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TATE OF ALABAMA, :

In Circuit Court of Morgan County,

HEYTOOD PATTER SON. :

Alabama.

#### BILL OF EXCEPTIONS

Be it remembered that upon the triel of the above styled cause in the Circuit Court of the 8th Judicial District of Alabama, beginning on the 6th day of January, 1936, present and presiding, Honorable \*\*. \*\*. Callahan, Judge of said Court, the following proceedings, not otherwise appearing on record, were had: towit:

The Defendant on January 6, 1936, filed in court a petition for removal to Federal Court, the same with the exhibits there to attached being in words and figures as follows:

IN THE CIRCUIT COURT OF ALABAMA

IN AND FOR MORGAN COUNTY.

STATE OF ALABAMA -- -- PROSECUTOR

-- -- PROSECUTOR

against

HAYWOOD PATTERSON

De Fen Dant No. 2366 Motion for Removal to the United States District Court.

Styled cause comes and makes application to the court to have his trial now pending in the Circuit Court of Morgan County, Alabama, transferred and removed from the Circuit Court of Morgan Court of Morgan Court of Morgan Court to the United States District Court

for the Northern District of Alabama, and your petitioner alleges as follows:

- 1. That Section 74 of the Judicial Code and of Title 28 of the United States Code provides for removal of causes to the Federal Court in the same district where "equal civil rights" are denied to a defendant or cannot be enforced in the State Courts; and under the above referred to Federal Law, the undersigned defendant brings this petition to remove the aforesaidemase to the aforesaid United States District Court.
- and is a citizen of the United States, and a non-resident of the State of Alabama.
- together with eight other negroes known as the Scottsboro defendants, taken off a train at Paint Rock, Jackson County, Alabama, by a large group of officials and citizens and accused of the crime of allegedly forcefully ravishing Victoria Price and Ruby Baites, two white women on said train.
- 4. On or about March 31, 1931, your petitioner was indicted by a special grand jury of Jackson County, together with eight other negroes, for allegedly ravishing one Victoria Price, one of the aforesaid two women on aforesaid train.
- 5. Subsequently and on or about March 6, 1958,
  your petitioner moved for a change of venue from the CirCuit Court of Jackson County to the Circuit Court of
  Jefferson County on the grounds that petitioner could not
  secure a fair trial in Jackson County or any of the surrounding counties, and that said Jefferson County was the

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the Court granted a change of venue to Morgan County, but denied the motion for a change of venue to Jefferson County, to which denial defendant excepted.

- 6. Thereafter one of said Scottsbero defendants, Haywood Patterson, was tried before Hon. James E. Horton, sitting in the Circuit Court of Morgan County, and on April 9, 1935, found guilty by the jury which imposed the sentence of death.
- 7. That during the trial of said Patterson, the public opinion in Morgan County was so hostile and prejudiced to the said Scottsbore defendants that Judge Horton on April 17, 1935, of his own motion, adjourned the trial of the other said defendants, stating in open court that they could not procure a fair trial at that time.
- 8. That thereafter Judge Horton on or about June 23, 1935, set aside the conviction of said Patterson, on the ground that the verdict against him was contrary to the evidence.
- 9. Thereafter and in November, 1933, Patterson and Norris, two other of said defendants, were separately tried before Honorable W. W. Callahan in the Circuit Court of Morgan County and found guilty and sentenced to death.
- 10. The convictions of said Patterson and Morris were reversed following appeal to the Supreme Court of the United States and the indictments against them, as well as against all the other Scottsboro defendants were quashed by reason of such proceedings.
- 11. Thereupon and on or about November 13, 1935, a new indictment was found by a special grand jury of Jack-son County, Alabama, against your petitioner, and the other,

Scottsboro defendants, for allegedly revishing said Victoria Price.

12. Your petitioner was arrainged under this indictment on January 6, 1986, not in Jackson County where said indictment was found, but in Morgan County where the previous trials were had as before stated. Petitioner has pleaded not guilty.

13. Your petitioner has been informed that he will be tried under this indictment in said Morgan County and in connection therewith refers to the order of the Supreme Court of the State of Alabama, dated May 16, 1935, fellowing the order of the United States Supreme Court above referred to, in the case of said Patterson, which expressly directed that all further proceedings following possible new indictments be had in said Morgan County.

14. Your petitioner does not believe that he can have a fair trial in Morgan County on account of the animosity and prejudice toward said Scottsboro defendants and their counsel, which has existed in Morgan County from the time of the trial of Patterson first had there before Judge Horton, and which prejudice and animosity continue down to the present time, as appears more fully from copies of affidavite annexed hereto and made a part hereof, and marked Exhibits "A" "B", and "C", respectively, the originals of which are on file in this Court.

16. Petitioner further refers to the fact that Judge James E. Horton, above referred to, was defeated for reelection in the Circuit Court in the Spring of 1984 and that the opposition to said James E. Horton and his defeat were due in part to the fact that he had set aside the verdict of said Patterson, as aforesaid.

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James 1. Rorton, election, in the speed than the due its part to the of said fattores.

16. Your petitioner alleges that he will be unable to obtain a change of venue in the courts of Alabama by reason of Section 5561 of the Code of Alabama, which, dealing with change of venue in criminal cases, provides that if the court finds that a change of venue is necessary:

"The trial must be removed to the nearest County free from exception and can be removed but once."

This section has been interpreted by the Supreme Court of
Alabama to mean what it says Parte Lancaster, 206 Ala.

60. This case was cited by the Supreme Court of Alabama
in the order in the Patterson case above referred to, as
follows:

"In the event of such new indictment, the trial thereon shall be had in the Circuit Fourt of Morgan County--Ex parte Lancaster, 206 Ala.60."

applied to his case is in violation of the Fourteenth

Amendment to the Constitution of the United States in that

by denying your petitioner a change of venue from a county

prejudiced against him and his counsel, your petitioner

would be denied a fair trial and would be deprived of life

and liberty without due process of law.

18. That petitioner avers that if he be forced to trial in Mergan County he will be unable to secure a fair trial and that the proceedings to be had against him upon such trial in Mergan County will, therefore, be a violation of your petitioner's rights to a fair trial as guaranteed to him by the Fourteenth Amendment to the Constitution of the United States in that such a trial would deprive your

potitioner of his life and liberty without due process of law.

redress in the courts of the State of Alabama on account of
the statute and decisions referred to and is, therefore,
being denied his civil rights under the Constitution of the
United States, as aforesaid, and, therefore, prays that
the prosecution of the indictment, hereinabove mentioned,
be removed from the Circuit Court of Morgan County of the
State of Alabama, to the District Court of the United States
for the Morthern District of Alabama, and requests that the
Clerk of said Circuit Court of Morgan County furnish your
petitioner with copies of processes and all pleadings and
other proceedings in the case for filing in said United
States District Court.

Dated January 6th, 1936.

Samuel S. Leibowitz

Osmond K. Fraenkel

Watts & White

G. W. Chamles

Attorneys for Petitioner.

COURTY OF MORGAS 7

Haywood Patterson makes eath in due form of law, that he is the defendant and petitioner herein, and that the facts as stated in the foregoing petition are true to the best of his knowledge and belief.

Haywood Patterson

Subscribed and sworn to before me this 6th day of January, 1986.

Clerk Circuit Court,
Morgan County, Alabama.

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Morgan County.

MADISON COUNTY

Before me, Blanche Everett, a Notary Public in and for said county and state this day personally appeared Captain R. A. Burleson, who is known to me and who being first duly sworn deposes and says that he is a resident of Lacey Springs, Morgan County, Alabama, and has been a resident of Morgan County, Alabama all of his life; that he is 47 years of age; that he known the people of Morgan County and that he hasheard a great deal about the Scottaboro cases.

removed from Jackson County to Morgan County, there was a great deal of agisation among the people of Morgan County and that said cases were the subjects of discussion by practically everybody in Morgan County old enough to notice such matters; that there was in the beginning a considerable amount of intense feeling against the defendants and against their lawyers from New York, and that while this intensity of feeling has somewhat abated, there has been a general crystallisation of cold and deliberate sentiment against the defendants, and that they are generally believed by the people of Morgan County, Alabama, to be guilty.

number of people in Morgan County from time to time, and up to and including the last few weeks, about the Scottsboro negroes, and that all persons who have discussed the matter with him have stated that they believed the defendants to be guilty and that whenever they were tried, they would be convicted, and that these people with whom affiant has dis-

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impossible to impenel a jury in Morgan County that would not convict the defendants.

eases will continue so long as they are pending, to be a political issue.

R. A. BURLESON

Sworn to and subscribed before me on this 4th day of January, 1936.

BLANCHE EVERETT, notary public.

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'EXHIBIT B'

STATE OF ALABAMA

Before me, Blanche Everett, a Motary Public in and for said county and state personally appeared John A. Hacken worth, of Runtsville, Alabama, who being first duly sworn deposes and says that he is a resident citizen of Madison County, Alabama; that he went to Morgan County, Alabama, on January 1, 1986, and stayed there several days for the purpose of securing affidavite from citizens of that county to show whether or not the defendants in the cases known as the Scottsboro cases, pending in the Circuit Court of said County, could secure a fair and impartial trial in that county; that while in Morgan County on that occasion, he interviewed about twenty or more citizens of Morgan County, Alabama, from all walks of life and from various sections of said County, on the subject of these cases, and without exception they all expressed their opinion of the guilt of the defendants; that a number of these conversations took place

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Sworn to an a good nothing a language of the defendants and sworn to an a good nothing a language of the defendants and sworn to an a good nothing a good nothing a language of the defendants and sworn to an arms of the defendants and sworn to arms of the good state of the defendants and sworn to arms of the defendants and sworn to arms of the defendants and sworn to arms of the defendants are sworn to are sworn to arms of the defendants are sworn to arms of the defendants are sworn to are sworn to arms of the defendants are sworn to are sworn to arms of the defendants are sworn to are sworn to arms of the defendants are sworn to are sworn to arms of the defendants are sworn to are sworn to arms of the defendants are sworn to a

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in hotel lobbies, on the streets and at filling stations in groups selected at random, and that all persons who expressed themselves about the cases stated their belief in the guilt of the defendants and it was epenly stated by numerous and divers persons in such conversations that these defendants and their attorneys ought to be lymehed; and affiant further states that as a result of his interviews and conversations on the occasions herein referred to, he is satisfied that the defendants cannot seeire a fair and important trial in said county at this time.

him by a great many people in said county to the effect that
the public sentiment of the people of said county was strong
against the defendants and that they could not secure a fair
and impartial trial in said county; affiant further says
that he made diligent effort to secure from the persons whom
he had heard express opinions and make statements concerning
these defendants, a written affiduvit of the statements made
by such persons verbally and that in each and every case,
these persons refused to make and sign a written statement
of the matters stated by them verbally, and in each case
assigning as a reason thereforeither that their reasons were
based on business or political considerations.

investigation of the matter that the defendants cannot secure a fair and impartial trial in the courts of said county due to the universal bitterness and heatility toward the defendants and their attorneys.

J. A. HACKWORTH.

Sworn to and subscribed before me this 4th day of

BLANCHE EVERSTT, Notary Public

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January, 1956.

STATE OF ALABAMA MADISON COUNTY

Before me. Blanche Everett, a notary public in and for said county and state personally appeared John A.

Hackworth, of Huntsville, Alabama, who being first duly sworn deposes and says that he is a resident citizen of Madison County, Alabama; that he went to Morgan County, Alabama, on January 1, 1936, and stayed there several days, the purpose of his visit being to interview citizens of said county in order to ascertain if the defendants in the Scottsboro cases could have a fair and impartial trial before a jury of said county in the cases against said defendants, now pending in the Circuit Court of Morgan County. Alabama; that while in said county he discussed said cases with a number of citizens of said county and that the result of these conversations were as follows:

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Mr. M. C. Campbell, resident of Decatur, Alabama, car inspector for the Southern Railway Company stated that he attended both trials of these defendants in Morgan County, and that he heard a great deal of talk about the cases around the court house and on the streets of Decatur, and that great bitterness and hostility was expressed toward the defendants and their attorneys; that on numerous occasions he heard it stated by various persons that the defendants and their attorneys ought to be lymehed or thrown into the Tennessee River, and that this feeling was general among the people of Morgan County, and that from what he knew of the sentiment of the people of that county toward these defendants and their attorneys, they could not get a fair and impartiel trial in Morgan County.

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Mr. Ben Poole, a citizen of Decatur, a gasoline and cil merchant, and a farmer, stated that he had heard many threats against the defendants, and that they could not secure a fair and impartial trial in Morgan County, because of the feeling of the people generally against the defendants and their attorneys, and because of the effect this feeling had on the jurors.

Mr. Phil Humphrey, a citizen of Decatur, engaged in the automobile business, stated that he attended one of the

Mr. Phil Humphrey, a citisen of Decatur, engaged in the automobile business, stated that he attended one of the trials of the defendants, in said county, and that he knew the feeling of the people of said county towards the defendants and that it was such that said defendants could not secure a fair and impartial trial in said cases in said county, at this time.

Mr. A. v. Davis, a resident of Falkville, Morgan County, Alabama, who was sheriff at the time of the former trials of thesecases in said county, and at present a farmer, stated that he knew the sentiment of the people of Morgan County toward these defendants, and that it was bitter and hostile, and that the people of said county had made up their minds that the defendants were guilty, and that the defendants could not secure a fair and importial trial in said county; that Judge Horton, formerly Circuit Judge, had been defeated for re-election because of his action in setting aside verdict of conviction in one of these cases tried by him, and that these cases would continue to be a political issue in said county. Mr. Davis said that he might want to get back into politics, and knew what had happened to Judge Horton, and would sign no written statement of what he said verbally in regard to these matters.

Mr. v. M. Simmons, a former policeman of Decatur, and a resident of that place, stated that he had talked to a great many people in different sections of said county

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about these cases, and that he was well acquainted with the sentiment of the people of said county on the subject of these cases and that the defendants could not get a fair and impartial trial in said county toward the defendants.

Mr. E. R. Britnell, a former deputy sheriff of said county, and a resident of Decatur, stated that he had talked to a great many people from over the county about these cases, and had heard a great many people discuss them; that he knew that the sentiment of the people generally of Morgan County was bitter toward the defendants and that they could not secure a fair and importial trial in said county.

Affiant further says that in case of each of the persons herein named, he asked them to make a written statement of the facts stated by them and that each of said persons refused to make such affidavit, and they all stated that for business reasons they were unwilling and would not make a written statement of the facts above detailed as the verbal statements of said witnesses.

J. A. BACKWORTH

Sworn to and subscribed before me this 4th day of January, 1936.

> BLANCHE EVERETT. Notary Public. Madison County, Alabama.

Filed in Office this Jan. 6, 1936. J. H. Green, Clerk.

After hearing argument the Court delivered its opinion:

THE COURT: Well, gentlemen, this removal statute referred to was passed for the purpose of aiding in the execution and administration of certain parts of the Jueblaer a bus Pourteenth Amendment to the Constitution of the United States and freds

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with reference to the colored race. That is the origin of the whole matter, - is that Fourteenth Amendment.

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sistently held that this removal statute is not as broad as the provisions that undertake to guarantee to the colored citisen his rights, his civil liberties, and protect him against discrimination. That has been conceded and held by the Court without any opinion to the contrary.

It is not as broad in this: That under the provisions of the Constitution -- Constitutional Amendment the defendant's rights and privileges undertaken to be guaranteed by that provision may be infringed upon either by the state through its legislative department or through and by the construction that the high state court may give to such legislation or -- and then the Constitution -- in the construction, is broader than that. His rights to be provided by the Constitution may be infringed upon by the officers of and authorities of the state in the execution of the laws that are valid and constitutional in form and on their face.

Bow, I think you will find that there isn't a solitary decision of the Supreme Court of the United States
that has held that you can have a case removed under this
statute unless and until it is shown by the petition that
the state has passed some law that infringes these rights,
that permits discrimination against the prisoner, or that
the court has construed that statute to give it a meaning that would authorize and permit a discrimination. There are
no conflicting authorities on that.

The first case that I recall is By Parte Wells, where Justice Bradley, speaking for the Supreme Court, held to that effect. Then, as I recall, before the Supreme Court of the United States passed on that question any more, it was up in the courts of Alabama, and Chief Justice Brickell cited the Wells case, and stated the destrine, and stated it a little broader than was stated in the Wells case. Since then it has been passed upon repeatedly. The late "55, case is the very case that you cited me, -- it is destructive of your position, -- and that is Kentucky against Powers. The whole question is reviewed by Judge Harland in the opinion handed down by him for the Supreme Court, and a recitation of the facts set up by the petition shows infinitely more irregular -- showing irregular acts, even revolting acts, all of which was brushed away by the learned Justice, who said that all that could be raised in another way and in another manner by writ of error to the highest court of the state from the Supreme Court of the United States. Judge Harland, again, in the case of Gibson against

Judge Harland, again, in the case of Gibson against the State of Mississippi, went into the matter. That was prior to the Kentucky case. And there Harlan stresses the question of discrimination. The law that is inveighted against the defendant as infringing his rights must appear reasonably appear or by reasonably subject to the construction of hindering or interfering with the establishment and the protection of his rights.

Well, that as applied to this case, shows that this petition has no standing in court.

That Gibson case was followed -- the next case follow-

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ing it is found in 162 U.S. -- followed by the case of Smith against The State of Mississippi. A very lengthy statement of the facts and quotations from the Gibson case are made in that.

How, that being true, I don't see how you have any standing in court on this motion. Of course, you set up a great manythings in it. Some of them are wholly irrelevant, and much of it. I might be permitted to say, improper, but when it is reduced to its last analysis, you must find a standing in court on your motion on the ground that the State of Alabama, by its Constitution, or by some law, has infringed upon the constitutional rights of this defendant. And that you have failed, in my judgment, to do. It is sholly when some hestile state legislation can be shown to exist interfering with the party's rights of defense that he can have his cause removed to the federal court. That is not only good law, but common sense and practical to me. If that wagn't true then all a defendant in case would have to do would be to come in to court and set up that his constitutional rights were being infringed upon, and that he couldn't get a fair trial, and any other matter he might want to put in it, and it would be moved to the federal court, because this statute said that after that petition is filed no further proceedings shall be had in the state court. But it must be conceded that, in the first instance, it cortainly is for the state court to determine, -- and I don't suppose that will be denied, -- it is for the state court to determine whether or not the petition, by the facts and natters set up in it, states a cause for removal.

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Bow, if it is determined that the factsand matters set up in the petition state a cause for removal, then the state court is without power to hear evidence contradicting the facts set up. The reason and sense and purpose of that fact is due to the reasons and construction the Supreme Court has given in the cases, that there must be a constitutional provision or state law that interferes with the right of the defendant under the federal Constitution, so that, when the petition sets that up there is no occasions of sense to deny it. There is nothing to that, — there is nothing to deny.

That is a statement of law that can not be disputed.

With that in mind, gentlemen, I see no other course for me to take than to deny and overrule the petition.

I also note on the record that counsel for the defendants intend to apply to the United States District Court for an order --

THE COURT: I don't need any such order as that. That is your problem. -- applying to the United States Court.

MR. FRANKEL: I want it noted on the record.

THECOURT: I will not make such entry.

MR. KNIGHT: It has no place on the record.

MR. FRAENKEL: We protest against any further proceedings in this court until we have had an opportunity to make
an application --

THE COURT: There isn't any opportunity provided under the law and I will not make that ruling.

MR. FRANKEL: I note an exception to that ruling. Mr. Clerk, I am ready to call the jury.

MR. WATTS: Now, if the court please, we have a pre-

liminary matter that we would like to take up before we go into the matter of the selection of a jury. We would like to have noted, for the record, the appearances for the State.

THE COURT: Well, they will have to identify themselves.

I don't know who is appearing. I see a lot of gentlemen over there, some old and some young; some one thing and some and other.

MR. HUTSON: You can get the names of them, Mr. Carr, -- Mr. Knight, Mr. Lawson, and Mr. Bailey.

THE COURT: I suppose you four gentlemen right there?

MR. HUTSON: Yes, sir.

MR. WATTS: That is Mr. Bailey?

THE COURT: That is Mr. Bailey, Mr. Hutson, Mr. Lawson and Mr. Knight.

MR. MATTS: Now, if the court please, we would like to ask Mr. Knight for what authority he appears.

THE COURT: I would like to askyyou a question.

MR. KNIGHT: I am perfectly willing to do that.

Sop t

THE COURT: Wait a minute, Mr. Knight. I will take care of myself for a while anyhow.

What is the point?

MR. WATTS: The point is this: We are informed Mr.

Enight, as Lieutenant Governor of Alabama, appears by

apecial employment, by compensation, and by the Constitution,

Section 280, he may not occupy two offices of profit under

the Constitution. These defendants, as I understand it,

are entitled to be presecuted by officers who are legally

constituted officers, and we take it under the Constitution

he is holding two offices of profit. If the Governor should

leave the State, we are in the situation of having the

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Governor of Alabama, as we understand, specially appearing for the purpose of prosecuting these defendants.

of course, the attorney general, if the court please.

may employ whom he pleases, if he sees fit and proper to

do so, to assist the lawfully constituted authority in the

prosecution of these cases, provided he doesn't employ some
one who, in the face of the Constitution of Alabama, has no

authority to appear and prosecute these cases.

We want to reserve that point.

THE COURT: I haven't passed on it.

MR. WATTS: We would like to raise that point, is what I mean.

MR. KNIGHT: Your Honor. --

THE COURT: Wait a minute. I will allow you gentlemen on opportunity --

MR. WATTS: We would like to have Mr. Enight state for whom he appears, and whether he is appearing without pay.

THE COURT: Well, knowing lawyers like I do, I think you are right.

med.

MR. WATTS: I think you are right.

THE COURT: On your constitutional proposition, I don't think a lawyer is an officer of the State of Alabama. He is a more officer of the court. I don't think your constitutional officer has any application, but I am prone to be accommodating, -- I will let the gentleman answer, if he desires.

MR. KNIGHT: If the court pleases, I have been employed by the Governor of Alabama, or by Mr. Carmichael, with the approval of the Governor of Alabama, and I am

being compensated for my services in this case, unquestionably, and I have collected a part of the fee which I expect to charge. I think that answers one part of your question. The other part of it is I am perfectly willing for the court to decide whether I am holding two offices of profit at one and the same time.

MR. WATTS: I would like to ask you, if I may,
Lieutenant, whether or not you hold a special commission as
a special Attorney General.

MR. KNIGHT: I do not.

MR. WATTS: For the presectuion of these eases?

MR. KNIGHT: I do not.

MR. WATTS: Bot by title, but as a matter of fact, that is your authority, ian't it?

MR. KHIGHT: Now, I am not going to surmise on that.

I think that is a matter for the court to decide. I thought
I had answered as frankly as I could.

THE COURT: Well, statements of fact, not oulegies, gentlemen.

WR. ENIGHT: I thought I had answered you fully. I will be paid. Let the court decide whether I am deputised.

I do not hold a commission as a special assistant.

THE COURT: The court declines to force an answer to

MR. WATTS: I except. As we see it, we have here an officer, --

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THE COURT: Well, the ruling is all past now.

MR. WATTS: All right.

THE COURT: Anything further?

MR. WATTS: No. eir.

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# EVIDENCE ON BEHALF OF THE STATE

MRS. VICTORIA PRICE, being called as a witness, and being duly sworn, testified as follows:

DIRECT EXAMINATION (By Mr. Bailey)

My name is Mrs. Victoria Price. I live in Huntsville.

Alabama. On the 25th day of March, 1951, I was living in

Huntsville, Alabama. On that date, I was on a freight

train traveling through Jackson County, Alabama, from

Stevenson to Paint Rock, Alabama. I was on that train when

it reached Stevenson, Alabama. When it reached Stevenson I

was on an oil tank. Ruby Bates was with me on that oil

tank. Well, there were also some white boys on the far end

next to the engine; on the same car I was on. There were

seven white boys there.

when the train left Stevenson, I changed my place on the train. I got down off the oil tank, me and Ruby Bates, and got into a gendelier. The best way I can describe it, it is sleping at the top, hellowed out, and it had chat in it, -- what I have heard it called, -- little, fine rock. It was an open top ear, with no top on it. We got in the end next to the caboose, next to a box car. When we got in there, there was nobody else in that car at that time. Later while we were in it there was seven white boys come and got in the far end of it with their feet towards us, and their heads towards the engine, and they were lying on their stomachs. The chat in the bottom of that car was about two and a half or three feet deep in the best of my judgment. If I stood up on that chat, fine rock, I could see over that car.

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ear.

