

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No.

HAYWOOD PATTERSON, PETITIONER,

vs.

THE STATE OF ALABAMA

**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA**

FILED

, 193 .

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No.

HAYWOOD PATTERSON, PETITIONER,

vs.

THE STATE OF ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA

INDEX.

	Original	Print
Record from Circuit Court of Morgan County.....	1	1
Organization of Court.....	2	1
Order for Special Session of Circuit Court of Jackson County	3	1
Organization of Court, Special Session, Circuit Court, Jackson County	5	2
Indictment	8	5
Writ of arrest	9	6
Order of removal to Circuit Court of Morgan County...	10	6
Order for Special Session of Circuit Court of Morgan County	11	7
Organization of Court of Special Session.....	12	8
Petition for removal to Federal Court	13	8
Exhibit "A"—Affidavit of R. A. Burleson.....	16	12
"B"—Affidavit of John A. Hackworth.....	17	13
"C"—Affidavit of John A. Hackworth.....	18	14
Order overruling petition for removal to Federal Court.	21	17
Arraignment	22	17
Organization of Court, January 20, 1936.....	23	18
Motion for change of venue.....	26	20
Exhibits "A" to "C", inc.—Affidavits (copies) (omitted in printing).....	29	
Order overruling motion for change of venue.....	34	24

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 2, 1937.

	Original	Print
Record from Circuit Court of Morgan County—Continued.		
Recital as to court's oral charge.....	35	25
Defendant's given charges.....	35	25
Defendant's refused charges.....	38	28
Judgment and sentence	40	29
Bill of exceptions	41	30
Caption	41	30
Motion for removal to Federal Court (copy)		
(omitted in printing).....	41	
Opinion of court on motion for removal.....	49	31
Colloquy	51	33
Testimony of Victoria Price.....	54	37
Obie Golden	64	48
Luther Morris	74	59
W. H. Hill	75	61
Tom T. Rousseau	78	64
R. S. Turner.....	79	65
Lee Adams	86	72
Motion for mistrial	87	74
Testimony of Tom Dobbins.....	90	77
W. E. Branham.....	90	78
Percy Ricks.....	92	80
Colloquy	94	82
Testimony of Haywood Patterson.....	96	84
E. P. Kingsberry	96	85
Motion for mistrial.....	99	88
Testimony of V. B. Gilbert.....	100	89
Colloquy	101	89
Offer in evidence—Testimony of Dr. R. R. Bridges—		
Former trial	108	97
Testimony of Lester Carter	112	101
Haywood Patterson (recalled).....	120	110
Olen Montgomery	131	123
Offer in evidence—Testimony of Sam Mitchell—		
Former trial	133	125
Testimony of Haywood Patterson (recalled).....	135	127
Lester Carter (recalled).....	135	127
Willie Roberson	138	131
Ocie Powell	139	132
Andy Wright	140	134
Oral charge of court	143	137
Defendant's exceptions to oral charge.....	161	156
Defendant's refused charges (copy) (omitted in printing)	162	
Order settling bill of exceptions	163	157
Certificate of appeal	165	158
Certificates to transcript.....(omitted in printing)..	166	
Proceedings in Supreme Court of Alabama.....	168	158
Minute entry of argument and submission.....	168	158
Opinion, Thomas, J.	169	159
Judgment	188	174
Præcipe for transcript of record.....	189	175
Clerk's certificate(omitted in printing)..	191	

[fols. 1-2]

IN CIRCUIT COURT OF MORGAN COUNTY

ORGANIZATION OF COURT

Be it Remembered, That at a regular term of the Circuit Court of Morgan County, Alabama, at which the officers authorized by law to hold or serve such court were serving, the following proceedings were had and done in a cause wherein State of Alabama was plaintiff and Haywood Patterson was defendant. Present and presiding at the trial of said cause, was the Honorable W. W. Callahan, Judge of said Court.

[fol. 3] IN CIRCUIT COURT OF JACKSON COUNTY

ORDER FOR SPECIAL SESSION OF CIRCUIT COURT FOR JACKSON COUNTY, ALABAMA—Filed November 5, 1935

On this the 5th day of November, 1935, J. E. Reid, Clerk of the Circuit Court: M. C. Thomas, the Sheriff of Jackson County; and A. E. Hawkins, Judge of the Ninth Judicial Circuit, being present, it is ordered that the Circuit Court of Jackson County be opened now by order of the Judge, which is accordingly done and proclaimed as being opened by the Sheriff.

