Did anybody come here with you from Scottsboro?

A Yes sir.

Q Jury Commissioners?

A Yes sir.

Q Who are they?

A Mr. Morgan, he wasn't a commissioner, he was the Clerk.

Q Do you know whether Mr. Morgan has got that book?

A No sir.

Q Is there anybody else, who served with ~~any~~ you on that Board, here?



A Jim Winn and W. P. Jenkins.

Q In all the years you have been a resident of Jackson County, have you ever known of a single instance, where any negro sat on any Grand Jury or Petit Jury, in the entire history of that country as far as you know?

A I don't recall any so sir, I am forty-eight years old and I never sat on it myself.

Q You have never sat on it?

A No sir.

Q Have you ever been excluded from the jury roll?

A Not that I know of.

Q Have you ever been on the jury rolls?

A I don't know whether I would answer the qualifications.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q In your selection for jurors for the jury roll and the jury box of your county, did you inquire as to color?

A No sir, that wasn't discussed.

Q Or the race?

A No sir.

Q Or the creed?

A No sir, it was political standing or religious standing, or standing, that would be the question there.

Q As a matter of fact, does the jury roll disclose the color of the person in the jury box?

A No sir.

Q Then you helped select the jury for your County, during your term as Jury Commissioner, including the time in which this indictment was found, did you exclude any negroes from that jury roll on account of ~~him~~ his race or color?

A Not that I know of, no sir.

-----  
RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Did you ever exclude any negro from service on the jury on account of his race or color, or any other reason?

A No sir, not that I know of.

Q Have you ever found a single negro whom you had occasion to exclude, by reason of the fact he wasn't intelligent, or he wasn't possessed of good sound judgment common sense and judgment, or had a disease that affected his mentality, or that was not twenty-one years old and under the age of sixty-five, and wasn't a person of good esteem in his community for having good sound judgment, and wasn't a citizen of the United States, and if he couldn't read English wasn't a house holder or free holder, have you ever excluded any negro on any of those grounds at all?

(No answer)

Q Did you ever exclude from the jury rolls any negroes because you found, first, he was man under

twenty-one years old or over sixty-five, and he was excluded by reason of his age; secondly, because he was a person who wasn't esteemed in the community for being a decent and honorable citizen, for good sound common sense and judgment, did you ever see or hear of them not going to take that negro because he wasn't esteemed in the community for good sense and judgment?

A No sir.

Q Did you ever have occasion to say, I can't take that negro because he is a fellow that has a disease which may affect, or does affect, his mentality, did you ever say that to yourself, with reference to any particular negro?

A No sir, negroes was never discussed.

Q Did you ever say to yourself as a jury commissouner in compiling those lists, I am not going to take that negro because he has been convicted before of a crime involving moral turpitude, have you ever ~~excluded~~ excluded a negro on that ground, did you ever find any negro that came within that category, under your personal knowledge in Jackson County?

A I couldn't recall any, no sir, I don't know.

Q Have you ever known of any negro in Jackson County who was excluded by reason of the fact he could not read English, and that negro at the same time wasn't a free holder or house holder, did you ever say I can't take that negro because he is prohibited under the rules from serving by reason of that provision?

A No sir.



Q Or anybody in your presence?

A It never was discussed.

Q You have been a jury commissioner how long?

A I was on it under Bibb Graves administration, 1928, 1929, 1930.

Q Three years?

A Yes sir.

Q And you never had occasion to exclude any negro in Jackson County by reason of the disqualifying provisions I have just called to your attention?

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q As a matter of fact doesn't the law provide the jury roll shall be kept secret after it is made up?

A Yes sir.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Isn't it quite true, the fact, in the thirty or thirty-four years you have been in Jackson County, the fact that no negro has ever been called as a Grand Juror or Petit Juror, do you ascribe that to mere coincidence, or it just happened that way?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

Q Do you consider that coincidence?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

COURT: As I understand it you had a roll of all the jurors, the male citizens?

A We tried to do that Judge.

COURT: And you passed on their qualifications, and in passing upon them you didn't know whether you were passing upon negroes or whites?

A No sir, didn't know them all.

COURT: You inquired about their qualifications?

A That is all that was discussed.

Q If I understand it, in all those years you have been a resident, and in the several years you have been a Jury Commissioner, the fact that no negro has ever served on a Petit Jury is a mere coincidence?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

MR. LEIBOWITZ: I except.

-----

jury service than there are negroes in the County?

A Yes sir.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

~~Q You don't know of any negro ever being~~

~~selected do you, yes or no?~~

Q You don't know of any negro ever being  
selected do you, yes or no?

A I can't recall any.

Q By that you mean you don't know of any  
ever being selected in the history of Jackson County as far  
as you know?

A As far as I know I don't know whether there  
was or was not.

Q You don't know of any that has been selected?

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q As a matter of fact weren't a lot of white  
people in Jackson County not selected for juries?

A Yes sir.

MR. LEIBOWITZ: We concede that.

ATTORNEY GENERAL KNIGHT: I want the record to  
show there are probably more white people not selected for



89 90  
jury service that there are negroes in the County?

A Yes sir.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q You wouldn't agree merely because the  
Attorney General asked you the question?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Don't answer that.

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q You stated I believe that you thought there  
were more white people who were not selected for jury duty  
in Jackson County that there are negroes in the county?

A Yes sir.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Did you exclude them?

A No sir, I didn't personally exclude them.

Q Do you know of any reasons why they were  
excluded?

A No sir.

Q You have been a Jury Commissioner, and  
You can not tell Judge Horton or the Attorney General or myself--

--91 90--

you have been a Jury commissioner, and can't point out a single man you have excluded from that jury list, and give the reason why he was excluded, you mean to tell us you are that kind of an official, you mean to tell us that is the state of affairs?

COURT: He has gone over how he selected the jury.

ATTORNEY GENERAL KNIGHT: He is Mr. Leibowitz's witness.

Q As a matter of fact you don't know much about the individuals on the juries, now do you?

A Not all of them.

Q Do you know any of them?

A Yes sir.

Q Do you know the names of any that have been excluded in Jackson County from service on the juries?

A Yes sir.

Q Do you know of any reason for the exclusion, yes or no?

COURT: Don't go into that. I will let you confine it on account of him being a negro.


Q Did you personally examine any negro for jury service?

A No sir.

Q You never did?

A No sir.

Q Do you know of any other Commissioner



that examined any particular negro for jury service?

A I couldn't say.

Q You never took the trouble to go into the negro section of Jackson County among the negroes to find out if there were some intelligent, decent, honest men, when you compiled the roll?

A No sir.

Q You don't know of any other man that took that trouble do you?

A I couldn't tell you about that.

Q I mean as a Jury Commissioner, you don't know of any man who ever ~~XXXXX~~ was delegated to go out in the negro communities among any negro persons, to inquire whether there was any material there fit for jury duty, you don't know of any person that got that job?

A No sir, that was never discussed.

Q Exactly, the negro's qualifications were never discussed, were they?

A The race or creed wasn't.

-----

K. M. MORGAN, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q You were the Clerk of the Jury Commission, Jury Board, for the year 1930?



92  
93  
A Yes sir.

Q And had charge of the list from which the jurors were drawn that served on the Grand Jury that indicted these boys in this case?

A Yes sir, I had charge of the list while they were in session.

Q That means the jury roll?

A Yes sir.

Q And from that jury roll all Grand Jurors and Trial Jurors that served in this case?

A Yes sir, the names ~~xxx~~ we put in the box.

Q Those names, were how many in number, you put in the box?

A It varied, if there wasn't very many in the box we would ~~xxx~~ put in some four to six hundred.

Q How long have you been clerk?

A I was clerk for three years, 1928, 1929, and 1930, three sessions. The other jury board didn't come until 1931 or 1932.

Q Do you know the name of any negro that was on that jury roll, ~~xxxxxx~~ let me withdraw that question. Is there a list made up of qualified people who sit on juries in Jackson County, a list that was filed with the Probate Judge?

A We make up a jury roll.

Q With Judge Mooney?

A We make up a jury roll but it wasn't filed

93

with the Probate Judge.

Q Who has the jury rolls?

A The books are kept in his office.

Q The jury roll, have you got that here?

A No sir, I haven't.

Q Did Judge Mooney send it with you?

A No sir. I am not one of the Commission now.

Q You haven't them here for the ~~years~~ years 1930 and 1931?

A No sir I haven't them here.

Q Do you know of any negro on the jury roll for the year 1930 or 1931, especially the rolls from which the Grand Jury that indicted these defendants was drawn?

A I don't know as I do, there were a lots of names.

Q Just answer the question, do you or do you not?

A I wouldn't swear I did or I didn't, I don't know everybody in the jury box.

Q Do you know any jurors on that list at all that were colored?

A I couldn't ~~swear~~ swear.

Q Do you know any colored people on that jury?

A I couldn't recall who all was on the jury

Q Can you recall just glancing before you, you recall the name of any colored person on that jury roll, you recall, yes or no.

A I don't know exactly whether I can recall

them or not.

Q Can you recall as you sit there the names of any particular person that is colored, negro citizens of Jackson County on the jury roll, cite one case?

A I wouldn't want to say because there are so many on that jury roll.

Q Do you know anyone, as you sit there can you recall any one person who is colored on that jury roll?

A I wouldn't want to say because that has been about three years ago.

Q I will ask you as you sit there--

COURT: He says he can't.

Q Can you recall any names of any particular person?

A That was drawn at a session?

Q Any session.

A Yes.

Q In 1930.

A Yes.

Q Or 1931.

A Yes sir.

Q I am speaking of the roll from which this particular Grand Jury was drawn?

A I suppose it was drawn out of the box we called in 1930.

Q Don't suppose.



- 95 26 -

A The last session I had anything to do with the Jury Commission was August 1930.

Q Can you name any single negro on that jury roll from which this Grand Jury was drawn?

A I don't know, I couldn't know all of their names, they were from all over the County and I don't know them all personally.

Q I am not asking you about that, I am not trying to quibble with you. I ask you, as you sit there, can you recall the names, as you sit there can you give us the name of one negro on that jury roll from which this Grand Jury was drawn? That is a simple question, I have asked it six times and I haven't gotten an answer.

A I couldn't name any white man and swear to it.

Q I don't think you want to answer the question.

A I am not going to answer the question--

COURT: Can you recall the names of any person?

A It has been three years since I put them in the jury box.

Q You can't recall one name?

A I didn't answer that that way?

Q As you sit there in the chair, can you think back and recall, can you personally recall, one single name of any man you knew to be a negro on that list from which this Grand Jury was drawn?

A I wouldn't want to name one because I wouldn't know positively.

COURT: You can't name any man?

A No sir, I wouldn't want to swear positively his name was there.

COURT: He answered the question.

Q How long have you lived in Jackson County?

A About twenty years I gress.

Q Do you know of any negro that ever served on a Grand or Petit Jury in Jackson County?

A Not while I was in the Court House, I am not there at every court.

Q Of your own knowledge do you know of any case where a negro sat on the Grand Jury or Petit Jury?

A I don't know of my own knowledge, no sir.

Q Your answer is, you don't know of any?

A Yes sir.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q While you were Clerk of the Jury Commission it was your duty to obtain a list of names and submit it to the Jury Commissioners, from ~~which~~ which the Board can tell whether or not they will be selected, did you ever inquire as to the race or color of any person?

A I did not.

Q You did not?

A No s r.

97  
Q Do you know of any person having been excluded, on account of their race or color, from the jury rolls?

MR. LEIBOWITZ: I object to the question because it is immaterial and irrelevant and no proper foundation for the question has been laid.

COURT: Overrule the objection.

MR. LEIBOWITZ: We except.

A No sir.

Q You never inquired?

A No sir.

Q Do you actually know whether there are any negroes in that box?

A No sir, I couldn't swear.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Can you name any human being on the face of God's green earth that can tell us whether there were any negroes in that jury box?

A No sir.

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q Did you ever knowingly, or do you know of a Jury Commissioner ever having excluded any person from the



99  
98

jury roll on account of their race, color, or creed?

A No sir, it never was discussed.

MR. LEIBOWITZ: I object.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

Q Was that question ever discussed?

A Not in my presence, no sir.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Just taking for granted it wasn't, if a  
man was a negro he was "out"?

A We didn't take things for granted.

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

Q That is just the unwritten law isn't it?

ATTORNEY GENERAL KNIGHT: I object.

COURT: Sustain the objection.

MR. LEIBOWITZ: I except.

Q Do you know of anybody that can give us any  
idea during your regime, that can tell us definitely, who  
was on that jury roll, and whether they were white or colored?

ATTORNEY GENERAL KNIGHT: He object.

MR. LEIBOWITZ: He was the Clerk Judge.

COURT: I wouldn't let you ask him that question,  
I will let you ask him about his information.

Q Do you know of anybody that can tell us--

COURT: Sustain the objection.

-----

JOHN SANDFORD, witness called on behalf of the  
defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Mr. Sandford how old are you?

A Fifty years old.

Q Where do you live?

A Scottsboro, Alabama.

Q How long have you lived at Scottsboro?

A All my life.

Q You are a family man?

A Yes sir.

Q Married, wife and children?

A Yes sir.

Q What is your business?

A Plasterer by trade.

Q Were you in the years 1930 and 1931, and

for several years prior thereto, afflicted with any permanent disease or physical weakness that would render you unfit to discharge the duties as a juror?

A I think not.

Q Can you read?

A Yes sir.

Q You are a citizen?

A Yes sir.

Q And born in this County?

A Yes sir, in Jackson County.

Q Have you ever been convicted of any crime?

A No sir.

Q Have you ever been convicted of any offense involving moral turpitude?

A No sir.

Q In your daily walds of life do you deal with other people in the community?

A Yes sir.

Q Both white and colored?

A Yes sir.

Q Have you on many occasions discussed the affairs of the State and National affairs, there in the community in which you live, and matters of public interest with other citizens?

A Sometimes, and read the paper.

Q You follow the newspaper, read the accounts in the newspaper of National events and County events?



A I read the Chattanooga Times and our paper.

Q Read them and understand them?

A Understand them as far as I can.

Q Have you ever been called on-have you ever been put on a jury roll?

A No sir.

Q Have you ever been examined by any Jury Commissioner as to your qualifications?

A No sir.

Q Have you ever been called as a Grand Juror or Petit Juror?

A No sir.

~~Q Do you know of any negro in Jackson County who was ever called as a Petit Juror or Grand Juror?~~  
Q Do you know of any negro in Jackson County

A I have known them to in the higher courts but I haven't known them in the lower courts.

Q You mean the Federal Courts?

A Yes sir.

Q I am not speaking of the Federal Courts, I am speaking of the State Courts?

A No sir.

Q Do you know of any negro ever being called?

A No sir.

Q You are acquainted with the negroes in Scottsboro and other negroes in Jackson County?

A I guess I am.

Q How many negroes do you know over the age of twenty-one and apparently under the age of sixty-five?

off hand?

A I couldn't say .

Q You attend church?

A Yes sir.

Q What church?

A The Methodist Episcopal Church.

Q Who is the pastor of that church?

A Callahan.

Q Do you know other members of the congregation?

A Yes sir.

Q Can you mention the names of the members of your congregation, male citizens of Alabama and Jackson County, who are citizens reputed to be honest and intelligent men and, who are esteemed in the community where they reside for their integrity, good judgment, and sound character, over twenty-one years of age and under sixty-five years and, who are not afflicted with a permanent disease or physical weakness that would render them unfit to discharge the duties as jurors and, men who can read English, and those ~~whom~~ who can't read English are house holders or free holders, do you know of any such men as that I have designated, as members of your congregation?

A Yes sir, several men in our congregation.

Q Name them.

A We have Mark Taylor.

Q Go ahead.

A ~~My~~ My brother.

105  
Q What is his name?

A Hugh Sandford, and John Stapler comes in our congregation, and Floyd Snodgrass. I couldn't go on and state and keep them in my mind who all just comes in there.

Q Do you know P. Toliver?

A Yes sir.

Q Do you know him to be a man of good sound judgment?

A Yes sir, he is a good man.