After the train left Stevenson we got in there, and me and her was mitting in the end next to the caboose. There was a car box joining us. I heard some hellering over the top, and I looked around and I seen some colored boys coming over there, and as they parked over into the gondolier, they come up firing a pistol, and they hollered, "All you white sons-of-bitches unload." Identify the one said that. I believe I could. So, after they got over there, why, the white boys, before they could get up there to do anything, the negroes were knocking them in the head, knocking them off. After they got all the white boys knocked off except one, they taken and run up and down the side of the box car with the guns in their hands to keep the white boys from getting back on. There was one white boy left on there. They didn't knock him clear off. I can't say which was hit. I can't say they hit him with anything. I want to tell the truth about it. This defendant over there, Haywood Patterson, was one of the colored boys that jumped in that car from the box car. He had one of the pistels. As he jumped in he said, "All you white sons-of-bitches unload," and they fired a time or two over the gondolier as they were coming into the gondelier where we were. The train had left Stevenson about five or ten minutes before these colored boys come into that gondola. The train was running then west towards Paint Rock, Alahama. Well, after they got in there and got all the white boys knocked off and seen they were not soing to get back in, I was standing up on the chat fixing to jump off. Ruby Bates was standing there. This defendant, Raywood Patterson, grabbed me in the back and hit me with a pistel on my head and threw me down in the gondelier. One of

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them held my legs, and this defendant held a knife on my throat. They took my overalls off me and tore my stepins apart, and attacked me, one holding my lefts, and one without a knife on my throat, and the rest of them serenading up and down there to see nothing happened. This defendant there had sexual intersourse with me on that car on that occasion. His private part penetrated my private parts. I had on a pair of stepins, three dresses, and a pair of waist overalls, and a shirt, and a woman's coat, and a woman's hat. My stepins were torn apart when those negroes was attacking me. They tore them apart. One of the defendants, Haywood Patterson, did. They pulled my overalland off me and one of them sat down -- Clarence Norris sat down on the overalls; the best of my remembrance, it was Clarence Norris. Six had sexual intercourse with me. This defendant was one of them. (The Court then sustained an objection to the introduction of the stepins in evidence.

I had a knife with me on that occasion, a pocket mile they taken it off Haywood Patterson, this defendant. Haywood Patterson took it from me. This is the knife. I next saw that knife after it was taken from me in that car at Scottsbero in the court house. Well, one of the law had it, but I den't know which one. One of the officers there,

The following then occurred:

Now, are those stepins you looked at over there in the same condition now, Mrs. Price. --

MR. WATTS: We object to any reference to them unless they are in evidence.

Q -- that they were --

THE COURT: What is that?

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unless it is in evidence.

THE COURT: I judge from the way he started he wanted to pave the way to offer them again.

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MR. BAILEY: That is what I wanted.

MR. WATTS: I just want an exception.

THE COURT: All right.

Are they in the same condition now as they were when they were torn off you in that car?

A Yes, sir, except I washed them.

We long did you wash them after this thing occurred?

MR. WATTS: We object, illegal, irrelevant, incompetent and immaterial.

THE COURT: That is well taken.

A About two hours, the best of my judgment.

MR. WATTS: We object.

THE COURT: That is not evidence, gentlemen. When I say an objection is sustained, it don't make any difference what the witness says, don't pay any attention to it; it is not evidence in the case.

Were you on that train when it stopped at Paint Rock,

A Yes, sir, It was stopped at Paint Rock.

Q Did that train --

MR. WATTS: We object. She says, "It was stopped at Paint Rock." We object to that unless she knows.

THE COURT: Why, the objection is overraled.

MR. WATTS: We except.

THE COURT: It couldn't have stopped if somebody hadn't stopped it.

MR. WATTS: Our information is it is a regular step
THE COURT: Somebody stopped it. That is an argu-

MR. WATTS: He except .

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Q Did the train stop anywhere before reaching Paint Rook?

A No. sir. It was stopped by a crowd of men.

I was in the gondole car when the train stopped at Paint Rock. Me and Ruby Bates and those colored boys, and Raywood Patterson, the defendant, was in there. They started running off down towards the engine; jumped off from where we were and went running down towards the engine. When the train stopped. I got up and put on my clothes the best way I could, and looked out the side of the gondolier, and seen what was going on, and got my clothes fastened up on me, and went to getting off the gondolier. Ruby Bates had done got down on the ground. I started to get off the gondelier. I got next to the last step on the gondolier down to the ground, and I fell, and I didn't know anything else until I came to myself in a store there. Ruby got off before I did, and was standing on the ground. She had her clothes on, toop when whe got off. Then I went back to Scottsbore, with Ruby. I saw this defendant when I got to Scottsboro.

be introduced.) Cus & aninetim (By m. wats)

I left Numtsville the 24th. Ruby Bates and no one else was with me. I know Jack Tiller. He was living at Runtsville at that time. I did not see him on the night of the 25rd of March, 1931, or on the morning or afternoon of the 24th of March, 1931. I travelled from Runtsville to Chattanooga on the 24th day of March, 1931 in a box car. I

a shirt, a woman's coat, and a woman's hat, and stockings and shoes. Ruby Bates went with me. I did not know Lester Carter at that time.

The following then occurred:

Q I will ask you if he rode with you on that trip in that
freight car.

MR. HUT SON: We object to that.

THE COURT: Objection sustained.

MR. WATTS: We except. We expect the answer to show he did.

When I got to Chattanooga, I went to a woman's by the name of Broachie. I stayed in Chattanooga over night. I will not say for sure, but from eleven-thirty to ond, -- the best of my recollection -- when I left Chattaneoga. I will not be positive, but it is in my other statement. I told you about eleven-thirty to one is the best of my resollection. Eleven-thirty to one, the best of my recollection. When I left Chattanooga, I got on an oil tank with Ruby Bates. I got on the oil tank up on the railroad track in Chattanooga, in the yards. I had on a pair of stepins, three dresses, a pair of overalls, shirt, a woman's coat, a woman's hat, a pair of stockings and slippers. Ruby Bates was dressed in men's clothing too. No one boarded the train with me, no one at all except Ruby Bates. I did not meet a man by the name of Orville Gilley in the freight yards at Chattanooga. I didn't know Orville Gilley at that time. I don't know him now. I just know that is his name. Orville Galley and Lester Carter did not board the train with me and Ruby Bates. They didn't. I got off the oil tank at Stevenson. I rode

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and the same place. When I got to Stevenson, I changed into a gondolier. That gondols was next to a box car. I got into the end of the gondols next to the box car.

was healthy, strong. There was nothing the matter with me. That car was loaded from two and a half to three feet from the top with small rock, erushed rock -- to the best of my recollection. If I did testify before this car was loaded, in my best judgment, within a foot and a half to two feet of the top with crushed rock, it was true. It wasn't half full. On my way down to Paint Rock, I remained in that car. I got off the train at Stevenson and changed from the oil tank to the gondola. I walked down the train.

- Carter and Orville Gilley went into this gondols with you at Stevenson at the time you and Ruby Bates boarded the cart.

  A Me and Ruby Bates got to one end of the gondols and sat down next to the box car, and the other seven boys got in the other end next to the engine, and laid down on their stomachs.
- Q Do you know who Gilley and Lester Carter is; do you know who I am talking about?
- A Yes, sir; I know who you are talking about.
- I am not talking about the seven boys. I am asking you if they did get on with you, Gilley and Carter?
- A They didn't get on with us.
- and helped you up to the stirrup of the ear?
- A No. sir, they did not.
- A Row fast was the train traveling after it left Stevenson at the time you say the colored men boarded the gondola?

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C Do you kn who I mm tol A Yes, sir;

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A I can't tell you that; I don't know how fast it was traveling.

Q Have you any idea?

A Best of my judgment, I guess, would be about twenty-five or thirty-five miles, the best of my judgment.

About twenty-five or thirty-five miles on hour?

I don't know. I am not no train specialist.

How after these darkies got into the car, they had two guns. I was struck on the head with one of the guns, In the hands of one of the defendants. Well, along there, the best of my recollection (indicating); I know it was on the side of my head, right agress there. My head did not bleed; not so much; busted the skin, though. It did bleed a little bit. That defendant, Haywood Patterson, sitting there struck me with a gun. I was not struck anywhere else. I was picked up and throwed down on the gondolier, though; in the gondolier on that chert. I do not know the caliber of the gun I was struck with. I don't know one gun from another. At the Scottsboro trial I testified to the caliber of the gun I was hit with. I said to the best of my knowledge of guns, it was forty-five. Maybe I said also there was a thirty-eight, but I don't know anything about guns. I was struck with one of them; I don't know which. I don't know the difference in appearance between a thirty-eight and a forty-five.

Well, you haven't any judgment about what sort of gun --

A I said the best of my opinion of a gun.

Well, you haven't got any opinion about a gun, have you?

MR. KHIGHT: We object to the argument.

THE COURT: Objection sustained.

MR. WATTS: We except.

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I do not know what calibre means with reference to a gum. I do not know what a forty-five pistol looks like or what a thirty-eight looks like. I don't know one gum from another.

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ted the act. And after the defendant, five with him, had intercourse with me and they completed the act. They came over the top of the gondolier about five or ten minutes after the train left Stevenson. About -- it wasn't over fifteen minutes -- about thirteen or fourteen minutes. The defendants were engaged in having intercourse with me, about ten minutes, I guess. They got through, all of them, in ten minutes. The best of my judgment, I guess it was. I couldn't say on that and tell the truth. They didn't stop until we got almost to Paint Rock.

My back was bunged up a little bit. Oh, back there, all over my back and hips, and my face was scratched and throat was scratched. My face was bleeding a little bit.

I was not struck in the face. I was scratched in the face.

I was smacked; I wasn't struck. I haven't testified in these other trials all the defendants struck me in the face. I don't remember if I said it.

Q Did you receive any other blows on the face outside of the blow Patterson hit you?

A Yes, sir.

No one else struck me. I was bunged. I was not

asked this question: "Who else?" and to you didn't say, "Practically all of them." This question was not asked me. "I am asking you about the places on your face?" and if you didn't answer, "That is on my face." I don't think I said; "who struck you a blow on the face besides Patterson?" and god answered "practically all of them".

Other injuries I received on my body other than those that I have testified about here during the occurrence were on my face, back, hips, legs, arm, hands, probably my breasts also on my thighs. I had scratches on my breast. Finger nail scratches or chat scratches. The chert scratches were on my back and hips. I couldn't tell you if they bled; I couldn't see back there. I saw a little blood of my clothes, and on my back. My back had it on it. My arms had a little blood on them; some blood on my leg. On the inside of my leg. I said legs. I didn't say leg. I mean it was on the inside of my legs where the scratches were. I didn't may leg. I said legs. I didn't may blood. I said soratches. There was a break. It wasn't bleeding. There was a little bit of blood there out of a scratch. I don't remember any blood on my left leg. There were scratches on my leg with flakes of blood in it; on both of them. The coratches were from my ankles up to the crotch; all over them. There were bruised spots on my breast. They were not bleeding. There were scratches all across here, and more agrees here. There was a few on my stomach. There was no blood on those scratches; them were bruises. There were not so many.

My private parts were wet from the intercourse that these darkies had with me. I was not bleeding from my pri-

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Yes, sar. So one

vate parts. I can't say; I don't know. If on former trials I said I was and it is in the statement, it is true. My clothes that I had on at that time had semen on them. My stepins had a little of it on them. My overalls did not have any on it. I told youthey pulled my overalls off me. I had on a princess slip. It had semen on it. A little bit; I didn't measure it. If my dresses had semen on them I don't remember. I don't remember whether my slip had any blood on it. I don't remember if on the trial the 25rd of November -- 27th of November, 1933, before Judge Callahan, I was asked this question, on page 89 of the official transcript, and made this answer: Question: "Were you bleeding from your private parts?" Answer: "A little bit." If I did it is true. After that has been called to my attention, I do not remember now whether I was or not. I will not say. I have no recollection about it.

As I understand you now, you mean to tell the jury you can't tell the jury --

MR. KNIGHT: We object.

THE COURT: Never mind about that. You have gone over that.

MR. WATTS: We except.

Do you deny your testimony that they --

MR. KHEGHT: We object to the repetition of the question in that form. He has been over that before.

THE COURT: Sustain the objection.

MR. WATTS: We except.

I don't remember it if on page 90 of the record I
was asked this question: "Did that blood come out on your
clothes?" I don't think I answered that question this way:

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"Yes, sir." I was not asked this question on this other trial before Judge Callahan: Question: "Did the doctor see that: did you show it to the doctor?" I didn't answer: "I reckon I did." I deny I made that statement.

- I will ask you do you mean to say now if you did say on the former trial that you were bleeding from your private parts that is true?
- A My first trial.
- Q Your first trial?
- / If it is in the first trial, it is true.
- Then, on your other trials --
- If it is in there in the same way, it is true.
- I will ask you if it appears in your last trial --
- A If it is like it was the other time --

THE COURT: I don't see anything to be gained by that.

If you are going to introduce that record, it will just dispute her, and that is all you can get out of the whole thing.

MR. WATTS: We except.

My lips were swellen after the rape was over kin'ly.

They were bleeding inside a little bit. My checks were

swellen a little bit. That was from being smacked. My nose

was not bruised. Hot as my remembrance, it wasn't. I can't

remember if on the trial before Judge Callahan, the last

trial, on page 100 of this record, if this question was

acked me: "Was your nose bruised too?" and if I answered "Yes,

sir, Kin'ly."

I had a smuff box with me on this trip. I did not lose it. I had it at Scottsboro. At the former trial before Judge Callahan I was asked: "What about your smuff box; did you lose that?" I don't think I made any such statement in answer as "I don't know whether I did or not. I never looked for it." This question was not asked me on that trial "The last time you had it was in Chattanooga?" I don't think it was My answer to that question was not: "Yes, sir".

In my judgment there were seven gondols cars towards the engine from the one we got into. They were all hooked together, right along together in the train in front of me and towards the engine. And I was in the last one towards the caboose on the back end of the train -- about the middle ways of the train -- and next to that gondols was a box car. It is not a fact that I was in the middle gondols car in that train, that I lost my smuff box in that middle gondols car. I was in the gondolier next to the box car. The gondols I fell from when I got off at Paint Rock was the one next to the box car. That was the only string of gondols cars on the train from where I was on to the engine. Them were lined up together in front of us. There was no other string of gondols cars between the engine and where I was. I don't think there was; wasn't over one, if there was.

when I got to Scottsboro I was carried to the doctor at Scottsboro. Doctor Bridges, and Mr. Lynch. They came over there where we was at the jail and took us to his office. That was about two hours after I claim the last of the darkies raped me. These doctors examined me over at their office and took off my clothes. It was a full examination. When I got to Scottsboro from Paint Rock, -- I rode up there in a roadster car, me and Ruby Bates together with a man driving us. I sat in the middle and Ruby on the right. And

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the driver under the wheel on the left. When I got there I did not sit there in the jail yard in that car a few minutes. then I got there to the jail yard I did not see the boys that had been off the train had been brought down from Stevenson to the jail at Scottosboro. I didn't see them until way up in the day sometime. What I mean, night. Real late. I do not know a man on that train, that was thrown off that train, by the name Odell Gladwell. I did not know him by the name of Texas or Texas Slim. I did not know Lester Carter at that time. I do not know now he was standing there in the jail yard, or that Gladwell, or Texas Slim, or Texas, the name he went by, was standing there too. It is not a fact I was smiling there in that car and motioned to Gladwell or to Carter, -- Lester Carter, -- one or the other, to come over to me, and that Gladwell didn't first go to me while I was in that car, and that in the presence of Carter, I said to Gladwell that "We are in trouble -- you see I tried to run away at Paint Rock, but couldn't get away on account of the clothes, and I don't went to get in trouble about this train, " or words to that effect, -- "I want you to pose as my brother." I did not say to him, "I want you to tell the authorities you are my brother." I did not tell the authorities, the sheriff. --Sheriff Eaun, he was my brother. Two or three days after I was first locked up, the sheriff of Jackson County did not confront me in the jail with this boy, Odell Gladwell, and say to me "Why did you lie to me; why did you tell me this man was your brother?" He did not have any such talk with me; I stayed in the hospital room. I didn't stay in the jail,

The white men that were on that train with me didn't sleep inside an iron cage, locked in there, and I and Raby Bates did not sleep in what they call the run around, which is the open space between the cell and the wall, and I did not stay to I had beige there several days while I was in Scottsbore, and sleep there. I stayed in the hospital room. I slept on a bed. Not on the floor in the run around on a mattress in the run ol ! .odaff! ground. I washed clothes in the run around. I asked to door that. Q And you cooked there? A Cooked? Merter Carte THE COURT: What is the use of that? What is your point? Min, or our

> MR. WATTS: I want to show the close association between her and Gladwell and Gilley and Carter there in jail.

> > THE COURT: That they were in jail there together?

MR. MATTS: Not only in jail together, but traveled together.

THE COURT: "hat has washing got to do with it?

MR. WATTS: Not only that --

THE COURT: Well, I will object to that and sustain the objection.

MR. WATTS: Yes, sir, Well, we will except.

After I had been carried from the jail the first time over to the Doctor's office. I don't remember whether I was crying when I was in the Doctor's office.

I have told the story of this rape once before the grand jury in Jackson County. I testified more than once before a jury in Scottshore. I testified before Judge Horton once. Then I testified two times before Judge Callahan.

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### REDIRECT EXAMINATION

There was some chat or fine rock; It run from about like your little finger, I guess, to very small, and then there was some a little larger. About the size of the end of my little finger.

## RECROSS EXAMINATION

I did not do the talking in the Doctor's office, nor did Ruby Bates do the talking. The Doctor done the talking.

OBIE GOLDEN, being called as a witness, and being first duly sworn, testified as follows:

## DIRECT EXAMINATION (By Mr. Bailey)

I was night guard at Kilby Prison in '34, in November; somewhere between the 20th and the 25th. We get done about eight o'clock looking up the big cell. I go down and look up the detention cell. That is down below the big cell. Then I go back to the big cell and look up there. That was about eight fifteen. The defendant was in the condemned cells. Now, when I came down to look up, he told me he wanted to talk to the warden.

MR. WATTS: We object to what this defendant said at that time.

THE COURT: Why?

MR. WATTS: We object, illegal, irrelevant, incompetent and immaterial; the proper predicate has not been laid.

THE COURT: I guess I had better find out about that.

MR. WATTS: He hasn't shown what was said ---

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once. Then

MR. WATTS: Well, we want to reserve an exception.

THE COURT: Well, if you have got anything in your

mind that has failed in being done legally, I think I am

entitled to know what it is, and I will see it is done.

MR. KHIGHT: I understood the court to offer them

MR. WATTS: We object on the ground it is illegal, irrelevant, incompetent and immaterial testimony.

THE COURT: You know the Supreme Court has said that don't mean a thing.

MR. WATTS: Well, we will reserve an exception.

THE COURT: You can. Go shead. Your objection is overfuled.

MR. WATTS: He except.

Q Go shead, Mr. Golden.

A Well. --

THE COURT: You have gotten to where he said he wanted to see the Warden.

THE WITHESS: Yes, sir.

THE COURT: Bow.go on.

THE WITHESS: I told him he would have to wait until morning to see the warden, he wouldn't be back unti, around six o'clock or six-thirty.

MR. WATTS: We object; illegal, irrelevant, incompetent and immaterial.

THE COURT: The objection will be overruled. The record will show I maked you what is the trouble.

MR. WATTS: Well, whether he wanted to see the warden has nothing to do with the issues in this lawsuit.

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THE COURT: If that is your view of it, I will overrule the objection.

MR. WATTS: We except.

MR. KNIGHT: Go ahead.

THE WITHESS: I said it would be six e clock or six-thirty before he could see the warden.

Then I started to go away and Haywood called me back.

He says, "Gaptain Golden, come here. I want to tell you

something." He says, "I am guilty of that crime," and says,

"Also Clarence Morris, and also those other seven up there
in Birmingham Jail," He says, "What could you de for me?"

I told him I couldn't do nothing. He says, "Well --" no,
at that time Morris heard him, and Morris told him it was
a lie, he wasn't guilty, and Haywood told him yes, he was,
and he was guilty, and also Clarence Morris, and also the
other seven. I asked him was that all he wanted with me,
and he said yes. I told him I couldn't do him no good.

Q (By Mr. Lawson): For the purpose of refreshing your
recollection, didn't he tell you he was guilty of messing
with them girls?

MR. WATTS: We object to that.

A Yes, that comes back. He told me he was guilty of messing with those girls, and Clarence Norris was, and all the rest of the seven.

MR. WATTS: We move to exclude that statement.

THE COURT: Well, the same about Clarence Morris and the other weven, -- that is not evidence.

Did you have him in there on more than one charge?
THE WITNESS: No. sir.

THE COURT: Anything else?

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THE COURT: What was he in there for?

THE WITHESS: On the Sectioner cases for --

THE COURT: All right.

MR. WATTS: Now, we move to exclude the statement of the witness as to what this defendant said at that time.

THE COURT: Your motion is overruled.

MR. WATTS: Be except.

CROSS EXAMINATION (By Mr. Leibowits)

Mr. Golden, I am going to ask you a few questions. You thought that was an important statement, didn't you?

A I don't get what you are talking about.

Well, now, let's make it plainer. Here was a man in the death house, awaiting to be electrocuted. That was true. waan't it?

A Well, that is what he was waiting for at that time. 4 He was in the condemned cells; that is where the people

that are to be executed are put, a separate part of the pri son?

A Yes, sir.

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I knew this defendant was in there on the Scottosborp case. I had followed the case, after a fashion, in the papers. I didn't know this defendant was first tried in Scottsbore back in 1981. I didn't know trials were had in Scottsbore. All I know about the case was after they came down there, and I went to work at the Kilby prison. They told me they were the Scottabore negroes. At this time he was sitting there to see what the Supreme Court done with Clarence, I think. I dien't know that the case had been

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transferred from Jackson County to Morgan County, to this court room, and that he had been tried here before Judge Horton. Well, I couldn't say positively whether I had heard it or not. I had not heard he had been tried before Judge Horton and found guidty, and the verdiet had been set aside by the Judge that tried the case. I can't remember whether I had read about it or not. I didn't know he had been retried before Judge Callahan in the fall of 1933. I knew he had been tried several times. I didn't know what Judge. My understanding was Norris was waiting there to see what the Supreme Court done with him. I heard there was an appeal pending for Norris. I didn't hear Haywood's name mentioned much. The time never was set for Haywood to go to the electric chair; that I remember. My understanding was he was waiting to see what the Governor done. -- Haywood. The warden at that time, in November of 1934 was living at the hotel three hundred yards away. There was a telephone in the warden's house. I had paper and pencil. Patterson had writing paper and a pencil right in the cell where he was in. I didn't offer this man any inducement to make a confession. I didn't promise him anything. I didn't threaten him in any way. I was not interested in getting a confession. If he had asked me to carry one out there, I would have carried it out if he had wrote it. I wasn't particular whether he made one or not. I would not deem it important to communicate it to the attorney general, but I would report it to the warden. All I did was tell the warden what passed between me and Haywood. Anything that happens in the condemned cells, he wants to know it. I did not have in mind that in the course of events, the information would

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have been there in that death house, this is the first time this man made a confession to me. I did not ask him to take a piece of paper and pencil and write it down. I did not think of it. I did not call up the warden and ask him to come over so that he could hear the statement. I did not know at that time the attorney general was looking for just such statement.

went off duty. I did not communicate with him at all. I did not call him over the telephone. I did not speak to the attorney general in this case, who is now the lieutenant governor. I didn't know Mr. Knight until he called me up. Mr. Draper called up this Saturday and told me Mr. Knight had subposensed me up here to court. There are no records in the jail to fill out about occurrences like this. I never made any entry in a book in the prison this defendant made a confession to me. I signed no statement or paper in November of 1934 about this occurrence. There was nobody there when the statement was made but me and the defendant.

The warden got there the next morning, around six o'clock. I was coming off duty as he come in. So went back there, but there wasn't no questioning. He asked Haywood what did he want with him. Haywood ain't told him nothing yet. He made no reply. Haywood made no confession to the warden in my presence.

LUTHER MORRIS, being called as a witness and being duly sworn, testified as follows:

#### DIRECT EXAMINATION (By Mr. Beiley)

On March 26, 1931, I lived in Jackson County, a mile and a half from Stevenson, Alabama, between Stevenson and Paint Rock, Alabama, over near the track of the Southern Railway that runs through Jackson County, Alabama. I have a house on each side of the railroad track. I have one, I will say, in about fifty feet, and the other one something like two or three hundred yards. On this day, March 25, 1931, about one o'clock I saw a freight train go by there traveling west. I was up in the barn loft, about fifty feet from the track. That loft was twelve feet hight. I saw eight negroes. I believe six or seven ears back from the engine - on a gondola. Two white women were also in there. I saw six white boys thrown off by the negroes in less than four hundred yards. They took hold of them and were beating them over the head with something, looked to me like to be a gun. I observed that train, three quarters of a mile from my position in the barn. After these white boys got off this car, they were calling for a telephone. They was excited, very bad excited. I seen two with blood, up here on their forehead (indicating). They went towards Stevenson. The white women on that car were in the same car with the negroes. They were souffling with the negroes. I saw negroes with their hands on the white girls.