And thereupon the Judge causes this order of the Court to be entered upon the minutes, that is to say; it being the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that a Special Session of the Circuit Court of Jackson County is necessary for the public good of the County, it is therefore ordered and adjudged that a Special Term or Session of said Court be, and the same is hereby ordered to begin on Wednesday, November the 13th, 1935, and continuing for one week, or until the cases set for trial and coming before said Court and Grand Jury are disposed of. It is further ordered that a Grand Jury be drawn and organized for the said Court, and the Jury box of said County being brought in, the Court now proceeds to draw therefrom in open Court thirty six names of Jurors for the said Court from which to select and organize a Grand Jury for said Special Term or Session. It is further ordered that

the Clerk of said Court will make a list and venire of said Jurors, drawn for the said Court which will be summoned by the Sheriff of said County, as Jurors commanding them to be and appear at the Court House of Jackson County, to serve as Jurors for the week beginning Wednesday, November 13th, 1935, as above ordered.

A. E. Hawkins, Judge of the Ninth Judicial Circuit.

The clerk will record this order on the minutes of said Court.

A. E. Hawkins, Judge of the 9th Judicial Circuit.

[File endorsement omitted.]

[fol. 4] Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 5] IN CIRCUIT COURT OF JACKSON COUNTY

ORGANIZATION OF COURT, SPECIAL SESSION, CIRCUIT COURT,

JACKSON COUNTY, ALABAMA—November 13th, 1935

Be it remembered, that a special session of the Circuit Court begun and held in and for Jackson County, Alabama, on the 13th day of November, 1935, this being the 13th day of November, 1935, and the time and place for holding the same according to order of the Honorable A. E. Hawkins, Judge of the ninth Judicial Circuit of Alabama. There was present and presiding the Honorable A. E. Hawkins, Judge of the Circuit Court, and J. E. Reid, Clerk of said Court, and M. C. Thomas, Sheriff of said County being also present, the following proceedings were held, to-wit:

The Sheriff returned into open Court the Venire of Jurors which had been duly and regularly drawn and summoned according to law, to supply the Grand Jury and Petit Jury, for this term of this Court the said Venire with the Sheriff's returns thereon being in words and figures as follows:

CIRCUIT COURT, SPECIAL TERM NOVEMBER 13TH, 1935

STATE OF ALABAMA,
Jackson County:

To any Sheriff of the State of Alabama, Greetings:

You are hereby commanded to summons the following named persons, qualified citizens of said County to appear and serve as regular jurors at the special term of the Circuit Court of said County, to-wit on the second Wednesday in November, next, they having been regularly drawn as special Jurors for the first week of said term of said Court, to-wit:

No.	Name	Beat No.	Occupation	Residence
1.	Bird Hill.....	1	Farmer	Bridgeport
2.	D. Hodge Rodgers.....	1	Laborer	Bridgeport
3.	Lawrence W. Holder.....	3	Farmer	Stevenson
4.	Ben Rudder.....	3	Farmer	Stevenson
5.	Ernest English.....	3	Farmer	Stevenson
6.	Robert McMahan.....	3	Farmer	Stevenson
7.	Europe Smith.....	11	Farmer	Pisgah
8.	Otis V. Thomas.....	12	Farmer	Langston
9.	Carl Gross.....	15	Farmer	Scottsboro
10.	Wiley Whittaker.....	16	Farmer	Woodville
11.	Elmer Proctor.....	16	Farmer	Woodville
12.	George W. Scott.....	18	Farmer	Estillfork
13.	Smith Ashmore.....	21	Farmer	Scottsboro
14.	Rankin L. Airheart.....	21	Farmer	Scottsboro
15.	Lenard Tiffin.....	21	Farmer	Scottsboro
16.	Burt L. Vann.....	21	Telephone Mgr.	Scottsboro
17.	Jno. A. (Tex) Snodgrass.....	21	Farmer	Scottsboro
18.	Jeremiah Hester.....	21	Laborer	Scottsboro
19.	Melvin H. Brown.....	21	Filling Station	Scottsboro
20.	Creed Conner.....	23	Farmer	Paint Rock
21.	Henry B. Robertson.....	24	Farmer	Section
22.	Jim V. Bolinger.....	24	Farmer	Section
23.	Floyd Pogue.....	25	Mill Man	Francisco
				(not found)
24.	John Clark.....	27	Farmer	Hollytree
[fol. 6]				
25.	John G. Hicks.....	28	Farmer	Dutton
26.	Fred Morris.....	28	Miller	Dutton
27.	Charles L. Hicks.....	28	Farmer	Henegar
28.	Robert Wilburn.....	32	Farmer	Limrock
29.	Albert E. Chambliss.....	32	Farmer	Limrock
30.	George W. Oliver.....	38	Farmer	Pisgah
31.	Charley Clarady.....	38	Farmer	Pisgah
32.	Chas. Scroggins.....	38	Farmer	Pisgah
				(not found)
33.	Wyatt J. Moore.....	39	Farmer	Henegar
34.	Sam C. Milligan.....	39	Farmer	Henegar
35.	Jim Bryant Holland.....	39	Farmer	Henegar
36.	Elbert Brown.....	39	Farmer	Henegar