Q He is a citizen, male citizen over twenty-one and under sixty-five?

A I don't know about him being over sixty-five.

Q Under sixty-five?

A I don't know about him being under sixty-five, but he is a good man.

Q Is he esteemed and honest, generally known to be honest and intelligent?

A Yes sir.

Q And esteemed in his community for integrity, good character and sound judgment?

A I think he is.

Q Is he an habitual drunkard?

A No sir.

Q Is he afflicted with any permanent disease or physical weakness, that would render him unfit to discharge duties as a juror?



104  
105  
A I think not.

Q You have known him for how many years?

A All my life.

Q Known him intimately?

A I know him when I see him, he don't live right at my home.

Q You know him and, you know he can read English?

A I think he can read and write.

Q Do you know whether he has ever been convicted of any offense involving moral turpitude?

A I don't think he has.

Q Do you know whether he has ever been convicted of any offense involving moral turpitude?

A I don't think he has.

Q Do you know Will Watkins?

A Yes sir.

Q Do you know where he lives

A Yes sir.

Q Where?

A Fackles. Alabama.

Q How long have you known Will Watkins?

A Known him all my life.

Q Would you say he would fit these qualifications I have outlined to you, as to his character, and all these other qualifications?

A I think he would.

Q Would you say he would fit them the same as, particularly in reference to the case of Toliver?

A Yes sir, I think he does.

106  
105

~~Spocky~~

Q In your opinion is he a man qualified to sit as a Grand Juror or Trial Juror under the rules I outlined to you?

A I think he would be.

Q Do you know M. T. Talley of Stewenson?

A Yes sir.

Q How long have you known M. T. Talley?

A I have known him fifteen years.

Q Would you say he fits those qualifications, those which would render him eligible to serve as a member of a Grand Jury or Petit Jury, does he fit those qualifications in the same ~~same~~ way?

A I think he would.

Q Do you know Mr. Rudder?

A Yes sir.

Q Of Stewenson, Alabama?

A Yes sir.

Q Does he fit these same qualifications as the others?

A I think he is a good man.

Q Under those qualifications would he make a good, fair, impartial and competent juror and grand juror?

COURT: I don't think that would be proper.

Q Under those qualifications would he be qualified to serve as a juror?

A I think he would if he was put on.

Q How about Ed Redd, do you know him?

A I know him, but I don't know much about him.

Q Do you know John Branch?

A I don't know much about him.

Q Do you know Timberlake?

A Yes sir.

Q Of Fackler, Alabama?

A Yes sir.

Q Having in mind those qualifications called to you in order to save time without going into detail, would you say his qualifications would entitle him to be on the jury roll as a Grand or Petit Juror?

ATTORNEY GENERAL KNIGHT: We object.

MR. LEIBOWITZ: I will withdraw that.

Q Would he have those qualifications as to character?

A His character and everything--he is a good man, but I don't think he can read.

Q He is a family man?

A Yes sir, a good man.

Q He is the head of a household?

A Yes sir.

Q Except for being able to read, would you say he possessed all the other necessary qualifications?

A Yes sir.

Q Do you know A. Joseph of Stevenson?



A Yes sir, whether he can read and write?

Q Would you say he possessed all these qualifications as to age and the other requirements?

A Yes sir he would.

Q In other words, all the questions you answered about Toliver in detail, you would say the same about this man?

A Yes sir.

Q Do you know K. D. Snodgrass?

A Yes sir.

Q Does he possess all of these qualifications?

A I think he is a good man.

Q Would you say he possessed all of these qualifications I called your attention to?

A As far as I know he is a good man.

Q In other words he is a man over twentt-one and under sixty-five?

A Yes sir.

Q And generally reputed to be honest and intelligent and, esteemed in the community for his integrity, good character and sound judgment?

A I think he is.

Q And not a habitual drundard?

2 A No sir.

Q Andhe isn't afflicted, to your knowledge, with any permanent disease or physical weakness which would render him unfit to discharge the duties ad a ~~juror~~ juror?

A No sir.

Q Do you know whether he can read and write?

A Yes sir he can read and write.

Q Would you say he would be qualified under those qualifications?

A I think he would.

Q How about Hugh Collier?

A I don't know much about him?

Q Or Stevenson?

(No answer)

Q Do you know Louis Cole?

S Yes sir.

Q What would you say about Louis Cole?

A He is all right.

Q Would he ~~pass~~ pass all of those qualifications?

A Yes sir.

Q What about Dave Stevenson, do you know him?

A Yes sir.

Q Would he pass all of those qualifications?

A I think he would.

Q Do you know John Staples, a farmer?

A Yes sir.

COURT: You asked about him.

Q Do you know Bud Moore, a merchant?

A Yes sir.

Q Would he pass all these qualifications?

A I think he would.

Q When you say you think he would pass it is your opinion or knowledge?

A Yes sir.

Q From what you have learned in the community about his reputation?

A Yes sir.

Q Do you know C. S. Finley?

A Yes sir.

Q How about him, do you know him well?

A I have known him all my life.

Q Would he pass all of these qualifications, without going into detail?

A I think he would.

Q Do you know Travis Mozley?

A Yes sir.

Q How long have you known him?

A All of his life.

Q Would he pass all of these qualifications?

A I think he would.

Q Do you know Pleas Larkin?

A Yes sir.

Q How long have you known him?

A All my life.

Q Would he pass all of these qualifications?

A I think he would.

Q Do you know Elijah Matthews?

A Yes sir.



Q How long have you known him?

A All his life.

Q Would he pass all of these qualifications?

A I think he would.

Q How about Henry Ross?

A Yes sir.

Q How long have you known him?

A All my life.

Q Would he pass all these qualifications?

A He wouldn't pass the qualifications now because he has been proven to be of unsound mind.

Q As far as he is concerned he wouldn't pass these qualifications?

A No sir.

Q When did he become of unsound mind?

A About a year and a half ago.

Q You would eliminate him?

A Yes sir.

Q One out of the whole list I have read?

COURT: He stated that.

Q I will ask you if to your knowledge do you know ~~any~~ of any negroes that ever served or were called as jurors in the State Courts?

COURT: You asked him that.

Q All of these names I have mentioned to you,

111

which you said were qualified to sit on Petit and Grand Juries, were negroes weren't they?

A Yes sir.

(Court convened at eight-thirty, March 28th, 1933.)

MR. LEIBOWITZ: If the Court please something has come to my notice which I think your Honor should be apprised of. At the entrance of this Court House there are two boys and both of them are carrying an arm full of leaflets, one of which I hold in my hand and which I am going to make a part of this record, and am going to show you. The leaflet is purported to be copyright 1932, by J. Glenn Jordan and the White Printing Co., Huntsvill, Alabama, for the price of fifty-cents, but are selling on the outside for fifteen-cents. It is purported to be written by J. Glenn Jordan, author of "The Inside Story of Alabama's Notorious Political Murder," and "Smashing the South's Great Auto Theft Ring." It is headed "The Unpublished Inside Story of the Infamous Scottsboro Case", and "Containing All the Sensational Evidence Introduced At Trials." The foreword I am not going to read, but, I am going to read the last two couple of sentences in this book. And, ask your Honor to hold this man in contempt of Court. From the last paragraph, under the heading, "Appeal Is Taken," "And this brings the story of the infamous Scottsboro case to a close as far as this little book is concerned. The mother of Roy and Andy Wright has sailed for Europe for a three months lecture tour, sponsored by the International Labor Defense League. It is believed the

Communists will make a last grandstand play in behalf of the negroes in order to win new members and to enrich their coffers, and then Alabama and the world will finally see justice claim its own--will see the negroes receive their just deserts--death in the electric chair." I say to your Honor that is contempt of Court, that is a contemptuous effort to play on the prejudices, and it is subversive of justice, and a black attempt, a contemptible, terrible, outrageous, attempt, by some individual to influence the people by putting in their hands this pamphlet, and seeking to inflame their minds before they have heard a word or evidence. I ask that this man, or these boys be brought before you, and you order their exclusion from the grounds of this Court House. I want to offer this book in evidence and show it to the Attorney General. I want to say for the purpose of the record, if it were not for the International Labor Defense, who came to the support of these boys after their conviction, these nine boys would be dead.

ATTORNEY GENERAL KNIGHT: Your Honor, as well as I, knows that I countenanced no interference with the Courts of Justice in this State, nor with the jury which has not been summoned. I don't think my story should be published, and I don't think any influence should be brought to bear on either the Court, or the jury, or the prospective jury. I stand ready and willing at this time to denounce any effort in any form to influence the Court



or the jury in this case. Now sir, this gentleman has seen fit to infect into this case a question of that kind, and I think I might be well heard in a few remarks. When this case was argued in the Supreme Court of the United States, that Court received hundreds of protests against the affirmance of our Court's ruling and were shown to me by the Marshall of the Court.

COURT: I don't want to foreclose you from saying anything.

ATTORNEY GENERAL KNIGHT: I think this order should go in the record.

COURT: The Court doesn't feel that anything should be said in the Court Room in the first place as to this--

ATTORNEY GENERAL KNIGHT: I think probably you are right.

COURT: That would affect in any way the fairness of this trial, and next the Court should not permit any pamphlet, or any publication, or any papers of that nature, that would prejudice anybody either way.

ATTORNEY GENERAL KNIGHT: I think your Honor is right, but you heard Mr. Leibowitz, now I want to ask you to hear me as to the interference of certain elements that have tried to enter into this case.

COURT: That is the point, any discussion

114  
out of Place

along this line, it appears to me, would be out of place, either by the defense or by the State.

ATTORNEY GENERAL KNIGHT: I think his statement is entirely out of place, I think it is perfectly out of place and probably made for the purpose of raising just such a discussion, and I am perfectly willing to have nothing in the world to say, and to refer to nothing that would in any sense of the word be used as an argument that justice could not be done at this time and at this place, but I do resent it being infected into this case. You know we have received and had pamphlets by the thousands spread over this state, I think you are right I don't think the subject ought to come up. If these men are guilty of contempt of Court ~~of~~ put them in jail. I don't want this case influenced by any outside influence, and I don't want the jury prejudiced. I haven't tried to influence the Court, and I have been here all day today and yesterday, and not a word have I said that could be construed as trying to incite the sympathy of the public of Morgan County, and I am not here now to do it, but I want to say for the State of Alabama that nobody has the right to deprive these defendants of a fair trial, and we are not now trying to do it, and I don't want it to go from this Court Room that there is an effort being made to do it. If you do not want to hear the data I have I think--

COURT: I prefer not to continue it any more,

= 115 =

it would probably be wise not to draw the attention to these matters, just let the Court read them would probably be wiser.

ATTORNEY GENERAL KNIGHT: DO you want them summoned up here for contempt of Court?

COURT: Yes I expect--

ATTORNEY GENERAL KNIGHT: Bring them up.

MR. LEIBOWITZ: I think the man ought to be arrested for contempt of Court.

ATTORNEY GENERAL KNIGHT: It is perfectly agreeable to me.

MR. LEIBOWITZ: I think he is guilty of contempt of Court.

ATTORNEY GENERAL KNIGHT: I am still the prosecuting officer of this Court and I will prosecute this.

MR. LEIBOWITZ: I think you should Mr. Attorney General. I want this (indicating) marked as a part of the record, I am offering the pamphlet as a part of the record.

ATTORNEY GENERAL KNIGHT: I have some things that ought to be marked to. I object to the introduction of this matter as a part of the record on the ground it has nothing to do with the case, or this phase of the case, and isn't relevant or admissible on a motion to quash the indictment.



COURT: Sustain the objection to the introduction of it as a part of the record, but it is a matter that the Court will consider.

MR. LEIBOWITZ: I ask your Honor to mark it for identification. May the pamphlet be marked for identification?

ATTORNEY GENERAL KNIGHT: Since your Honor is sustaining that objection I won't offer this.

MR. LEIBOWITZ: May your Honor dispatch a member of the militia to have these boys chased from in front of this Court House.

ATTORNEY GENERAL KNIGHT: No sir, you are not chasing anybody from anywhere.

COURT: The Court has sent for the boys.

MR. LEIBOWITZ: Very well.

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q Your name is John Sanford?

A Yes sir

Q How long have you lived in Jackson County?

A Nearly all my life.

Q You are a plasterer are you?

Q How long have you been engaged in that occupation?

A About twenty years.

Q Did you ever take part in the deliberation of the Jury Commission of that County?

A No sir.

Q Have you ever been on a Federal Jury Board?

A No sir.

Q Do you know all of these people the defense asked you about yesterday?

A Yes sir.

Q Known them for a lifetime?

A Yes sir.

Q And know they possess all of the qualifications prescribed for a juror do you?

A That he asked me I do.

Q That he asked you?

A Yes sir.

Q What did he ask you?

MR. LEIBOVITZ: I object to the question.

COURT: Overrule the objection.

MR. LEIBOVITZ: I except.

A I can't tell you right now.

Q What did he ask you?

A I couldn't remember all of the things he

asked me.

Q That is one of the reasons you are not on jury right now, you can't remember?

MR. LEIBOWITZ: I object to that if the Court please.

COURT: Sustain the objection.

Q You have testified that Hugh Sandford, Mark Taylor, John Staples, Floyd Snodgrass, Henry Ross, Travis Moseley, and others possessed the qualifications prescribed for a juror, haven't you?

A That is what he asked me.

Q Don't you know that to possess the qualifications of a juror that you must be held in esteem in the community in which you live as a man of sound judgment?

A I think that is what he asked me.

Q What does the word esteem mean?

MR. LEIBOWITZ: I object because he wouldn't let me ask him--the State objected to the very question I put to the learned Jury Commissioner.

ATTORNEY GENERAL KNIGHT: I am examining the witness on cross-examination.

COURT: Make your objections to the Court, overrule the objection.

MR. LEIBOWITZ: I except.



Q Tell me what the word esteemed means?

A I don't know whether I could tell you that or not.

Q How do you know they possessed the qualifications inquired about then?

MR. LEIBOWITZ: You are not going to bully this witness or any other witness.

COURT: Make you objections to the Court.

MR. LEIBOWITZ: Ask the Attorney General to stand back a little bit, and just lower his voice, and stop sticking his finger in the peoples eyes.

COURT: Ask him the question.

Q Will you please tell me what the word esteem means?

A I might tell you if I had a dictionary, or something the other, I couldn't "rememberize" it.

Q You swore these people possessed the qualifications, of a juror, he stated, didn't you?

A According to my knowledge they did.

Q And you think they are esteemed do you?

A The way he asked me according to my knowledge.

Q And you don't know what the word esteemed means John?

MR. LEIBOWITZ: Call him Mr. Sandford please.

ATTORNEY GENERAL KNIGHT: I am not in the habit of doing that Mr. Leibowitz.

COURT: That has nothing to do with the case.

Q You swore all of these men possessed the qualifications of a juror yesterday?

A Yes sir.

Q And you tell me you don't know that the qualifications of a juror are, isn't that true?

MR. LEIBOWITZ: We object to that.

COURT: Overrule the objection.

MR. LEIBOWITZ: We except.

Q You tell me you don't know what the qualifications of a juror are now?

MR. LEIBOWITZ: We object of the Court please.

COURT: Overrule the objection.

MR. LEIBOWITZ: We except.

A I know what he asked me what he said--I tried to answer what he asked me.

Q You just answered anything he asked you?

A He asked me was he a free holder or a house holder.

Q Did he ask you anything about esteemed?

A And had he ever ~~not~~ been convicted.

Q Did he ask you anything about esteemed?

A I don't know that he asked me all of that,  
he might have asked me, I don't remember.

Q Didn't ask you if these people you named  
would make good jurors and possessed the qualifications?

A And their character and being a citizen  
of the County and State.

Q Are they esteemed, answer that question,  
yes or no.

A As far as my knowledge, I think they are.

Q What does esteem mean John?

A I wouldn't know that, I might know if I  
had something to look it up in.

Q You would know if you had something to look  
it up in, but you can swear before you looked up, isn't that  
what you did yesterday John?

COURT: That is argument with the witness.