CROSS EXAMINATION (By Mr. Watts)

The train was running between twenty-five and maybe thirty-five miles an hour; maybe not so fast. The people

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I saw were on the sixth or seventh our back from the engine. I am not exactly certain about that. The barn is elevated. the loft is about twelve feet high. That would put it up a little bit higher than the road bed. That is my judgment of it. The darkies were souffling with the white boys. The omen were souffling too, trying to get out. I looked at the train as it passed; I had plenty of time to view the train. I had time to count eight people there. And tell how many were darkies. I will not say positively how the women were dressed, but I think they were dressed in overalls. the best I remember. The last time I saw them they were trying to get out of the car. They were standing up. Well. this car was loaded, partly loaded, and you could see about half of the body. They had on hats or caps or something, but I don't exactly know they had on hats. I don't remember that, whether either one of the women had on a lady's coat.

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of these white boys. I seen six put off. I think there might have been seven on that car. The train didn't stop a minute. They was putting them off as fast as they could; some times put two off at one time. The first one was put off about a hundred yards west from my barn. The next one about two hundred yards; that was the last one. There were six put off.

W. H. HILL, being called as a witness, on behalf of the State, and having been first duly sworn, testified as follows:

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DIRECT EXAMINATION (By Mr. Bailey)

In March, 1931, I was the depot agent for the Southern Railroad at Paint Rock, Alabama. I recall the time that a freight train stopped there and some negroes were taken off it. It was in the afternoon, about one or two o'clock, between one end two, I would say. I was at the station when the train came up. I saw negroes on a car, an open car, what we call the chat car, but what most people call an open cars what is sometimes called a gendela, but it is really not a gondela. I couldn't say positive; there were seven negroes. When they passed the depot, most of them were around the edges of the car attempting to grawl off or get off. The our they were in passed the depot before it stopped. The train was going west, towards Memphis. The railroad track over all the extent from Stevenson, Alabama, to Paint Rock, Alabama, is all in Jackson County. Alabama. It is a distance of thirty-eight miles.

I saw two white women there about that train about
the time it stopped. They were standing on the ground at
the end of the car. That was the same car that I saw these
negsmes in after the train stopped. They were dressed in
overalls. One of them apparently had fainted. The other
had her arm around her supporting her. They went over to
a shade tree in front of a house. I would know those women
if I were to see them now. Victoria Price, that has been in
the witness room where I havebeen, was one of them. I learned
afterwards the other was Ruby Bates. Indidn't know at that
time. Victoria Price was the one that apparently had
fainted. There were quite a crowd around there. They were

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marched them up town to a store building. Hime of them.

Haywood Patterson, this defendant, looks to be one of the

nine. I didn't know any of them. I couldn't say whether he
was one on the ground or one that was getting off. In fact,

I didn't have a good look at them until they got them uptown.

CROSS EXAMINATION (By Mr. Leibowits)

I wasn't at Scottsboro. My first testimony was given before Judge Horton. And the next time I appeared was before Judge Callahan. That was in Patterson's third trial, his second trial here. Then I appeared in the case of Norris before Judge Callahan.

(showing a picture) This is a view that shows the railroad track coming towards Paint Rock before it reaches the curve. The rails are running from east to west, that is coming east, going west.

(The said picture was thereupon marked and received as Defendant's Exhibit Number 1).

After the train comes around a bend there she starts to pull in towards the station (showing another picture). This is an accurate picture of what you get as of that day. (The said picture was thereupon marked and received as Defendant's Exhibit Number 2).

As you get closer to the station, this (another pisture) is a fair and accurate representation of what you see, as of that date. (The said picture was thereupon marked and received as Defendant's Exhibit Bumber 3.) This (a fourth picture) is an accurate view of what you get showing a portion of the platform and of the railroad station, coal

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chute, the water tank. (The said picture was thereupon marked and received as Defendant's Exhibit Humber 4.)

This (a fifth picture) is fair and correct view you get of a good part of the station when you stand looking towards Stevenson. This is standing at the west end of the depot looking east. (The said picture was thereupon marked and received as Defendant's Exhibit Sumber 5). A mark on this photograph (Exhibit 4) with initials marked H.H. is the spot where I saw these two women. That is about half way in between the station and the coal chute, about opposite the water tank. The trains get water down at the coal chute by means of a stand pipe; not at the water tank. The engine pulls over to the coal chute. The coal chute is on the right hand side of the engine, going west towards Funtsville. The water tank is on the left hand side looking towards Huntstille. The coal chute is about four or five hundred feet from the station. We measured that accurately and sent it down here the last trial. That train took coal and water on this occasion. The water tank is about two hundred feet from the coal chute. These women, when I first saw them, were about two hundred feet from the coal chute. but on the water tank side. These freight cars are about thirty-six feet long, with some distance between them where the coupling is. I saw these negroes, and I saw the women on the ground near a gondola car, which was about the sixth or seventh ear from the engine. I didn't see them near any car fifteen cars from the engine at any time. I saw them six or eight cars from the engine. That would be about two hundred feet. I at no time saw these women way back here about the fourteenth or fifteenth car from the engine. I didn't

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a odf , ofinds to gee them back there. I just saw them at one place. them after they carried them up town, too, from there. I did not notice a string of gondelas, some six or seven or con a to see a cight of them hooked up together on that train. I don't wast shamed a recollect that there were that many. There were three or minoof joues of four at least. I didn't see the women come off any car. howisess and I gouldn't say I did. I saw several get off the car as I was walking down there, but I couldn't say whether they were I stady Journal the women or the negroes. They all had on overalls. When recognised they were women they were on the ground. The train pulled by me; the engine pulled by me and it stopped about to stands the coal chute, and then I left the station and started to move towards the engine. At no time did either of these emen or both of them pass me. I did not see any women some rom any part of the rear of the train and pass by me to get ver to the place about two hundred feet east of the coal bute.

# REDIRECT EXAMINATION (By Mr. Enight)

It is possible that the distance between the water and and the coal chute is three hundred and one feet.

# RECROSS EXAMINATION (By Mr. Leibowits)

At no time -- assuming three hundred and one feet is harrows and me correct distance between the water tank and the coal me discres to the at no time were these women further away from the water no mostlil men than three hundred and one feet.

TOM TAYLOR ROUSSEAU, being called as a witness, and being duly sworn, testified as follows:

DIRECT EXAMINATION (By Mr. Bailey).

I was living at Paint Rock in March, 1931 and was down at the depot there at Paint Rock, Alabama, on March 25, 1931, when a freight train stopped there. I saw negroes on that freight train ar about is as it pulled into Paint Rock. Well, I was right on the north side of the depot. The train runs east and west, but coming right through town the tracks run directly north and south. I was on the north side of the depot on the end going towards the coal chute, when I first saw the train coming. The engine stopped right around the coal chute. These negroes. they were coming out of a gondola car the first time I saw them. I wouldn't know how many there were then. They were all crawling up on another car going towards the engine. I did not see any negroes about that train at that time other than around the gondola car. I saw this defendant, Haywood Patterson, there. They were all coming out of the car when I first saw them. Haywood Patterson with them. Well, some of them came up a little further towards the engine out on top of the box cars. I think there were about three or four, of my knowledge. I helped to take or catche On the side of the train next to the depot. I did not see any when there about that train not then. After we brought the negroes backmap town and lined them up against the wall. The first time I saw these girls there were two of them, and two fellows toting one of them up in a chair; That was Victoria Price. The other one was

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Ruby Bates. They were coming around the depot platform when I first saw them. The one in a chair, there were two fellows toting her, and she had her head laying on her shoulder with her eyes dlosed. She never did say anything to me. Ruby Bates was walking along by the side of them. They turned down the street and went down in front of the doctor's office and stopped. That is the last time I seen them.

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# CROSS EXAMINATION (By Mr. Watts)

I didn't drive these women to Scottsboro. I think it was a fellow by the name of Bush, and the Arnold boy. I took three men off the train; back from the engine a little piece. I was between the water tank and the coal chute somewhere. I never paid very much attention to that. When I first saw the darkies, none of them had gotten on the ground. Bot when I first saw them. They were scattered up on the train there. Yes, they were between the engine and the gondola car. The ones I took off were on top running towards the engine. On the box car. The minute the train stopped they come off and I told them to stick them up.

## (Witness Excused)

MR. WATTS: May we, out of order, put on the train conductor to establish the makeup?

THE COURT: I will let you identify it if you can. All see it does is take up a lot of time. I will let you identify your train.

R. S. TURNER, a witness for the defendant, being called, and being duly sworn, testified as follows:

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DIRECT EXAMINATION (By Mr. Leibowits)

D. C. Markette, Thinks Alleria.

I was the freight train conductor on the day this trouble happened. I had been a freight train conductor before that about thirty-two years, with the Southern Railroad. That is the way the train stood, just like it is there.

(Indicating the train in front of the jury). Rirst an engine. Then a tender. Then two box cars. Then a coal car. Then four box cars. Then eight gondolas. Then snother box car and some other cars behind that. Those eight gondolas were hooked up with one another. These freight train cars were forty or fifty feet long. It is one of them hig engines. I don't know how long they are. I suppose they are something like one hundred feet, something like that; maybe more. That includes the tender.

l. Is it fair to say, Mr. Turner, as the conductor you have been for about forty years, -- is it fair to say that the average length of those cars you see as represented by these little things before the jury, was approximately forty-five feet; is that fair to say?

MR. KNIGHT: We object to what is fair.

THE COURT: Well, --

- Q. Is that about --
- The cars run from about forty to fifty feet.

THE COURT: That strikes me as enough on that. We are magnifying, it looks to me like, things that are not very important.

MR. WATTS: If the court please, we except to that statement of the court.

THE COURT: Very well, but show me the importance.

MR. LEIBOWITZ: May I show the importance?

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T'E COURT: Yes, sir.

MR. LEIBOWITS: Victoria Price testified she was in the last in this series of gondolas.

THE COURT: Yes, sir.

MR. IEIBOWITZ: That is fifteen care from the engine?

THE WITHESS: Yes, sit.

THE COURT: What is important about that.

has been produced here has placed her from within two hundred to three hundred feet of the coal chute. Furthermore, she testified she immediately dropped and fell at the car.

THE COURT: I understand all that.

MR. LEIBO ITZ: Well, I want to explain to you -How, I want to show that where she was first seen, where
she was found, according to the witness Hill, and according
to Mr. Rousseau, who has just left the stand, was over near
the coalt chute, which was hundreds of feet away from the

THE COURT: That contradicts her --

MR. LEIBOWITZ: That is the purpose.

THE COURT: You have attended to that matter a long while ago.

MR. LEIBOWITZ: The length of the cars show definitely here her story can't be true, or Mr. Hill's or Mr. Rousseau's story can't be true.

THE COURT: I still don't see the importance of it, but go shead.

MR. LEIBOWITZ: An exception.

THE COURT: I don't see the force of that.

MR. WATTS: We except to the statement of the court.

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THE COURT: What statement?

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MR. MATTS: You keep saying, if the court please, you don't see the importance of that testimony. For the record

THE COURT: I said I don't see other than it is contradictory, and under the evidence before us, you have accomplished that purpose.

MR. WATTS: Yes, sir; we except.

MR. KNIGHT: It is cumulative.

THE COURT: Go shead. How, you except to what?

MR. WATTS: To the statement of the court.

THE COURT: Go ahead.

MR. WATTS: About magnifying the importance of the train.

THE COURT: All right; go on.

On this train as it was going from Stevenson down to Paint Rock. I was on the caboose. No white boy come to me at the caboose and reported an attack on any women on that train. I didn't know there were any white boys on there.

As well as I remember, it was in the third or fourth car coming from the caboose towards the engine. I was on that car of lumber I was telling you about, got on there at Paint Rock, and went from that on to the other cars. Either in this gondelar car or the car shead, either the third or fourth from the rear end. I picked up the snuff box and opened it, and it was empty, and dropped it down.

CROSS EXAMINATION (By Mr. Knight)

I take my train to run from Stevenson to Paint Rock.

Anywhere from an hour to an hour and twenty-five or thirty

or forty minutes, something like that. I reckon it was

making its usual speed that day. I saw two girls over there under the tree when the officers met me. One of them, I believe, was lying down.

REDIRECT EXAMINATION (By Mr. Leibowits)

There are several roads across this railroad track as it goes from Stevenson to Paint Rock. I think it was a clear day. Fackler was the name of the first station I came to after I left Stevenson.

Roscoe Allen was with me in the caboose. There was a negro fireman on that train by the name of Percy Ricks. I have seen him here in the court room. This first station has some stores on one side and a depot on the other, and as well as I remember, some dwelling houses on this side. Hollywood is the next station. I didn't pay any attention to anybody there. All we did was to look out for the board to see if there was a red board. There were houses around that station, and stores. There are houses all along the read; a few houses on either side of the read all the way down. Spottabore is the next station on the other side of Hollywood. We passed by many houses going to Scottsboro. Then Larkinsville; there are stores and houses there. After that we pass Lim Rock. Storehouse and a depot and a few houses southered around there. Then Woodville. There are stores and houses there. And beyond Woodville is Paint Rook. I was looking out of my window there as I went down

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THE COURT: Well, he is asking about this trip, not what happened some other time. Have you got any recollection at this time about seeing anybody?

- people at some of the stations as you passed along the road?

  A. Yes, see people as we pass down the road, along the station, at the doors, see them standing around, maybe.
- tevenson down to Paint Rock, did you pass along some highways that rose above the level of the track so that people on those highways were in a position to look down into the interior of the gondoler cars?
- A. Yes, there are highways that go over some of those hills you could look down into the cars.

RECROSS EXAMINATION (By Mr. Enight)

I saw the girls sitting under a tree not far from the train. As well as I remember one was sitting down, and the other had her head in this girl's lap.

REDIRECT EXAMINATION (By Mr. Leibowits)

I was on the opposite side of the train from them.

I don't know what her real condition was.

MR. LEIBOWITZ: That is all.

THE COURT: Anything further?

MR. LEIBOWITZ: That is all.

THE COURT: Through with this witness?

MR. ENIGHT: You, sire a market I man about the

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MR. LEIBOWITS: May I ask just one more question?

THE COURT: Well, all right. When you get through with that one then there will be another. It will be some time before you are through.

MR. MATTS: We except to that statement on the part of the court.

THE COURT: Oh, Mr. Watts: Mr. Watts.

MR. WATTS: "When you get through with that question there will be enother."

THE COURT: Yes, sir, and I mean it.

MR. MATTS: And we except to that statement.

THE COURT: Very well. Go on with the witness.

MR. LEIBOWITZ: I just have one question.

THE COURT: Well, ask it.

Q. If required, could you produce official records of the outhern Railroad to show the train was made up exactly as you testified, here?

MR. BALLEY: We object to that.

THE COURT: Objection sustained.

MR. LEIBOWITZ: We except.

IRE ADAMS, being called as a witness on behalf of the state, and having been first duly sworm, testified as follows:

DIRECT EXAMINATION (By Mr. Balley)

On March 26, 1931, I was down near the track of the Southern Railroad between Stevenson and Paint Rock. About a mile and a half on this side of Stevenson I saw a freight train pass along there while I was there. It was somewhere

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along about ten or eleven e'clock, I guess. I was standing down in the road, hauling cross ties. My wagon was standing in the road, and I was sitting on the cross ties in my wagom. I was about half a quarter from the track when the train passed. I could see the train, I guess, about five or six hundred yards from the time it come in sight until it went out; five or six hundred yards each way. As the train passed, I saw some people on a box car, and there was some more in a gondolas car. They was a whole bunch in the car -- in the car. I couldn't tell just whether they were white folks or negroes. I saw some folks climb up over on top of the box car. They were climbing down from up on top of the box car, down the end of the box car, up over into the gondolarear, and walked back about half way of the car in the gondels car. When they got in the gondels I could see them from about their waist up. There was -- well, there was eight or nine or ten of them. Some of them were negroes. Yes, sir, they were negroes. After they got in there I saw a man strike this way (indicating) with one standing on this side, -- left hand side, and he goes down and picks up this way (indicating) and out over the top he threw. I saw them again strike down in the car, and out and throw it off again. It looked to me like a person; he throwed it off on the opposite side of the train from me. They threw two off over the top of the car. I was doming towards the railroad from down in the field, and I came up to where the railroad made its turn, and some down the dirt road to the railroad to the crossing, and there I saw two white men coming up the road -up the railroad and the blood was running down their faces, and he had his handkershief in his right hand wiping his face that way (indicating), and he took up his handkerchief that way (indicating), and squeezed the handkerchief that way.

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(indicating). They were going back towards Stevenson. I did not see any more white men or boys there other than those two. I did not see any women on the train.

### (Witness Excused)

Thereupon followed a recess, and during the recess
the court, the counsel in the case, and the reporter repaired
to the Judge's chambers, where certain proceedings were had,
and after the recess, in open court, with the jury in the
box, the following occurred:

THE COURT: All right.

MR. WATTS: Now, if the court please, at this time, on behalf of this defendant, we wish to move for a mistrial in this case for the matters that have already been stated to the court, to which exception has been taken. We respectfully move the court for a mistrial.

THE COURT: You mean what has transpired in the court room?

MR. WATTS: Yes, sir, the attitude of the court and the irritability of the court as manifested on the bench, and materially and substantially affecting our ability to proceed here with the trial.

THE COURT: Well, I must confess, Mr. Watts, that I can't see anything that I have done wrong. If you will point out anything I have done that is wrong, why, I will rectify it. I think I am entitled to that much consideration, to ascertain from you what it is that you think I have done wrong. Certainly, if I have, I will correct it.

MR. WATTS: If the court please, we have stated definitely. --

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THE COURT: "ell, I can't pass on matters like that.

MR. WATTS: You mean, your Honor --

THE COURT: Not in that way.

MR. WATTS: You mean Your Honor wants me to state it here?

THE COURT: Yes, sir, if you have anything you desire to state.

MR. WATTS: You would like for me to state what I have already stated?

THE COURT: Whatever you have stated, I would like to hear it.

MR. WATTS: We feel, if the court please, the irritability manifested by the court --

THE COURT: The what?

MR. WATTS: The irritability, the comments of the court in the presence of the jury in tending to minimise the evidence effered by the defense, whether calculated to do that or not -

THE COURT: Nothing particular? Certainly, if I have been irritable, I didnt know it.

MR. WATTS: The record throughout the trial has shown the comments of the court, is what we have reference to: the stemographic report --

THE COURT: If you will point out what it is, -- if I have said something wrong, I will be glad to take it back.

MR. WATTS: It would be very difficult for counsel to so through the stenographic record and call up all these things.

THE COURT: It would be very difficult for me to and any change, make any spology. I am not above apologising.

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If I have made a mistake, I will be glad to correct it. I am certainly entitled to an opportunity to knowwhat it is.

That I am irritable and you couldn't get a fair trial?

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SURE,

MR. WATTS: Lack of patience, --

THE COURT: Leek of patience?

MR. WATTS: -- Irritability, --

THE COURT: Irritability?

MR. WATTS: -- comments, --

THE COURT: What comments?

MR. WATTS: Comments about counsel.

THE COURT: Comments about counsel?

MR. WATTS: Yes, sir.

THE COURT: What comments?

MR. WATTS: You have spokenseveral times indicating you thought counsel were trifling and wasting time.

THE COURT: If I did, I didn't know it. I don't know what instance it was. All I did I can recall was when I said I didn't see the importance of a question you asked a certain witness here.

MR. WATTS: Your Honor. --

THE COURT: I didn't because, as I saw it, which you seemed to concede, your purpose was to contradict what the witness Victoria Price had said, and if the evidence was to be believed, you had contradicted her enough.

MR. WATTS: Your Honor, --

THE COURT: I didn't see anything to be gained by

MR. WATTS: Well, the train as evidence --

THE COURT: Until Mr. Leibowitz stated his purpose, and I said, "Go shead", and he abandoned that and went on

on some other question, and didn't follow it up at all.

MR. WATTS; Your Honor has gone so far as to state with reference to the train offered you didn't have any patience with that, and it didn't have no place, and no value, and we think it has a very material place, and a very material value.

THE COURT: Do you think that has hurt your case?

MR. WATTS: It certainly didn't help it, and probably hurt it.

THE COURT: All I said before that, it hadn't been identified --

MR. MATTS: The record shows the comments of the court.

THE COURT: Well, I am willing to stand on the record.

MR. WATTS: Well, we just reserve an exception --

THE COURT: What did you say?

MR. WATTS: We move for a mistrial.

THE COURT: Your motion is overruled.

MR. MATTS: We except.

THE COURT: Gentlemen of the jury, comments by the counsel and the court with reference to this matter have nothing to do with this came as far as you are concerned.

If I have made a mistake, why, another authority corrects me, and I don't want you to get any false impression of anything that is passing between the court and the counsel in the case. Your business is to hear the evidence end pass on the truth of this matter from the truth of the evidence, not from any conclusions you might draw or feel like you could draw from anything that counsel has said or the court

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has said. The counsel has a right to register his objection to enything he sees fit to do, whether he is right or wrong. He has that privilege, and this defendant's right must not be in any way jeopardised by you because he has made some remark or made some motion or made some objection that the court don't agree with counsel about. You can't draw any inference from that towards reaching any just conclusion as to the guilt or immosence of this defendant, and I want you to bear that in mind on any statement that I may have made to counsel, or remark to them about any objection that they have set out. That has nothing to do with the case so far as you are concerned, and should not and must not affect any verdict that you reach or any conclusion that you may draw. You weigh the evidence in the light of your oath, and you will have done your duty.

THE COURT: Go shead.

MR. HUTSON: Now, if the court please, I would like for the court to make one correction to the jury, if I om right about it. The Court remarked that Victoria Price had been contradicted. Now, we contend, if the court please, that she has not been, and it occurs to me that that is a question for the jury.

THE COURT: Probably I ought not to have said that, but I think I qualified it. I think I said their objection, as I gathered it, which they seemed to admit, was an effort to contradict Victoria Price as to where she was on that train, and that they had introduced evidence that I took it, if believed did that. I didn't say they had done that.

All right, gentlemen; go on-

TOM DOMBIES, being called as a witness, and being

DIRECT EXAMINATION (By Mr. Bailey)

In March, 1931, I lived down the Southern Railroad below Stevenson, about two miles. On the 25th of March in that year. I was down near the railroad track when a freight passed coming from Stevenson and going in the direction of Paint Rock. I was about one hundred and fifty feet away from the track. I was sitting on my porch. That train in sight of me as it passed, from a hundred and fifty to two hundred yards, both approaching and going. I seen some people on the train in a gondola. They were souffling and wrestling around. I thought it was brakemen trying to throw off hoboes. It looked like they were fighting and fussing around. I couldn't tell if they were white or colored. I never paid such attention. The train was running about twenty-five or thirty miles an hour. They were scuffling; looked like they were trying to throw them off. I live west along the railroad from Mr. Morris about three quarters of a mile. Towards Paint Rock. It was between twelve and one e'clock, I reckon; right about one o'clock when it passed.

CROSS EXAMINATION (By Mr. Leibowits)

This train that come by me had already passed Mr.

Morris' place. And at that time I still saw the souffling
in the train. I couldn't tell you how many were there.

Pretty good bunch. I didn't see none of them put off. I

couldn't tell whether they were women or men; all up to-

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end. I saw one darky in a box our next the caboose. Standing at the door. This scuffling was up towards the front,
and this now was standing in a box our near the caboose.

MR. LETBOWITZ: That is all.

WEE. BRANHAM, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION (By Mr. Bailey)

I was at the railroad station at Paint Rock a day in March, 1981, when some folks were taken off a freight train there. Well, I was just right on the crossing beyond the depot about ten steps, I guess. Towards Scottsboro. It is between five and six hundred feet from the depot to the coal chute. There is a water tank there, between the coal chute and the depot. The engine then, on this occasion, passed on by the water tank and went on to the coal chute.

I saw somebody get off that train after it stopped. They was on the front part of the train after it stopped. They they from the engine, or about how many cars back from the engine, do you know?

- A. No. I don't know how many cars they were.
- What is your best judgment or recollection about that.

MR. LHIBOWITZ: He says he don't know. Ichject to that. He says he doesn't know.

THE COURT: Objection is overruled.

MR. LEIBOWITZ: Exception.

Q. Have you any judgment or recollection about how many care

hack of the engine these folks were getting off?

A. Well, the best of my judgment, it was something like four or five cars.

It looked to me as coal cars or something like that. It wasn't box cars. It was colored folks getting off that car. I wouldn't say but two on my side. They were just rustling around over the top of this coal car when I first Well. I saw two of them hit the ground, but the others were on the other side from me. No. I didn't go on the other side. I went on downthe train to where I saw these two getting off. I did not see any women there when I got up to where these two were getting off. I saw one woman back down between the cars as I was going by. I don't know who that was. I don't know whether I have seen her since or not. I know Victoria Price. I have seen her here today. I couldn't say whether it was her or not. her or the other woman. After we got the colored folks sort of rounded up I saw two. There was one of them sitting about opposite of the water tank, and the other was being toted up in town some way in a chair or something. She didn't have her eyes closed, I don't think. It looked like she wore a calico waist or something like that on. I never saw her up. I couldn't say how she was dressed. I never saw her or the other woman any more. I guess the distance between the tank and the coal chute is three hundred and fifty feet, something like that. I wouldn't say positively. I did know, but I have just lost my measurements and forget about that. The distance from the water tank to the depot is between six and seven hundred feet.