And have you then and there this order with your Endorsement thereon, Witness this 6th day of November, 1935.
J. E. Reid, Clerk Circuit Court.

First Week

Circuit Court Venire for Regular Jury

THE STATE OF ALABAMA,
Jackson County:

November 13, 1935.

I hereby certify that I have executed the within order for the summons of 36 Jurors on all of the within named persons except Floyd Pogue and Chas. Scoggins. This Nov. 11th, 1935.

M. C. Thomas, Sheriff, — — —, Deputy Sheriff.

After the Sheriff had made return of said venire, the Court require- the names of the persons on said Venire to be called in open Court, all the persons answering upon said call were duly and legally examined under oath, by the Court, of and concerning their qualification, their excuses and their claims of exemptions, as Jurors; and in addition to Floyd Pogue and Chas. Scroggins on whom the Sheriff failed to get service, the Court ascertained and adjudged that the excuses rendered by the following persons, why they should not serve as Jurors for the present term, are legal and sufficient, and each of the said persons were excused from attendance under their said summons to-wit: Bird Hill, John Clark, Fred Morris, Jim V. Bolinger and Albert B. Chambliss and the Court examined under oath, ordered and adjudged that the persons named in said Venire in attendance upon Court, the following named persons possessed the qualifications required by law for Grand Jury and Petit Jurors to-wit: Europe Smith, Geo. W. Oliver, Wyatt J. Moore, Robert Wilburn, Sam G. Millican, Creed Conyer, Robert McMahan, Ben Rudder, Carl Gross, D. Hodge Rodgers, Wiley Whitaker, Jeremiah Hester, John A. (Tex) Snodgrass, Jim Bryant Holland, Burt L. Vann, Otis V. Thomas, Rankin L. Airheart, Leonard Tiffin, Elbert [fol. 7] Brown, Henry B. Robertson, Charles J. Hicks, John O. Hicks, George W. Scott, Lawrence W. Holder, Smith Ashmore, Charley Clarady, Elmer Proctor, Ernest English, Melvin H. Brown, and the Court ordered the Clerk of the Court to write on separate slips of paper the names of each of said jurors in attendance upon the Court on said day and named in said Venire, and who had not been excused

by the Court and who are just above set out, and place each of the slips of paper in a hat, and the Clerk obeyed said order, thereupon the presiding Judge of said Court, in open Court drew from said hat the names of eighteen qualified Jurors to serve as Grand Jury, whose names are as follows: Europe Smith, George W. Oliver, J. Wyatt More, Robert Wilburn, Sam G. Milligan, Creed Conyer, Robert McMahan, Ben Rudder, Carl Gross, D. Hodge Rogers, Wiley Whittaker, Jeramih Hester, John A. (Tex) Snodgrass, Jim Bryant Holland, Burt L. Vann, Otis V. Thomas, Rankin L. Airheart, and Leonard Tiffin. The said above named persons being the first eighteen names drawn from said hat, and the court having ascertained according to law that each of the said eighteen persons selected to serve as Grand Jurors possessed all the qualifications required by law as Grand Jurors.

Wiley Whittaker was appointed as foreman of said Grand Jury, and the said Wiley Whittaker was duly sworn as such foreman, after which each of the other persons so selected as Grand Jurors was duly sworn according to law. Thereupon W. M. Crabtree was duly appointed and sworn according to law as bailiff to serve upon said Grand Jury, thereupon the Grand Jury thus organized, sworn and charged, being composed of eighteen Jurors last above named, retired in charge of said bailiff in the discharge of their duties.

The Court thus organized proceeded as follows:

Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 8] IN CIRCUIT COURT OF JACKSON COUNTY

INDICTMENT—Filed November 13, 1935

The Grand Jury of Said County charge that before the finding of this indictment Haywood Patterson whose name to the Grand Jury is otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

H. G. Bailey, Solicitor for Ninth Judicial Circuit.

No Prosecutor.