Q I don't quite understand why you say these  
people, whose names I have called to you, and those names he  
called to you yesterday, possessed the qualifications of  
jurors and you don't know the qualifications of jurors, do  
you John?

MR. LEIBOVITZ: We object to the form of the  
question.

COURT: Let him ask him the qualification.



Q Do you know the qualifications of jurors?

A I might not know the form of it in the book laid ~~knx~~ down, but I know them in a way?

Q In a general way?

A Yes sir I know in a general way but not in the form of the book laid down. I couldn't memorize from the book or the law.

Q What does moral turpitude mean?

Q That is a man that has not been convicted of any malicious crime that would stain his character and reputation in the community in which lives.

Q Any malicious crime that would affect his character and reputation in the community in which he lived?

A Yes sir, I would think so.

Q Then you say that all of these people whose names he called to you yesterday have not been convicted of any crimes involving moral turpitude?

A No sir, they haven't been convicted.

Q Are they guilty?

A They haven't been convicted.

Q Are they guilty of any crimes involving moral turpitude?

A Not that I know of as far as my knowledge.

Q Not to your personal knowledge?

A No sir.

Q How do you know they possessed the qualifications of jurors?

-- 124 -- 123 --

MR. LEIBOWITZ: We object to the form of the question.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

Q Do you know whether or not they possessed the qualifications of a juror?

A I might not know the ~~unobjectionable~~ way you want it answered.

Q You knew the way Mr. Leibowitz wanted it answered.

MR. LEIBOWITZ: I object to that question.

COURT: Sustain the objection.

Q You stated yesterday they did, didn't you?

A And I say today what I said yesterday.

Q Are they esteemed, can you tell me what the word esteemed means?

MR. LEIBOWITZ: We object to that question, that has already been gone over.

COURT: Yes.

Q As a matter of fact do you know whether these men possess the qualifications of jurors as prescribed by the statute, and as defined by law?

MR. LEIBOWITZ: We object on the ground it is incompetent, irrelevant, and immaterial, and he isn't supposed to be a lawyer.

COURT: Overrule the objection.

MR. LEIBOWITZ: We except.

Q Do you know whether they possess the qualifications of a juror as prescribed by law?

COURT: Do you know whether they possess those qualifications?

A I don't know whether they possess what is prescribed by law.

Q Do you know whether any of these names he called to you yesterday are in the jury box or on the jury roll?

A No sir I don't know.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Mr. Sandford, if I told you the word esteemed as translated according to the dictionary means--

ATTORNEY GENERAL KNIGHT: I object to leading the witness.

Q Well thought of, would you say all of these men, those names I have mentioned, were well thought of, well spoken of in the community in which they live?

A Yes sir, they are well spoken of.

Q You say you never sat on a jury commission?

A No sir.

Q Have you ever been invited to sit on a jury?



126  
125  
A No sir.

Q You have never seen any Jury Commissioner of Jackson County, or any agent of a Jury Commission, has ever come to your district or precinct where you live, and asked you or anybody else any questions, any of your neighbors any questions?

A Not that I know of.

Q For the purpose of giving a worthy, decent negro the test and a chance to sit on a jury?

A No sir.

Q Have you ever heard of any such case?

A Not to my knowledge I haven't.

Q You have lived in Jackson County--

COURT: He stated that.

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q John, you testified yesterday Timberlake was qualified for jury service?

A No sir, I said he was qualified--he asked me I remember so far as my knowledge on that, and I said he couldn't read and write and under that head he wouldn't be qualified, because he couldn't read and write, but any other thing he was all right as a good man.

Q Isn't that the reason the school board of that county asked that he be removed?

A I don't know whether that is the reason or not.

MR. LEIBOWITZ: I object.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

A I never sat on the school board with him.

Q Are you on the school board?

A I have been, I am not now.

Q Do you remember Timberlake ever being on the school board?

A I think he was in his district.

Q Did you ever hear of the Commissioners of the school board asking that he be removed?

MR. LEIBOWITZ: We object to that.

ATTORNEY GENERAL KNIGHT: He testified the men possessed the qualifications.

COURT: Sustain the objection.

Q John, do you think Timberlake is looked up to highly?

A As a negro in our county he is.

Q But I mean taking them all, all the whites and blacks?

A I am talking about he is looked up to in our county as a negro among the white folks as being a high standing darry.

Q That about a juror?

127  
128  
MR. LEIBOWITZ: I object to the form of the question, it is indefinite and means nothing.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

Q I didn't ask you if he was looked up to as a high standing darky, is he looked up to as a man of esteem and sound judgment, and possessing the qualifications of a juror, is he looked up to that way?

A He is looked up to as a man of sound judgment all right, but I said that would be one thing that would knock him out because he couldn't read and write.

Q Don't you know that does knock a person out?

MR. LEIBOWITZ: We object to the form of the question.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

Q Don't you know it does knock him out?

MR. LEIBOWITZ: I object to that on the ground it isn't the law it knocks him out, it does not knock him out if he a free holder or house holder.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.



Q I want an answer.

A No sir, I don't know that that knocks him out.

Q Does Timberlake live in a purely colored community John?

A He lives on a white gentleman's farm.

Q Are there any white people there in that community?

A Yes sir.

Q Good many of them?

A There is white people and colored people living all mixed up, white tenants and colored tenants.

Q You testified as to Timberlake's reputation, what you think about it?

A I heard them all say he is a good man.

Q Who did you hear say ~~xxxx~~ he was a good man John?

A I can't recall the man he worked for but I heard him say.

Q Have you heard anybody else say that?

A The merchants at Fackler says he is a good man.

Q Have you ever heard them say he was esteemed as a man of sound judgment?

A In there speaking about him they wouldn't hardly put all of that emphasis to it.

Q That is the reason I am trying to get at this, you have testified he possesses the qualifications of a juror and you don't know them do you? I will withdraw the question. Is his judgment prized in his community?

A I heard them all say he had good sound judgment.

Q Did you ever hear of them regarding him with reverence in his community?

MR. LEIBOWITZ: I want to interpose an objection to that.

COURT: Sustain the objection.

Q Is it prized in his community?

A I think it is, he has lived a long time on the farm he is living on.

Q That means his sound judgment is prized in his community?

MR. LEIBOWITZ: I object if the Court please.

COURT: Sustain the objection.

Q Is a high value set on his judgment?

A I don't know nothing about the price or value.

Q Is he on the jury roll?

A I couldn't tell you.

Q You testified a minute ago you didn't know whether any man you testified about was on the jury roll, isn't that true?

A I don't know that.

-----

RE-DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q Mr. Sandford, what are the duties of a member of the school board of which you say you were a member?

A The duties of the colored school board in most school districts is they are to look after the up keep of the school and property, indebtedness and so forth.

Q Indebtedness of the school?

A Indebtedness of the school, and keeping the school going on under a good system and seeing to getting good qualified teachers, that is their duty in our district, and I suppose that is it in all districts.

Q Who appointed you on the school board?

A The Superintendent of Education.

Q Is he a white man?

A Yes sir.

MR. LEIBOWITZ: I guess that is all.

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q They appointed you on the school board but you have only supervision over colored schools?



A That is all, we don't hardly white schools.

-----

C. S. FINLEY, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. SAMUEL S. LEIBOWITZ

Q What is your name?

A C. S. Finley.

Q Where do you live?

A Scottsboro, Alabama.

Q Is that in Jackson County?

A Yes sir.

Q How old are you?

A Fifty-five.

Q How long have you lived in Jackson County?

A Bred and born there.

Q Fifty five years?

A Yes sir.

Q Have you ever seen a colored man sitting on the jury in the Circuit Court of Jackson County?

A No sir.

Q Did you ever serve on a jury?

A No sir.

Q Have you got school boards in you county?

A Yes sir.

Q Who are the members of the school board?

A Mark Taylor, Hugh Sandfor, and Lawrence Hunter, now.

Q Are they negroes?

A Yes sir.

Q How long have they been members of the school board?

A I think they were made members sometime during last year.

Q Haven't you got colored schools in your county?

A Yes sir.

Q Have you got colored school teachers?

A Yes sir.

Q Ant of them men?

A No sir I don't think there are any men school teachers there.

Q Have they got any man school teachers in other counties?

A Some in Alabama, but not in my district.

Q I mean in the county?

A Yes sir.

Q Got any ~~churches~~ churches?

A Yes sir.

Q Got any preachers?

A Yes sir.

Q And deacons?

A Yes sir.

Q And trustees?

A Yes sir.

Q Are they men or women?

A Men.

Q About how many colored churches have you got in Jackson County?

A Well I don't know exactly how many, good many thought

Q Have you got an association of colored churches that meets at Scottsboro?

A Yes sir.

Q That embraces churches all over the county in that district?

A Yes sir.

Q Have you got preachers that preach there?

A Yes sir.

Q What are their names?

A Callahan, he is there, and Reverend Graves, and Reverend Crutcher.

Q Are those men of some education?

A Yes sir.

Q Have you got hospitals?

A There is one there but it is white.

Q In these schools, do you attend the schools sometimes?

A Well sometimes, I used to be a trustee of a school.



Q What school were you trustee of?

A At Scottsboro.

Q How long were you trustee?

A Trustee there for about six years.

Q Who appointed you as a trustee?

A At that time the people elected the trustees,  
but since that we select so many and sent them in and the  
white board selects them out of that number.

Q Did you have an election when you were  
elected trustee?

A Yes sir.

Q Regular ballot voting in the election?

A Yes sir.

Q You were elected by ballots?

A Yes sir.

Q What year was that?

A I don't remember that year, I think it was  
long about 1927 or 1928.

Q Five or six years ago?

A Yes sir.

Q How long did you serve?

A About six years.

Q Served until your term expired?

A Until they changed the law.

Q Then who appointed your successor?

A The white trustees.

Q At Scottsboro or Montgomery?

A At Scottsboro.

Q Who did they appoint as your successor?

A Huey Sandford was the first they appointed,  
and my son, and John Sandford, and Mark Taylor.

Q Are they the trustees now?

A No sir.

Q Did they abolish that board?

A They abolished that board after they served  
the term out.

Q Is your son living?

A Yes sir.

Q Where is he now?

A Scottsboro?

Q How old is he?

A He is thirty-two years old.

Q In good health?

A Yes sir.

Q Did he go to school when he was a boy?

A Yes sir.

Q How far did he get in school?

A He got about the seventh grade.

Q Did you go to school?

A Yes sir.

Q How far did you get in school?

A The eighth grade.

Q Do you know Mark Taylor?

A Yes sir.

Q Do you know Will Watkins?

A Yes sir.

Q Do you know L. C. Cole?

A Yes sir.

Q Do you know Pleasant Harkins?

A Yes sir.

Q Do you know W. T. Moseley?

A Yes sir.

Q Name over some colored men you know in Jackson County, that are over twenty-one years old and under sixty-five, names I haven't called?

A Huey Sandford, Snodgrass, and there is a Cain Snodgrass I know.

Q What were the duties of the school board while you were on it?

A To see after the school, watch after it, keep up the interest of the school and everything.

Q Did you have to look after the employment of the teachers?

A Yes sir.

Q And look after the property?

A Yes sir.

Q And look after the discipline and welfare of the children?

A Yes sir.

Q How many schools have you got in Jackson County?



A I don't know in the whole county.

Q Are there a large number or small number?

A I wouldn't say, a good many schools.

Q Do you own property in Jackson County?

A Yes sir.

Q Do all these other negroes you have spoken about own property?

A Yes sir.

Q And pay taxes?

A Yes sir.

Q Have you ever been called or questioned about sitting on a jury?

A No sir.

Q Do you know whether any of these negroes, whose names you have called, have ever been called by the jury board, and questioned whether or not ~~they~~ they were qualified to sit on a jury?

A No sir.

Q Did you ever hear of anything like that going on in Scottsboro, or Jackson County, of the Jury Commissioners investigating the colored men to see if they were qualified?

A No sir.

Q Does the school board examine into the qualifications of school teachers, and make inquiries, before they hire them?

A Yes sir.

Q Did your board do that?

A Yes sir.

Q Referring to these men for jury service,  
that Mark Taylor, were you acquainted with his reputation and  
standing in the neighborhood where he lived?

A Yes sir, since I have known him.

Q How is it?

A Good.

Q He bears the name of a good citizen?

A Yes sir, ever since he has been around there  
he has made a good citizen.

Q Would you say he is a man of sound judgment?

A Yes sir.

Q Is he afflicted with any disease?

A No sir.

Q Is he a habitual drunkard?

A No sir.

Q Has he ever been convicted for stealing  
or any crime involving moral turpitude?

A Not that I know of.

Q Is he a man that bears the name of having  
a good character?

A Yes sir.

Q Is he a householder, the head of a family,  
married man?

A Yes sir.

Q Does he own land?

A Yes sir.

Q He is a free holder?

A Yes sir.

Q Do you know L. C. Cole?

A Yes sir.

Q Where does he live?

A Stewenson.

Q Tell us about him regarding his character.

A It is good as far as I know of him I never heard anything against him.

Q Is he a man of good health?

A Yes sir.

Q Has he got any disease or any thing that would impair his body or mentality?

A Not that I know of.

Q Has he ever been convicted of any crime to your knowledge, of any stealing or anything of that kind?

A I never heard of it, not that I know of.

Q Do you know what his neighbors say about him, or what they think of him, as to whether or not he is a man esteemed in his community?

A Yes sir, everybody gives him a good name.

Q Is he a free holder, a house holder, the head of a family, does he own land?

A Yes sir.

Q Is he a habitual drunkard?

A No sir, I never heard of him drinking.



Q Do you know Pleas Larkin?

A Yes sir.

Q Do you know W. T. Moseley?

A Yes sir.

Q Do you know Cam Rudder at Stevenson?

A Yes sir.

Q Do you know Edd Redd?

A I know him but as far as his standing I am not personally acquainted with it.

Q What would you say about Cam Rudder, is he a man of good character, would you give him a good name on all these questions I asked you?

A Yes sir.

Q Skipping Ed Redd, and going to John Branch?

A Yes sir.

Q What would you say about his character and standing?

A I wouldn't care to say <sup>about</sup> that, I don't know, I just know him.

Q Just know him, not well acquainted with him?

A He lives about thirty miles from me.

Q Do you know A. Joseph at Stevenson?

A Yes sir.

Q What about him?

A It is good.

Q All of these questions asked you here?

A Yes sir.

Q What about Hugh Collier?

A I just know him.

Q What about Louis Cole?

A He is all right.

Q Good man, good negro?

A Yes sir.

Q As to all these questions I asked you about?

A Yes sir.

Q Do you know K. D. Snodgrass of Hollywood?

A Yes sir.

Q What do you say about his character?

A Good.

Q Good, on all these questions I asked you about, for jury service?

A Yes sir.

Q Do you know Bud Mowre?

A Yes sir.

Q What do you say about his character, his standing?

A Good.

Q Do you know Travis Moseley?

A Yes sir.

Q Is he a railroad man that lives in Scottsboro?

A Yes sir.

Q What do you say about his character?

A Good.

Q Do you know Eligah Matthews?

142  
41  
A Yes sir.

Q Where does he live?

A Scottsboro.

Q What about his character?

A It is good.

Q Do you know Henry Ross?

A Yes sir.

Q What about his character and standing?

A His character is good but he has been kinda insane for the last seventeen or eighteen months.

Q Mental condition bad?

A Yes sir.

Q How long has it been that way?

A It has been that way about—I guess it has been about eighteen months.

Q It has gotten bad in the last year or two?

A Yes sir.

Q It has gotten bad since these boys were indicted in this case, prior to that time was he all right?

A Yes sir.

Q Do you know the Reverend Crutcher who used to live down there?

A Yes sir.

Q He is the pastor in the church at Scottsboro?

A Pastor of the Baptist Church.

Q Have you got an association of the Baptist Churches, the Mud Creek Association, that meets there?



-- 143-- 144 --

ATTORNEY GENERAL KNIGHT: We object, what has the Mud Creek Association got to do with it?

COURT: Sustain the objection.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q What is your name?

A C. S. Finley.