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CROSS EXMAINATION (By Mr. Leibowits)

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This one woman that I have described as sinking down was about the fourth car from the engine. It couldn't have been the fifteenth car, back. That would be beyond the depot. I don't know what the number of the car box was that stopped next to the station. I stood on the station. There would be something like fifteen cars I guess between the station and the coal chute and the tank. I didn't see any woman in no car. I said she had on a calico waist. Calico waist, or some gingham or something. I couldn't say. She had on a dress. She wasn't up on her feet. I couldn't see only just from here up. (Indicating). There were several white boys there. There was one that came off the train that didn't belong there. I don't think there were two. They didn't go to Scottsboro with us with the darkies.

I never noticed but one.

THE COURT: Next witness.

MR. HUTSON: If the court please, the State desires to rest with the permission of the court to show those seasurements in the morning.

THE COURT: That is at Paint Rock?

MR. HUTSON: The measurements from the -- we understood we had a witness here that measured the distance from that coal chute, which was eight hundred and four feet, and Your Honor can see the importance of that testimony, and we want to have that measured tonight and put a witness on in the morning to prove those measurements, and with that permission, we rest.

TRERSUPOR THE STATE RESTED.

#### DEFENDANT'S EVIDENCE

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THE COURT: First witness for the defense.

MR. WATTS: If the Court please, it is now five o'clock, and I believe we would savetime if you would give us an adjournment now and let us talk to our witnesses and be ready to go shead in the morning.

THE COURT: I am sorry I can's do that. It would be impossible for us to try that other case during the week if se stop now. I will give you some time to talk to your witnesses and confer, but I can't adjourn until in the sorning.

MR. WATTS: I would like to have Mr. Leibowits called, please, outside.

(Thereupon Mr. Leibowitz returned to the court room).

MR. LEIBOWITZ: If the counsel for the state are here, we are ready to proceed.

> THE COURT: Tell the attorneys to comezin. (Thereupon the counsel for the State returned to the court room).

PERCY RICKS (c), called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION (By Mr. Leibowits)

I was the firemen on this train, on March 25, 1981. and award of fine I testified in the trial before Judge Horton. I also testievery of sminted fied in the two trials before Judge Callahan. When I left Stevenson I was on the engine. I begun firing on the railond October 29, 1920. When this train reached Paint Rock

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shere it stopped I got up to take water up on top of the tender. It hadn't stopped at the coal chute when I got on top. It did finally stop. At this point I have to pull a lover down, to get the water. Pull this lever down in order to open the velve in order to get the water, and we ere usually up there by the time the train stops so there is no time lost in getting water. I was facing the caboose. I saw some people back apparently about the middle of the train. There were about sthirty-six or thirty-eight cars, .- something like that; I don't remember exactly. I saw some women at Stevenson. At Paint Rock I saw them when they got off on the side right next to the -- where that tank is. They got off on this side and ran down -- started down towards the engine. One come almost running this way, and tried to come around the engine -- She got off about this car along here. (Indicating the third car). The third or fourth our from the tender. I souldn't say for sure, but just looking at it -- of course, a box our is larger, -- it wasn't so very far; four or five cars, something like that. They got off a chat car or coal cer, and started to come up towards the engine, and were surrounded. The car they came out of wasn't the first chat car. It was near the first chat car. They got off on the side nearest the station. They got off somewhere along this string of chat cars. They started down towards the engine. running , took a little trot. They got not more than a par length and a half. They were surrounded by men. Some men were taken off along about the first chat car up that way. I know the one in the front was trotting, and if I am not E staken they were, both of them. One right behind the

ther. They were both together. One had on overalls and the other a dress.

CROSS EXAMINATION (By Mr. Enight)

When I got up on the tender to take on water, I had been up on the tender just a minute or two before the engine stopped. I saw men coming from behind buildings and out from behind piles of cross ties. They had guns. They did not start at once taking these hegre boys off the train. the train hadn't stopped. When I saw them coming the train hadn't stopped. When the train did stop they started taking them off the train. Well. I saw some -- some were taken out of box oars way back, and I saw one that was taken off up mear that -- looked, from the arrangement of that, near that ohat car there. (MR. LEIBOWITZ: He means that red car). Now a gondola car is a chat car. I saw the girls get off a chat car back a pretty good piece there. Well. comething about right where you are standing there. I would think. (Indicating the fourth chat car back behind the first box car.) The car I saw the first negro taken off I think was the cer right shead of the -- about two or three ters from the engine there. My positionwas right here en the tender. I was looking down the train. I did not see thy colored persons coming out of any car that were loaded with chat. I didn't see anybody some out of any of those cars, but I did see a man on a chat car, and I don't know thether he was a white man or a colored man. I saw a man at Stevens Gap, throw at some birds or something as we come out this side of Stevens Cap in a chat car. I don't know whether he was colored or white. It could have been a woman

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with man's clothes on, but I never paid that much attention. I remember seeing him throwing at something as we came through . the gap. I don't remember seeing any colored people scampering out of any of these cars back here you call that cars. I was looking on bothsides, trying to see what happened, and I didn't see it all. All the people I saw in connection with it got off the train was the men I saw coming aut of two different sets of box cars, and the girls they got off that chat car, and the men that come near the head of that train. Other than that I didn't see anybody else I can remember.

I saw one colored man scrambling over the top. They took him off. No. sir. I didn't see none come out of those ears down there.

#### (fitness exeused)

MR. WATTS: If the court please, we would like to ask for an adjournment for the day.

> THE COURT: I can't do it.

MR. WATTS: We commenced this morning --

THE COURT: I can't do it.

MR. MATTS: I would like for you to hear me.

THE COURT: All right.

MR. WATTS: We commenced this morning at eight thirty and worked until twelve o'clock without stopping. We had one hour for lunch. We have been nine and one-half hours continually in the trial of this case. Your Honor know it is very difficult to do justice to matters of this sort after that long a period, after that lapse of time in the court room. The tenseness of the situation and the atmosphere and all that sort of thing slows one down. We don't feel we can

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properly continue here working longer and do justice to our client. We wish to ask, after nine and one-half hours of work, a recess until temorrow morning.

THE COURT: I will have to go on a while longer.

MR. WATTS: We except.

that, -- nothing at all unusual to hold court beyond this hour. It is five minutes after five. I am not going to work until dark, but I must go on a little longer. I have got lots of work to do.

MR. MATTS: Commonplace labor don't work that long, if the Court please.

THE COURT: Well. --

MR. MATTS: They have learned they don't do well after that long a period of time.

THE COURT: I am very serry, but I can't agree with you.

MR. WATTS: We except. If the Court please, we have issued a subpoens for the court stenographer to identify these records, and issued a subpoens for one Walls to identify this map that has been excluded, and those witnesses will not be here until temorrow morning.

I wish to say, in connection with the map, we took the precaution to call Judge Mooney of Jackson County, and ask him whether or not Jackson County had a county surveyor. He told me they did not have a surveyor in 1981 and did not have a county surveyor at this time, and told me that Mr. Eyeter was the man that had these records and knew about the records and could identify the records and testify about the records, and, of course, acting upon that man's judgment, who has been Probabe Judge of Jackson County, I think, one or two terms, I

relied on that statement.

THE COURT: I am going to give you until the morning for that evidence.

MR. MATTS: Mr. Kingsberry is the other witness.

THE COURT: I will wait for Mr. Kingsberry.

MR. WATTS: And Mr. Harlin.

THE COURT: I will wait for Mr. Marlin.

MR. WATTS: We have nobody else here to introduce as a witness at this time.

THE COURT: Is that all the witnesses you have here? MR. WATTS: That is the only witness we have except the defendant.

THE COURT: Well, I don't see anything wrong with putting him on.

MR. WATTS: Well, if Your Monor please, counsel for the defendant do prefer not to put the witness on until his other evidence is in. That is a matter about which we have some judgment. We may not have the right judgment. That is our judgment about it. It is five -- I have got six minutes after five at this time.

THE COURT: Well, if you haven't got any witnesses, you haven't got any. But some of those things -- none of them, for that matter, is the fault of the court, and I might be permitted to suggest that I don't think you have shown due diligence as to some of it. I don't think you are in a position to ask for further time on some of it, but I in willing to give it to you, but I really don't see any good reason why you couldn't use the defendent.

MR. WATTS: Take the stand, Haywood.

HAYWOOD PATTERSON (C), the defendant herein, being called as a witness and being duly sworn, testified as follows:

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DIRECT EXAMINATION (By Mr. Leibowits)

This is the fourth time I have been on trial. I was arrested on March 25, 1931 and have been in prison ever since. I was eighteen when I was arrested.

Q. How long, all told, have you been in the death house? MR. KHIGHT: We object to that.

THE COURT: Objection sustained.

MR. LEIBOWITZ: We want to connect that up with the -- all right; exception.

I left Chattanooga on this freight train shout eleven o'clock or eleven-thirty. I boarded this train with three companions, --

THE COURT: If you desire, I will let you withdraw this witness and put Mr. Kingsberry on. He has just come into the court.

> MR. LVIBOWITZ: All right; step down. (Witness excused)

E. P. KINGSBERRY, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION (By Mr. Leibowits)

- 4. Mr. Kingsberry, have you got your notes here with you?
- A. No. Sir.
- . We can use this them. Mr. Eingsberry, I had you a typewritten manuscript. Will you look at it, please?

THE COURT: Gentlemen, let's see if we can't shorten it a little bit. Is it conceded Mr. Kingsberry took this testimony?

MR. KHIGHT: Yes, sir.

THE COURT: And he transcribed it correctly?

MR. KHIGHT: If Mr. Kingsberry identifies that.

MR. IEIBOWITZ: No: I want to prove that. I am not

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taking any concessions now from Mr. Knight. THE COURT: Just a minute. I am getting rid of pree 1 HP liminaries. I am qualifying -no horacida MR. IEIBOWITZ: I will qualify him. stror I . somin THECOURT: I am going to qualify him. Do you gentlemanof woll .0 1650 pen concede he took the testimony here before? 12. 61 MR. KNIGHT: Yes, sir. April 1997 THE COURT: And that is a transcript of the testimony? 27 . 1751 MR. KNIGHT: No. sir, not until after Mr. Kingsberry Fr IIn -- bdt identifies at. Mai I THE COURT: Go ahead. s'alogk or ol 4. I show you this menuscript, Mr. Kingsberry, and ask you companions, if that manuscript was prepared by you? recently elds . It was. That is that transcript? . It is a carbon copy of the testimony on the trial of the Pirt atti tate of Alabama against Haywood Patterson, tried in Decatur. tarting November 27, 1935, This carbon capy was made at 100 1.90 he same time that the original copy was made. Target "Target Made by the same striking of the keys, wasn't it? Yes. sir. de his Timbol MR. KHIGHT: He has identified it. A. Beautre MR. LEIBOWITZ: Well, I will prove that is -ern me cem me THE COURT: I didn't hear you, Mr. Enight. DEBUGG HORSE MR. KNIGHT: Your Honor, I wanted -- the only proposion I was insisting on Mr. Hingsberry taking the stand for id offeld a first to identify that. All I wanted him to do was to say just Tynosidas at he did say, that he did make that copy. 江北江 "出路 THE COURT: Do you admit that it was correctly tran-TOOD THE PROPERTY LHE WHELL MR. KHIGHT: Yes, eir. diam'r MR4, LRIE MR. LEIBOWITZ: He had the same copy I had on his desk.

THE COURT: I am not arguing that with you.

MR. LEIBOWITZ: He knew that was a correct opy before he required me to call Mr. Kingsberry.

THE COURT: Er. Leibowits; that is enough of that.
MR. LEIBOWITZ: I except.

Victoria Price was asked this question and made this snewer: "Question: Did that blood come out on your clothes? Answer: Yes, sir. Question: Did the doctor see that; did you show it to the doctor? Answer: I recken I did;" She was asked this question and she made this answer: "Question: That about your snuff box, did you lose that? Answer: I don't know whether I did or not. I never did look for it. Question: The last time you had it was in Chattanooga? Inswer: Yes, eir." She was asked these questions and made these answers, reading from page 60: "Question: Did you receive any other blows on the face outside the blow that Patterson hit you? Answer: Yes, sir. Question: You mean who else? Answer: From practically all of them. Question: There did they strike you? Answer: Had a knife on my throat. Question: I am asking you about places on your face. Answer: That is on my face. Question: Who struck you a blow on the face besides Patterson? Answer: Practially all of them." How, on page 85: QUestion: When you got to the jail did you find any blood on your back? Answer: A little bit." That was not a question that was asked on that trial. That was a question read from a previous record on page 64. The testimony before Judge Horton. I presume so. l am not sure.

(Thereupon at 5:25 P.M., January 21, 1936, a recess was taken until 8:30 A.M., January 22, 1936.)

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(Thereupon the jury retired from the court room.)

MR. WATTS: Now, if the court please, at this parjuncture, we wish to move for a mistrial in this

case on the ground that it was without our consent that the court brought around two other defendants charged under indictments in this case and draw a jury in the presence of the jury impaneled in this case to try this defendant. We think that act was highly prejudicial and materially affects the ability of counsel to interpose a defense on behalf of these defendants -- of this defendant. We wish to make that motion at this time.

progress of this case in the presence of the defendant and his counsel, that I desired to arraign - to set the trial for two of the other defendants in this case for week after next, I believe it was, or whatever time it was, -- the 27th, -- and to have the defendants up here. This defendant nor his counsel made any objection or suggested to the court the impropriety of such an act. One of the counsel for the defendant yesterday afternoon, after they were arraigned, wanted to know of me when the other cases would be tried.

MR. LEIBOWITZ: That was private.

THE COURT: I have been shown no law, and I never heard of any, and I think me one else ever heard of any that would justify that motion, and the motion for a mistrial is overruled.

MR. WATTS: Now, we wish to move again - we except
-- we wish to move again for a mistrial in this case because
the court did state in the presence of the jury in open
court that he desired to arraign --

THE COURT: That motion is overruled.

MR. WATES: We except, and as far as the statement --

THE COURT: You need not argue any further.

MR. WATTS: We except.

ment. I have ruled on it.

MR. WATTS: We except to the court shutting off our argument.

THE COURT: I had already ruled. I thought the rul-

MR. WATTS: Yes, sir. We except.

MR. HUTSON: Now, if the Court please, we want to put that other witness on.

THE COURT: Let the jury come back.

(Thereupon the jury returned to the court room and resumed seats in the jury box).

V. B. GILBERT, a witness on behalf of the State, being called, and being duly sworm, testified as follows:

DIRECT EXAMINATION (By Mr. Hutson)

I am connected with the State Highway Patrol; captain of that squad located in and around Decatur. I measured the distance from the depot at Paint Rock to the water tank. I measured from the wall next to the water tank to the center of the water tank. Three hundred and fifty-two feet. I measured from the wall to the center of the coal chute.

Hight hundred and seventy-four feet.

CROSS EXAMINATION (By Mr. Watts)

I made the measurements with a fifty foot tape. Mr. Rousseau carried one end, but I laid it on top of the rail, and I laid a rock, and he moved up to it. I measured from the wall of the station next to the water tank.

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MR. WATTS: Now, if the court please, at this time SWT . de l se have an affidavit of a physician of the sickness of · 101 Doctor Bridges and his inability to be here, and we will want 5 4 47 D MET to read -- we want to file this with the court. Does counsel · 7 (26) email I want to see it? . Carr W . 1792 MR. KNIGHT: No: that is all right. 。 「 // A G (2007年) 「 (2007年) MR. WATTS: We want to file it. D SHIP THE COURT: That is all right. Well, are you showing hito fold mal that with a view of reading the testimony of Doctor Bridges? W . 231 MR. KNIGHT: And the State will object. ME . COM THE COURT: Is that agreed to? esta u incla auq MR. KNIGHT! No. sir. it is not. THE SE MR. WATTS: Now, if the court please, it was understood that we could examine the doctors out of order, and when they could get here. .5 .7 THE COURT: Yes. , and in a naked

MR. WATTS: And we had no definite information as to whether this doctor could be here until last night. I thought you said you objected to that, did you?

MR. KNIGHT: I didn't object to you introducing the certificate that the doctor was ill, but I have not agreed to admit in evidence any of his former testimony.

MR. WATTS: That is what I understood. You object to Doctor Bridges' testimony being read?

MR. KNIGHT: Yes.

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MR. WATTS: You do?

MR. KHIGHT: Yes.

MR. WATTS: He is the doctor who exemined the women and has testified in these cases before.

MR. KNIGHT: That was not the purpose of my concession a blat I have a while ago, if the court please.

THE COURT: Gentlemen, I don't know enything about any Miles Will sgreement among yourselves. to an over to MR. KHIGHT: There wasn't any agreement except what Bootor Bridge took place before you. 100 -- DE 10位 (A) THE COURT: However, if they don't agree to it being I cam of finer read in evidence in the case, I don't think it would be legal. METE WITH 11.00 That is not the way to get his evidence here. ACT .FE MR. WATTS: Then, we will have to cak for an attach-MOD HEST ment for Doctor Bridges, and it may kill him, but we have got by a dilla Confil that men here on triel. MES. EM THE COURT: If you feel that way about it, that it 10.D 15 might kill him. I don't think the court would be justified N . 104 DA. AS in having him brought here. MR. WATTS: But this man is on trial for his life. b 3 mm bonte -best they could and in view of our agreement --THE COURT: There is no conflict about our agreement. 170 2.311 I have always allowed doctors to be examined out of order TA .AT b mids wodfady when you get them here. MR. KNIGHT: Might I ask the court this: I know it you said you a has been the policy of this court and other courts to allow 157 .324 a doctor tobe examined out of turn, but an examination isn 157 NTA 017 1800 one thing, and reading his testimony on a former trial is sabive al fine TAT ARE another where the other side is precluded from cross examinseablad worse ing him. For that reason we object to it. THE COURT: I toke it you are familiar with the law MON. YOU'S on that. If they insist on it, you couldn't read his testi-MEL DATE mony on another trial. I will give you the attachment if MR. KHLG MR. WATT you want it. i boltlines and MR. WATTS: We will ask for the attachment and we except to the exclusion of the reading of the testimony of MR. ENIG al .com ofies a Doctor Bridges under the showing for Doctor Bridges. THE COURT: You did what?

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MR. WATTS: I said we objected --

showing. I haven't held you wasn't entitled to a showing.

MR. WATTS: We said we excepted to the court's disallowing us to read, under the showing made here at this time, the testimony of Postor Bridges on the former trial of Patterson.

MR. KNIGHT: Might I ask defendant's counsel if you did not excuse Doctor Lynch yesterday, who was present?

THE COURT: That is not -- that is not -- I am not concerned with that.

MR. KNIGHT: I know you are not concerned, but I want to ask that.

THE COURT: I will give the defendant a showing for the witness Bridges if he desires, and also issue the attachement, 0- order it done. I don't know what else I can do.

MR. WATTS: If the court will give us a few minutes, I will prepare the showing.

MR. HUTSCH: If the court please, it puts us in a very bad box to be put on a showing at this time. We have either got to admit it or let the case be continued, as I see it. It looks like they ought to have submitted us the showing before they announced ready.

THE COURT: Well, they announced --

ER. HUTSON: We will agree --

THE COURT: -- that I agreed to examine Doctor Bridges out of order, and that being true, they didn't know he would not be here.

MR. HUTSON: What testimony is it you are trying to read?

THE COURT: I will say this to the State: If they

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write a showing that shows literally the transcript of his evidence that you say is correct, you will be required by the court to admit it.

MR. KNIGHT: We haven't said we wouldn't admit it.

THE COURT: I am just giving you warning.

MR. HUTSON: If that is the position of the court, why not just agree and let them read it.

THE COURT: That is with you.

MR. HUTSON: If the court can make us admit the show-

THE COURT: Of course I would where you have admitted the evidence is correct.

MR. HUTSON: Just require the court to let that be read them.

THE COURT: What did you say?

MR. HUTSON: Just require the court to let that be read. What is the use out the other if you are going to require us to do that?

THE COURT: Because they had a right to do it if they wanted to.

MR. KNIGHT: Your Honor. --

THE COURT: They are not confined to that. They can write out any kind of showing they want.

MR. WATTS: We don't want to write anything except what is right.

THE COURT: I am stating a principle of law.

MR. HUTSON: In that event the cross examination --

MR. WATTS: We will settle the thing by preparing our showing from the record.

MR. HUTSON: I don's see any necessity of that in view

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TUE .AE KCS VOTE AND THE of the position the court has taken. Let him read it and save all that time.

THE COURT: Well, --

MR. WATTS: It won't take long.

THE COURT: I don't see any necessity for it when the court has told you you can read that record to the jury. -- and unnecessary consumption of time.

MR. WATTS: This may simplify the matter.

MR. HUTSON: Yes, sir.

MR. WATTS: The only thing we want to offer from this doctor's testimony is the testimony of the doctor contradicting this woman as to her physical condition, the condition of her body, exterior damage that she testified to here yesterday.

MR. KNIGHT: Yes, sir, I understand that. I understand that was the purpose of introducing the testimony of Doctor Bridges.

MR. LEIBOWITZ: Yes.

MR. ENIGHT: Now, if the record is read, of course, read the cross examination as well as --

MR. WATTS: We will offer the showing.

MR. KNIGHT: Which will be a literal --

MATTS: We want to prepare a showing for the doctor.

THE COURT: Gentlemen, I don't see any reason for you preparing a showing if they have stated that they will admit

MR. KNIGHT: If he will read both direct and cross examination --

MR. WATTS: As I understand the court, the court has held we have got a right to it, and I understand that is the law.

THE COURT: Younunderstand what?

MR. WATTS: I said if I understood Your Honor, Your Honor said under the circumstances we had a right to prepare a showing.

THE COURT: Yes, where they resisted, but I told them if you wrote a showing copying that record. I would require them to admit it. That is pretty strong action on the part of the court. If you offer the record, it is supposed to be right and I will --

MR. ENIGHT: If they will offer the record --

MR. KNIGHT: If they will offer the record of his testimony in toto I will admit --

THE COURT: I have just said --

MR. WATTS: All right. We will do thisin order to settle the matter. We will read from the testimony of Doctor Bridges on the former trial such portions as we want to offer, and they can offer snything they want to.

THE COURT: as shown there.

MR. WATTS: Subject to legal objection?

THE COURT: Why certainly.

MR. HUTSON: How, if the court please, we take the position, in all fairness to the state, this man should have presented his showing to start with, and now the court has allowed him to present a showing in the middle of the trial, and he ought to be required to read that record and not pick out parts he wants to read end not read other parts.

MR. EBIGHT: He leaves us to read other parts.

Over nothing. If he picks out and reads what he wants, you can pick out and read the other. Is that agreeable?

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MR. LEIBOWITZ: Yes, sir.

THE COURT: Of course, you gastlemen understand technically -- of course, it is your evidence that you are offering --

MR. MEIBOWITZ: That that we offer is our evidence.

THE COURT: You see the distinction I am trying to point out to you, so there will be no misunderstanding.

MR. LEIBOWITZ: I don't want to misunderstand the court, and I don't want the court to misunderstand me.

THE COURT: I understand what you said, but I am trying to state a legal proposition to you.

MR. IEIBOWITZ: Yes, sir.

THE COURT: For this reason: that evidence there was offered by the State. Now, it is not the State's. When you offer it from the transcript, it is your evidence.

MR. HUTSON: The whole thing.

MR. LEIBOWITZ: Now, if the court please, I don't think it was the State's testimony.

THE COURT: Well, I am pretty sure it was.

MR. IEIBOWITZ: Well, we will just see.

THE COURT: Of course, if it wasn't, why, it was yours then, and it is yours now.

MR. LEIBOWITZ: This Doctor Bridges was called as a defendant's witness.

THE COURT: Before Judge Horton?

MR. LEIBOWITZ: No. before you.

THE COURT: I thought you said his testimony before Judge Horton.

MR. IEIBOWITZ: I wasm't speaking of the testimony before Judge Horton.

THE COURT: Well. I am just stating that is what I understood you gentlemen to say.

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MR. ENICHT: So did the State.

THE COURT: I wouldn't be angry about it, but it is my business to try to remember it, and I think that is what you did say.

MR. LEIBOWITZ: Well, if Your Honor confines --

THE COURT: To make it plain, whatever you offer from those records is your evidence offered in this case, and not the State's evidence.

MR. LEIBOWITZ: Whatever they offer is their evidence from this record.

MR. HUTSON: No; if they offer part of it, it is all their testimony.

THE COURT: Just like a deposition you have taken.