A True Bill. Wiley Whitaker, Foreman Grand Jury.

[File endorsement omitted.]

Witnesses: Victoria Price. Lee Adams. Luther Morris. Harry Hill. W. E. Brannum. Walter Hall. Tom Dobbins. Dr. H. H. Lynch. T. T. Rousseau.

Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 9] IN CIRCUIT COURT OF JACKSON COUNTY

WRIT OF ARREST

To any Sheriff of the State of Alabama, Greeting:

An Indictment having been found against Haywood Patterson at the Special Term, 1935, of the Circuit Court of Jackson County, for the offense of *Rpae*.

You are therefore commanded forthwith to arrest the said Haywood Patterson and commit him to jail, unless he give bail to answer such indictment at the said Circuit Court of Jackson County, in the sum of — Dollars.

Witness my hand, this 18 day of November, 1935.

J. E. Reid, Clerk.

Committed to jail Dec. 11, 1935.

Fred H. McDuff, Sheriff.

[File endorsement omitted.]

[fol. 10] IN CIRCUIT COURT OF JACKSON COUNTY

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, EUGENE WILLIAMS, OLIE POWELL, Willie Robertson, Andy Wright, Oren Montgomery, Charlie Weems, Clarence Morris, Roy Wright.

ORDER FOR REMOVAL

On the hearing of the petition for a change of venue filed by all the defendants in the above styled cause, came the State of Alabama, by its Attorney General, and the de-

fendants by their Attorneys, and the Attorney General stating in open court that while he does not consent to a change of venue, that he does not resist the motion therefor. The petitioners having made known to the court by written petition and by statements of counsel in open court that they desire the trial of this case transferred to another County, it is, therefore, ordered that the prayer of said petition be and the same is hereby granted and the case is hereby removed to the Circuit Court of Morgan County, Alabama, for trial.

It is further ordered that the Clerk of the Circuit Court of this County, namely, Jackson County, Alabama, make out a transcript of all the entries, orders and proceedings in the case, including the organization of the grand jury, the indictment, the indorsements thereon, and all the entries relating thereto, the undertakings or recognizances of the defendant, all the orders and judgments thereon and a copy of this order, to which transcript he shall attach his certificate and his seal, and he shall forward said transcript in a package under seal by a special messenger, or by express, or by registered mail, or by delivering it in person, to the Circuit Clerk of Morgan County, Alabama, and he must also enclose in the package, the original subpoenas in the case.

A. E. Hawkins, Judge of the Circuit Court of Jackson County, Alabama.

[File endorsement omitted.]

[fol. 11] IN CIRCUIT COURT OF MORGAN COUNTY

ORDER FOR SPECIAL SESSION OF THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA—Filed January 6, 1936

It is ordered that a special session of the Circuit Court of Morgan County, Alabama, be and the same is hereby called and set to be held and convened on Monday, January 6, 1936, for the purpose of hearing and considering such matters and causes as may properly come before said court on said date. Said court to remain in session or to be passed or continued as may appear to the court proper and necessary for the disposition of such matters and causes as may come before the court at such time.

The clerk will enter this order upon the permanent records of this court.

This, January 6, 1936.

W. W. Callahan, Presiding Judge, 8th Judicial Circuit of Alabama.

[File endorsement omitted.]

[fol. 12] IN CIRCUIT COURT OF MORGAN COUNTY

ORGANIZATION OF COURT OF SPECIAL SESSION

Monday morning, January 6th, 1936, Court met in Special Session, in accordance with the order made and entered by the Honorable W. W. Callahan, the presiding Judge of the Eighth Judicial Circuit of Alabama, on the 6th day of January, 1936. Present and presiding the said W. W. Callahan, Judge of said Court, Hon. Melvin Hutson, Solicitor for said Circuit, Hon. J. S. Sandlin, Sheriff of Morgan County, Alabama, and John H. Green, Clerk of said Court. The Court being now open according to law, the following proceedings were had and done, to-wit:

[fol. 13] IN CIRCUIT COURT OF MORGAN COUNTY

No. 2366

STATE OF ALABAMA, Prosecutor,
against

HAYWOOD PATTERSON, Defendant

PETITION FOR REMOVAL TO FEDERAL COURT—Filed January 6, 1936

Your petitioner, who is a defendant in the above 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 County 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 aforesaid case to the aforesaid United States District Court.

2. Your petitioner is a negro of the African race and is a citizen of the United States, and a non-resident of the State of Alabama.