Q How long have you been a citizen of Jackson County?

A All my life, raised and born there.

Q You called a good many names of people, you say you know Sandford, you know John Sandford?

A Yes sir.

Q That just testified here?

A Yes sir.

Q And you know Snodgrass?

A Yes sir, one.

Q What Snodgrass, you called one Cain Snodgrass?

A They call one Toppery, and one they call Cain, that carried the mail there.

Q You say they are honest men?

A Yes sir, as far as I know.

Q Are they intelligent men?

A Yessir.

Q Do you know the community in which they live?

A Yes sir.

Q Are there any white people in that community?

A Yes sir.

Q More white people or more colored people?

A More white people.

Q Do you know what those people think about them in that community?

A I am just going by the way that they act about them, they seem to think pretty well of them.

Q By the way they act about them?

A Yes sir.

Q When you say they seem to think pretty well about them what do you mean, how they act about them?

A They treats them as citizens and everything, nice to everybody that tries.

Q Nice to everybody in Jackson County, all the colored folks?

A Yes sir.

Q You haven't made it plain to me, you stated everybody in the community, in which these three people whose names I have just called lived, thinks they are good citizens, thinks they are honest, and thinks they are intelligent, tell me why you say by the way they act?

A The way they live, they never do nothing, nothing like that. I think a person who never does anything, I think he is a good citizen.

Q What do you mean by doing nothing?

A Not in trouble, into a whole lot of something or other.

Q Your son was into something about a week or two ago?

A Yes sir.

Q And convicted didn't he?

A In one case he did.

Q What did they do with him in the other case?

A Turned him loose.

Q Didn't get him but once?

A That is all.

Q Do you esteem Snodgrass and Sandford?

A Do I esteem them?

Q Yes.

A Yes sir.

Q When you say you esteem them do you esteem them for their sound judgment?

A Yes sir good sound judgment.

Q What do you mean by the word esteem?

A Means men who do right and justice.

Q That is esteem?

A Yes sir.

Q Do you do right in justice to them?

A Try to.

Q We are not talking about that right now, we know you do, but we are talking about how everybody looks on those people?



A They looks on them as their character, they  
looke on them as good fellows.

Q A lot of us could be looked on as being  
good fellows and not have the best character in the world,  
isn't that right?

A Yes sir.

Q But what I am talking about, when they are  
~~weighing~~ weighing himan life or property rights, how are they looked  
on?

MR. LEIBOWITZ: I object.

COURT: Sustain the objection.

Q Tell me what the ~~xxx~~ word esteemed means?

MR. LEIBOWITZ: He has already answered.

COURT: Sustain the objection.

Q Is your son esteemed in the community?

A Well he has had a good record, that is the  
only thing he has ever been into, up to that he was esteemed  
as a good citizen.

Q Cass, you have talked about your school  
board, those are local school boards?

A Yes sir.

Q Just in the community?

A Yes sir.

Q In your county white people and colored  
people don't go to school together?

A No sir.

Q You have separate school boards?

A Yes sir.

Q And separate schools?

A Yes sir.

Q You spoke of some of these people being on the school board, Sandford and Toppery Sandgrass having been on some of the school boards, they were elected by the colored patrons of the school?

A Yes sir.

Q That means people who have children in that particular school?

A Yes sir.

Q That doesn't mean everybody in the county elected them on that board, nor everybody in the community?

A No sir, but just the majority.

Q Of that particular school?

A Yes sir.

Q It is just a colored school?

A Yes sir.

Q Talking about the reputation of these men whose names you have mentioned, do you think they possess the qualifications of jurors?

A Well, that is what I should think about it, they are men of good morals, and good standing, and I think they would be qualified.

Q A list of names was read you and you testified you thought they probably had good morals and so?

A Not all of them because I didn't know all of them, most of them.

Q Have you ever sat with the jury board?

A No sir.

Q Do you know how the jury board selects the people whose names they put on the jury rolls of Jackson County?

A Well, I don't know whether I would know all about it.

Q Tell me what you know about it?

A I don't say--

Q How do they do it?

A I don't know, I have seen them selecting them.

Q You don't know anything about it?

A I have been in there and seen them select them?

Q You say you have seen them select them?

A Yes sir, It looked like they tried to get the best.

Q Have you seen them select them?

A Yes sir.

Q Whereabouts did you ever see at any time a jury commissioner select them?

A Than they were getting them on cases?

Q Don't you know that isn't the selection of the jury roll?

A Yes sir, I said I didn't mean--

MR. LEIBOWITZ: We object.



ATTORNEY GENERAL KNIGHT: I expect to show the absolute ignorance of this negro.

MR. LEIBOWITZ: May I state my objection. I object to this question on the ground it is highly incompetent, irrelevant and immaterial, and for the reason this man's knowledge as to the legal procedure, which is probably not known by one half of the lawyers in any county in this state, and it is not a test of this man's qualification to sit on a jury. He isn't supposed to know all the technical rules, how the names are put on the jury and how the roll is made up, especially in view of the fact that none of these folks at any time have ever been given an opportunity to serve on a jury and learn these things.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

Q You testified you think these people ought to be jurors, I just want to find out whether you know what you are talking about?

MR. LEIBOWITZ: We object to the form of the question.

COURT: Sustain the objection.

Q Have you ever seen the Jury Commissioners selecting a jury?

A No sir.

Q You have not?

A No sir.

Q Do you know how they go about selecting a jury?

MR. LEIBOWITZ: I object.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

A No sir I don't know how they go about it.

Q You don't know whether they inquire or send people out to examine people personally or not?

MR. LEIBOWITZ: We object on the ground he says he knows nothing about it.

A No sir, but I don't think they do.

(No ruling)

Q White people or colored people?

A No sir I never heard of it.

Q You know of a good many white people in Jackson County I suppose?

A Yes sir.

Q Do you know whether they were on the jury roll or not?

MR. LEIBOWITZ: We object because that has no bearing on this case.

COURT: Overrule the objection.

MR. LEIBOWITZ: I except.

A You said whether I knew a good many white people?

Q Yes.

A Yes sir, I knows a good many white people.

Q I will ask you whether you knew they were on the jury rolls?

A Not all of them.

Q You know not all of them were on it?

A No sir.

Q How do you know whether they were or not?

A Becsuse a lots of them are not competent to be on the jury, and a lots of ~~achored~~ people are not competent.

Q Do you now those that are on it?

A I don't know whether I know all of them that are on it.

Q Do you know how many of your knowledge that are on it?

A No sir I don't.

Q You have called the names of all these negroes here, you testified as to their charadter, do you know whether or not they are on the jury rolls of Jackson County?

A No sir I don't.

-----



MR. LEIBOWITZ: I appreciate this as a fact of proving whether or not the jury roll contained the names of any colored persons, and I appreciate the difficulty in proving that if the Attorney General is going to insist on me proving it, both General Chamlee and I proved that to a mathematical certainty. I will have to ask the indulgence of the Court to get the jury roll, and we will bring every living man on that jury roll if it takes twenty-five years to do it, and we will prove that they are white. If the Attorney General will not make a concession along that line I will be compelled to do that.

ATTORNEY GENERAL KNIGHT: The Attorney General makes no concession what so ever, prove your case.

-----

MARK TAYLOR, witness called on behalf of the defense, after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. G. W. CHAMLEE

MR. CHAMLEE: judge Mooney told me he would have this jury roll here, and I understand he thought he couldn't let it leave the Court. It may be possible the Attorney General could get this record and save us that expense and delay.

COURT: Possibly.

Q What is your name?

A Mark Taylor.

Q How old are you?

A Forty-one.

Q Forty-one years old?

A Yes sir.

Q Where do you live?

A Scottsboro.

Q Where were you born?

A Limestone County.

Q How long have you lived in Jackson County?

A Twelve years.

Q Where did you live before that time?

A Sheffield.

Q What county is Sheffield in?

A Tolbert County.

Q Since you have been in Jackson County have you ever seen any negroes on a Circuit Court Jury?

A No sir I haven't.

Q Do you know whether or not there has ever been any names of negroes in the jury box?

A Not to my knowledge.

Q You never heard of any?

A No sir.

Q Do you own land?

A Yes sir.

Q A married man?

A Yes sir.

Q Did you ever go to school?

A A little.

Q What grade did you get to?

A Sixth.

Q Were you ever on the school board?

A I am now.

Q For what county?

A Jackson County.

Q For some district?

A District number eighty-eight.

Q How did you get your appointment as a member on the school board?

A Under the late law, being a qualified voter of the county.

Q Can you comply with the law in Alabama for voting?

A Yes sir.

Q Do they allow you to vote?

A Yes sir.

Q When were you appointed on the school board?

A This last year.

Q Who appointed you, what officials?

A The County Superintendent.

Q Of Jackson County?

A Yes sir, being elected by the people.

Q Was the County Superintendent elected by the people, then he appointed you?



A No sir the school--the local trustees was elected by the school district and the restriction was they had to have qualified voters.

Q Were you elected in the district or appointed?

A Elected.

Q Who voted for you?

A The people in the community.

Q Were there any other negroes elected as school trustees in your county?

A Two others.

Q Who were they?

A Hugh Sandford and Lawrence Hunter.

Q Where do they live?

A Scottsboro.

Q Do they own property?

A Yes sir.

Q Are they over twenty-one years of age?

A Yes sir.

Q Do you know whether or not they are under sixty-five?

A Yes sir, under sixty-five.

Q What is their character and reputation?

A Good I suppose, I don't know anything against their character.

Q Do you think they are esteemed in the community in which they live for their honesty and sound judgment?

A Seemingly so, yes sir.

Q Are they sober men, not habitual drunkards?

A Yes sir.

Q Men that are not afflicted with a disease.

A Yes sir they are.

Q Do they own their own land?

A Yes sir.

Q Can they read and write?

A Yessir.

Q How long have they lived in that county?

A All their lives to my knowledge.

Q About how old are they?

A Sandford is about forty something years,  
and Hunter about the same.

Q Approximately forty years of age?

A Yes sir.

Q Are they men who are reputed to be honest men?

A Seemingly so, yes sir.

Q Do you know any extrustees, former trustees  
of the school board down there?

A Yes sir.

Q Who were they?

A G. A. Edmondson, John Sandford and Robert  
Finley.

Q Where do they live?

A Scottsboro.

Q Are they over twenty-one years of age?

A Yes sir.

Q When were they trustees?

A They were trustees, these men Sandford and Edmondson, when I came to the county, when I was admitted on the board.

Q How many years did they serve as trustees?

A They served several years, I don't know just exactly.

Q Are they esteemed as honest men of good judgment, and good sense, and good health in the community in which they live?

A Yes sir.

Q Do you know of them ever being convicted for stealing or any crime involving moral turpitude?

A Not that I know of.

Q Do you know of any body else that served as trustees in that county?

A John Stapler.

Q How long did he serve as a trustee?

A To my knowledge about five or six years.

Q He is an old man?

A Old man.

ATTORNEY GENERAL KNIGHT: Let me interrupt a minute your Honor. I suggest and ask the Court to interrupt the direct examination for the time while your Honor disposes of whether or not those little boys are guilty of contempt of court; I don't think they ought to be.



MR. LEIBOVITZ: May I say I am not asking--

ATTORNEY GENERAL KNIGHT: You asked that they be brought in Court.

MR. LEIBOVITZ: Please, I want to say something if you will bear with me a moment. I am not asking to have these two little boys punished, that was not my idea, I asked you to bring the man in that is responsible for it. The people of Decatur are going to give these men a square deal, but if these people are allowed to pour poison in the minds of the people it isn't fair.

-----

(At this point in the proceedings Alston Hargrove, Leon Smith, and Sam White, were brought before the Court.)

Alston Hargrove was questioned by the Court as follows:

COURT: What is your name?

A Alston Hargrove.

COURT: Where do you live?

A 1204 Fourth Avenue, South.

COURT: How old are you?

A Fourteen.

COURT: Who got you to sell these pamphlets?

A Kyle Frazier.

Q Where does he live?

A I don't know where he lives

COURT: Does he live in town?

A Yes sir I think he does.

-----

Leon Smith was questioned by the Court as follows:

COURT: How old are you?

A Fifteen.

COURT: Have you read these books?

A No sir.

COURT: Just hand the books up here.

-----

Sam White was questioned by the Court as follows:

COURT: Where did you get these books?

A From White Printing Company in Huntsville,  
they sent them down here.

MR. LEIBOWITZ: What is the name of the man  
that sent them down here?

A Ernest White.

ATTORNEY GENERAL KNIGHT: I don't think any  
kind of propaganda ought to be sold around this Court House  
at any time during this trial or at any time before the jury  
reaches a verdict.

MR. DEIBOWITZ: I ask you to send for this man who is responsible for these books, and I am going to make an application before your Honor to have that man committed for criminal contempt of the Court.

ATTORNEY GENERAL KNIGHT: This was committed out of the presence of the Court, and I want to tell you the way to do it is to file an information and swear to it.

COURT: Boys I am not going to do anything with you about these books, but in my opinion they are not proper to be sold around the Court House. In fact books of this nature, or any other nature in regard to the trial, that would inflame the passion or influence the jury improperly, I don't think ought to be sold here around the Court House, or in this county, or published in the county. and the Court intends so far as it can to exercise its power to prevent any sale, or distribution, or giving away, of any kind of literary matter which would influence any prospective juror to bring in a verdict either on one side or the other. I believe you say the man who got you to sell them lives in Decatur?

A Yes sir.

COURT: I might state to those who are present that I am excusing these boys. Sometimes we distribute or sell matters we do not know, or matters we do not know the contents of, we do not know we are doing these things



which the law will not permit. But any sale of any paper or any pamphlet of this kind in this county the Court is going to consider as contempt of court. Now newspaper people, and people generally, have a right to publish proceedings of a trial, and they have a right to put the facts, and they also have a right to make their comment on the trial provided those comments are fair and impartial, and are not made for the purpose, or may not be made for a purpose such as would induce those, whose duty it might become to try the case, to bring a verdict contrary to the law and the evidence in the case. In this case, as in all other trials, the Court isn't going to permit anything of this kind, and the Court will confiscate these pamphlets, and if anybody else sells them, whether he be young or old, the Court will deal with them as it sees fit.

ATTORNEY GENERAL KNIGHT: I do not want these things circulated, and the Court does not want them circulated, I don't know whether they are true or false, I have never read one myself. If I had read one I would have called it to your Honor's attention, and if he (Mr. Leibowitz) has any complaint to make about the facts here, the Court isn't going to be threatened, just present your motion when you get ready.

COURT: GENTLEMEN, this much we just as well get it from the state, the Court is inclined to be patient

162

and to consider the frailties of human nature, and is going to consider that persons may do things thoughtlessly, but this much right now we just as well understand, we are going to have a fair and impartial trial in this case from beginning to end. There is no question about that. The powers of Alabama, and the laws of Alabama, and the laws under which this case is being tried, are vested in the Court to carry out and to see these things are done. Now, because we do not act hastily in this matter let it be understood the Court will act and act with determination if the necessity should arise. And, I do not propose that anyone circulate or anyone distribute any propaganda intentionally to influence any juror, or influence this trial in any way, which shall not result, or which would make it result in a trial which would not be upon the law and the evidence in the case. I have issued a bench warrant for that gentleman. That the Court has said will be sufficient to deter others from acting against this statement which the Court has made. If anybody distributes pamphlets like this please call the attention of the Court to it, and the Court will examine those things.

MR. LEIBOWITZ: May these boys be released.

COURT: I have released these boys.

-----

CONTINUING THE DIRECT EXAMINATION BY MR. CHAMLEE

Q I believe when we were interrupted you were being asked about John Stapler. I will ask you about, do you know Will Watkins?

A Yes sir.

Q Do you know S. C. Cole?

A Yes sir.

Q And Pleas Larkins?

A Yes sir.

Q A. F. T. Moseley?

A Yes sir.

Q Do you know M. T. Talley?

A Yes sir.

Q Do you know Cam Rudder?

A Yes sir.

Q Do you know Ed Redd?

A Yes sir.

Q And John Branch?