MR. LEIBOWITZ: We want it understood before we prosort of toking good if the State reads any evidence from this record it is the State's evidence.

THE COURT: I have already told you if they read it from that Doctor's testimony, it will be the evidence you offer, because you offer the testimony of the witness on the former trial.

MR. LEIBOWITZ: We except.

THE COURT: And you read such parts as you want to read. MR. IEIBOWITZ: And we except to the court's burdening is a 'damberale's with the Sestimony that they may read under the circumstan-Now, we offer, under the circumstances, to make a showing --

MR. HUTSON: We object.

THE COURT: You have already agreed to this, and we will just stand by that,

MR. LEIBOWITZ: No except.

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THE COURT: All right; that is the thing to do.

MR. LEIBOWITZ: We renew our application now to prepare a showing for Doctor Bridges.

THE COURT: I decline it. I am not going to be tampered with in that fashion.

MR. INIBOWITS: We except to the statement of the sourt before the jury you are not going to be tampered with.

THE COURT: That is all right. Here you any other setion?

MR. LEIBOWITZ: No. sir.

THE COURT: All right. #e will proceed.

MR. LEIBOWITZ: Now, we move for a mistrial in this case on account of the statement of this court to the counsel for the defendant in the presence of the jury that the court would not be tampered with by counsel.

THE COURT: That motion is overruled.

MR. LEIBOWITE: We except.

THE COURT: Gentlemen of the jury, that has got nothing to do with this case. You, I assume, have got sense smough to pass on this case from the evidence and not what transpires between counsel on one side and the court on the other. These motions that are made, they have got a right to make them, and the court passes on them, and it doesn't affect -- it ought not to affect the trial of this case, -- got nothing to do with it. Pay no attention to it.

If that word is effensive to you, I will withdraw it.

MR. LEIBOWITZ: I don't think our objection --

THE COURT: I am not trying to cure any objection.

MR. KNIGHT: Mr. Leibowitz, if you are not reading the whole thing, please indicate with a pencil what you have left out.

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THE COURT: Gentlemen, I am going to require the defendant, if they want that record in here, to offer the whole record and read such parts as you want.

MR. ENIGHT: That is what we went.

MR. LEIBOWITZ: What is the court's instructions?

THE COURT: I am holding, when you offer that record, you are offering the testimony of Doctor Bridges on a former trial, and you can read from that record such parts as you want.

MR. LEIBORITE: If Your Honor please, we are offering this testimony to contradict Victoria Price.

THE COURT: I understand.

MR. IEIBOWITZ: That is all we are offering it for.

THE COURT: I am requiring you to offer the whole of his testimony, and you can read such parts as you wish.

MR. INIBOWITZ: I am not offering the whole of the testimony in evidence. I am offering the testimony, as we see it, that contradicts the claims of Victoria Price, and if the State wants to offer, subject to objection, any other part, they can offer it.

THE COURT: I can't do that.

MR. LEIBOWITZ: Except.

THE COURT: I thought I had it plain at the start it may your testimony, and you were offering it, and you could read such parts as you wanted to.

Thereupon Mr. Leibowitz read from the testimopy of botor Bridges given on the former trial of the case:

DOCTOR R. R. BRIDGES, sworn on behalf of defendants, testified:

I am a duly licensed physician in the State of Alabama

and have been practicing my profession for a good many years,
since 1913. I testified that on each of the trials at
scottsbore. They had four different trials in which different batches of defendants were tried. I took the stand and testified in each of the four cases.

The followingnthen occurred:

- Q. Each time you were subposmed by the State?
- A. Yes, sir.

MR. KNIGHT: We object to that.

court: Sustained, and the answer excluded from the jury.

MR. LEIBOWITZ: May I note my exception, Judge? COURT: Yes, sir.

- Q. You also testified last Spring before Sudge Horton?
- A. Yes, sir.
- Q. As a witness for the State:

anked twice. You have the legal advantage of your objection.

Q. Here you subposmed by the state in this case?

The witness further testified:

I made an examination of the woman, Victoria Price.

Late in the afternoon of March 25, 1951, something about four o'clock, or after four. I was called to the jail.

They have a sort of hospital room; it had a bed in it. There is no doctor's table there. I refused to examine her there. I didn't tell her to remove her clothes. I saw her with her clothes on. I don't remember what she had on. She was fully clothed. When I first looked at her, I saw no blood on her face or on her forehead. I don't remember anything about her appearance, about the appearance of her nose, to show me as

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and evan bus absolute that her nose was smollen or any cuts on her shell some that is right. I found no outs on her cheek, nor any marks on the belief of the skin, that is right. I found no outs on her cheek, nor any marks on the belief of the skin, that is right. I found no outs on her cheek, nor any marks on the belief of the skin, that is right. I found no outs on her cheek, nor any marks on the belief of the skin, that is right. I don't remember any lumps on her cheeks. I did not be say blood coming from her mouth. I don't remember her extent her lips puffed up or swollen. I don't remember her extent that her condition, I don't remember her or not. I left directions to have her taken to a place where I could make a more thorough examination. That was my office.

The was carried over to my office, where I had a doctor's table. She was brought to my office with her clothes on. We removed her overalls and step-ins. I don't remember that she were three dresses. She had on some dresses. After the dresses were removed, I examined her body a little later.

She was naked at that time. There was no blood on ber back. There was no blood coming out of her vagina. No blood at all. The pubis is the hair in and about the private parts of a woman. I examined about her private parts; the hair was dry, that's the way I remember it. I found some wratches on her wrist, slight scratches, small ones. eratches that were made by a person coming in contact with freight trains, and things like that, would be large seratches. I think these were smaller than scratches you would get that may. These were small. I couldn't tell where the scratches time from. There were some blue marks in the small of the trotoch ad al hack, about here (indicating). They were small affairs, first o'mail ittle small knots. I couldn't tell what those small blue brks came from except that the boff had come in contact with ned . bedfold tome object. I think there were some scratches on her arm. Tod so to soot on the fore arm of the left arm. This blue mark was down on da somewhere the small of the back. I don't remember any other one. This done in 1981, and I am liable to forget.

When she went off the table I read her pulse and it

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under great nervous strain, the breathing is very fast, as a rule. I took her respiration count. I think they were both normal, is the way I remember it.

MR. KHEGHT: Now, your Honor, there is none portion of the testimony, and only one -- it is all in --

that is all evidence, and really what has been said here, there is no occasion for the stenographer to take it down, because the testimony in that record is offered and offered as whole by the defendant as evidence in this case, -- just like reading a showing. He don't have to talk about the entire showing.

MR. WATTS: Just to keep the record straight, we don't offer it. Your Honor has said it is in.

THE COURT: I have held you have offered it as evi-

MR. WATTS: We except.

THE COURT: Of course, you couldn't offer a part of a man's testimony that way.

MR. KHIGHT: There is one part I would like to read to the jury.

THE COURT: If you have anything you want to read, it had better be done by both of you now, because it is left to the discretion of the court whether testimony of that kind goes out with the jury or not, but I am not inclined to allow it to go out in this transcript.

MR. KHIGHT: This is just a portion of the testimony that Mr. Leibowits did not read.

4. "About what time in the afternoon did you make this ex-

A. "After four e'clock."

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q. "I will ask you this question: From your examination of Victoria Price, the vaginal canal, in your opinion was the intercourse recent?"

MR. WATTS: We object to any testimony being read into the record of the trial of this case with reference to any condition of the veginal canal by the presectuion.

MR. ENIGHT: I understood that the --

THE COURT: The whole evidence is already in, Mr.

MR. WATTS: Doesn't --

THE COURT: Wait a minute. The whole evidence is in, and it is all in.

MR. WATTS: If the court please, I don't want to be captious, and I want to have this understanding with the court, that the record will show our objection --

THE COURT: All right. That is the objection you are usking to the testimony of Doctor Bridges?

ME. WATTS: That he is reading. We object to nothing he reads in that record except testimony that relates to any findings in the vaginal canal.

THE COURT: I overrule the objection.

MR. WATTS: If it is understood we have the benefit of an objection and exception to all that testimony he is reading. I will not interrupt him any further.

MR. ENIGHT: You will not have any opportunity to interrupt me further.

THE COURT: Go ahead, gentlemen; no side remerks.

MR. WATTS: Is that understood?

THE COURT: I have ruled it all in.

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MR. LEIBOWITE: Your Honor, may I say we contend whatever Mr. Knight reads now is in the nature of cross examination?
THE COURT: I don't so construe it. You have offered
all the testimony of Doctor Bridges.

MR. LEIBOWITE: They have offered that.

THE COURT: That is the ruling under which you have pead it, and I made that clear to you. I don't understand how, after you have offered the testimony of Doctor Bridges, you can be heard then to object.

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MR. KNIGHT: "I will ask you this question:" -- this
ms a question asked by me to Doctor Bridges, -- "from your
examination of Victoria Priods vaginal canal, in your
opinion was the intercourse recent?" The answer was, "I
would say that it was recent, but I wouldn't put the hour or
sinute on it. I couldn't do that."

That is all the State cares to read.

MR. LEIBOWITE: Is that all?

MR. KNIGHT: All the State cares to read.

MR. LEIBOWITZ: I understand that was the cross ex-

THE COURT: I don't know.

MR. LEIBOWITZ: Let the record show --

THE COURT: It is a part of the evidence of the witness bridges you have offered in this case.

MR. LEIBOWITZ: Let the record show --

THE COURT: The evidence of Bridges, I repeat, is all in, and in by you offering it.

MR. LEIBOWITZ: May I read some other portions?

put, gentlemen, it strikes me the ordinary thing to do is to set down and read the testimony that is agreed upon as being the evidence of Doctor Bridges upon the former trial just like you would read a showing.

MR. MEIBOWITE: Page 349. "Question: Would you say it was a day or two days? Answer: I am not going to put one hour, six hours or any other time. Question: Or twenty hours? Answer: No. sir." That was from the redirect ex-

LEGTER CARTER, called as witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION (By Mr. Watts)

I was in Huntsville, Alabama, on and prior to the 23rd day of March, 1931. I had been there some sixty days. I left on the afternoon of March 24, 1931. I knew Victoria Price for some forty or fifty days.

t. Where did you get acquainted with her?

MR. KHIGHT: I object.

THE COURT: Objection is sustained.

MR. MATTS: We would like to state to the court what

THE COURT: That would be for my information alone, and I am satisfied with my raling.

MR. WATTS: We except to the refusal of being allowed to state what we expect to prove by this witness.

Prior to March 24th, I seen her very often. On March 24, 1981, I left Huntsville in her company, for Chattanoga, Tennessee, by freight train, hoboing with Ruby Bates, and there were several people in this box car in which us three

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the train at the charteness, in the railroad yards. All three of us got off together.

q. I will ask you to state to the jury whether or not during your stay in Chattenooga you were in company with Victoria Price and Ruby Bates substantially the entire time you were there?

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MR. KNIGHT: The State objects.

THE COURT: Objection sustained.

MR. WATTS: And the defendant excepts. We expect the sitness to enswer he was in her company substantially all the time she was in Chattanoogs.

A. All but a very few minutes --

THE COURT: Wait a minute. Wait until he asks the

Q. How, I want to ask you if you know of your own knowledge whether Victoria Price, while in Chattanoora, had sexual intercourse with a man?

MR. LAWSON: We object, if the court please.

MR. KNIGHT: "e object.

THE COURT: That objection is sustained.

MR. WATTS: And we except, and the purpose is to

THE COURT: I understand the purpose.

MR. WATTS: Does the court refuse to allow me to state
the purpose?

THE COURT: It is just of such character and so patently illegal I don't think it is proper for you to state your Purpose, -- what you want to do about it.

MR. WATTS: If the court please, of course, sometimes

lawyers and courts don't agree, and we are in perfect good faith in this matter.

THE COURT: I am not questioning your faith at all. MR. WATTS: We think we are entitled to account in this lawsuit for the presence -- the testimony they have read into the record, -- I understand Your Honor's ruling, -- of recent sexual intersourse, -- we look upon it, notwithstanding the court's ruling, it is in the nature of gross examination of Doctor Bridges, and that is the purpose of it. We think we are entitled to show --

THE COURT: Dog tor Bridges is your own witness.

MR. WATTS: I understand the court's ruling.

THE COURT: I don't know whether I will be criticised for it or not. I will venture to state a few things about the law. You have in mind, probably, a principle of law that was declared in a case in 18 Alabama where they allowed that, but they did it on this theory --

ME. WATTS: I think I understand the theory.

THE COURT: All right. If you don't went to hear it. I will rule and bush.

MR. WATTS: I understand that case.

THE COURT: All right. Go on with another question. I was just supposing nyou know it. Everybody doesn't know it. I don't claim to be wiser than enybody else. I happen to know that. I run up on a lawyer once in a while that doe an't know it.

MR. WATTS: If the court please, we are not offering this testimony now on the issue of the women's credibility, but undertaking to offer it for the purpose of accounting for a physical state of affairs.

THE COURT: I have overruled the objection, I under-

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took to tell you the principle, and you declined to hear it, or follow it, --

MR. WATTS: We except.

THE COURT: -- so I am through, --

MR. WATTS: We except.

THE COURT: -- and I sustain the objection.

MR. WATTS: We except.

the next morning. Victoria Price and Ruby Bates and Orville Gilley left with me. We met Orville Gilley in Chattanooga.

Q. I will ask you whether or not Orville Gilley, after you met him in Chattanooga, remained substantially all the time with you and Victoria Price and Ruby Bates.

MR. LAWSON: The State objects.

MR. WATTS: Don't answer until the sourt rules.

THE COURT: The objection is sustained.

MR. WATTS: We except. Now, if the court please, the purpose of this testimony --

THE COURT: I understand the purpose.

MR. WATTS: -- is to contradict --

THE COURT: I understand the purpose, Mr. Watts. The objection is sustained.

MR. WATTS: Will the court allow me to state -THE COURT: I don't care to hear any argument. I
want to be courteens, but why argue something that I have
already ruled on. What is the need of ruling if I am going
to open it up and argue it all over again?

MR. WATTS: I think we have the right to make that statement.

THE COURT: Well, I don't agree with you.

MR. WATTS: Yes, sir. We except.

When we left Chattenooga, four of us together, in one

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party, by freight train, we all four boarded the same part of the train. I and Gilley helped these women on the train. to got onto an oil car, and walked up and caught onto the back of a box car which were hooked to this oil car. We were standing. We got our arms around the women and held onto the stubs on the back end of this box car. For about a mile and a half or until we reached through the little tunnel, and then we got up on top of this box car. Us four together. We rode in that position all the way to Stevenson, All the way to Stevenson. Then us four got up and I relled s sigarette, and we changed into a different part of the train. On that train that we were riding on from Chattanooga down to Stevenson on that day there were plenty of other men. Negunes and white men. Between Chattanooga and Stevenson, seven white men were riding that train in addition to myself and Oilley. Not all together. I can name those men. Orville Gilley, myself, John Gleason, Odell Gladwell. Lindsey Gladwell, and the Ferguson boy. I don't recall just now the other boy's name. derkies on that freight train between Chattanooga and Stevenson. Some twelve or fifteen. They were riding to the back of the train. The negroes and the white boys had a fight between Chatteneoga and Stevenson. As the train reached through the tunnel, it was going very slow and some of these white boys got off on the ground and picked up closs of dirt or some stone or coal or something, and "h'isted" it up on the car, and then they would get up on the car and throw it back at the negro boys. That went on for some time. I don't know exactly how long. It was on a grade. going slow. It was going very slow. I am not so good at getting off and

surface by the de the train to got outo bidde of it tie elbende eres onto the ste n mile nur of bunnel, and together. W were and REA alderentia 's grain. HOOR COURS DE other well. ton novoje bes medition to m MRMS thoors on Seell Glades I don't recel derkies on the жиспие**жен** a Se Loud of monuted adopted di digerovate 50 those welter w dirt or some 00 the car, a dit to zone #1 ne would a mon

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getting on a train, but I could have got off and caught the came car. They were tossing stones or whatever it was back at these negro boys. Before we got to Stevenson there was conversation between these other boys and me about ganging up on the darky boys. It was sarried out later, after we got to Stevenson. The two women and Gilley, that I was traveling with, left the freight train at Stevenson, Alabama, to got off while the engine was stopped there. The four of as caught that same train as it left Stevenson. I and Cilley helped these women on that train. I am not going to point on no certain car we got on but I would think it was along in the middle of these here kind of cars. There was s string of cars of that type tied together in that train, a string of gondols cars like that on that train together. I didn't count them. I would say there were nine or ten. The car that I and Gilley and these two girls got into was loaded with some kind of small, chipped stone. I would judge about two or three feet of the top. We got right along here in the end of the car. To my best remembrance, the girls were sort of laying down like this, or something like that. We boye sort of sat down before them, and I was playing on a harmonica and Mr. Gilley was singing, and the women were just there with us. I think they were sinking also. there were no other people in that that che with us four people. Not at that time. We didn't stay in that position 'ery long. Just after we left out of Stevenson this fight tere getting refreshed up, and these boys had them some new Homes they got in Stevenson, and the fight started out Wain. I mean Odell Gladwell and the boy from Arkensas. its name was the Thurman boy. The white boys at that time

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were beyond us, towards the back of the train. They were in the next car. The negro boys never come into the car where we were. The darkies got into the our where the other white boys were, the five white boys. The car next to the car we were riding in, but did not get into the oar where we and the girls were. The fight was hand to hand, close together fighting, and called for Mr. Gilley and I to come over and give them a hand. Gladwell, myself and Gilley went over . there to give them a hand. The girls remained where they were. I had my leg over the side of the car and one of them sade a strike at me and I ducked off and clumb down on the stirrup. I got off the train. Gilley remained on the train. Some of those other boys got off also. Ferguson and Thurman and Odell Gladwell and Lindsey Gladwell and myself. That . made five altogether, leaving two white boys on the train. to walked back to Stevenson. We went from Stevenson to Cottsboro the same day by automobile. All five of us. I don't know whether it was the same negro boys I seen at Cottuboro. I seen some negro boys in Scottsboro, and I do know I seen Mrs. Price and Miss Bates. We went to the jail house yard. Ruby Bates and Victoria Price got there. They was driving up while we was walking down that way. Mrs. Price was sitting on the outside and Ruby Bates was sitting in the middle ment to the driver. We was very close. Well, to begin with we took a few steps towards the car. To begin, were about fifteen feet away. Victoria Price was smiling. I think she was smiling a little bit. She motioned for me to one over to the car. I went very near it. Odell Gladwell stepped up between me and the girls, and they spoke to one another. I could hear what they said at that time. She asked Odell Gladwell -- she said to Odell Gladwell that, "one of

bare beyond was Jasa ody or nero. The DOTE NOTE. T thir owner of the ciric me m. , smlddig.H Ave then c . wri : s exemi 5 nr. 2 = 97280 made a strike n i ....rewide Some of those and Oders one dia svil mass tons for Law of dd brodeffbal I don't know a .oroda#### moss I would be hause yord. B gu satylyh say file one oping In the middle to begin with Spods otem sv aw and southe I to of wave each stepped up bequete coo I .xadfons (dell Gladwell

your boys should tell the authorities you are my brother." the said they were picked up in Paint Rock, Alabama, Said they got off the train and tried to get awat. She said there were so many damn people there she couldn't get away; she didn't know that there were that many damm people in the State of Alabama. When we first went in this jail we went upstairs and stood at a little flat place there at the top of the stairs until the negro lade were brought up and they were put in a side room. They first took us other boys in there to identify those negro lads as the ones we were in the fight with. We came right out of that room at this top of the stairway and went straight across into a door in the run-around -- on the inside of this large room there was a cage, steel cage, and we were on the outside of that in the run-around. Later, I saw the women in jail. The next day and the next night. Well, then, we were on the inside of this cage, you see, and the two women were on the outside in this run-around. They slept there. In full view of the sen in the cage. I think they stayed there nost every night after that first night. Eighteen days. While I was confined in that jail, I heard a conversation between Sheriff Wann of Jackson County, Alabama, and Victoria Price and Odell Gladell. Mr. Wann asked Mrs. Price, "Which one of these boys tre your brother?" and pointed to me, and she said, "I mean the big boy," and that was pointing out Odell Gladwell. And then Mr. Wann says, "Are you her brother?" and he said, "Yes." low, later, and after that conversation, I heard another con-Versation there in the jail between Sheriff Wann and Victoria rice about Gladwell being her brother. Mr. Wann and the isputy sheriff they had there told this boys, "If you are not

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into the court. " She said he was. He said he wasn't her brother. I saw the two white boys that were brought from Paint Rock to Scottsboro at the time these women were brought to Scottsboro from Paint Rock. Gleason and Gilley. They kept us, Orville Gilley, John Gleason, Odell Gladwell, Lindsey Gladwell, Perguson and Thurman in the jail at Scottsboro.

I was never called as a witness for the state in the prosecution of any of these cases.

CROSS EXAMINATION (By Mr. Enight)

I came here Sunday from New York City. I was not with Ruby Bates Sunday or just before I left Hew York City. I wouldn't say for sure which one, but I was in one of these cors slong in the middle of this train of gondola cars. The negro boys came up from the back of the train. We can say we were in the end of the train, and the negro boys came over and had the fight in this car. Then I started to help them. I and Gilley. And when I got over. -- started over to help them, some of them struck at me; after I got my leg over I climbed down. This fight took place just out of Stevenson. I wouldn't say exactly. I would say some mile and a half or two miles out. I got off. I would judge a mile and a half or two miles or not over three miles. I know there were negroes in the adjoining car at the time I got off, in the adjoining our to the our the girls were in. And they were fighting when I got off. Relative to this alleged attack on these white girls, all I know about it, they were on the adjoining car, when I was on the train, to the negroes. Now I walked to Stevenson in company with the other white boys thrown off. I went to the station to get a drink

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of water. I don't think any of those boys did any telephoning. I know they reported in Stevenson the fact there was
a fight. We got off the freight train from a fight and were
going to take the next freight train. Odell Gladwell says,
the are going to follow those negroes and whip them yet."
Sothing was said about overtaking these negroes because the
white girls were in the next car to them. When I got to
sottabore we were put in jail. The negroes were put in
jail too. Q. They were the same negroes you saw having that
fight in that gondols car?

- A. Not that I know of. I don't think they were the same lads I saw.
- 4. You don't think they were the same lads?
- A. I couldn't identify either one of them, Mr. Knight, and be telling the truth.

HAYWOOD PATTERSON (e) being recalled as a witness, and having been previously sworm, testified as follows:

I am twenty-three. I was born in Chattanooga. I was never convicted of any orime. I know a boy by the name of Eugene Williams, and Roy Wright, and Andy Wright. Those boys come from Chattanooga the same as I and were friends of mine. On the 25th of March, 1951, we left Chattanooga on a freight train bound west from Chattanooga. Eugene Williams and the two Wright boys. Eugene Williams I think was fourteen. Roy Wright was thirteen or fourteen. Andy Wright was eighteen. We boarded the train out there on Thenty-Third Street. That is far away from my home. We got on an oil tank car. There wasn't anyone else on there. We cought the oil tank car next to a flat car, near the caboose. I think we were on the left hand side going out. I didn't

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see Victoria Price or Ruby Bates at that time. I did not

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As you leave Chattanooga you go through a tunnel. Under Lookout Mountain. As you go through that tunnel, if you are riding on an open our, you get a lot of soot on you from the engine. After we got out of the tunnel, going around the mountain there the trd n was running very slow, and some boys were transferring backward and forward on the train. At least three or four same by transferring from one part of the train to the other, and they stepped on my hand, at least, and nearly knocked some of the boys off, and I spoke up to some of the boys and asked them if they wanted to get by to speak up and I would let them go by. I told him the next time he wanted to got by to ask me and I would let him by, and they cursed us and we cursed back -- They seemed to get hot about it, and they got mad about it, and went on up the train a piece further, and one of them came back again, so then we started a big argument with each other, and the boys got shead of us, and finally they would get off the train and got stones and throwed back at me and my three companions. They continued to do that and we never got off the train. When we got to Stevenson we all got off, I and Williams and the two Wright boys. When the train started off we got back on the same car we left Chattanooga on. The boys got to throwing stones again, and we went over the train to settle it with the boys. We got over there and started fighting with the boys and they fought back, and we outdid them, and they all jumped off the train, -- all except one boy. We came from the oil tank car, over the top of the train over to some gondola cars to where these

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ete Victoria Endw they we See As yo under Lookou thin ous may west from the argund the an 100 0000 000 nid to dwar bin . Jenel de s of ou whose 00 ges by to drag ode mie 19t him by, o for of Samesa court on up the back sunin, s other, and the ed bild him day ny thyte outpu ed odd the dos I mad Milliams started off we aged beff age the train to e it besteed the one outette them rend out leasts top of the top

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shite boys were after the train pulled out from Stevenson. There were a string of gondola cers, a number of gondola ears hitched up together. These boys wasn't inthe first car. We had to come across at least three or four cars before we could get to them. They were in one of these middle cars. I and the Williams boy and several other boys went over to have a fight. We didn't know the other negro boys that went over with us. All I knew were the two Wrights and Williams. When we got over in that car where this scrap took place between us and the white boys I didn't see any girls. I did not pay any attention who was in the other gondola cars. I saw a boy there which they called Gilley. The train was done picking up speed, and he was hanging off on the side -- on the step down between the cars and couldn't get out. He was swinging off the car and some of the boys were trying to get him off by hitting him, and I savised the boys not to hit him again, and I got out there and by the help of the other boys there I pulled him back in the car. And put him in the ear so he wouldn't get killed, because the train was going too fast. After I pulled Gilley back in the car and the fight was over, I and my three companions went back to our our where we came from. We left the gondels cars and went back to the oil car. I never did see any womens. I did not assault Victoria Price at any time; or lay a hand on her after that fight took place. until I got to Paint Rock. I did not see her, not until we was in Scotteboro jail. I did not hit her on the head with a pistol. I never had any pistol. I did not hearany pistol shot off on that train at any time. No official of that train came towards where I was any time on that train before it stopped at Paint Rock.

enite boys u фасте него dere bitched bad of .we pefore ne co estee ofbhig WO JEST STOP negro boys to two Nr. guta i coros sidi age ony girls other gendole DET. COSESED henging off o d'abluog bas of the boys w Ladvierd the sad by the he but . woo but eseause the tr sack in the cu panien continu an alobnom ads SHOR ON KILD BOS time; or lags of for I Little was in Sockton er i .forsiq s ds no The Jose train come town de Beggests \$1 the road, and people atthose houses. We saw stores near some of the stations and people at the stores. I wasn't paying any attention to the roads, but we crossed some. Q.Now, you knew at that time it was a very serious offense for, especially, a negro boy to commit rape on a white woman?