3. On or about March 25, 1931 your petitioner was, 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, 1933, 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 nearest county where defendant might procure a fair trial. The Court granted a [fol. 14] 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 Scottsboro defendants, Haywood Patterson, was tried before Hon. James E. Horton, sitting in the Circuit Court of Morgan County, and on April 9, 1933, 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 Scottsboro defendants that Judge Horton on April 17, 1933, 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, 1933, 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 Norris 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 Jackson County, Alabama, against your petitioner, and the other Scottsboro defendants, for allegedly ravishing said Victoria Price.

12. Your petitioner was arraigned under this indictment on January 6, 1936, not in Jackson County where said indictment was found, but in Morgan County where the previous trials were had, as before stated. Petitioner has plead 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, following 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 [fol. 15] 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 affidavits 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.

15. Petitioner further refers to the fact that Judge James E. Horton, above referred to, was defeated for re-election in the Circuit Court in the Spring of 1934 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.

16. Your petitioner alleges that he will be unable to obtain a change of venue in the courts of Alabama by reason of Section 5581 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—*Ex 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 Court of Morgan County—*Ex parte Lancaster*, 206 Ala. 60."

17. Your petitioner avers that said statute as 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 Morgan County he will be unable to secure a fair trial and that the proceedings to be had against him upon such trial in Morgan 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 petitioner of his life and liberty without due process of law.

19. Your petitioner is therefore unable to secure redress [fol. 16] 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 Northern 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. Chamlee, Attorneys for Petitioner.

Duly sworn to by Haywood Patterson. Jurat omitted in printing.

EXHIBIT "A" TO PETITION

STATE OF ALABAMA,
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 knows the people of Morgan County and that he has heard a great deal about the Scottsboro cases.

Affiant further says that after these cases were removed from Jackson County to Morgan County, there was a great [fol. 17] deal of agitation among the people of Morgan County and that said cases were the subject 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 crystallization of cold and deliberate sentiment against the defendants, and that they are generally believed by the people of Morgan County, Alabama, to be guilty.

Affiant further says that he has talked to a large 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 discussed the matter have stated to affiant that it would be impossible to impanel a jury in Morgan County that would not convict the defendants.

Affiant further says that the Scottsboro cases became a political issue in Morgan County, Alabama, subsequent to the removal of the cases to that county, and that the cases 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.

EXHIBIT "B" TO PETITION

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 for the purpose of securing affidavits 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 [fol. 18] 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 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 openly stated by numerous and divers persons in such conversations that these defendants and their attorneys ought to be lynched; 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 secure a fair and impartial trial in said county at this time.

Affiant further says that the statement was made to 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 efforts to secure from the persons whom he had heard express opinions and make statements concerning these defendants, a written affidavit 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 therefor either that their reasons were based on business or political considerations. Affiant further says that he is satisfied from his 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 hostility toward the defendants and their attorneys.

J. A. Hackworth.

Sworn to and subscribed before me this 4th day of January, 1936. Blanche Everett, Notary Public.

EXHIBIT "C" TO PETITION

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

[fol. 19] 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:

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 lynched 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 impartial trial in Morgan County.

Mr. Ben Poole, a citizen of Decatur, a gasoline and oil merchant, and a farmer, stated that he had heard many threats against the defendants and *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 trials of the defendants, in said county, and that he knew the feeling of the people of said county toward 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. W. Davis, a resident of Falkville, Morgan County, Alabama, who was sheriff at the time of the former trials of these cases 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 impartial 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 countin-e to be a political issue in [fol. 20] 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. W. 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 about these cases, and that he was well acquainted with 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. H. 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 impartial trial in said county.

Affiant further says that in case of each of the persons.

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. Hackworth.

Sworn to and subscribed before me this 4th day of January, 1936. Blanche Everett, Notary Public, Madison County, Alabama.

[File endorsement omitted.]

[fol. 21] IN CIRCUIT COURT OF MORGAN COUNTY

[Title omitted]

ORDER OVERRULING PETITION TO TRANSFER TO FEDERAL COURT
—January 6, 1936

Came the State by its Solicitor and the defendant in his own proper person and by attorney into open court, and the defendant being arraigned upon the indictment in this cause, pleads not guilty thereto. Thereupon, the defendant files a petition to remove this case to the United States District Court for the Northeastern Division of the Northern District of Alabama; and the said motion being now duly presented to the Court, and by agreement, the said motion was passed until Wednesday, January 8th, 1936, at 1:30 o'clock P. M.