A Yes sir.

Q And M. F. Tamberlake?

A Yes sir.

Q Do you know A. Joseph?

A Yes sir.

Q And E. D. Snodgrass?

A Yes sir.

Q And Louis Cole?

A Yes sir.

Q And Dave Stevenson?



A Yes sir.

Q Do you know Bud Moore?

A Yes sir.

Q And C. S. Finley?

A Yes sir.

Q And Travis Moseley?

A Yes sir.

Q And Pleas Larkins?

A Yes sir.

Q And Elijah Matthews?

A Yes sir.

Q And Henry Ross?

A Yes sir.

Q These men I have named are all negroes and live in Jackson County?

A Yes sir.

Q Did you ever know of any one of them serving on a jury?

A No sir.

Q Tell me on the question of whether or not they are esteemed men, good character in the neighborhood in which they live?

A To my knowledge they are,

Q All are esteemed as men of good character?

A Yes sir.

Q Are they of good health and sound judgment as far as you know?

A With the exception of Henry Ross?

Q That is one named awhile ago?

A No sir he seems to be mentally impaired  
in some way, feeble minded.

Q How long has he been that way?

A A year or eighteen months to my knowledge.

Q At the time this case started two years  
ago, was he apparently in good health then?

A To my knowledge he was.

Q Do you think this list of men I have called  
out here are men of good character and sound judgment?

A Yes sir, as far as my knowledge they are.

Q Are ~~you~~ you acquainted with them, do you know  
the neighborhood where they live?

A Yes sir, some of them live on the rural  
and I am not so well acquainted.

Q Is anyone of them a habitual drunkard?

A Not that I know of.

Q Has any one of them ever been convicted  
of stealing or any offense involving moral turpitude?

A Not to my knowledge.

Q Do you know whether or not they can read  
English?

A Except Timberlake, I am under the impression  
he can't read nor write.

Q With the exception of Timberlake, the others  
can?

A Yes sir.

Q Do you know whether they are married men and have their homes?

A That are, yes sir.

Q Do you know whether or not they own land, some of the?

A Some of them yes sir.

Q And are over twenty-one years old?

A Yes sir.

Q And under sixty-five?

A Well some may be over sixty-five.

Q The majority of them, in the main part, are under sixty-five?

A Yes sir.

Q Maybe one or two in excess or that?

A Yes sir.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q What congregation does Timberlake belong to, what church?

A Baptist.

Q You are a Baptist?

A No sir.

Q What church does John Sandford belong to?

A Methodist.

Q Are you a Methodist?

A Yes sir.



~~Q What church does Topper Sndgrass belong to?~~

Q What church does Topper Sndgrass belong to?

A Methodist.

Q All but Timberlake, he can't read and write,  
can do all of these things?

A Yes sir.

Q You have testified some of these people  
whose names you have called were on the school board or  
board of trustees?

A Yes sir.

Q Including yourself?

A Yes sir.

Q Isn't that a local school?

A Yes sir.

Q Local colored school?

A Yes sir.

Q Then you ran for the position you now hold,  
only the patrons of the school voted for you?

A That is right.

Q Colored people?

A Yes sir.

Q You didn't run county wide?

A No sir.

Q You don't know of any colored people who  
have been elected throughout the county, in a county wide  
election?

A No sir.

Q As a member of a school board?

168 169  
A No sir.

Q Do you know the names on the jury roll of Jackson County?

A No sir.

Q Do you know whether or not the names Mr. Chamlee just read to you are on the jury rolls of Jackson County?

A No sir.

MR. CHAMLEE: I make this point, he is asking our witness if he knows if certain names are on the jury roll, under the law the jury roll is a secret roll.

ATTORNEY GENERAL KNIGHT: That is just exactly what we have been arguing all of this time, they don't know who is on the jury roll of Jackson County.

COURT: Overrule the objection, let him answer.

Q You said you didn't know whether these names Mr. Chamlee called to you were on the jury rolls of Jackson County?

A I do not.

MR. CHAMLEE: I want to find out, does the Attorney General of Alabama state there is a public record in Jackson County, Alabama, beyond his reach; and needed in this trial to administer justice?

ATTORNEY GENERAL KNIGHT: I haven't asked for it.

169

MR. CHAMLEE: We say that book is beyond our reach so far as we know, we have issued subpoenas trying to get it.

COURT: That will be argument to make on the motion.

-----

TRAVIS MOSELEY, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. G. W. CHAMLEE

Q What is your name?

A Travis Moseley?

Q Where do you live?

A Scottsboro.

Q How old are you?

A Forty-one.

Q How long have you lived in Jackson County?

A Born and raised there.

Q Did you ever see any negroes sitting on the Circuit Court jury in Jackson County?

A No sir.

Q You attend the Court House don't you?

A Yes sir.

Q And witness trial and court proceedings.

A Yes sir, just once in a while.

Q Did you ever hear of a negro sitting, or being called to sit on a jury in Jackson County?



A No sir.

Q You have got school boards down there?

A Yes sir.

Q And got schools?

A Yes sir.

Q Who is on the school board now?

A You mean trustees?

Q Yes.

A Lawrence Hunter, Mark Taylor, and Hugh Sandford.

Q How long have you known these men that are trustees now?

A One of them I was born and raised with.

Q What is his name?

A Hugh Sandford.

Q Tell us what you know about his character, whether or not he is a man of good character and good judgment, and good health, and not a habitual drunkard?

A Yes sir, he is all right as far as I know.

Q How did he get the position as trustee on the school board?

A I don't know sir, because you see I have stayed on the roads since 1917, I was just at home every three days,

Q You are a railroad man?

A Yes sir.

Q You were not there when he was appointed?

A No sir.

Q Do you own your own home?

A Yes sir.

Q A married man?

A No sir, I have been married.

Q You are a free holder?

A Yes sir.

Q What are the names of the men you say are on the school board there?

A Hugh Sandford, Mark Taylor, and Lawrence Hunter.

Q Has either one of these men ever been convicted of stealing or any offense involving moral turpitude?

A Mark, he aint been in Scottsboro over fifteen years.

Q Do you know whether or not they have ever been convicted in a court?

A No sir.

Q You may not know what we mean by moral turpitude, whether or not a man has been convicted of a crime--

ATTORNEY GENERAL KNIGHT: We object to the discourse with the witness.

COURT: Overrule the objection.

Q What I am getting at is whether or not they have ever been convicted of any offense like stealing, or malicious shooting, anything involving moral turpitude?

A No sir.

Q Are these men well esteemed in the neighborhood where they live?

A Yes sir, they seem so.

Q Do you know whether or not they can read and write?

A Yes sir.

Q Are you acquainted with many colored people, or negroes, in Jackson County?

A Yes sir, at some stations.

Q What are the ages of these school board members you mentioned here awhile ago, are they over twenty-one years of age?

A Yes sir.

Q Are they under sixty-five?

A Yes sir.

Q You said you are forty-one?

A Forty-one.

Q Do you know Mark Taylor?

A Yes sir.

Q Do you know John Sandford?

A Yes sir.

Q And L. C. Stapler?

A Yes sir.

Q And P. Toliver?

A Yes sir.

Q And Will Watkins?

S Yes sir.

Q And M. T. Talley?



A Yes sir.

Q Do you know Cam Rudder?

A Yes sir.

Q Do you know Ed Redd?

A No sir I don't know him.

Q Do you know John Branch?

A Yes sir.

Q Do you know M. F. Timberlake of Fackler?

A Yes sir.

Q Do you know A. Joseph?

A Yes sir.

Q Do you know K. D. Snodgrass?

A Yes sir.

Q Do you know Hugh Collier of Stevenson?

A No sir.

Q Do you know Louis Cole?

A Yes sir.

Q Do you know Dave Stevenson of Stevenson?

A No sir, I don't know him.

Q Do you know John Stapler?

A Yes sir.

Q Do you know Bud Moore?

A Yes sir.

Q Do you know C. S. Finley?

A Yes sir.

Q And Pleas Larkins?

A Yes sir.

Q And Elijah Matthews?

A Yes sir.

Q And Henry Ross?

A Yes sir.

Q Tell us some other negroes you know in Jackson County, over twenty-one years of age and under sixty-five.

A There is a fellow, Oliver Little.

Q Where does he live?

A Scottsboro.

Q Is he a man of good character?

A Yes sir.

Q Stands well in the community?

A Yes sir.

Q Sober and not a habitual drunkard?

A No sir.

Q And not diseased or crazy?

A No sir.

Q And owns land?

A Yes sir.

Q Is he a married man?

A Yes sir, he has got a family.

Q These names I have asked you about, all of these people are negroes?

A Yes sir.

Q And all live in Jackson County?

A Yes sir.

Q I will ask you if in your opinion they are

men of good character and sound judgment?

A Yes sir.

Q And if they are not esteemed or regarded as good citizens in the neighborhood where they live?

A Yes si, regarede as good citizens.

Q Has any one of them, on the list I asked you about, ever been ~~that~~ convicted of any offense for stealing or anything of that kind?

A No sir.

Q Do you know whether or not they can read English?

A Yes sir.

Q Do you know whether any one of them has ever served on a Circuit Court jury in Jackson County?

A No sir.

Q Are they all over twenty-one years of age you think, abd under sixty-five?

A Yes sir.

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q What did you say your name is?

A Travis Moseley?

Q Do you know M. F. Timberlake?

A Yes sir, he lives at Fackler.

Q You testified all of these who were called could read and write?



A Yes sir, that is what they tell me, all the names of men he said, could read and write, all of them live around Scottsboro.

Q You don't know as much as you thought you did?

A I am speaking of Scottsboro, about the ones that could read and write.

Q You don't know much about those that aren't at Scottsboro, do you know much about them?

A Know their names and know their standing you mean, I couldn't say that.

Q Do you know whether they are on the jury roll or not?

A No sir.

-----  
L. C. COLE, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. G. W. CHAMBERLAIN

Q Your name is L. C. Cole?

A Yes sir.

Q How old are you?

A Fifty-two.

Q Where do you live?

A Stevenson, Alabama.

Q Is that in Jackson County?

A Yes sir.

Q How long have you lived in Jackson County?

A Fifty-two years.

Q Have you ever served on a Circuit Court jury in Jackson County?

A No sir.

Q Did you ever know of a negro serving ~~him~~ on a jury in Jackson County?

A No sir.

Q Were you born at Stevenson?

A Yes sir.

Q Did you ever go to school?

A Yes sir.

Q How far did you get in school?

A Seventh grade.

Q You learned to read and write?

A Yes sir.

Q Have you ever been convicted of any offense?

A No sir.

Q Do you know Mark Taylor?

A Yes sir.

Q Do you know John Sandford?

A Yes sir.

Q Do you know L. C. Stapler?

A Yes sir.

Q Do you know P. L. Tolliver?

A I don't think I know him.

Q Do you know Will Watking of Fackler?

A Yes sir.

Q Do you know M. T. Talley?

A Yes sir.

Q Do you know Cam Rudder?

A Yes sir.

Q Do you know Ed Redd and John Branch?

A Yes sir.

Q Do you know A. Joseph?

A Yes sir.

Q Do you know A. Joseph?

A Yes sir.

Q Do you know K. D. Snodgrass of Hollywood?

A No sir, I don't know him personally.

Q Do you know Hugh Collier?

A Yes sir.

Q Do you know Dave Stevenson?

A Yes sir.

Q Do you know John Stapler?

A Yes sir.

Q Do you know Bud Moore?

A Yes sir.

Q Do you know C. S. Finley?

A Yes sir.

Q And Travis Moseley?

A Yes sir.

Q And Pleas Larkin?

A Yes sir.

Q -And Elijah Matthews?



A I don't think I know him.

Q Do you know Henry Ross?

A Yes sir.

Q These men that you do know that I have asked you about, starting with Mark Taylor, where does Mark Taylor live?

A Scottsboro.

Q Are you acquainted with his standing, whether or not he is esteemed as a good citizen, or a good negro in the community in which he lives?

A I think he is, I haven't heard anything else.

Q Does he bear the reputation of being honest?

A Yes sir.

Q And intelligent?

A Yes sir.

Q Is he a man of good sound judgment?

A Yes sir.

Q And not afflicted with any disease or anything of that kind?

A I don't think he is.

Q Is he a habitual drunkard, a man that gets drunk and stays drunk?

A No sir.

Q Can he read the English language?

A Yes sir.

Q Has he ever been convicted of any offense?

A Not that I know of.

Q Does he own his own property, has his own

household and a married man?

A Yes sir.

Q Do you know John Sandford?

A Yes sir.

Q Where does he live?

A Scottsboro.

Q What would you say about John Sandford's character and reputation?

A I have known John quite a while, I think he is all right.

Q Is he an honest man?

A Yes sir.

Q And intelligent?

A Yes sir.

Q Is he a man who is esteemed and regarded as a good citizen in the community?

A Yes sir.

Q Is he a man that is sober?

A Yes sir.

Q Has he ever been convicted of any crime?

A Not that I know of.

Q Is he an habitual drunkard?

A No sir.

Q And a man of sound judgment?

A Yes sir.

Q Has he any disease or any mental weakness, like a man whose mind is bad?

A I think he has a good mind.

Q Good judgment?

A Yes sir.

Q Is he over twenty-one years of age?

A Yes sir.

Q And you think under sixty-five?

A Yes sir he is under sixty-five.

Q Do you know P. Tolliver of Hollywood?

A No sir.

Q Do you know Will Watkins of Fackler?

A Yes sir.

Q How long have you known him?

A Quite a while, twenty-five or thirty years.

Q Is he a man who is esteemed, and who is

generally reputed to be honest and esteemed in the community for his integrity and good character?

A Yes sir.

Q And sound judgment?

A Yes sir.

Q Is he an habitual drunkard?

A No sir.

Q Has he ever been suspected of being diseased mentally?

A No sir not that I know of.

Q Has he ever been convicted of stealing or any offense involving moral turpitude?

A No sir not that I know of.

Q Can he read the English language?



A Yes sir.

Q He is a negro citizen of Jackson County?

A Yes sir.

Q Did ~~you~~ he ever serve on a jury to your knowledge?

A Not that I know of, he is an older man than I am, he might have.

Q Do you know M. T. Talley of Stebensen?

A Yes sir.

COURT: You might ask the general question about the qualification?

MR. CHAMBER: I think that would save a lot of time.

Q Would you give him the same good reputation you have for this last witness ~~asking~~?

A I wouldn't give Matt that, he had a stroke.

Q When did he ~~have~~ that stroke?

A It has been recently.

Q How was he two years ago?

A All right.

Q Would you at that have given him a good reputation?

A Yes sir.

Q These other boys ~~se~~ have asked about, without having to repeat the question, take A. Joseph and Hugh Collier?

A They are all right.

Q And Dave Stevenson?

A All right.

Q And K. D. Snodgrass, do you know him?

A No sir.

Q These you know who we have been discussing here, would you say those men have the qualifications specified in these questions here, that is they are esteemed in the community for their integrity and good character and sound judgment?

A Yes sir.

Q And they are not habitual drunkards, and have never been convicted of stealing, and they can read and write?

A Yes sir.

Q They never served on a jury in the Circuit Court of that county to your knowledge?

A No sir.

Q Neither in your life or theirs?

A No sir.

Q Do you drink liquor and get drunk?

A No sir.

Q Have you got any disease or anything wrong with you?

A No sir.

Q You have had no stroke, or not insane?

A No sir, I am not really healthy.

Q What is the matter with you?

A I have an enlarged liver.

Q Does that affect your judgment?

A No sir.

Q Do you know other men, other negro men in Jackson County, of good character that have the qualifications for jurors as these you have been talking about this morning?

A You might put down Charles Berry and Horace Young.

Q Where do they live?

A Live in Stewenson.

Q Did they ever serve on a jury?

A No sir, too young.

Q Are they esteemed as good citizens?

A Yes sir.

Q And good character?

A Yes sir.

Q Do you know some more names, other negro men?

A The others I know you got their names.

Q I want you to tell me some you know I haven't got.

A That is all I know I could recommend.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q What did you say your name was?