MR. EFIGHT: We object to that.

, yes, sir.

THE COURT: Sustain the objection.

MR. LEIBOWITZ: Except.

q. I am going to am you if you would have dared under any circumstances to ride along with two white women on an open cor, along that railroad, by all these stations and all these houses, by these reeds, p- would have dared to rape a white women on that car in view of people along that rail-road?

MR. NUTSON: We object.

MR. KRIGHT: We think it is argument, but to save time. I don't mind him answering it.

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THE COURT: The objection is sustained.

MR. LEIBOWITZ: Exception.

- Q. Did you take any knife of Victoria Price?
- A. Did I take any knife?
- Q. Yes, sir.
- A. I haven't seen Victoria Price.
- 4. Here you taken off any gendels car in Paint Rock?
- A. Was I taken off the gondola car?
- Q. Yes.
- A. Yes, sir, I was taken off.
- 4. That car were you taken off?
- A. The gondola car.

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A. The oil tank car.

Q. The oil tank car?

A. Yes, sir.

were the two Wright boys and Williams taken off?

A. Off the wooden car.

. Where was the wooden car?

A. It was next to the gondola car.

THE COURT: Next to what car?

THE WITHESS: Next to the oil tank car.

The wooden car and the oil tank car were hitched up together. Williams was on that oil tank our with me. The two Wright boys was on the car with the wood. Right next to each other on the ends of those cars? That is the place there we were at Paint Rock. I had on trousers, dark brown trousers. Wright had on a dark pair of trousers, and Williams had on a kind of light, checked pair of trousers, and Roy had on a pair of waist overalls. I did not have any yellow or white stains on my trousers near the fly. Hone of the other boys showed any signs of stain on their trousers near the fly, on any of their clothing, when we were taken off at Paint Rock. Some men gathered up around we boys and lined us up and taken us to the main road or main highway up there, which they call the town. Hime when we got up there among the rest after we all was together. There were More than nine boys on that train when it left Stevenson. I would say four or five more. I said including myself and the three companions, and the other boys they have in fail now, Charlie Weems and them, and I think there were three or four more, excusing myself and my companions, are all that I seen on the train.

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I was then tried before Judge Horton. And the verdict was set aside by Judge Horton and then tried before Judge Callahan again. And as a result of that trial at the time I was in Kilby prison in November, or in the fall or early inter of 1936, an appeal was pending, to the United States Supreme Court. And at that time that appeal had not been decided. I was in the death house at Kilby prison, practically ever since I have been in Alabama. I say I was there about two years or better before Mr. Golden came, -before I saw him there. There were other guards there besides him. I knew the warden, Mr. Walls. I know the deputy warden, a man by the name of Curtis. I don't know whether he be there at night, but oftentimes. I see him come up there at night. Along about mix o'clock. I can write very well. I have met Attorney-General Enight on these various occasions. New Lieutenant Governor of the State. I knew where I could reach him if I wanted to reach him by ME S letter.

Q. Now, Haywood, if you had any confession to make, would you make it to a guard at the jail, or would you have written to Attorney General Knight?

MR. HUTSON: We object.

MR. KNIGHT: An objection.

THE COURT: Objection sustained.

MR. LEIBOWITZ: Exception.

I heard this man yesterday, this man Golden, At the time my case was before the United States Supreme Court, wither on appeal or about to be appealed; all this time I was in the prison down there, in the death house, I was communicating with counsel right for a while.

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Almost daily you were writing letters to your lawyers? A Yes, sir.

THE COURT: Let's don't go into details on that.

MR. LEIBOWITE: I think that is important, Judge.

THE COURT: I don't think so.

MR. LEIBOWITZ: I except.

THE COURT: All right.

MR. LEIBOWITZ: I except to the remark of the court.

I was receiving answers to these letters I was miting. I knew at that time my case was being appealed. At least for a while. I heard this man Golden say I called him to my cell one night and said I wanted to see the warden; the warden ween't there; he malked away! I called him back there again and I made some statement to him, that I was milty of messing around with them girls, that Norris was milty and the other seven were guilty; I made no such statement. I did not at any time tell this man I was guilty. I heven't never had any talk with him, not only with him, but mone of them there. I didn't talk with anybody there at filby prison. I did not at any time say to him. "I am milty of messing around with the girls", or any such language to that. I never asked him what he could do for me. I was pink . The laked to make a statement in writing that I was guilty, sever-EUOQ SHE sale of times, by officials there and some I didn't know come and size and I tells them tren come to the door to see what they want at times, and they let very --

THE COURT: Wait a minute. You have answered.

I had a pencil in my cell and stationery to write out letters.

I miver raped any of these women. I am innocent of this crime. I never told anybody, or the guard that testified here yesterday, "Captain, I am guilty of the crime, and I am ready to take what is coming to me."

My clothing or no part of my clothing ever was taken from me by the authorities, either at Paint Rock or Scottsbore, and held as evidence in this case.

## CROSS EXAMINATION (By Mr. Hutson)

We were going to Memphis, Tennessee, the Wright boys were going to Memphis. I don't know Charlie Weems; at that time I didn't know Charlie Weems. There were three with me. Roy Tright and Andy Wright and Eugene Williams. In Chattanooga I got on the oil tank. That was back of the line of chert cars. There was a box car between the oil cer and the flat cars, the coal cars there, the gondolas. Right in front of me was a lumber cars they call a flat car, loaded with lumber. Right in front of this lumber our was this box car. Right in front of the box car was a gondola car. I don't have to cross the lumber car. I said the lumber car was hitched on to the oil tank car. The lumber car was behind the oil tank. I went from the oil car to the gondela car. I had to climb over two box cars. I crawled out. I couldn't say how many did. I was looking forward. I wasn't looking back. I was alongside two -- I wasn't in front. The boys shead of me crawled down. I was not leading that procession over anybody. There were two boys shead of me. Andy Fright and Williams. I didn't say Weems. I said Andy Wright and Eugene Williams. Well, altogether, whom joined in the fight, I would say there was about fourteen. And we all come over that box car; I wasn't paying any attention to what was

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coming on. There was two of them joined up on the oil tank par before we went over to fight. We started before the other nine came. Yes, sir, but just before we went over to fight these boys, a couple of more boys come up and said they had been mistreated by the boys. That made six. We just decided to stop them from throwing rocks at us. After we decided to go over and fight the boys, I don't know how long before the other eight come up. When the fight was over, I saw more fellows than what there were when we went over there. We had been gone from Stevenson. The boys had been throwing stones enough at me. I don't know how long I had been on that train before I went to where the white boys were. I didn't have any watch. I say it is about an hour or better. When the fourteen were over there with me in that gondela car, there was gravel on the floor, or ground rock. The white boys were not thrown out; they got down themselves. I didn't see any girls. I saw all the boxe. which was joining in the fight; I saw five at least. They all got out. I don't know how far I was out of Stevenson. That trein was running more than two or three miles an hour. I was in that car where the gravel was when the white boyo got off the train. I didn't stay in there any time. I went back to my same position. I think all the colored boys went away. Not at the same time I went away. I didn't so towards the engine. I went back towards the caboose. And I was back there when I was taken off. They carried me up there on a through road up there. I did not see any girls out there. I saw some ladies, of course, but I didn't see my girls right on the railroad. I couldn't say exactly what side of the train I got off of. I was so excited --They tried me once at Scottsboro. I was convicted and

domine one dat batotte m other mine a se fight the they had best Sant toolded we deplied to long before SECT. I new a \* 07407 TOTO been throwing bed been on \$ main I didm or better. B niconcy deed reck. The win themselves. MARGE WAR JOIL .two ton Ein The truly was Jadi ni amw 1 wo odd lin dan went back to m boys went away edd abrawol 92 ond man band maw I there ou a the I .orada auc date ofthe wan it, to obtu spilu they tried me !

and sentenced to the death cell.

4. And then you got a rehearing and was tried in Decatur?

A. I was tried. I got a new trial.

MR. LEIBORITZ: You mean a new trial ordered by the United States Supreme Court, is that what you mean?

MR. HUTSON: I don't care what you call it, just so it was a rehearing.

Q. You were tried here in this court and you were convicted

THE COURT: I don't see any occasion of that.

MR. HUTSCH: They brought it out.

THE COURT: I know they did, and you didn't object to it.

MR. HUTSOM: I didn't have any objection to it.

THE COURT: You are just wasting time, Gentlemen.

MR. LEIBOWITI: I have no objection to the solicitor bringing it out.

THE COURT: I don't see any use of wasting time on matters so foreign.

MR. HUTSON: Well, it is agreed he has been convicted by three juries --

THE COURT: I don't think that has anything to do with it.

MR. LEIBOWITZ: I move that remark be stricken from the record.

THE COURT: That remark is wholly unwarranted.

MR. LEIBOWITZ: I move for a mistrial --

THE COURT: You will pay no attention to it. You try
this case on the evidence, not by what these lawyers say to
one enother or to the court.

MR. HUTSON: Then the court don't desire me to cross examine any on the matters he brought out --

THE COURT: The court has ruled. When an objection is made and I think it is well taken, I will sustain it.

MR. HUTSON: Yes, sir, but I don't want --

THE COURT: I can't dictate what you have to do.

MR. MEIBOWITZ: Just to protect the record, we move for a mistrial.

. You have had three convictions ---

THE COURT: I don't see what that has to do with it.

I don't see the necessity of it. You can't impeach a man on
immaterial matters. Besides, you have got it all in here, and
what do you want to go over it for?

MR. HUTSON: Well, the jury might not --

THE COURT: The jury ought not to pay any attention to it. I don't think they will.

- Q. You were tried in Scottsboro, I believe you said?
- A. Yes, sir, I was.
- Q. You and the others were tried there, were you?
- A Yes, sir.

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Q. And in that case you, in your testimony --

MR. LEIBOWITZ: Now, just a moment, Mr. Hutson. I want to object at this point to any reference to any testimony given at the Scottsboro trial on the ground that the Supreme Ourt has held that those trials were illegal in that the defendant wasn't properly and adequately represented by counsel, and we object to any testimony given on those trials by this or any other defendant.

THE COURT: The objection is overruled.

MR. LEIBOWITZ: Sucception.

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Q. You don't know how many cars you passed over getting to that fight, do you?

A. I don't know, but I would say shout two --

Q. About two?

A. Or probably could have been more.

Q. Now, in your trial at Scottsboro, I will ask you if you didn't make the statement there that you saw all the neggo boys who went into that gondola rape the women but three?

MR. LEIBOWITZ: That is objected to.

A. I did not.

THE COURT: Wait a minute.

MR. LEIBOWITZ: That is objected to on the ground illegal, irrelevant, immaterial and incompetent, and ask the court to take judicial knowledge of the decision of the Supreme Court declaring that trial illegal.

THE COURT: Overruled.

MR. MEIBOWITZ: Except.

THE COURT: What was your enswer? I didn't hear it.

MR. HUTSON: He said he didn't make the statement.

THE WITNESS: I said I didn't make any statement

Then I was tried at Scottaboro, I did not make the statement I saw all the negro boys that went into the gondola rape the women but three.

naking a statement I don't know anything of it. I was threatened with death or being killed if I didn't confess. They threatened me if I didn't tell."

A. I was threatened over there several times, not only over there but at Gadsden, Alabama.

4. You answer the question. Did you make that statement on

that former trial?

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A. No, sir, I didn't make a statement like that, not as I

Q. You didn't make the statement you made a statement at

A. No. sir.

and you didn't make the statement here the reason you made the statement you were threatened up there?

A. No. sir, I didn't say that, not that I knows of.

The one whom they called Gilley was left on the ear.

I grabbed him and pulled him back on the ear. They say
there was another one beft on. Gilley was swinging over on
the side and we helped pull him back up in there, and then
he climbed back up into another ear.

- lection, on another tital -p "while this fight was going on, what happened to the other two boys that come on the car?"

  And if, in answer to that, you didn't say this: "If I ain't mistaken, all the boys got off the car excusing one boy, and he was in the car, and some of these colored boys were trying to put him off. The train was picking up speed, and I goes down there and tells them boys not to throw this boy off because the train was going too fast?"
- A. When I got down in between the cars, -- that is what I was meaning.
- 4. You got down in between the ears?
- A. Yes, sire
- 4. That is what you were meaning?
- A. Yes, sir, because he was swinging off the step. That is the one they call Gilley.

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there but at Co.

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### REDIRECT EXAMINATION ( By Mr. Leibowits)

- q. Was the train gone long out of Stevenson before the sorap started?
- traveling more than an hour. I mean it had been traveling more than an hour. I mean it had been traveling more than an hour from Stevenson, not from Chattenooga. I mean the scrap started shortly after I left Stevenson. I am not attempting to give you any definite time.

### RECRESS EXAMINATION (By Mr. Hutson)

- Q. You were asked these questions: "You testified in your own behalf on the trial at Scottsboro, didn't you?" and you answered, "You mean I got on the stand like I now sm?" I will have to ask two or three to get down to the point. And the question was, "Yes", and you said, "Yes, sir, I got up there", and the question, "That was the trial against you?" and you answered, "Yes, sir", that was my firsttime in court." And then the question, "Do youremember being asked this question, 'Where did you first see these girls'?" Do you remember being asked that question?
- A. No. sir. --

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A. Yes, sir, o

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ero off?

- answered, "Yes, sir," do you remember answering yes, sir, on this former trial?
- A. Yes, sir.
- And I will ask you this question: Did you reply to that question as follows: I seen them as the train left out of Stevenson?
- A. No, sir, I did not say that.
- . You didn't say that?

A. No. sir, because I didn't see any girls after I left out

MR. LEIBOWITZ: Will you read the rest of the answer?

May the answer be read? He goes on and answers he told them

he saw the girls at Paint Rock. Hay that be read.

Q. Didn't you say at that tital. "No. sir. I did not see

them. I seen the girls in Paint Rock."

A. I did say so.

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. Then you did see the girls at Paint Rock?

A. I couldn't say I saw the Price girl or the other girl, but I did see lots of girls at Paint Rock.

OLEN MONTGOMERY (c), being called as a witness and being first duly sworn, testified as follows:

DIRECT EXAMINATION (By Mr. Leibowitz)

I have been wearing those glasses two years, one day and this month. I forget what day it was. I think it was two years next month, in Pebruary. (Witness exhibits glasses to the jury.) They are very thick lenses. Before I was arrested in Paint Rock I had no glasses. On that day I was just about blind. I can't see very good, blind in the left eye, and the other one was very weak. I can't sit here and see a match lying on the floor. (Witness moves towards stick on the floor.) Now, I see it. I can't see it from the witness stand.

I was on this train the day the arrest took place. I was seventeen years old. I come from Monroe, Georgia, bound for Memphis.

Q. Coing to Memphis for what?

A Just going around --

MR. HUTSON: We object.

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The second parallel and the second was the contract of the second

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THE COURTS Objection sustained. A. No. at MR. LEIBOWITZ: I want to show that he was going to eves Deve a hospital to have his eyes fixed. .EM CONTRACT May the on THE COURT: The objection is sustained. MR. LEIBOWITZ: Exception. he eaw the . Hay I ask if you were going to Memphis for a purpose? d'nald ... them. I se MR. HUTSON: We object to that. THE COURT: The objection is sustained. A. I did a MR. LEIBOWITZ: Exception. Q. Phon yo I got on the train at Chattanooga on an oil ear. To my best biro I sh judgment it was more near the back than it was the front. a the I dud to I don't know. All I know it was an oil car. I just got on MESTO it. First time I hobsed in my life. I did not know any of Jenil ngilad the other boys before I gotmon the train. I did not know 12 HER then after I got on the train. The first time I knew who Action 1 wad I bases any of these other colored boys were that got on the train ald hear was ms at Scotteboro. I did not see another lad by the name of LOUIS TWO year lowell get on the grain. I did not know a boy by the name of Classes to the fillie Roberson. I didn't know any of them boys. I was bolostra dam just sitting on that oil tank car, this arm wrapped around mode tost saws that little rod that went eround the tank. I was about asleep Left eye, und then it stopped at Paint Rock. My arm was wrapped around nege bon exed there (indicating on the model train). Sitting on this end Cowards owlor If that is the front end. I was not in any fight with any w edd mont of hite boys. I didn't know there was any fight going on. If som 3 here was I couldn't see it. When I got on it I get right Hand Hoves, 689 here until it got to Paint Rock. Of course, the train stopped or for Homentas. It some little places. I didn't get off. I just sat right Ar Coing to there. I couldn't catch a train running. aques topt .A. You are one of the nine boys taken off at Paint Rock? " Yes, sir. NUR .SNI It has been testified to here by Victoria Price, the com-- 116 -

plaining witness, that the nine boys taken off at Paint Rock were in the gondola car with her, and they either raped her or participated in the fight in that car; you being one of the nine boys taken off at Paint Rock, did you ever engage in any fight or any rape of Victoria Price?

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Since I was arrested in Scottsbore or Paint Rock about five years ago, I have been in prison.

### CROSS EXAMINATION (By Mr. Hutson)

I ain't seen anybody pass me going towards the engine. There wasn't anyone on the oil our with me I knows of; if they was, they were under it. With the glasses off, I can see a person, is all I know. Take a person get as far as from here to that door from me, I can't tell whether it is a white person or negro. If there had been three boys with me on the oil tank I could have seen them.

# REDIRECT EXAMINATION (By Mr. Leibowits)

I don't know how many oil tank ears there were in that train. I don't know whether there were some other colored boys on another oil tank car.

THE COURT: Gentlemen of the Jury, I have allowed these questions to be propounded to this witness about his not participating or participating in the rape of Victoria Price for one purpose, and that was to meet the testimony of Victoria Price that there were nine on that car and that mix of them raped her, nine on there participating in the rape. I allowed him to testify that he wasn't there and he didn't do it, not for the purpose of trying his case or for you to be worrying over whether he was guilty or immoment,

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or knew anything about that transaction.

Thereupon Mr. Watts read to the jury the testimony of the witness Mitchell given on the trial of the case of the State of Alabama vs. Haywood Patterson.

SAM MITCHELL? Sworn for the State, testified:

#### DIRECT EXAMINATION

Along in Merch, 1981, I lived this side of Stevenson.

I was there at Mr. Dobbins' place on the 28th of March, 1981, when a freight train passed by there going towards Paint Rook. I saw people on that train. They was on a coal car, a half-gon, I think they call it. They were white people and colored people. Seems to me like they was both kinds. Seems to me like they was wrestlin' - we see'd them wrestlin'. 'peared like. That's all I seen; the train was going by pretty fast. I did not see anybody get off that train there. I know where Mr. Luther Morris lived at that time. I was west of where he lived. I know where Mr. Lee Adams' farm is. I was west from him. That train was going towards faint Rook. It was about one o'clock; we was going back to our plowing. We had had our dinner.

#### CROSS EXAMINATION

That is about two and a quarter miles out of Stevensonir. Morris lived nearer to Stevenson than I was. Mr. Adams' form was nearer to Stevenson than where I was. I seen some negroes in the doorways of box ours while the souffling was going on. They was settin' down in the door, some of them, feet hanging down. I can't tell you how many. I never had

no thoughts about anything coming up. I just can't say if it out for year s dosen or half a dosen. There was some in there, I can't Winterin Frie say how many. As the train passed by, I saw negroes all or knew enyth along the different parts of the train back towards the caboose, all up and down the train. I can't say for sure if they was on the oil tank car; they was all up and down the train. I didn't have in mind to count them that was on the train.

> Thereupon Mr. Watts read to the jury the testimony of the witness Mitchell in the case of the State of Alabama vs. Glarence Horris.

SAM MITCHELL, sworm for the State, testified:

## DIRECT EXAMINATION

My name is Sam Mitheell. I work for Mr. Dobbins. I was about his house, near the wood pile, about the 25th of March, 1931. I saw a freight train pass there that day, shout I o'clock; we was going back to work. I was working over in the field plowing. We saw some people that looked like they were fighting on the train that day; Looked like they was rastlinf on a gondola our. I can't tell how many of them there were. It was a mixed eroud.

## CROSS EXAMINATION

I saw some negroes in some box cars all the way from the engine gowards the caboose as the train passed by; there was a whole lot of them in the cars. After that gondola in which I saw the wrestling going on passed, fromwhere I was standing at the wood pile, I saw some other colored men

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There I saw that wrestling going on in that gondola car, the car passed on by me. I saw men in that wrestling around, white and colored. I couldn't tell you whether I saw any women in that car; they all looked like men to me.

(The railroad map from Stevenson to Paint Rock was thereppon received in evidence and marked "Defendant's Exhibit Number 6.")

HAYWOOD PATTERSON (c), being recalled, and having been previously sworm, testified as follows:

DIRECT EXAMINATION (By Mr. Leibowitz)

These questions were asked me by the solicitor in the Scottsboro trial: "Question: And you saw these girls? Answer: No, sir, I did not see any girls. Question: Didn't you tell me shhile ago that you saw them? Answer: No, sir, I did not see any girls. Question: You never did see any girls in there? Answer: No, sir, until we got to Phint Rock. Question: No white women in there? Answer: I did not see any until we got down to Paint Rock."

LESTER CARTER, being recalled as a witness, and having been previously sworm, testified further as follows: DIRECT EXAMINATION (By Mr. Leibowitz)

when I was with Victoria Price in Chattanooga the night before, Victoria Price had no knife. We had to use a knife to open these cans we made coffee in and I used my own knife. I asked her for a knife to open the cans with we had our food out of. She said she had no knife.

CROSS EXAMINATION (By Mr. Enight)

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from Paint Rock?

MR. INIBOWITZ: Your Honor, I must submit recross ex-

THE COURT: Overrale the objection.

MR. LEIBOWITZ: We except.

I went back to Scottsboro from Stevenson; I was in jail there in Scottsboro and was eventually released from jail there,

4. And where did you go then?

MR. LEIBOWITZ: Your Honor, we object to all that.

THE COURT: Well, I don't know how far he is going
to go. I will let him go a little while. I will overrule
the objection.

MR. LEIBOWITZ: We except.

Q. Go shead.

A. I went back to Stevenson, Alabama, and from Stevenson to Knoxville, Tennessee, to my home.

Q. Were you in jail in Knoxville, Tennesseq?

MR. LEIBOWITS: We object to that, if the court please.

THE COURT: Well, unless it is just preliminary, it is not material.

MR. LEIBOWITZ: I object to it.

THE COURT: Go shead,

MR. LEIBOWITZ: Exception.

. Were you?

4 Yes, str.

4. With what offense were you charged?

A. I wasn't convicted on anything.

THE COURT: I believe you had better get down to find out whether he was convicted.

THE WITHESS: No. sir, I wasn't convicted on any

charge in Enoxville, Tennessee.

THE COURT: Gentlemen of the Jury, the testimony of this gentlemen he was in jail in Knozville is not evidence. You will give it no weight whatever in arriving at your verdict.

Q. From Emoxville where did you go? MR. IEIBOWITE: Objection --

THE OBURT: Objection is overruled.

MR. LEIBOWITZ: Except.

- A. I come back to Huntsville, Alabama.
- Q. From Buntsville where did you go?

MR. INIBOWITZ: Objection.

THE COURT: Overruled:

MR. LEIBOWITS: Except.