Now, on this the 8th day of January, 1936, came the State by its Solicitor and the defendant in person and by attorney into open court, and the said motion of the defendant for the removal of this case to the United States District Court for the Northeastern Division of the Northern District of Alabama, being now duly considered and understood by the court, the court is of the opinion that said motion is not well taken, and should be disallowed and overruled. It is therefore considered, ordered and adjudged by the Court that the defendant's said motion of removal be, and the same is hereby disallowed and overruled. To which action of the court, the defendant then and there in open court, duly reserved an exception.

[fol. 22] IN CIRCUIT COURT OF MORGAN COUNTY

[Title omitted]

ARRAIGNMENT—January 8, 1936

Came the State by its Solicitor and the defendant in his own proper person and by attorney into open court, and the defendant being arraigned upon the indictment in this cause, pleads not guilty. Cause set for trial on January 20th, 1936. It appearing to the court that heretofore the

names of 35 persons, qualified citizens of the County, have been legally drawn to serve as regular jurors in this court for the week commencing January 20th, 1936, it is ordered that a list of 100 persons shall constitute the venire from which a jury shall be selected to try the defendant in this cause; and the court now proceeds in open court, to draw from the jury box the names of 65 Special Jurors, which together with the names of the 35 Regular Jurors, heretofore drawn as jurors for the week of this Court commencing on January 20th, 1936, shall constitute the venire from which a jury shall be selected to try this defendant, in this cause. The Sheriff of this County is hereby ordered to summon all persons whose names have this day been drawn as Special Jurors and all persons who have been drawn as Regular Jurors for this Court for the week commencing on January 20th, 1936, to be and appear in this court on the 20th day of January, 1936, and the Sheriff is further ordered to serve forthwith upon the defendant a copy of the indictment in this cause and a list of all persons drawn as Jurors for the week of this Court commencing on January 20th, 1936, and a list of the names of the persons this day drawn as Special Jurors in this cause.

[fol. 23] IN CIRCUIT COURT OF MORGAN COUNTY

ORGANIZATION OF COURT—January 20, 1936

Monday morning, January 20, 1936, present and presiding the Hon. W. W. Callahan, one of the Judges of the Eighth Judicial Circuit of Alabama, Hon. Melvin Hutson, Solicitor of the said Circuit, Hon. J. S. Sandlin, Sheriff of Morgan County, Alabama, and John H. Green, Clerk of said Court.

The court being now open according to law, came the Sheriff and presented in open court the venire heretofore issued to him for jurors for this week of this court, which is in the following words and figures, to-wit:

CIRCUIT COURT

THE STATE OF ALABAMA,
Morgan County:

To the Sheriff of Said County, Greeting:

You are hereby commanded to summon the following named persons to appear and serve as Jurors in this Court

during the week beginning on Monday, the 20 day of January, 1936, at 8:30 o'clock A. M., they having been drawn according to law to serve as Jurors for this week of said court, to-wit:

Name	Residence	Occupation
1. J. Ralph Aldridge	Danville	Farmer
2. Frank B. Arnold	Falkville	Farmer
3. Walter G. Bean	Decatur #2	Farmer
4. Ephriam A. Bock	1806 5th Ave. So.	Unemployed
5. Cleo Benich	Decatur #2	Farmer
6. James A. Briscoe Jr.	Joppa #1	Farmer
7. Addie L. Cain	Somerville #2	Farmer
8. Walter J. Clopton	4th Ave. West	Merchant
9. Nute L. Compton	Falkville #2	Farmer
10. Wm. A. Crawford	Baileyton #1	Farmer
11. Alfred Densmore	Joppa #1	Farmer
12. Herbert Dunn	Somerville #1	Farmer
13. Louis E. Field	Danville #1	Farmer
14. Berry Fogg	2nd Ave. West	Laborer
15. Carl H. Gibson	623 4th Ave. West	Helper
16. Elias Hatton	3rd Ave. West	Laborer
17. James A. Hendrix	Lacey Spring #1	Farmer
[fol. 24]		
18. Melvin M. Hipps	Eva	Farmer
19. Lonnie Jones	Hartselle	Janitor High School
20. Joe R. Lawrence	Union Grove #3	Farmer
21. M. E. Lawrence	Somerville #3	Farmer
22. Henry D. Luther	514 Lafayette St.	Clerk
23. Wm. G. Martin	Eva #1	Farmer
24. Henry Mattison	11th Ave. West	Cleaning & Pressing
25. Sherley H. Moore	Lacey Spring	Farmer
26. Walter D. McCaghren	Hartselle #2	Farmer
27. J. Anthony McKee	Hartselle #2	Farmer
28. Nelson A. Norris	Hartselle #1	Farmer
29. Henry Shoemaker	Falkville #2	Farmer
30. Wm. T. Stewart Jr.	Hartselle	Clerk
31. Joe Straughter	Decatur #2	Farmer
32. G. Chestley Walker	Joppa #1	Farmer
33. W. E. White	Danville #3	Farmer
34. Alex H. Williams	Somerville #3	Farmer
35. Jack Williamson	321 Jackson St.	Bookkeeper

And have you then and there this writ with your endorsement thereon.