A L. C. Cole.

Q You called over a good many names, those you testified about that possessed a good character?



A Yes sir.

Q You said one of them, during your examination, that you wouldn't give M. T. Talley a good character, didn't you say you wouldn't give him a good character because he had a light stroke?

A I didn't say I wouldn't give him a good character, his character is all right, but I said he might not be sound minded, his character is all right, good as anybody's.

Q This Berry you mentioned just a minute ago, you said he was too young for jury duty?

A I meant he was too young to serve before this time.

Q Right now?

A Yes sir.

Q You say these people are esteemed in the community as men of sound judgment?

A Yes sir.

Q What do you mean by the word esteemed?

A Well law abiding, good citizens, something like that.

Q What about their judgment, what do you mean when you say a man is esteemed for his sound judgment?

A A man that has got a good mind, knows what he is talking about, what business is.

Q Do you know what the word esteemed means?

A I aint got my dictionary.

Q All of these names you have called are

citizens you say of Jackson County?

A Yes sir.

Q Did you ever help prepare the jury rolls for Jackson County?

A Nosir.

Q Can you tell me as a matter of fact whether of not those names are on the jury rolls of Jackson County?

A No sir.

Q You don't know whether they are or not?

A I don't know whether they have ever served.

Q I am talking about are those on the jury rolls?

A I guess they are on the rolls.

MR. LEIBOWITZ: I move to strike that out, the answer what he guessed.

COURT: Motion overruled.

MR. LEIBOWITZ: I except.

Q As a matter of fact don't you know they are on the rolls?

A I couldn't testify to that, I haven't seen them.

Q You haven't seen the rolls at all?

A I don't visit Court very much, I never have time, I couldn't tell you.

Q The fact is you can't swear--

COURT: You said you guessed, that is your best judgment?

A Yes sir, best judgment.

COURT: Let him state that.

Q You say you don't visit the Courts very much?

A No sir, I don't have time.

MR. CHAMBER: I submit this, the Attorney General has been asking this witness about what he says is a jury roll, maybe the Attorney General--

ATTORNEY GENERAL KNIGHT: Wait a minute, that is just the point in this case, the qualifications of a juror, and if a witness doesn't know what a jury roll is how can he swear as to the qualifications of a juror?

MR. LEIBOWITZ: The Attorney General is asking about a secret jury roll in the custody of an official at Scottsboro, and asking him about the contents of a secret roll kept secret from everybody, and because he don't know whether he is on the jury roll he wants to criticize the witness.

ATTORNEY GENERAL KNIGHT: I am not criticizing the witness.

COURT: Overrule the objection.

Q You say you haven't been to Court much?

A No sir.

Q You don't stay around there mery much?

A I am a railroad man.

Q Of your personal knowledge you don't know



whether they ever served on a jury or not?

A I told you I didn't know whether they had ever served.

Q You don't know they haven't?

A No sir.

-----

RE-DIRECT EXAMINATION BY HON. G. W. CHAMLER

Q He asked you about the jury rolls, do you know what he means by jury roll?

A A Jury roll is twelve men for jurors.

Q Your idea of a jury roll is twelve men sitting in the box?

A Yes sir.

Q Did you ever see a negro in the box in Jackson County?

A No sir.

Q That was a jury roll he was talking about?

A I haven't seen that.

-----

PLEAS LARKINS, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. G. W. CHAMLER

Q Your name is Pleas Larkins?

A Yes sir.

Q How old are you?

A Fifty-six years old?

Q Where do you live?

A Larkinsville, Alabama.

Q Is that in Jackson County?

A Yes sir.

Q How long have you lived there?

A All my life.

Q Did you ever go to school there?

A ~~xxxxxxx~~ Yes sir.

Q Did you learn to read?

A Yes sir.

Q Do you own your home?

A Yes sir.

Q Did you ever sit on a jury in Jackson County?

A No sir.

Q Did you ever see negroes on a jury in Jackson County?

A No sir.

Q What do you read, we were speaking about reading, do you read the newspapers?

A Yes sir.

Q Did you ever read about negroes serving on a jury in Jackson County?

A No sir.

Q Are you acquainted with many negro men in Jackson County?

A Yes sir, some.

Q That town did you say you lived in?

A Larkinsville.

Q Are you acquainted at Scottsboro?

A Yes sir, some few.

Q Do you know Mark Taylor?

A Yes sir.

Q And John Sandford?

A Yes sir.

Q Are you acquainted with the general reputation and character of those men?

A Yes sir.

Q I will ask you to tell us about how long you have been acquainted with them?

A Mark Taylor about seven or eight years I reckon.

Q I will ask you to state whether or not he is a man generally reputed to be honest and intelligent, and esteemed in the community for his integrity, good character and sound judgment?

A Yes sir.

Q Is he over twenty-one years of age?

A Yes sir.

Q And under sixty-five?

A Yes sir.

Q Is he an habitual drunkard, a man that gets drunk?

A I never heard of it.

Q Can he also read?



A Yes sir.

Q Is he a married man?

A Yes sir.

Q With a family?

A Yes sir.

Q Does he own land?

A No sir.

Q He has a family?

A Yes sir.

Q Do you know John Sandford?

A Yes sir.

Q I will ask you to tell us if he possesses the

qualifications I asked you about Mark Taylor?

A Yes sir.

Q Do you know L. C. Stapler?

A Yes sir.

Q Does he possess the same qualifications  
as this negro, Mark Taylor?

A Yes sir.

Q Do you know P. Tolliver of Hollywood?

A Yes sir.

Q Would you give him the same record as you  
would the others?

A Yes sir.

Q Will Watkins of Fackler, do you know him?

A Yes sir.

Q Would you give him a good character the same  
as the others?

A Yes sir.

Q Do you know Cam Rudder of Stevenson?

A Yes sir.

Q Would you give him the good name and good character the same as you would the others?

A Yes sir.

Q Do you know Ed Redd?

A No sir.

Q Do you know John Branch?

A No sir.

Q Do you know A. Joseph?

A No sir.

Q Do you know Hugh Collier?

A No sir I don't think I do, I know some Collier but I don't remember.

Q Do you know Louis Cole?

A Yes sir.

Q Would you give him a good name and character, is he qualified?

A Yes sir.

Q Do you know Dave Stevenson?

A No sir.

Q Would you give him a good name?

A Yes sir.

Q And good character and good qualifications?

A Yes sir.

Q Do you know C. S. Finley

A Yes sir.

Q Would you give him a good name and good character?

A Yes sir.

Q Do you know Travis Moseley?

A Yes sir.

Q Would you give him a good name and good character?

A Yes sir.

Q Did you ever sit on a jury yourself?

A Yes sir

Q Were you ever called as a juror, or ever called to come to court as a juror and excused after you got there?

A No sir.

~~XXXXXXXXXXXXXXXXXXXX~~

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT:

Q Your name is Pleas Larkins?

A Yes sir.

Q From Larkinsville?

A Yes sir.

Q You testified as to all of these people who you said possessed good character?

A Yes sir, as far as I know.



125 194

Q What do you mean when you say they are esteemed for sound judgment?

A I mean they are esteemed above the common class of people.

Q You don't know whether or not they are on the jury do you?

A I know they are not to my knowledge.

Q How do you know they are not?

A I never heard of it.

Q Have you ever seen the jury rolls of the county?

A No sir.

Q Have you ever looked in the box?

A No sir.

Q Have you ever helped select the jurors of your county?

A No sir.

Q Of your own personal knowledge, and as a matter of fact, you don't know whether they are in that box or not?

A No sir I don't know whether they are, but I said I never heard of them.

Q Do you go to court everytime court is held?

A No sir.

Q You don't know of your own knowledge whether they served on a jury?

A No sir.

-----  
RE-DIRECT EXAMINATION BY HON. G. F. CHAMBER

Q Have you got school boards in your county?

A Yes sir.

Q Are there any colored men as trustees on the school board?

A Not in my town, I suppose there are in Scottsboro, but not in my town, it is kinda of a small village.

Q Do you know who these trustees are in Scottsboro?

A No sir, I don't know the trustees at Scottsboro?

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q Those are colored schools?

A Yes sir.

Q As a matter of fact the trustees are not elected except by the patrons of the school?

A Yes sir.

Q You mean the colored people?

A Yes sir.

Q Selected by the colored people?

A Yes sir.

-----

RE-DIRECT EXAMINATION BY HON. G. V. CHAMBERLAIN

Q Is it a matter of general understanding and common knowledge that negroes never serve on juries in

in Jackson County?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

MR. CHAMLEE: We except.

JOHN STAPLER, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. G. V. CHAMLEE

Q Your name is John Stapler?

A Yes sir.

Q Where do you live?

A Scottsboro.

Q How long have you lived there?

A Lived there about, come there in 1896.

Q Between thirty and forty years?

A Thirty-seven years.

Q Did you ever see a negro on a jury in Jackson County in the last thirty years?

A No sir.

Q Do you live in Scottsboro?

A Yes sir.

Q They have a school board there?

A Yes sir.

Q Do you know the members of the school board,



the negro members of the school board?

A I know who the members are now, they have had several, Mark Taylor, Hugh Sandford and Hunter.

Q Do you know those men, do you know them well, are you well acquainted with them?

A Well two of them I have known all of their lives.

Q Are those men--

A And one of them, Taylor, is a son-in-law of mine, and I have known him for the last ten or fifteen years.

Q You gave Taylor your daughter because you thought enough of him for that?

ATTORNEY GENERAL KNIGHT: We object.

COURT: Sustain the objection.

Q I will ask you if these men you have mentioned, if they are men generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character, and sound judgment?

A Yes sir.

Q I will ask you if they are sober men, not habitual drunkards?

A No sir.

Q They are regarded and reputed to be honest men?

A Yes sir.

Q Have they ever been convicted of stealing

anything of that kind involving moral turpitude?

A No sir.

Q Are they the heads of families or married men,  
or own land?

A All married men.

Q And are negroes that live in Scottsboro or  
Jackson County?

A Yes sir.

Q Over twenty-one years of age?

A Yes sir.

Q And under sixty-five years of age?

A Yes sir.

Q Do you know Mark Taylor?

A Yes sir.

Q Do you know John Sandford?

A Yes sir.

Q Do they live in Scottsboro?

A Yes sir.

Q Do you know their qualifications as I have  
asked you about these other fellows?

A Yes sir.

Q Are they regarded as honest men of sound  
judgment and good citizens?

A Supposed to be, I never heard nothing against  
them.

Q Reputed to be men of honesty and intelligence,  
and men of sound judgment?

A Yes sir, supposed to be.

Q Good men, law abiding citizens?

A Yes sir.

Q And not habitual durnkards?

A No sir.

Q And men who never have been convicted for stealing, or any crime involving moral turpitude?

A Not that I know of.

Q And are married men, heads of families?

A All married men.

Q Either own their land or are house holders or free holders?

A All of them own thei~~r~~ property there.

Q Passing from those two, do you know P. Tolliver of Hollywood?

A I know Pleas.

Q That is the man I am asking you about.

A Yes sir.

Q Is he a man of good character like these others you have named?

A As far as I know, I have been knowing him for years and never heard anything.

Q About how many years have you known him?

A Forty years.

Q Passing from Tolliver, Will Watkins of Packler, do you know him?

A Yes sir.

Q Is he a man also esteemed as a good citizen



and a man of good character in the neighborhood, under the same questions I asked you about the others?

A I never heard anything about him, of course he don't live in my neighborhood, he lives ten or twelve miles from me.

Q He lives in Jackson County?

A Yes sir.

Q How many years have you known him?

A I have known him thirty-five years.

Q Do you know Cam Rudder?

A Yes sir.

Q Lives in Stevenson?

A Yes sir.

Q Are you acquainted up there?

A Pretty well.

Q Do you know Ed Redd?

A Yes sir.

Q Do you know John Brandh of Bridgeport?

A Yes sir.

Q Do you know those two men?

A Yes sir.

Q You don't know Redd?

A Yes sir.

Q What would you say about Redd's qualifications, would you give him a good name and character?

A I never heard anything else of him, in your

Q Never heard anything against him in your life?

A No sir.

Q Do you know A. Joseph of Stevenson?

A Yes sir.

Q Do you know Hugh Collier?

A I am not personally acquainted with him.

Q Back to Joseph, do you give Joseph a good character and name?

A He always has had as far as I know.

Q Then taking Hugh Collier, would you say he would bear a good reputation and good name?

A In that settlement up there.

Q About Louis Cole, do you know him?

A Yes sir.

Q Does he bear a good name also?

A Yes sir.

Q For good character and sound judgment?

A Yes sir.

Q Do you know Dave Stevenson?

A Yes sir.

Q Does he bear a good name also?

A I never heard nothing wrong with him.

Q Do you know John Stapler?

A Yes sir., I reckon I know myself.

Q Is he some kin to you?

A The one I know is myself.

Q You are John Stapler, isn't there another John Stapler up there?

A I have a brother.

Q L. C. Staler?

A He is a brother of mine.

Q Do you know Pleas Larkins?

A Yes sir.

Q Do you know Hunry Ross?

A Yes sir.

Q Do you know Elijah Matthews?

A Yes sir.

Q What do you say about those men, do they have a good character, and are good citizens?

A I never heard nothing against them.

Q You would give them the reputation of being esteemed as good citizens in the neighborhood in which they live, and possessing sound judgment and good character?

A Yes sir.

Q Ross, is he the man that was in insane?

A Yes sir, his mind is off, got off in his mind.

Q Ross is reported to be insane?

A Yes sir.

Q All of these men you mentioned, or all these men we have been talking about, are negroes living in Jackson County?

A Yes sir.

Q Did you ever know or hear of one of them sitting on a jury in the Circuit Court of Jackson County?

A No sir.



Q How many years have you lived in Jackson County?

A I have lived in Jackson County since 1873.

Q Did you ever serve on a jury yourself?

A No sir.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q Your name is Stapler?

A Yes sir.

Q You have lived in Jackson County a long time?

A Yes sir.

Q You say these names Mr. Chamlee called to you are men who are esteemed in the county, is that right, as men of good reputation and sound judgment in their community?

A They always had as far as I know.

Q What do you mean by esteemed?

A Esteemed people, never had nothing wrong with them.

Q They are not any better than anybody else are they?

A A lots of them have the same character they have up there, I am telling about those he asked me about.

Q There may be a lot of people better in Jackson County than those he called off to you, isn't that right?

MR. BRODSKY: I object as calling for a conclusion of the witness.

ATTORNEY GENERAL KNIGHT: This is cross examination.

COURT: Overrule the objection.

MR. BRODSKY: We except.

(No answer)

Q I asked you if there was people better, who  
you think more of--

MR. BRODSKY: Same objection.

COURT: Sustain the objection.

ATTORNEY GENERAL KNIGHT: The only purpose of  
this is, he comes in here and said everybody else thought  
well of them--

MR. BRODSKY: That is argument.

COURT: Sustain the objection.

Q How long have you lived in Jackson County?

A I think since 1973.

Q You have lived there for a number of years?

A Yes sir.

Q Have you any reason to complain of any justice  
done you by a jury in Jackson County?

A I don't say that I have.

Q Have you ever been convicted of any offense?

A No sir.

Q You have been treated all right by

Jackson County juries haven't you?

MR. BRODSKY: We object as calling for a conclusion of the witness.

COURT: Sustain the objection!

Q Coming to these names you called, have you ever seen the jury rolls of Jackson County?

A No sir.

Q Have you ever looked in the jury box of Jackson County?

A No sir.

Q Can you swear those names are not on the jury rolls of Jackson County?

A No sir, I couldn't swear it.

Q Do you go to court very often?

A I couldn't swear--

Q How often do you come to court?

A Very near every term I am around there.

Q You stay around court?

A I live in town there right close.

Q Have you been to court every term?

A I think I have.

Q You don't know the list of names in that jury box?

A No sir.

Q You don't know whether they are white or black?

A No sir.



Q Didn't you make the statement you had never seen a negro on a jury in Jackson County?

A I think I made that statement.

Q Haven't you seen them on juries in Jackson County in your lifetime?