- A. I went book to Arkansas State.
- 1. In Arkensas were you in a hobe jungle?
- A. Yes, sir.
- . And did you meet a preacher?

ME. LEIBOWITZ: I object to all that; it is immaterial.

THE COURT: As a preliminary, I will permit it.

MR. KNIGHT: I just want to ask him --

MR. LEIBOWITZ: May I just put this on the record? Why was not the defense permitted to put in the preliminary proof --

THE COURT: Weit a minute. You must stop right there.

MR. LEIBONITZ: I --

THE COURT: You stop right there.

MR. LEIBOWITZ: An exception.

THE COURT: That is what you are entitled to. I don't vent any of that incimuation you didn't get one thing and the State got another. I would advise you to leave that out from

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MR. KHIGHT: Your Honor has indicated once or twice this testimony would not be admissible unless it was preliminary evidence, and I will state I want to show that the first time this witness ever testified in this case for the defendent or told about the happenings on this train or what he contends happened on this train, -- that that was in a hobo jungle in Arkensas.

THE COURT: Just ask him that.

MR. KNIGHT: I am leading straight to it.

THE COURT: Let's don't lead so much . Get down in the jungle and ask him that.

MR. KNIGHT: All right.

I went to a hobo jungle there. I met a preacher and ned same I so recited what happened on this train that day -- a part of anguary al . I don't know whether I recited all that happened on the train or not; maybe I did. I spoke to a number of roughly had a greathers about what happened. I spoke to Preacher Gillespie in Knoxville, Tennessee, about this case.

THE COURT: Just a minute.

Mr. Gillespie told me to come back here.

THE COURT: Mr. Witness, lookset me. When I say stop. ou stop. I spoke to Victoria Price in Huntsville about it. moke to Mr. Gilley about it. I went to California. I -- look et Hr. Gilley out at the Rose Bowl game -- I hiked back brough the northern part of the United States part of the y, and then I turned north and went to Governor Roosevelt's ffice in Albany, New York. I went to the State of New Jer-The first fellow I told my story to, who was a lawyer, can recall, was Lawyer Barnett in Knoxville, Tennesgee, who municated with Mr. Brodsky in New York City. I went to New

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York City through Arkansas to California and then back through the North Central part, and then bore north to Albany, New York, to Governor Roosevelt's office. Then I went to New Jersey.

- Q. And must I assume after that you went to Mr. Brossky?

  MR. WATTS: We object, immaterial.
- A. I just told you, Mr. Knight, I came back to Knoxville.

  THE COURT: The question is objectionable, I think,
  but not on that ground.

MR. WATTS: We except.

MR. KHICHT: Probably it is objectionable.

Q. Did you come back to Knoxville, Temmessee, from New Jersey before you came in contactwith Mr. Brodsky?

MR. WATTS: We object to that.

THE COURT: The objection is everraled.

MR. WATTS: We except.

Q. From Enoxville where did you go?

MR. WATTS: We object.

MR. LEIBOWITZ: May I ask if this is still prelimi-

THE COURT: In a measure he has a right to know the general movements of the witness.

MR. HUTBON: His interest in going to New York.

MR. ISIBOWITS: I went to note my exception to the remark and the insimuation behind that remark.

MR. HUTSON; No insimustion. I said we had a right to show his interest in going to New York to see the counsel for the defendent. That is what we mean.

THE COURT: Go shead.

I said I met an attorney named Barnett. He first advised me to go to General Chamles, one of the attorneys in this case, in Chattanooga, Tennessee, and that is what I did. id. Circ ages I went to Mr. Chemlee's office. From there I went to New York.

> WILLIE ROBER SON (e), being malled as a witness, and being duly sworn, testified as follows:

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DIRECT EXAMINATION (By Mr. Watts)

On or about the 25th day of Harch, 1931, I was on a train that ran -- freight train that ran from Chattanooga to Paint Rock, Alabama. I got on the train at Chattanooga. I was seventeen. I was sick. I was on the oil car. I got off there at Stevenson -- and I got out and crawled in a box car. I stayed in that box car until I got to Paint Rock. I did not see any trouble that took place. I did not nee my women on the train. I had generrhea and syphilis.

CROSS EXAMINATION (By Mr. Knight)

I don't know how many oil tanks were on that train-I was in such misery I wasn't looking. Q. How long had you been suffering from this disease or these diseases?

MR. LEIBOWITZ: That is objected to.

MR. KNIGHT: They proved he had syphilis and generahea, and I want to prove how long he had had it.

THE COURT: Objection is overruled.

MR. LEIBOWITZ: Except.

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I had been that way six months. I was going to Memphise I had been in Chattanooga one day. I got to Chattanooga and caught a ride. At Stevenson I got off the oil car and got in a box car. That box car was back of the oil car. I didn't see any gondola cars. On the box car

N LUB W

THE PERSON NAMED IN COLUMN TWO IS NOT THE OWNER.

There was a white fellow. I do got know his name. Then I got to Paint Rock I was in the back of the car. I think I was about seven cars from the caboose. I didn't see no one, on that oil tank. I was on the back end, holding. There wasn't no one on the oil tank where I was.

REDIRECT EXAMINATION (By Mr. Watte)

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I don't know how many oil tanks there were in that train.

OCIE POWELL (e), being called as a witness and having SHINE been first duly sworn, testified as follows: 17.To ...

DIRECT EXAMINATION (By Mr. Watts)

I was on a freight train that left Chattanooga en March 25, 1931. That ran from Stevenson to Paint Rock. I get on that train in Chattanooga, alone. On a gondola car leaving Chattaneoga it was empty. I didn't pay any attention how far that ear was from the esposee. I rode in that car until I got to Stevenson. When I got to Stevenson I got off the train and got on again, between a box car and a gondola. There was nobody else on that car with me. I didn't see any fight or any black boys pass by me going over the car towards the front of the train.

CROSS EXAMINATION (By Mr. Hutson)

I did not see those white boys jump off the car. The box car was back of me. And the gondolas were shead of no. I didn't see those boys when they jumped off the box ear into the gondola. I didn't testify in this case before. I remember testifying in this case, but I didn't testify that I seen anyone -- In that trial Mr. Bailey did not ask to this question: "Protty soon after you saw these colored

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boys go into that gondola, you saw these white boys jump off the traint" and I did not answer, "Yes, sir," or Question: "How long after you saw them jump into that gondola before you saw the white boys jump off?" and I didn't say, "As soon as they got in there".

I don't know how many gondolas were in front of me, but a good many of them was in front of me. I didn't see these boys as they jumped over these cars into the gondola. No, sir; they were over my head. And I didn't look up. When they jumped over I didn't see them. I didn't see anyone until I got off there in town. I was just hid down there between those two cars. And I was down there when they took me off. They carried me to Scottsboro, in a truck. They didn't talk to me.

they talked to you, one or two of them said they didn't do it, but these &there did, and the others said they did it?

MR. IEI BOWITZ: That is objected to.

THE COURT: Objection is everyuled.

MR. LEIBOWITZ: Except.

- Q. You remember that as you went up there in the truck?
- A. Yes, sir, I remember when I went up there in the truck.
- Q. And some of these boys accused others --

YOU remember the other part he asked you about?

THE WITHESS: No. sir, I don't remember about that.

I didn't know I was being charged with rape. They had us bound together with rope. I didn't know what had happoned.

first duly sworn, testified as follows:

Scotle.

DIRECT EXAMINATION (By Mr. Watts)

I was on a freight train that left Chattenooga for Stevenson and from there to Paint Rock on the 25th day of March, 1931. I got on the train. I was with three more. Haywood Patterson, Roy Wright and Eugene Williams. Roy Wright was my brother. I lived in Chattanooga and was eighteen. I have grown since I have been in jail. I got on the train at Chattenoogs on a box ear. I couldn't tell you exactly how far the box our was from the end of the train. Bobody else was on that car with me. I changed before I got to Stevenson. I got on an oil car. Thenel got an Stevenson, I stayed on the oil tank car. Before I got to Stevenson, that is, after I got through the tunnel coming towards Stevenson, whites picked up rocks from the ground and throwed them at the colored. The train was going very slow, and some of them would reach down and get them, and some jump off the train and get them. The boys throwing at us were up on the train towards the engine. The boys kept on throwing. The colored had warned them about throwing -- they had hit some of them, hit my brother in the head with a rock, and they didn't stop, and we decided to go up and make them stop. I went with them. There was string of gondolas had gravel in them. These white boys were on the third gondolmic I went everto where the white boys were. We engaged in a fight with them in that third soudola ear. I Midn't not eny wesen in that our. After the fight in the gondola car between the white boys and the colored boys was over, I went back to where I started from-

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on the bil tank and stayed on the oil tank until they took me off in Paint Rock. I didmnot see any women on that train at any time from the time I got on it until I gotto Paint Rock.

CROSS EXAMINATION (By Mr. Hutson)

I ain't counted how many were in there, when this fight was going on. I knows four what left with me. Haywood Patterson, Roy Wright and Eugene Williams. I was on the oil tank car, me and mu brother and Haywood, and then was on the other ear. On the lumber car. The oil car was back, and the lumber car in front. I don't know how many cars were back of the oil car to the caboose. I couldn't tell you how close the box car was to the caboose. I didn't pay no attention to what kind of cars were back there. I didn't pay any attention to them, only the ones I was on. I don't mow whether there were any gondola cars back of me. It was about thirteen or seventeen minutes after we left Stevenson before I went up there to engage in this fight. they were swinging off the car getting rocks, and swinging back on the car throwing them. They were on a gondola. The third one from the back. And I was on the oil tank. They told us to go up there and make them stop. He and my brother and Haywood Patterson and Eugene Williams. We all agreed. I don't know how many there was in that growd when I entered into that agreement. I didn't pay any attention to how many there was. All we wanted to do was to go up there and make them stop throwing rocks. I didn't pay any attention to how many was on our side. On their side I saw at least six. had at least six on our side; could have been more. I ton't know which one was in front. I don't know whether Towood was in the lead or not. We all went together. All know, when we were there, we were there. And in going from there to there we climbed up over that box ear.

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and fits end me and we jumped from the box our down into this gondele. To This is the sere all together. I remember going over two gondoles. I mount outs was counted at least six in there when I jumped over in there. they got up. They all got off the train except Gilley. They got off. A lick or two was passed. We didn't knock them off. I didn't hit one. I went to protect my brother. I didn't see him doing any fighting. I didn't see those girls in that car. I ain't attacked none, and ain't seen none.

They took me off the oil ear. I went back to the ndo one no new oil car. I ran back to the oil oar because that is where I started from.

to some war Q. Oh, just because you started from an oil tank and you had gone up there and was in a gondola that wasn't full of of molfored and on that you could ride as easy as an oil tank, and yet ingolia gan yaq you --

MR. IEIBOWITZ: We object.

MR. HUTSON: Let me finish my question.

THE COURT: Wait until he finishes.

Q. -- and yet without any reason at all you retreated back to that oil tank, is that a fact?

mount same hains . I went back to the oil tank.

4. Can you explain to the jury why you left that gondola and went back to that oil tank if those girls weren't up there and you hadn't attacked them?

A. I ain't seen no girla. --

Q. I want --

MR. IBIBOWITZI Let him answer.

MR. HUTSON: That is no answering my question. I Janul Ja ban . want him to explain why he left that gondela.

doles worm a sub . If you hadn't attacked those girls in that gondola, why the car boomen did you leave it; tell this jury.

. I had no reason to leave it.

. You had no reason to leave it. All right. I didn't think you did. That is all. - 189 -

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did you leave it. A. I had no you and no you take no you aid.

THE FOREGOING WAS ALL THE EVIDENCE IN THE CASE.

(Thereupon the case was argued to the jury
by counsel representing the State and the
defendant, to which argument no objections
were made or exceptions reserved, and at
5:15 P.M., January 22, 1936, a recess was
taken until 7:30 P.M., of the same day.)

#### AFTER RECESS

7:30 P.M.

ORAL CHARGE OF THE COURT

THE COURT: Gentlemen of the jury, the defendant, would retter son, was indicted by a grand jury of the reuit Court of Jackson County, Alabama, charging him with hit the law knows as rape, that is, that he forcibly wished one Victoria Price. While that indictment was found a grand jury of Jackson County, it, by due process of law, transferred to this county and is to be dealt with under same proceedings as if the grand jury of this county had dicted him, having jurisdiction of the case.

I have reduced to writing some notes, and some of it written out, and I will use it, sometimes reading it to for the purpose of being sure as to just what was said.

The first thing I want to call to your attention is this is a suit, not of Victoria Price against Reywood terson, but it is a suit by the State of Alabama against wood Patterson, and Victoria Price is a more witness in case. It is not to settle any controversy between Victoria Price and this defendant, but the State of Alabama by its grand jury that the defendant has broken one of laws, that law of rape, which is a law and intended for Protection of women.

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case. It is not aids bus soirs al ot busta estimo laws, that law or

As I have said, the crime charged is known in law as The 198 rape. Rape is defined by the law to be the carnal knowledge. of a woman forcibly and against her will. The offense is completed when the woman is made to yield through fear and toes not consent voluntarily or consciously. A man need not resort to force actively, but if, on account of the circumstances, or the relationship of the parties, he, intentionally, for the purpose of accomplishing his unlawful purpose. puts the woman in fear of personal injury by violence, and the yields on account of these things, he taiguilty of rape. there the female is not an imbecile, is not rendered unconscious, or bodily weak by the administration of drugs or ther substances, force is an essential element of the ffense of rape.

Now, force is either actual or constructive force. etual force would be the application of personal violence literally. Constructive force is a force brought to bear m the mind and amounts to mental force or mental distress. when such I dequiescence obtained through duress of the mind of the omen, or by putting her in four, that is constructive force, nd is as much forbidden by the law as actual force. If the at was committed by force actually of legally implied, which Jim a al sid for constructive force, against the consent of the woman, it rape without regard to whether the defendant put Victoria tice, the prosecutrix in this case, in fear of her life or ter of great bodily harm in the accomplishment of his pur-

Vonsent or acquiescence obtained by duress or fear personal violence will constitute no defense. The law new to notivestate such submission as no consent at all. If the mind of

the woman is overpowered by the display of physical force through threats, expressly made or implied, from the conduct of the man and the surroundings, or she causes to resist through fear of great bodily harm, the consummation of the unlawful purpose by the man is still rape. The offense is complete when the woman is made or caused to yield through stammen, or the fear, and does not consent voluntarily, whether the apprehenelly, for the pr sion of bodily harm is reasonable or unreasonable. The law puts the somen t doesn't go in to ascertain those kinds of facts, to find out she yields on ac whether or not she had good reason. While the law arms the blower the found woman who is assaulted by a man with the intent to ravish sommerleus, or be her with the legal right to stand her ground, and if necessary, to kill her assailant to protect her person from the senstadore wester . squar lo empelia matification of his lust, the law does not compel her to resort to such means, and the fact she does not so resort fuen seret fantel toes not strip the charge of the offense of rape in and of literally. Const itself. All the circumstances surrounding the commission of in the wind and of the alleged crime are to be considered, and whether the prosecutrix does or does not repel force by force, and regrand to the net of penetration to I soom set al but is accomplished by force either actual or constructive as I beddinges and to have defined these words, and against the will of the proseol evisuations a cutrix, the defendant is guilty of rape.

In considering all these questions, the relative size grossorq and .est of the parties, the situation of the defendant, or his accomplices, if there are any, the social or racial conditions, tre all matters to be weighed by you and are questions to be passed on by you as to whether all the elements of the orime exist, and when the elements of the crime are shown by the Widence beyond reasonable doubt, the crime is one of rape,

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although the prosecutrix may have been shown to have no setual effort to resist. The act must not have been by the sameent of the woman, and in this case there is no claim by the defendant -- in the case now on trial, -- that the prosecuting witness, Victoria Price, gave her consent, but on the contrary, the defendant here in this case, -- the defense is made that the defendant did not have sexual intercourse with the prosecutrix, either with or without her consent.

Where a woman charged to have been raped, as in this case, is a white woman, there is a very strong presump tion under the law that she will not and did not yield voluntarily to intercourse with the defendant, a negro, and this is true whatever station in life the prosecutrix may occupy, whether she is the most despised, abandoned or ignorant woman of the community, or a spotless virgin from a home of luxury and learning. The law knows no distinction there. The law is made for all and reaches out its protecting arm for all regardless of coler, creed or station in life. It is the glory of our law and this state and this Union that its protecting arms encompass all womankindl If she has been violated unlawfully, she may appeal to the courts with an shiding faith that no accusing finger can be pointed to her erring past or hopeless future as an excuse for denying to her full protection of the law-

now, gentlemen, the law is broad enough to reach all persons participating in a crime. That principle of law is known as siding and sbetting. One may be an aider and abetter in a case of this kind, although he did not actually rape the woman or have sexual intercousse with her. He is an aider and abetter if he advised by words or acts, or encouraged by word

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the commission of the offense, if, by his encouragement of by the same of the conduct, purposely made therefor, did setually -- was known to the participant and did setually encourage him to do the deed.

tion only, if a man comes to you and tells you he wants to borrow your gun to go across the street and kill Jim Jones and you let him have that gun for that purpose, under that information, and goes across the street and there shoots and kills Jim Jones, as a direct result of your sot, he is just as guilty of murder as the man that did the shooting, and the law looks upon him as a murderer, although that is all he did.

one may be an aider and abetter although he never said a word at the time the crime was committed, or never made a gesture. By his mere presence, he may become an aider and abetter if he is present for the purpose of aiding and abetting or encouraging or assisting, and the perpetrator of the crime knows that he is there for that purpose and by his mere presence, that presence does actually in any direct way encourage and aid in the commission of the crime, then, gentlemen of the jury, he is an aider and abetter. Of course, he wouldn't be an aider and abetter by his mere presence unless he was there for that purpose, and even if he were there for that purpose, he wouldn't be an aider and abetter unless the perpetrator of the crime knew he was there for that purpose.

Now, when you apply that to this case, under the contentions of the parties here, if you should find and believe from the evidence beyond all reasonable doubt that Victoria

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Now, when leations of the pa from the evidence

Price was raped on this train on this occasion, the defendeant would be guilty of rape if he was an aider and abettor in the sense I have explained to you, whether he had sexual intercourse with her or not.

Now, there is another principle of law very much akin to that principle of aiding and abetting, and sometimes the circumstances are such that the principles apparently overlap, and that is what is known inlaw as a conspiracy.

prearrangement, or upon an emergency, enter into a common purpose which contemplates crime. Each is a conspirator, and if the purpose is to carry out such crime, each is guilty whether he did an overt act or not, and this proposition extends to the preximate and natural consequence of such act or acts.

A very wide latitude is allowed in proving a conspirscy, extending to everything said and everything done by any conspirator in the execution of the common purpose. The conspiracy need not be proven by positive facts, but its extent and intent are to be determined by you from the sets of the parties charged in the conspiracy if shown to your satisfaction beyond all reasonable doubt in a case. they may appear by more gestures, a more not. It may be determined that there was a conspiracy by consideration of all the facts and circumstances, and the situation of the ectors at the time, provided these acts and the circumstantes permit a reasonable inference thereon. When a prima facie conspiracy is established, any act or declaration on the part of the co-conspirators in connection with and in furtherance of the common purpose is proper to be comdered by you in arriving at the truth of such charge.

nent of the law that is involved in this case under the contention of the State and the defendant.

When this case was entered upon before you the State read or stated the indictment to you. what constituted the State's charge. "The defendant, in reply to that, said that he was not guilty, and that plea of not guilty in law denies every material charge made or involved in this indictment before you. The same law to which I have referred guarantees to him the freedom of defense, and a fair, full and impartial hearing to determine his guilt or his innocence. He, like the woman I referred to, is guaranteed here by the Constitutions of the State of Alabama and of the United States that he will receive such consideration, and that law and that -these constitutions are all-pervading. They are no respecters of persons; the most humble, the most debased, abandoned and confirmed criminal, as to that matter, comes into court with that guarantee standing by him and abiding with him, and it enters the trial and accompanies him all the way. So solicitous is the law for an ascused that it declares he is presumed to be innocent until his guilt is shown by the evidence beyond a reasonable doubt. This presumption enters the trial with him and abides with him until his guilt is shown, and shown by the evidence in the case beyond all reasonable doubt. That is a presumption, however, that the law has created for his benefit, and being a presumption, it may be answered or met or overcome, and it is met and answered and overcome whomever, from all the evidence offered on the trial the jury is convinced beyond a reasonable doubt of guilt. But it is not answered or

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overcome unless the evidence rises to that degree of eredence.

Fow, in the trial of this case, as in all criminal cases, there are two main things to be considered and determined by you. The first is what the law calls the body of the crime, very often expressed in the Latin term corpus delicti, which means in everyday language the body of the offense. That is, in a case of this kind, the commission of rape and the commission of rape on Victoria Price by somebody intentionally done. The other branch of the charge is that the defendant is the guilty party, -- that he is the participant in that crime.

So, the first question you would have to determine from the evidence is has there been an offense committed; in this case, the offense of rape as I have defined it to you; that is, that she was violated, sexual intercourse had with her foreibly and against her will. That is the first thing you will have to determine, and you will ascertain that from the evidence offered in the case, and before you need proceed further, you must be satisfied beyond a responsible doubt from the evidence that the crime of rape has been committed. So, you take all the evidence in the case to first determine whether or not that crime was committed by anybody. If you reach the conclusion that it was, as I have indicated, then the next question is not who did it, -- you are not concerned with that, -- not who did it, but did this defendant do it. Well, when Insay who did it and you ware not concerned with whether one other than this defendant did it or not, I said that in a legal sense. I have said it with the understanding of what I have said about aiding or abetting or the information of a conspiracy.

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I repeat, in this case, if you are satisfied beyond all reasonable doubt from the evidence in this case that this defendant encouraged, suggested, assisted or aided intentionally in the encouragement -- in the commission of this crime, then, gentlemen, he would be in law a rapist.

If you are not satisfied by that measure of proof
that I have defined to you for conviction that a rape has
been committed, that ends the case; there is no occasion to
proceed farther to try to see what the defendants did or
didn't do. If nobody was raped that ends this case.

ommitted, -- then you take up the consideration of all the evidence and the legal inferences to be drawn from the evidence to determine whether or not this defendant did actually, as I have defined to you, -- did aid or abot or conspire to commit the offense as I have defined those terms to you, and that, before conviction can be warranted, you must find from all the evidence in the case, and believe beyond all reasonable doubt. So, the same applies, although you may be satisfied beyond all reasonable doubt from the evidence that the crime of rape has been committed, yet there is no verdict called for unless you are also satisfied from the evidence beyond all reasonable doubt that the defendant did it or participated in it in the manner in which I tried to explain to you.

And in charging you gentlemen, when I say -- use the word "find", as I sometimes do, I mean by that that you secortain after a consideration of all the evidence and believe in the things you have found beyond all reasonable

at .deequa 1 doubt from the evidence before you.

Fow, cases are tried on evidence. Suspicion is not evidence; it is not proof and it is not a matter proper for you to allow lodgment in your minds for the purpose of considering the guilt or the innocence of this defendant. His guilt cannot be shown or found, nor can a verdict on suspicion, however, strong it may be, nor can his defense be belatered up by suspicion. The law requires evidence, that is, such as the court trying the case declares to be evidence by allowing the recital of it to you, and that that is not allowed to go to you, although offered and rejected by the court, is not to be considered by you. That is not evidence.

The evidence may be oral, or it may be what the law calls documentary evidence, that is, written evidence, or it may be both, and often is, as in this case. Oral testimony, of course, is what some witness has stated from the stand as to what he saw or what he heard. That is what the law calls direct evidence. Then you, as jurors, are suthorised to apply your common sense, your common knowledge and observation and past experience in life to that evidence, and say whether or not that evidence establishes some point in issue before you. You are also authorised to draw what we calls reasonable conclusions from direct evidence or oral evidence or documentary evidence.

Now, there is another classification of evidence, and that is called or known in law as indirect evidence. You know it better, probably, as circumstantial evidence, -- what we call circumstantial evidence.

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Now, circumstantial evidence is a good deal easier to illustrate than it is to define, because that calls on a little technical logic in dealing with the case. I probably might better illustrate it to you. You are farmers, I presume; certainly some of you are. You go down in your field and in approaching you see the fence knocked down, some of the rails broken, freshly done. You know something did that, although you weren't there and saw it. You get up close enough and look over in the field and you see some tracks in there. You apply your past experience and observation in determining what it was that made those tracks. You would know a cow's tracks from a mule's tracks or from a horse's track, and by looking atthose tracks, you would mow that a horse or a mule, whichever it appeared to you. mineraces wifes sade those tracks, although you weren't there, nor did you added of what to see them made. It wouldn't require any direct evidence to to greatfest from some source to appeal to your mind, -- somebody to say of me small out I was down there and I saw the thing that knocked that fence to allen was and down, and got over there and made these tracks, and it was a to as headrodows tow or horse or whatever it was. That is the application of northwarmed bar sommon sense and past experience to the situation and that wandade wan has als circumstantial evidence.