Witness my hand this 9 day of Jan. 1936.

J. H. Green, Clerk.

In pursuance of the mandate of the above writ, I have executed the same by summoning as directed in the said writ each of the within named persons except Ephriam A. Bock and Henry D. Luther who were not found.

J. S. Sandlin, Sheriff.

The Court then caused the names of all jurors served to be called and examined under oath, and upon said call and examination, and for good and legal cause shown, the following named persons were excused by the Court from service as jurors for this week of this Court, to-wit; Walter J. Clopton, Carl H. Gibson and G. Chestley Walker.

Thereupon the following named persons being ascertained to be competent and qualified persons to serve as petit jurors for this week of this court, were duly empaneled and sworn according to law, to wit: J. Ralph Aldridge, Frank B. Arnold, Walter C. Bean, Cleo Benich, James A. Briscoe, Jr., Addie L. Cain, Nute L. Compton, Wm. A. Crawford, Alfred Densmore, Herbert Dunn, Louis E. Field, Berry Fogg, Elias Hatton, James A. Hendrix, Melvin M. Hipps, Lonnie Jones, Joe R. Lawrence, M. E. Lawrence, Wm. C. Martin, Henry Mattison, Sherley H. Moore, Walter [fol. 25] D. McCaghren, J. Anthony McKee, Nelson A. Norris, Henry Shoemaker, Wm. T. Stewart Jr., Joe Straughter, W. E. White, Alex H. Williams, and Jack Williamson.

Thereupon the following proceedings were had and done, to wit:

[fol. 26] IN CIRCUIT COURT OF MORGAN COUNTY

[Title omitted]

MOTION FOR A CHANGE OF VENUE—Filed January 13, 1936

Your petitioners, who are defendants in the above styled cases, come and make application to the court to have their trial and trials now pending in the Circuit Court of Morgan

County, Alabama, transferred and removed from the Circuit Court of Morgan County to the Circuit Court of Jefferson County, the same being the nearest county to Morgan and Jackson Counties where a fair, impartial and unbiased trial of your defendants may reasonably be expected to be had, and your petitioners allege as follows:

1. Your petitioners and each of them are negroes of the African race and citizens of the United States.
2. On or about March 25, 1931 your petitioners were 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 two white women on said train.
3. On or about March 31, 1931 your petitioners were indicted by a special grand jury of Jackson County in joint and separate indictments, for allegedly ravishing one Victoria Price, one of the aforesaid two women on aforesaid train.
4. Subsequently and on or about March 6, 1933 your petitioners moved for a change of venue from the Circuit Court of Jackson County to the Circuit Court of Jefferson County on the grounds that petitioners could not secure a fair trial in Jackson County or any of the surrounding counties, and that said Jefferson County was the nearest county where defendants might procure a fair trial. The court granted a change of venue to Morgan County, but denied the motion [fol. 27] for a change of venue to Jefferson County, to which denial defendants excepted.
5. Thereafter one of your petitioners, Haywood Patterson, was tried before Hon. James E. Horton, sitting in the Circuit Court of Morgan County, and on April 9, 1933 found guilty by the jury which imposed the sentence of death.
6. That during the trial of said Patterson the public opinion in Morgan County was so hostile and prejudicial to the defendants that Judge Horton on April 17, 1933, of his own motion, adjourned the trial of your other petitioners, stating in open court that they could not procure a fair trial at that time.
7. That thereafter Judge Horton on or about June 23, 1933 set aside the conviction of your petitioner, Patterson,

on the ground that the verdict against him was contrary to the evidence.

8. Thereafter and in November 1933 your petitioners, Patterson and Norris were separately tried before Hon. W. W. Callahan in the Circuit Court of Morgan County and found guilty and sentenced to death.

9. The convictions of your petitioners, Patterson and Norris were reversed following appeal to the Supreme Court of the United States and the indictments against them, as well as against all the other petitioners, were quashed by reason of such proceedings.

10. Thereupon and on or about November 13th 1935 new indictments were found by a special grand jury of Jackson County, Alabama, against your petitioners separately for allegedly ravishing said two white women.