A No sir.

-----

WILL WATKINS, witness called on behalf of the defense after being first duly sworn testified as follows:

DIRECT EXAMINATION BY HON. G. V. CHAMBERLAIN

Q What is your name?

A Will Watkins.

Q Where do you live?

A Fackler.

Q Is that in Jackson County, Alabama?

A Yes sir.

Q How long have you lived there?

A Sixty-six years.

Q In that county sixty-six years?

A Yes sir.

Q Did you ever sit on a jury?

A No sir.

Q Did you ever see a negro on a jury in Jackson County?

A No sir.

Q You have been there sixty-six years?

A Yes sir.

Q You go to Scottsboro sometimes?

A Yes sir.

Q And attend court sometimes?

A Yes sir.

Q Did you ever go to school?

A Yes sir.

Q Can you read the English language?

A Yes sir.

Q And read the newspapers?

A Yes sir.

Q Have you ever been convicted of any offense?

A No sir.

Q Do you own your own home?

A Yes sir.

Q Got a family, you are a married man?

A Yes sir.

Q I want to ask you if you know some people in that county--do you know any of the negroes that are living down in Fackles, colored men?

A Yes sir.

Q Tell us the names of some of the ones you know down there?

A Lessie Austin.

Q How old is he?

A He is about thirty years old. Milton Timlin, Robert Stewart, Henry Waggoner, Jesse Harris, Harry Harris,

Will Harris, Ransom Stewart, Lucien Scott, Church Stewart,  
and Alvis Stewart.

Q Go ahead.

A Will McCarver, and Hubert Stewart.

Q Are you acquainted with the general character  
of those men?

A Yes sir, I think I am.

Q I will ask you to tell us if that list you  
have named are men who are generally reputed to be honest and  
intelligent, and esteemed in the community for their integrity,  
good character, and sound judgment, these men you have named  
would you give them good names, good character?

A Yes sir.

Q Are any of them habitual drunkards, get drunk  
and become bad citizens?

A If they ever have been?

Q Yes, either one of them ever been up for  
being an habitual drunkard, why cut his name out.

A None of them from my knowledge.

Q Has either one of them ever been convicted  
for stealing or anything like that, any offense involving  
moral turpitude, to your knowledge?

A Yes sir.

Q Which one is that?

A Will Harris.

Q What about the balance of them, do they own  
land?



A No sir.

Q Are they married men and got families?

A Yes sir.

Q House Holder s?

A Yes sir.

Q Over twenty-one?

A Yes sir.

Q And under sixty-five years of age?

A Yes sir.

Q How old are you?

A ~~Sixty-six~~ Sixty-six.

Q Do you know anybody up there at Scottsboro?

A I guess so.

Q Tell us the names of the negro men you know at Scottsboro, men you know and are best acquainted with?

A John Stapler, Mark Taylor, and John Sandford.

Q What do you say about those three men you have named as to the question of good character, would you give them a good character the same as you would those at Packler?

A Yes sir.

Q At Stevenson, are you acquainted over there?

A Yes sir.

Q Tell us the names of somebody you know at Stevenson?

A Cam Rudder, and Louis Cole.

Q Do you know A. Joseph, a hotel man, hotel porter.

A Yes sir.

Q Do you know Hugh Collier?

A Yes sir.

Q Louis Cole?

A Yes sir.

Q Do you know Bud Moore?

A Yes sir.

Q Do you know C. S. Finley?

A Yes sir.

Q Travis Moseley.

A Yes sir.

Q Pleas Larkins?

A Yes sir.

Q Do you know Eligan Matthews?

A No sir I don't.

Q Do you know Henry Ross?

A Yes sir.

Q Putting the same questions to all of these men I have named, are all these men generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character, and good judgment, in the community in which they live?

A Yes sir, as far as I know.

Q You have lived in that county all of your life?

A Yes sir, at Packler.

Q How many years have you known those at Stevenson?

A Maybe twenty-five or thirty years.

Q Did you ever know of anyone of them ever sitting on a jury?

A No sir.

Q And all of these boys, these men, are over twenty-one years of age?

A Yes sir.

Q And under sixty-five?

A I don't know how old they is, I know they are over twenty-one.

-----  
CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Do you know Cass Finley?

A Yes sir.

Q Wasn't his boy convicted just shortly ago?

A So I understand, yes sir.

Q Wasn't Cass convicted himself?

A Not that I know of, I never heard of it.

Q You say these people, whose names have been called, are citizens of good standing, and you say they are esteemed for their reputation in the community in which they reside as men of sound judgment, is that right?

A I didn't understand that I said all of that.

Q You mean by that you don't know what esteemed means?

A No sir I don't understand so many words.  
 -----



212

RE-DIRECT EXAMINATION BY HON. G. W. CHAMBER

Q The word esteemed means, in the community in which a man lives the estimation in which he is held in the minds of his neighbors and friends, whether he is esteemed as a good citizen or bad citizen. Now with this explanation, I will ask you if the men you have testified about here in this trial are esteemed as good citizens in your opinion in Jackson County?

A Yes sir.

-----

RE-CROSS EXAMINATION BY ATTORNEY GENERAL KNIGHT

Q Did you ever look at the jury roads of Jackson County?

A No sir.

-----

L. C. STAPLER, witness called on behalf of the defense after being first duly sworn testified as follows:

Q Your name is L. C. Stapler?

A Yes sir.

Q Where do you live?

A I live at Limrock.

Q Jackson County?

A Yes sir.

Q How old are you?

A Seventy-six.

Q You have passed the three score stage?

A Yes sir.

Q Have you ever seen any negroes on the jury in Jackson County in the last thirty years?

A No sir.

Q Or any other time in Jackson County?

A No sir.

Q I want you to tell us are you acquainted with any negro men in the neighborhood where you live that are good citizens and of sound judgment, tell us if you know some of them, give us the names of some of them?

A Me give the names?

Q Yes.

A Well Pleas Larkins.

Q All right.

A Lewis Sandford, John Sandford, Mark Taylor, and Will Watkins.

Q Will Watkins?

A Yes sir, and Cole.

Q Louis Cole?

A Yes sir, Cass Finley. Any more you want?

Q Yes, name all you know, take your time.

A Matt Talley, M. T. Talley.

Q Do you know Ed Redd of Stevenson?

A Yes sir, Bridgeport.

Q Do you know John Branch?

A New sir, at Bridgeport.

Q Do you know A. Joseph of Stevenson?

A Yes sir.

Q Do you know Hugh Collier?

A Yes sir.

Q And Louis Cole?

A Yes sir.

Q And Dave Stevenson?

A Yes sir, he is at Stevenson.

Q Do you know John Stapler?

A Yes sir, of Scottsboro.

Q Do you know Bud Moore?

A Yes sir.

Q Travis Moseley?

A Yes sir.

Q Do you know Elijah Matthews?

A Yes sir.

Q Do you know Elijah Matthews?

A Yes sir.

Q Do you know Henry Ross?

A Yes sir.

Q Do you know Reverend Crutcher?

A Yes sir.

Q Do you know Reverend Barbour?

A No sir.

Q Do you know any more negro men at Scottsboro?

Have they got a school board at Scottsboro?

A Yes sir.

Q Are the members of that board, the trustees



A Yes sir.

Q Have they had negro school trustees off and on in Jackson County heretofore?

A Yes sir, always had them at Scottsboro.

2 Q Is Scottsboro the county seat?

A Yes sir of Jackson County.

Q Are there a large number of negro men in Jackson County?

A Yes sir, good many up there.

Q These men you have named that you know, I want you to tell us whether or not they are generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character, and sound judgment?

A Yes sir, as far as I know they are.

Q I want you to tell us whether or not they are habitual drunkards, men that make a habit of getting drunk, and staying drunk until the whiskey gives out?

A I don't know any of these I names.

Q you think these are sober men?

A Yes sir.

Q Any of them ever been convicted of stealing, or anything of that kind?

A No sir.

Q Nothing that would involve moral turpitude, that is men that have been rendered infamous. I am asking you about moral turpitude--a man that has been convicted of

216  
a crime like stealing, that reflects on him and involves some violation of the law, or misconduct?

A I don't remember any of them.

Q Do you remember any of them being convicted of anything of that kind?

A No sir.

Q Or convicted of stealing or anything?

A No sir, not that I remember.

Q What you mean to say is that these men are honest good citizens?

A Yes sir.

Q All having good character?

A Yes sir.

Q Truthful men?

A Yes sir, always proved out that way.

Q Are these men all negroes?

A Yes sir.

Q Did you ever know of either one of them being summoned for jury duty, or sitting on a jury?

A No sir.

Q The ages of these men, are they over twenty one years of age, this crowd you named?

A Yes sir.

Q And are there any under sixty-five?

A Yes sir.

Q You are passed sixty-five, you are seventy something?

A Yes sir.

217  
218

Q Were you ever called while you were under sixty-five to sit on a jury?

ATTORNEY GENERAL KNIGHT: I think he is going pretty far your Honor.

MR. CHAMLER: I will withdraw that.

COURT: I will let him answer.

(No answer)

Q Isn't it a matter of custom in Jackson County that no negro can sit on a Jury, that has been a custom for sixty-years?

A Yes sir.

Q Do you know what it means when I ask you about a man being esteemed as a good citizen?

A A man that has a good character, a man that don't steal and tends to his own business, a man that has got a good character.

Q You think a man that lives correctly and who his neighbors speak well of?

A Yes sir.

-----

CROSS EXAMINATION BY ATTORNEY GENERAL

Q How are you getting on?

A Very well.

Q In Jackson County nobody has imposed



upon you there?

A No sir.

Q Do you know Dr. J. T. Porter of Bridgeport?

A I don't believe I know him.

Q Where do you live?

A I live at Limrock, twelve miles out side of the county seat.

Q How far is that from Larkinsville?

A Four miles.

Q Do you know A. H. Cotton at Larkinsville?

A Yes sir.

Q What sort of man is he?

A He is a pretty fair man as far as I know, he is a white man.

Q White man is he?

A Yes sir.

Q He possesses good moral character does he?

A Yes sir the best I know about him.

Q Is he esteemed in the community in which he lives?

A Yes sir.

Q Is he an able bodied man?

A Yes sir.

Q Has he ever been convicted of any offense involving moral turpitude?

A Not that I know of.

Q How old is he?

A Mr. Cotton?

Q Yes.

A I expect he is up in fifty.

Q He isn't over sixty-five?

A I couldn't tell you that, I have been knowing him for a long time.

Q You thought well of him always?

A Yes sir, I haven't had dealings with him.

Q Is he on the jury rolls of Jackson County?

A I don't know whether he is or not.

Q Do you know whether the names of all those others he called to you are on the jury rolls of Jackson County, the ones Mr. Chamlee mentioned to you?

A No sir, they are not on it.

Q Have you ever seen the jury roll?

A I don't know as I have.

Q Have you ever looked in the box?

A Me?

Q Yes.

A No sir.

Q Are their names in that box, can you swear whether or not their names are in that box?

A They haven't been accustomed to be in there.

Q How do you know, have you ever looked in the box?

A No sir.

Q You don't know whether what you are swearing

is true or not?

A I don't know what I am swearing to?

Q You know what you are swearing to now isn't the truth, you have never looked in that box?

MR. CHAMLEE: We object.

COURT: Sustain the objection.

Q Did you ever look in that box or did you ever look at that jury roll?

A No sir.

Q Did you ever help the Jury Commissioners select the jury roll of Jackson County?

A No sir.

Q Do you know all the persons who are on the jury rolls of Jackson County?

A I didn't know any was on it that was colored.

Q How do you know it?

A I didn't know it?

Q You don't know whether they are colored or white in that box, you have never looked?

A I have been in Court around there several times and I never seen no colored men on it.

Q On the jury?

A No sir.



Q You never looked in that box?

A No sir, I wasn't allowed to look in it.

Q You don't know whose name was in that box?

A No sir.

Q Do you know Mr. W. C. Shelby of Larkinsville?

A Yes sir., Watt Shelby.

Q Do you know his general reputation?

A Yes sir, I reckon it is all right, I don't know anything about him.

Q Did you ever hear anything against him?

A No sir.

Q Do you know whether he is esteemed in his community or not?

A Well I haven't heard anything definite against him.

Q But you wouldn't say he was esteemed?

A I couldn't say he was, I don't know.

Q You can say all of those names Mr. Chamlee called to you are esteemed?

A I am supposed to know more about my race than I do about the other race.

Q Do you know whether Mr. Shelby is in the jury box or not?

A No sir.

Q Then you don't know who it is in that box?

A No sir.

-----

MR. LEIBOWITZ: We have an application to make to the Court. We wish to inform the Court that an effort has been made by General Chamlee to have the jury roll of Jackson County, from which the Grand Jurors were drawn that found the indictments in these cases, produced in Court, and a subpoena duces tecum was served on Judge Mooney, of Scottsboro, the Probate Judge of Jackson County, who informed Mr. Chamlee he had those records in his possession, or in his custody, or they were available to him, and he said he would send those records to Court here at Decatur before your Honor, and he therefore was excused from coming here personally. Now, I understand these records are not here, I have inquired, and Mr. Chamlee has inquired, and we were informed the Judge said he could not under the law direct they be taken away and brought here. I will ask your Honor to issue a subpoena duces tecum, subject to the mandate or order of your Honor, calling for the forthwith production of the jury roll referred to and from which the names of the Grand Jurors that found the indictment in this case were drawn, directing that each and all persons named therein be forthwith brought into this Court, for the purpose of offering substantial proof to the fact that none of the names on that jury roll are the names of any negroes living in Jackson County, covering the period of time mentioned. We deem that proof absolutely vital and essential upon this motion.



ATTORNEY GENERAL KNIGHT: The jury roll of Jackson County of course discloses hundreds of names. What has become of the jury roll, prepared by the old Jury Commission, from which this Grand Jury was drawn, which found these indictments, and where it is I do not know. It is possible some people do not know, possible the custodian of it does not know, that the jury roll has been decided by the Supreme Court of this state not to be a public record, and I do not think this Court can order it be brought in this case. But, the question now to decide is whether or not we shall go into all this evidence, all this sort of stuff, the same thing we have been through. The point to be decided in this case, the only point that can possible under any circumstance be properly raised under these pleadings, is whether or not negroes on account of their race or color were systematically excluded from the jury. It is not a question whether any negroes were on that jury roll. It is not a question whether or not any negroes have sat on a jury in Jackson County. But, it is a question of whether or not the Jury Commissioners of Jackson County arbitrarily exercised that discretion which rests in them, that is the selection of persons, all male persons in the County, who possess according to their view the qualifications prescribed by the statute. Consequently in going into the jury roll, and taking up every name on the jury roll, you



can readily see how that would conflict with the question of absolute proof of the color of them in the first place, and in the second place then you must go into the qualifications of every juror of Jackson County, every negro and every white person, whose name appeared on that roll. So in view of the fact, that proof that there are no negroes on the jury roll of Jackson County could be offered, or might be offered, I don't admit it can be offered, would not be proof of the fact, that the Jury Commission of Jackson County, for no good reason provided by the statute, or noncompliance with the qualifications by the statute, systematically, intentionally and systematically, excluded negroes from the jury of Jackson County. I think that is the question in the long run that is going to address itself to the discretion of this Court in ruling upon this motion.

COURT: As I understand it there has been a subpoena duces tecum issued to the Probate Judge of Jackson County?

ATTORNEY GENERAL KNIGHT: Yes sir.

COURT: And he has been excused.

MR. LEIBOWITZ: The Jury Commissioner here said the Probate Judge was the custodian.

COURT: The Court would refuse that petition to have issued a subpoena duces tecum to the Judge you have excused.

MR. LEIBOWITZ: I respectfully request your Honor that the subpoena duces tecum to now issued forthwith directed to person, or persons, whoever they may be, a subpoena be issued in the name of John Doe, or Richard Roe, the true name of the person, or persons, unknown to the Court, having the custody, control and supervision of the jury roll for the year 1930 or 1931, and the jury roll for 1930 and 1931, from which the names, referred to before as being members of the Grand Jury that found the indictment in the causes before your Honor, were selected and drawn, and forthwith produce such jury roll or jury roll, such jury roll and such jury roll, forthwith before this Court, for the use of the Court, the Attorney General, and counsel for the defense, on this motion.