You are present in a dark room, -- another illustradancemer flan of tion, -- and stay there a good long while; you lose count of he day and night, can't tell; a man comes in there and tells on he is just from the outside and it is a perfectly clear ly, not a cloud in the sky. That is direct evidence. tother man comes in and tells you he is just from the outide, that it is noon, midday. How, you don't need anyone to

ence has taught you that if there is no cloud and it is noon the sun is shining. And you would hardly believe any conflicting evidence, if a man under that sort of situation, were to tell you that it was noonday and there wasn't a cloud in the sky but the sun wasn't shining; you wouldn't have to believe that sort of testimony because somebody swore it.

Now, there has been something said in this case about correborative evidence. Both sides have had a good deal to say about that. The law would authorise a conviction in this case on the testimony of Victoria/Price alone, if, from that evidence, taken into consideration with all the evidence in the case, both that for the State and that for the defendant, you are wonvinced therefrom beyond all reasonable doubt that shehad been ravished on this ocession. The law does not require that she be corroborated by some other witness to that act. There may be cases, however, where correboration is to be desired, and it is always permissible to show it or to introduce it. Now, corroborate means to support, to strengthen, to aid; it does not mean that everything the witness testified to, to be corresponded satisfactorily, must be sustained by that kind of evidence, that there must be some other proof to some along and corroborate it, that is, say the same thing that the witness Victoria Price said, applying it to her, and say it in the same way. It doesn't mean that, but it toes mean to say that before being correborative, it must aid or strengthen some material statement that that witness Bade.

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Now, the state contends, and I as only telling you shat the state contends, and later on, what the defendant contends; I am not tellingyou what the proof establishes, nor am I undertaking to tell you what the witness said or didn't say, -- the State contends in this case that Victoria Price is corroborated by other evidence in the case in this: that a fight occurred on that train between Stevenson and Paint Rock; the state claims and contends that the corroboration is this: that she testified to a fight occurring on the train between the white boys and the negro boys between Stevenson and Paint Rock, and the State says that is corroboration of some part of the testimony of Vigtoria Price: that is, they claim there was a fight, and as I understand it, that is not disputed, that there was a fight, end the State contends that that supports the statement of Victoria Price in this case, which was a material statement. She said there was a fight, so they contend, so, if there redite ease ve a fight, the state contends there is correspondive eviornew . Toweword . dence of some material fact that Victoria Price stated, and, lugianed agamla | further, the State cays that that fact, if it be one, is com ejerodowase also correborated by other witnesses, who saw what happened s mean son another along that railway on that occasion. They claim -- the State claims that they have offered evidence here showing massive to build or tending to show that shortly after leaving Stevenson that a party saw parties on that train, some part of it, in certain kinds of cars, that have been testified about by Victoria Price; that they were seen there; some claim that there was a souffle, some claim there appeared to be a esisments no his light, some claim they couldn't tell whether they were white

or black, some claim there were some white and some black, and some claim there were men black and white, and women or a woman. Now, that is the State's contention, and they claim if you find that to be true and believe it beyond a reasonable doubt, that that is evidence correborating Victoria Price.

But the defendant contends that that is not to be considered as corroboration of Victoria Price as to a rape. having been committed. The defense claims that there was a fight on the train, but that it constituted no part nor was it a forerunner of any rape that then -- that thereafter took place or was alleged to have taken place; that it was simply a fight between the white toys and the negro boys, that they were put off, the white boys, and that the blood that was found on them afterwards was the direct result of that fight and that there was no rape in connection with it. Now, that is their contention.

Well, that is a matter that you have to deal with. I can't help you on that. That is a matter of weighin the evidence and drawing conclusions from the evidence. The state claims or contends that that fight was a more preliminary to what they claim took place, that it was the mere paving of the way to clear the train of the white boys for the purpose of rape; but their claim, gentlemen, doesn't settle the matter. It doesn't make any difference what they claim. It takes proof. Now, does the evidence in this case satisfy your minds beyond all reasonable doubt that that is true? Well, there is a case where you will have to determine whether or not it is a legitimate and fair con-

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clusion to draw from what happened and what their purpose was. Was their purpose just simply to fight, some trouble they had had, or was it what the State contends. That is the contention of the two parties.

when you go to looking into a thing like that to find out what a men's intentions are; that is not always easily done, because no witness can take the stand and tell what a man is thinking about or what he is intending to do. The law judges him by what he did do. So, in this case if you should be satisfied beyond all reasonable doubt from the evidence in this case that this defendant on that train on this occasion along with some of his companions did rape Victoria Price, then it may be left open for inference by you for you to ascertain what was their purpose in coming into the cars where the boys were end getting into a fight with them shd putting them off the train.

In arriving at all these facts or questionsyou apply
your commonweense, your reasoning power, your past observation and knowledge and experience.

or not is left open for you to ascertain from the evidence, and before it is established you must believe it beyond all reasonable doubt, that semen was found in the private parts of Victoria Price. Well, you apply your common sense and knowledge again. If you are satisfied of that from the evidence in the case beyond all reasonable doubt, then you may find, or it may be at least presumed that she costainly had had sexual intercourse with a man. Then, you give attention to the evidence in the case, if believed by you, to determine

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chains the taken chains antiacy your case antiacy your that he true! I've when it was and who the man was. You are not justified in entering into the field of supposition on that subject, but you will have to deal with the evidence in the case as to who had sexual intercourse with her. You are not authorised just to begin to wonder whether it could have been Jim Smith or John Jones or Mr. Johnson or somebody else, Lock at the evidence. I don't say by looking at the evidence you will find enough evidence there -- that is not my province. -- to say who did it, but that is where you go to try to find out that question.

In passing on all these questions and contentions, however, gentlemen, you don't do it in a one-sided way, of course. When I may all the evidence, I mean all of it; that means that that is offered by the State and that that is offered by the State and that that

Now, gentlemen, it is further contended in this case, and disputed, that this defendanthas made what the law calls a confession, that is, an admission that he is guilty of the charge here laid against him. A confession may be in direct language confessing the crime, or it may be the making of a statement of facts that unerringly -- that authorises unerringly the reaching of a conclusion of an admission of the charge against him.

Now, gentlemen, a confession is not admissible against
a defendant -- not admissible against this defendant unless
you are satisfied from the evidence beyond all reasonable
doubt that that confession was voluntarily made, that is,
that he did it without duress and force, either actual or
constructive. He must not be tricked into it or bullied

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into it, or encouraged into making it. It must be a free,
voluntary statement on his part. There is no particular
prescription in the law as to just how it shall be made nor
to whom it shall be made. In arriving at that, as I understand it, there is no claim in this case of any trickery or
any fraud or any duress of any kind. That is not the issue.

The defendant, as he had a right to do, said he didn't make it. So, that is the issue. Did he make it? And you arrive at that like you do all other material facts you have to find, from the evidence in the case. So, the evidence in the case on that point rests with the witness the state offered, and that of the defendant. Of course, their statements must be viewed in the light of the surrounding circumstances at the time and the conditions. Again, the law says that in considering the question of a confession that the jury should examine the matter with great care and ceution, as, for that matter, they ought to exemine all evidence where a man's life and liberty is involved with great care and saution. The reason for that is the chances, the possibilities of the witness detailing the confession having misunderstood what was said. However, gentlemen, if you are satisfied beyond all reasonable doubt that he did make the confession claimed here, and made it voluntarily and freely, then, gentlemen of the jury, that is of the highest type of evidence because no man would know better whether he is guilty or not than the man that is charged or the man that makes the alleged confession, if he makes item That is the chief thing for you to find out. Did he make it in the language used, or substantially so?

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tate it, or cap reluptory contes nt-molfalwanes Laria di modwyet exects, .51 beams gus, To lumb you wat at add .... TARRET & DOORS L SEE NOT NOT BEELFE. year here to that end al comphive erolle glods out that it at a burner to lass skire aget open tack area was war eds wast odd dags gol , an , moldes a exacts operably realingers and ex the meet bilities de rednurs 2m nuitus belieling one wer lago choos ods ones one freely, then, highens type of e shormor be ta gui. the man thut pake line to the obtor in the language, and beyond a reasonable doubt. That is such a simple expression that it is rather hard to give an accurate, technical definition of it. It is very well understood. The law doesn't say that you must believe beyond doubt. It says you must believe it beyond a reasonable doubt, so doubt is not enough. It must be a reasonable doubt. And that doubt is not a mere figment of the mind. It must — you must reach that doubt after a consideration of all the evidence in the case. When you have done that, does a doubt arise in your mind as to his guilt? If it does, then the natural thing would be to look at the evidence to see whether or not it is such that it furnishes you a reason for having that doubt. If it does, why, that is sufficient.

in this case, Victoria Price, has not been put in direct issue. It is not claimed, as I understand it, by anyone that she was unworthy of belief. Now, the character of a witness may be put in issue in any and all cases, and the law prescribes a formal way in which to do that. It is not necessary for me to go into detail on that, because I don't think that that is a matter of serious controversy in this case. Tou do it by showing those who know her or are nequainted with her reputation in the community where the witness lives, -- either by testifying that her general character is bad, or that it is bad for truth and verseity.

There has been a good deal of argument here on both sides about failure, -- one charging another about their putting on witnesses and not having them here, and all that

sort of business. Well, with all due respect to the learned counsel, that is not a proper argument in this case. I am addressing that to both sides. Where a witness is in court or answerable to the process of the court, it is the duty of the party who wants their testimony to call for them and put them on the stand and seek such evidence from them as they desire, and although they may have witnesses in court and sworn and put under the rule, no adverse inference can be drawn against their right or the issue involved because they fail to put me them on the stand. And, so far as this case is concerned, it is wholly immaterial whether the witness was summoned as a defendant's witness or a state witness and testifies -whoever puts that witness on the stand, that witness becomes his witness and not the witness of the party who had him subposmed in the case, and that is fair and that is proper, and no inference -- adverse inferences are to be drawn against any party on that account.

now, there is some written evidence in here by an agreement of the parties that satisfied the court to allow it to come before you. There is evidence offered here of the testimony of witnesses on a former trial. Well, it doesn't make any difference in the eyes of the law what party offered that witness on the former trial and produced that testimony. That is not an issue. Whoever offered that testimony in the case now on the trial, that former testimony becomes the testimony of the party offering it just the same as if the witness had been here and he had put the witness on the stand. So, gentlemen, you may just abandon any consideration of contentions of that kind.

Now, gentlemen, evidence is very largely made out by vitnesses. When a witness takes the stand to testify not

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only what he says becomes evidence, buthe himself becomes evidence in the case. He is before you and is offered as a witness. You may look at him, look at his demeanor, read, if you may, his countenance, and observe his demeaner on the stand. You do that for the purpose of ascertaining how much oredence you will give to what he has to say about the facts. Of course, in weighing the testimony of witnesses, you have a right to look at the witnesses' intelligence. I don't mean that, though, to indicate that there is a warrant in any way to give him more credence on account of his intelligence. A very ignorant man might be just as honest as a very intelligent man, but he might not be able to express himself or make answers understood as to what he saw or what he heard as the more intelligent man who had a happier and better faculty of expressing himself. Looksat the evidence for everything along that line, though. Just don't jump at conclusions. You look at the evidence. I say again detersine by his conduct or his whole surroundings, as shown by the evidence in the case, whether or not he is partison or is friendly to one side or the other; whether or not the conditions are such that would make him friendly to one side or the other or the reverse, unfriendly or unkind. You, of course, may look at the reasonableness of his story. Does it sound reasonable, or is it in accord with the other evidence in the case that you ascertain from a consideration of it is reliable? You may look to the evidence to see whether or not vitness has any interest or lack of interest in the preseution, any reason you can find from the evidence that will hed any light on that subject to reach that kind of onclusion. Those things are all permitted to be looked at

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by you. That is only a recognition of human nature. The law says that the defendent is interested in the result of a suit. and that being true, the law says you may look to that -- it doe sn't say you must, it says you may look to that in arriving at what consideration you will give to this testimony. Now, on these other things I have pointed out, you will have to look to the evidence to see whether that situation exists. but when it comes to an interested party, to wit, the defendant, and I will come to some sort of them in a minute, the law steps in and decides the question by saying he is interested because he is the defendant. These others, you have got to search through the evidence to find out whether or not it justifies you in reaching the conclusion he is partisen, for instance, and things of that sort, but where the defendant testifies as a witness the law steps in and says he is interested and you may look to that.

Now, again, it is natural that the prosecuting witness in this case is interested in the result of this suit, and you may view her testimony in that light.

How, gentlemen, by saying that you may do these things, and take them into consideration, the law doesn't mean to say, nor do I, that because you find those facts to exist, that when you do discard the testimony. It doesn't say that at all. It simply furnishes you a light to turn on the evidence to view it and decide its credence and its worthiness, -- that is all. But, if you ascertain it to be a fact, then you sot upon it.

Now, gentlemen, that is about all I think it is necesbary for me to may. Now, when you have done all that, -- of a verdict of some sort. There are two forms of verdict if you should find the defendant guilty, and when I say find. I am following it with the idea if you believe beyond all reasonable doubt. One form is this: We, the jury, find the defendant guilty, and fix his punishment at death.

Another form is: We, the jury, find the defendant guilty, and fix his punishment at -- so many years in the penetentiary. It cannot be less than ten, and any number of years above ten that you feel that the evidence justifies you in fixing.

How, gentlemen, I have explained to you about believe things beyond a reasonable doubt. When you go into the jury room, gentlemen, you go there without any particular pride of your own opinion. The very purpose of having twelve men to pass on a matter is that you may reason together, that you consult with one another. That you discuss the evidence among yourselves, and the law presumes, gentlemen, that you do it with an open mind. You know there are several ways of doing things, and if we don't watch we may fall into that error. It is a right difficult thing for the average mon to hear a state of facts and not have his mind pretty well made up, and if he gets too strongly in that situation he hears the noise the other fellow is making in presenting his views, but it just goes in one ear and out the other. You are just estehing and listening for the purpose of jumping afoul of his argument and tearing it to pieces when he gets through accord ing to your satisfaction. That is not reasoning together and not reaching a verdict as the law requires and expects of men that get on the jury.

Now, gentlemen, the law is to be executed by reasonable

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guilty to a methematical certainty, that is, that there be no error, no chance for error. Well, the world is full of errors. All menkind is subject to err. You are not excused from erriving at a verdict in this case, either of guilt or of innocence because you are afraid you might make a mistake, because, if that is the model to follow, we might never have any yerdict. The law has fixed snother rule. It doesn't say that; it doesn't require it. It says you must believe the guilt beyond all reasonable doubt from the evidence in the case, and that is the rule, and it does require that.

Sow, gentlemen, if after viewing all the evidence according to the manner I have indicated to you you are not satisfied beyond all reasonable doubt therefrom that the defendant is guilty, then the law says he is not and that he should be released, and in that event the form of your verdict would be we, the jury, find the defendant not guilty.

In either event, gentlemen, reduce your verdict to writing, one of you sign it as formmen, and bring it into court. How, the law doesn't necessarily require that it be in writing, -- it may be announced orally, -- but the better form, the better practice is to reduce it to writing so that there may be a record made of it and no dispute about it, so you follow that plan.

At the request of the defendant I give you the following charges. When I do, gentlemen, they become a part of
the law of the case the same as if I had said it in the besinning, and they are no longer the charges of the
defendant; they are not supposed to be in conflict with
anything I have said. Usually, charges will provably bring

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nore specifically certain questions to the attention of the

- (5) "Before the jury should convict the defendant,"
  the hypothesis of his guilt shall flow naturally from the
  facts proven and be consistent with all the facts in the
  case."
- (5) "If the evidence is reasonably consistent with the defendant's innecence, you should sequit him."
- (7) "If you believe that Victoria Price swore
  falsely as to material facts in this case, and that her
  testimony was either willfully or curruptly false as to
  such material facts, then you may disregard her testimony
  in its entirety and refuse to believe any part of it."
- (10) "I charge you that the defendant enters this trial with the presumption of innocence and that that presumption attends him throughout the trial until, upon a consideration of all the evidence, you are convinced beyond a reasonable doubt and to a moral certainty of his guilt."

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That charge is number 10. You will notice there, gentlemen, it says, "You are convinced beyond a reasonable doubt and to a moral certainty." Now, that expression, "to a moral certainty", is the legal equivalent of beyond a reasonable doubt. It doesn't mean any more, and it doesn't mean any less. It is just the same as if I had said you were convinced beyond a reasonable doubt and beyond a reasonable doubt.

(8) "In determining what weight you shall give to the testimony of Victoria Price, you may consider what interest, if any, she has in the result of this case, and

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may also consider the fact that she is the person alleged to have been raped."

- you shall give to the testimony of any witness, you may consider his or demeaner on the witness stand and you may determine for yourself in the light of all the facts and circumstances testified to by the witness, and in the light of your common experience of men and affairs, whether the sitness is worthy of belief."
- Victoria Price, you may consider her demeanor upon the witness stand, together with what she has to say as a witness and the reasonableness of her testimony, and if after considering all the evidence, you find that she is contradicted as to material matters in the case by other evidence, and that she swore to any one material fact in the case falsely, and that this was willfully done, then if you see proper so to do you can disregard her entire testimony."
- malice against the defendant or anger, and thereby satisfied the jury that they have not testified truely and are
  not worthy of belief and the jury think their testimony
  or these accounts should be discarded, they may discard it
  altogether."
- connot say that they have an abiding conviction to a moral certainty of the guilt of the defendant, the jury are bound to give him the benefit of that doubt and not convict him.

there is an expression of that term, "a moral cor-

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thing, no more or no less, thembeyond a reasonable doubt.

- (14) "The defendant is authorized under the statute"
  to testify in his own behalf and the jury have a right to
  give full credit to his statements."
- there is some evidence of the defendant's guilt, yet if after considering all the evidence in the case from the standpoint of both the state and the defendant, the jury have a reasonable doubt of the defendant's guilt arising out of any part of the evidence, they must find the defendant not guilty."
- (17) "The legal presumption of innocence is to be regarded by the jury in this case as a matter of evidence, to the benefit of which the defendant is entitled."
- (27) "If you find from all the evidence in the case that there is a probability of defendant's immocence, you should acquit him."

That is number 27. Gentlemen of the jury, criminal cases are not tried on probability. That rule applies to civil cases, and to say this amounts to a probability, or if there is a probability, that is not the same thing as beyond a reasonable doubt. The fact is, it is not as strong a term.

(22) "The court charges the jury that the defendant is presumed to be immosent until his guilt is proven beyond a reasonable doubt and the evidence to authorize a conviction what be not a more prependerance of the evidence, but should be so strong and convincing as to lead the minds of the jury to the conclusion that the defendant cannot consistently with any reasonable hypothesis be immosent."

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(4) "The court charges the jury that a person charged with a felony should not be convicted of a felony unless the evidence excludes to a geral certainty every possible hypothesis but that of defendant's guilt."

That expression, "moral certainty", in present in

MR. WATTS: What is that, please, the number?

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MR. ENIGHT: Humber 27 was given relative to the probability.

THE COURT: I reckon so.

presumption of innocence, and this is a fact in the case which must be considered with the evidence and should not be disregarded."

You are not supposed to disregard anything that is evidence.

MR. WATTS: What is that charge?

THE COURT: That is 26.

(25) "Unless each member of the jury, from all the evidence in the case, is satisfied of the defendant's guilt beyond a reasonable doubt, the jury cannot find the defendant guilty."

Well, of course, you can't. This is 23. You can't find the defendant guilty or innocent either unless all twelve of you reach the same conclusion. That is what that means, -- it fast says unless each member finds that. Well, of course, all twelve must reach that conclusion, and if one didn't reach it, then there couldn't be any verdict.

(19) "I charge you that if after considering the evi-

dence in the case, there remains in your minds a reasonable doubt of the defendant's guilt, although you believe there is a probability of his guilt, then you must find him not guilty."

That is 19. That is in keeping with what I told you shile ago, that the two words mean different things. Beyond a reasonable doubt, as I said, is a stronger term than a probability, and that is why that charge is good. There might be a probability and still you wouldn't be convinced beyond all reasonable doubt.

evidence in the case, is satisfied beyond a reasonable doubt of the guilt of the defendant, then the jury cannot find the defendant guilt of rape."

Well, I will explain that to you. That is all that

MR. WATTS: What number?

THE COURT: That is 24. That is the same charge I have already given once before.

(25) "The burden is on the state to convince you of defendant's guilt to the exclusion of every reasonable doubt, and by evidence that overcomes the presumption of fact that the law surrounds the defendant with, that he is innocent of crime."

MR. WATTS: We wish to reserve an exception, if the court please, separately to each explanation by the court of each and every written charge given by the court at the request of the defendant.

THE COURT: Very well.

MR. WATTS: Will the court give me an opportunity to

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prepare a written request on the matters I called your attestion to?

THE COURT: Yes, sir.

MR. WATTS: Now, I have an explanatory charge here I prepared while Your Honor was charging I would like to submit.

THE COURT: Very well.

MR. WATTS: Now, if the court pleases, one more matter, and I will be through.

THE COURT: Are these two separate charges, or all one charge?

MR. WATTS: Two separate, one is B and the other is C. Now, if the court pleases, we wish to reserve an exception to that portion of Your Monor's oral charge wherein Your Honor charged the jury in substance that they might, under the evidence in this case, find this defendant guilty of a conspiracy, as Inunderstood Your Honor, or that he could be guilty of a conspiracy to commit rape, and, also, that entire portion of the oral charge which is -- also which is rather long and involved on the definition of what constitutes tonspiracy, our theory being it is abstract insofar as this tage is concerned, the defendant not being charged with consomebive ad and spiracy and not being jointly indicted.

THE COURT: All right; is that all?

MR. WATTS: That is all.

> (Before the jury retired, and in the presence of the jury, and at the time the court called for written requests for charges, the defendant requested the court to give each of the following separate and several written charges. The court, separately and severally,

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refused to give, separately and severally the following requested written charges, endorsing on each of said requested written charges the words, "Refused. ".". Callahan, Judge", to which action of the court in refusing to give said written charges, and each of them, the defendant duly and legally, separately and severally, reserved an exception. Said requested written charges, so refused by the court, being in words and figures as follows:)

1. I charge you, gentlemen of the jury. that if you believe the svidence in this oase, you should acquit the defendant. 2. Unless each and every member of the Jury is estisfied beyond a reasonable doubt from all the evidence that the defendant is guilty as charged in the indictment, then you should sequit him. 6. The jury must be satisfied of the defendant's guilt beyond a reasonable doubt before they can convict him. 18. The court charges the jury that if there is one single fact proved to the satisfaction of the jury which is inconsistent with the defendant's guilt, this is sufficient to raise a reasonable doubt and the jury should acquit the defendant.

18. The court charges the jury that if from a consideration of all the evidence,

there is any reasonable uncertainty as to the truth of the testimony of the witness Victoria Price, the jury should find the defendant not guilty.

the acquittal of the accused unless his guilt in shown by that full measure of proof which the law requires. It would be a legal wrong to convict a defendant of whose guilt there is a reasonable doubt. The demands of society and the good of the country to not require nor senetion the conviction of a defendant whose guilt is not preven to a moral certainty.

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20. I charge you that you have no right to capriciously reject the testimony of the defendant simply because he is interested, and unless upon a consideration of all the evidence, you are satisfied beyond a reasonable doubt that the defendant has sworn falsely, you should sequit him.

A. I charge you, gentlemen of the jury,
if you are satisfied from the evidence
beyond a reasonable doubt that the semen
found in the vagina of Victoria Price was
deposited there before Victoria Price boarded
the freight train at Chattenooga on the 25th
of March, then such semen would not someti-

tute evidence against the defendant in this

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has been committed by the defendant beyond all reasonable doubt, they may then go to a condideration whether (the defendant) has been proven under the evidence to be guilty beyond a reasonable doubt of assault and battery; and if the jury should fail to find the defendant guilty beyond all reasonable doubt to the crime of assault and battery, they should then consider whether the defendant under the evidence has been proven guilty of simply assault beyond all reasonable doubt.

c. We ask the court to charge on assault and battery and simple assault and instruct the jury upon the punishment as provided by statute for these respective crimes.)

And the defendant, Haywood Patterson, here now tenders foregoings as true and lawful BILL OF EXCEPTIONS, this

day of April, 1956, being within the time allowed law for the same; and prays that the same may be signed certified to the Supreme Court of the State of Alabama, it the errors complained of may be reviewed and corrected. The is accordingly done this day of . 1956.

Judge Circuit Court, Presiding.

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sh is accordingly

I hereby certify that I have this day handed to MEIVIN HUTSON, of Counsel for the State of Alabama, a copy of the foregoing BILL OF EXCEPTIONS.

Dated, Decatur, April , 1986.

C. L. WATTS, Of Counsel for Defendant.

The foregoing BILL OF EXCEPTIONS was presented to me this day of April, 1936; being within the time allowed by law.

Judge Circuit Court, Presiding.