ATTORNEY GENERAL KNIGHT: Here is one act of the acts of 1931 which might show a reason why this Court should not grant this subpoena duces tecum on account of its impracticability. Section 16 of the acts of 1931 provide; "Whenever the names in the jury box are exhausted or so far depleted that they will probably be exhausted at the next drawing of jurors, the jury board must proceed to make and certify a new roll, and deposit the names on the box in all respects as provided in this act, and for this purpose the



226

Jury Board must meet whenever it is necessary and refill the jury box."

MR. LEIBOWITZ: Is that 1931 General Knight?

ATTORNEY GENERAL KNIGHT: Yes sir. It proves nothing, they may have been in the box and they may be out of the box, it still proves nothing.

MR. LEIBOWITZ: Your Honor, the Jury Commissioner testified that the names which were selected for that year were entered in the book, that book is in the custody I think he said of the Probate Court. He said from the names that went in the box a list was made, a permanent list, effecting the persons who served on the jury, both Grand and Petit Jury of Jackson County. That is the list I have reference to, and I must ask your Honor to issue the subpoena I have called for. I want to say to your Honor what I have in mind in requesting that subpoena be issued, the inquiry that am constrained to make is to see whether or not the Fourteenth Amendment of the Constitution has been violated. And I want to make my exception to the denial of the other application the first time. I offer to withdraw this application if the Attorney General for the State of Alabama will concede that there were no negroes on that jury roll, thus saving the expense, trouble and annoyance of carting back and forth, and all that entails the time of the Court. The Attorney General



has already stated that he did not think it was important. If the State will agree that there were no negroes on the jury roll I will withdraw my application.

ATTORNEY GENERAL KNIGHT: The Attorney General does not know whether there were any negroes on this jury roll of his own personal knowledge, and I can not so state, and further more this Court judicially knows that the jury box was emptied at the time the 1931 law went into effect.

MR. LEIBOWITZ: I am not referring to the jury box I am referring to the jury roll, the original jury roll, from which the names were selected.

ATTORNEY GENERAL KNIGHT: There is no provision of law forkeeping such a roll.

MR. LEIBOWITZ: The witnesses have testified there was such a roll.

MR. LEIBOWITZ: Then as much as the Attorney General now raises the point as to the jury box, I ask a separate subpoena duces tecum be issued to the officer having the custody of the jury box, or the jury boxes, containing the names from which the names of the jurors, that served on this Grand jury, were drawn. I make that as a separate

--2228

application. If I am incorrect in onw application it will have no reference to the other application.

ATTORNEY GENERAL KNIGHT: All right, but I don't think a subpoena duces tecum should be brought in here to prove an immaterial point, and disclose to the opposing counsel, not particularly the opposing counsel, but people who have no right to inquire into the jury box in the State of Alabama.

MR. LEIBOWITZ: Your Honor, the only inquiry we shall make is going into the qualifications. We want to demonstrate to this Court by legitimate proof there were no negroes on this jury roll. We have a right to show that under the petition because the Attorney General has traversed that allegation in the petition which reads as follows: "That the authorities having in charge in Jackson County of the administration of the laws of the State of Alabama with reference to the compilation of the said jury roll arbitrarily refused, omitted and neglected to place the names of any of the oforesaid negroes, so qualified as aforesaid, upon the said jury roll, from which the said Grand Jury was drawn."

Attorney General questioned every witness, asked them whether they knew all the names that were on that jury roll, and we are attempting to show they were not on that roll, and the only way we can show that is by producing the roll in Court. In as much as

Attorney General Knight has challenged this statement by his reply filed in Court, we are entitled to prove it and we propose to prove it.

ATTORNEY GENERAL KNIGHT: I don't think that shows a systematic exclusion, and that is the only reason this indictment could be quashed. Consequently I don't think the jury box or the jury roll of the County should be brought in to prove an immaterial point.

MR. LEIBOWITZ: If the Attorney General insists I will ask for the jury rolls of Jackson County for twenty-five years.

COURT: The Clerk can issue it at your request, what you want. Have the Clerk issue it to the person whom you name in the subpoena dices tecum under section 7776 of the code. You give the name of the document you wish to the Clerk and he will issue it.

MR. LEIBOWITZ: With the reservation to produce the jury roll and witnesses to prove that negroes were not on that jury roll, or other jury rolls that may be involved we will rest, with that proviso, and we ask leave of the Court to produce that additional proof when it gets here. We rest with the reservation when that subpoena is served and the rolls are produced here, we



ask leave of the Court to continue with the proof of the rolls.

COURT: That becomes a question whether or not it is here or not.

MR. LEIBOWITZ: Then we will ask for a continuance Judge.

COURT: I wouldn't grant the continuance.

MR. LEIBOWITZ: Will your Honor permit us when the rolls are produced, will your Honor permit us to offer those rolls in evidence and prove there were no negroes on those rolls?

COURT: All I can do now is to issue the subpoena as requested, the Court would not pass upon its legality before the time, as to whether or not it could be introduced.

ATTORNEY GENERAL KNIGHT: Of course your honor knows I object to the issuance of the subpoena, and object to the testimony, and I want my objection noted to it.

MR. LEIBOWITZ: We can not rest our application for the quashing of the indictment until the execution of the subpoena duces tecum.

COURT: Have you any other evidence to offer at this time?

MR. LEIBOWITZ: Nor at this moment sir.

COURT: Mr. Attorney General the Court does not care to hear any more testimony on this motion, the motion is overruled--the motion to quash is overruled.

MR. LEIBOWITZ: Your Honor I would like to note my exception.

COURT: Yes sir.

ARRAIGNMENT OF THE PRISONERS

COURT: Do you want to arraign them all together?

ATTORNEY GENERAL KNIGHT: No sir, we want to make a suggestion to the Court.

COURT: All right.

ATTORNEY GENERAL KNIGHT: Your Honor the State suggests that the defendant, Haywood Patterson, be arraigned on an indictment heretofore found by the Circuit Court of Jackson County, number 2404. Now the State also suggests that the age of Roy Wright and Eugene Williams has been contested, that is whether or not they are now sixteen years of age.

MR. LEIBOWITZ: Whether they were at the time of the commission of the crime.

ATTORNEY GENERAL KNIGHT: Yes sir, whether they were at the time of the commission of the offense and whether they are now sixteen years of age. The question of the ages of them has been raised, whether they are at this time sixteen years of age, and we suggest that at this particular time they not be arraigned until the Court has had an opportunity to ascertain their age.

MR. LEIBOWITZ: That is satisfactory with us.

ATTORNEY GENERAL KNIGHT: Then we ask---



MR. LEIBOWITZ: May I add this, the Supreme Court of the State of Alabama has remanded the case of Eugene Williams to this Court, with a direct mandate to inquire as to his age.

ATTORNEY GENERAL KNIGHT: And also we are trying to follow that decision as applies to Roy Wright. Then that leaves Charlie Weems, Ogie Powell, Violie Roberson, Andy Wright, Olin Montgomery, and Clarence Morris, to be arraigned on indictment 2402.

COURT: Is there more than one indictment in these cases?

ATTORNEY GENERAL KNIGHT: There were several indictments, there were two joint indictments for the rape of Ruby Bates, and one for the rape of Victoria Price, and several indictments of each for the rape of the different girls.

COURT: Separate indictments in each case?

ATTORNEY GENERAL KNIGHT: Several indictments in each case, but the only occasion on which they were heretofore tried was indictment number 2402 and indictment number 2402, and Roy Wright I believe was charged on indictment 2416. We would not try them on different indictments but the same indictments they were heretofore tried on, consequently we first desire to try the case of Haywood Patterson.

COURT: He will be upon a single indictment?

ATTORNEY GENERAL KNIGHT: Yes sir, number 2404.

MR. LEIBOVITZ: I would like to see the indictments themselves.

ATTORNEY GENERAL KNIGHT: Yes sir.

MR. LEIBOVITZ: Those are the indictment?

ATTORNEY GENERAL KNIGHT: Yes sir.

MR. LEIBOVITZ: May it be understood I am now handed by Attorney General Knight and Assistant Attorney General Lawson, certain papers represented to me as containing all the indictments in this case.

ASST. ATTORNEY GENERAL LAWSON: So the Clerk certified.

COURT: As I understand you want Hoywood Patterson separately?

ATTORNEY GENERAL KNIGHT: On indictment 2404.

COURT: The other six, there are two who are alleged to be under the age of sixteen, you wish a separate examination as to them, what about the other six then?

ATTORNEY GENERAL KNIGHT: That leaves the other

six under number 240222

MR. LEIBOWITZ: I have just spoken to the Attorney General, and the indictment 2402, which is the joint indictment, alleging the crime of rape on Victoris Price, includes the nine defendants, and of course includes the names of Roy Wright and Eugene Williams, that is 2402. It is my understanding the Attorney General would like to have that indictment with reference to the two alleged juveniles eliminated from this arraignment.

ATTORNEY GENERAL KNIGHT: That is correct, unless your Honor arraigns them and doesn't set them for trial.

COURT: I will order a severance of Eugene Williams and Roy Wright. Number 2402 reads, Haywood Patterson, Oxie Powell, Willie Roberson--the names then on.

MR. LEIBOWITZ: Yes sir that is entirely satisfactory with me.

COURT: Is there a suggestion they are under sixteen?

MR. LEIBOWITZ: We don't have to go into an inquiry of the age at the present. The point I make is they were under the age of sixteen at the time of the commission of the alleged offense, and if they were under age at that time they can be tried by this Court.

ATTORNEY GENERAL KNIGHT: We have asked for a



severance, and we will inquire into the age and argue that question out later.

COURT: On suggestion of the State and by consent of defendants a severance is ordered as to Roy Wright and Eugene Williams, the suggestion being made they are juveniles.

MR. LEIBOWITZ: With reference to indictment 2405 it is an indictment against Eugene Williams and alleges the rape on Victoria Price. With reference to indictment 2407 it is an indictment against Roy Wright for the rape on Victoria Price. With reference to indictment number 2314 it is an indictment against Williams for the rape of Ruby Bates. With reference to the defendant Roy Wright, number 2416 here, for the rape of Ruby Bates. It is my understanding the Attorney General wants a severance in those cases, if not I will ask for it.

ATTORNEY GENERAL KNIGHT: I don't want to take up the severance in the Bates case until we get through with the Price case.

MR. LEIBOWITZ: You will pardon me, I made a mistake, I want to apologize for what I said, there is no severance necessary, they are indicted on separate indictments. I made a mistake in asking for that, they are separate, and now I am going to ask your Honor to put aside those indictments on the question of age, with reference to each of the indictments in which these two defendants are indicted.

COURT: Is Roywood Patterson alone, that is indictment 2404?

MR. LEIBOWITZ: Your Honor numbers 2405--7--14--16. I think in line with the decision of the Supreme Court, I think they should be set aside by the Court for the purpose of following the mandate of the higher Court, and take testimony as to their age.

COURT: There is no need to order it now, that will come when they are arraigned. You want to arraign them now?

MR. BAILEY: We would like to arraign them all today.

COURT: Suppose we arraign Roywood Patterson on number 2404, and get through with that, and make the orders as we go along.

MR. BAILEY: Yes sir.

COURT: What day do you suggest setting this case?

MR. BAILEY: The Patterson Case?

COURT: Yes sir. Thursday of this week--before arraigning or drawing the jury I will first draw the names of fifty regular jurors and order them summoned here for Thursday.

MR. LEIBOWITZ: We ask for a special venire.

COURT: You get a special venire in these cases, you have a special and regular. In this case I will draw fifty regular and fifty special jurors, that is the limit. This is the regular jury of fifty jurors drawn first (indication).

(The indictment of Haywood Patterson was read by Mr. Bailey.)

Said indictment is as follows:

THE STATE OF ALABAMA,  
Jackson County

CIRCUIT COURT, Special Session  
March 6 1931

The Grand Jury of Said County charge that before the finding of this indictment Haywood Patterson whose name to the Grand Jury is otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

(Signed) H. G. Bailey  
Solicitor for Ninth Judicial Circuit

MR. LEIBOWITZ: We refuse to plead at this time, and we desire to raise the question as to the violation of the rights of the defendant under the Fourteenth Amendment, to the equal protection of the law on the ground that the jury, that was drawn by your Honor, and the rolls from which that jury came was in violation of the Fourteenth Amendment of the Constitution, and excluded from the said roll and the said jury box from which your Honor drew the names, members



of the negro race, solely by reason of the fact they were members of such race. We desire to raise the same objection to the venire just drawn as was raised with reference to the roll from which the Grand Jury was drawn. We refuse to plead at this time, and we do not desire the record to show any act on our part which would constitute a waiver of the right to raise that question. We feel that in pleading to the indictment at this time without interposing the objection to the venire on the ground of the exclusion just referred to might, although I am not certain it would, constitute a waiver of the right to raise that objection after pleading.

COURT: You are raising the motion to quash the venire now, not to quash the indictment.

MR. LEIBOWITZ: No sir, we can not move to quash the indictment, your Honor ruled on that. I am moving now to quash the venire and do not want to plead because my pleading might be construed as a waiver of my right.

COURT: I would overrule that motion at the present time.

MR. LEIBOWITZ: I want an opportunity in as much as I have made a motion, at the earliest possible opportunity I want the record to show I have made this motion at the very first opportunity presented to counsel in this Court. In as much as your Honor has just drawn this venire I don't want to plead at this time until I can

submit to the Court a full set of papers, and I want to be given a reasonable opportunity to do that, setting forth the grounds for the granting of this motion. I would like to have the motion passed on before I plead.

ATTORNEY GENERAL KNIGHT: I would suggest the State doesn't care to demur to his motion, but the State wants to take issue to it at the proper time, and I would suggest the Court enter a plea of not guilty for the defendant.

COURT: I overrule the motion at the present time. There hasn't been a venire drawn in the case, and there not having been a venire drawn--what I have drawn is what we call the regular jurors, and at the present time I would overrule that motion.

MR. LEIBOWITZ: We except. May the record show, if you direct us to plead at this time, that we do not waive, nor do I understand the Court to say by this pleading, our right to challenge the venire at the time when the venire is called in the case in open Court.

COURT: I am going to put that on my docket showing that you have not waived any right to plead. I understand from Attorney General Knight's and Asst. Attorney General Lawson's silence in this matter they have no objection.

ATTORNEY GENERAL KNIGHT: No you raised the question--at the time of your motion not at this particular time.

MR. LEIBOWITZ: With reference to the trial jurors.

ATTORNEY GENERAL KNIGHT: At this particular time no.

COURT: I will show this much, the defendant reserves a right and offers to make a motion to quash the venire to be drawn and without waiving that right a plea will be--

MR. LEIBOWITZ: In view of the Court's direction.

COURT: All right, do you still refuse to plead?

MR. LEIBOWITZ: As your Honor has directed that I plead I would follow the Court's direction. The only purpose of my statement here was to preserve my right to make a formal objection to the venire, and I didn't want it construed that in pleading I would waive any right I have. And with that understood we are ready to plead now, and we plead not guilty.

COURT: The motion to quash the indictment as I understand goes to all of the cases?

MR. LEIBOWITZ: The intent of that motion was to cover all of the indictments.

COURT: That is what I wanted to understand.

MR. LEIBOWITZ: That motion made in the record was intended to cover all of the indictments.



COURT: The agreement is that motion covers this particular indictment. It is agreed the motion to quash and the rulings thereon and evidence thereon offered in this Court is the same in all cases. The Court Now proceeds to draw fifty special jurors, which will make one-hundred jurors in all, and it is from this list the jury will be selected to try the case. forthwith the Clerk will make out a list of these jurors, both regular and special, and serve upon the defendant, and also they will be summoned forthwith to be here, both the regular and special jurors, on March 30th.

---

THIS WAS ALL OF THE EVIDENCE

---