11. Your petitioners were thereupon notified that they would be arraigned, not in Jackson County where said indictments were found, but in Morgan County where the previous trials were had, as before stated.

12. Your petitioners have also been notified that their trials under these new indictments will be had in the Circuit Court of Morgan County commencing on January 20, 1936.

13. Your petitioners ask for a change of venue of said forthcoming trials from Morgan County on the ground that no fair trial of your petitioners could be had in Morgan County on account of the animosity and prejudice toward your petitioners and their counsel which has existed in Morgan County from the time of the trial of Patterson first had there before Judge Horton.

14. Your petitioners refer to the motion for change of venue made by them in Jackson County in March 1933 and incorporate the same herein.

15. Your petitioners also refer to the motion for a change [fol. 28] of venue made by them before Judge Callahan in November 1933 and incorporate the same herein.

16. Petitioners further refer to the fact that Judge James E. Horton above referred to, was defeated for re-election in the Circuit Court in the spring of 1934 and that the oppo-

sition to said James E. Horton and his defeat were due to the fact that he had set aside the verdict of your petitioner, Patterson, as aforesaid.

17. Your petitioners ask that a hearing be held upon their motion for a change of venue at the time set for their trials aforesaid, and ask leave to submit prior to said hearing affidavits in support of the allegations herein contained, with the right to call witnesses in support of said petition in the event that the statements contained therein and in said affidavits be denied by the State of Alabama.

18. That petitioners aver that if they be forced to trial in Morgan County they will be unable to secure a fair trial and that the proceedings to be had against them upon such trial in Morgan County will, therefore, be a violation of your petitioners' rights to a fair trial as guaranteed to them by the Constitution of the State of Alabama in Section 6.

19. That petitioners aver that if they be forced to trial in Morgan County they will be unable to secure a fair trial and that the proceedings to be had against them upon such trial in Morgan County will, therefore, be a violation of your petitioners' rights to a fair trial as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States in that such a trial would deprive your petitioners of their life and liberty without due process of law.

20. Your petitioners further allege that if Section 5581 of the Code of Alabama be invoked by the State of Alabama as reason for denying your petitioners' application it should be held that such section has no application to circumstances existing in this case, but that if the Court should apply said section to the circumstances of this case, said section as so applied will be in violation of the Constitution of the State of Alabama and of the Fourteenth Amendment of the Constitution of the United States in that it would deny your petitioners a fair trial and deprive them of life and liberty without due process of law.

Wherefore, your petitioners pray that a change of venue be granted to them transferring the above styled causes of your defendants to the Circuit Court of Jefferson County or to such other county as may be just and proper, excluding the counties of Jackson and Morgan and for such other [fols. 29-32] and other and further relief in the premises

as to the Court may seem just and proper, for all of which no previous application has been made, except as hereinabove set forth.

Dated, January 13, 1936.

Samuel S. Leibowitz, O. K. Fraenkel, Geo. W. Chamlee, Watts & White, Attorneys for Petitioners.

Duly sworn to by C. L. Watts. Jurat omitted in printing.

Exhibits "A" to "Z" to motion omitted. Printed side pages 16, 17, 18, ante.
[fol. 33] [File endorsement omitted.]

[fol. 34] IN CIRCUIT COURT OF MORGAN COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR CHANGE OF VENUE—January 20, 1936

Came the State by its Solicitor and the defendant in person and by attorney into open court; and the defendant having filed a petition or motion for a change of venue in this cause, and the said motion or petition being now duly presented to and being duly considered and understood by the Court, and after hearing and considering the evidence introduced both for State and the defendant upon said motion or petition, the Court is of the opinion that the same should be overruled. It is therefore considered, ordered and adjudged by the Court that the defendant's said motion or petition for a change of venue in this cause be and the same is hereby overruled. To which action of the Court the defendant then and there, in open court, duly reserved an exception.

[fol. 35] IN CIRCUIT COURT OF MORGAN COUNTY

COURT'S ORAL CHARGE

(The Oral Charge is set out in full at pp. 142 to 161 of Bill of Exception.)

IN CIRCUIT COURT OF MORGAN COUNTY

DEFENDANT'S GIVEN CHARGES

3. 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.

Endorsed: "Given, W. W. Callahan, Judge."

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 moral certainty every reasonable hypothesis but that of defendant's guilt.

Endorsed: "Given, W. W. Callahan, Judge."

5. If the evidence is reasonably consistent with the defendant's innocence, you should acquit him.

Endorsed: "Given, W. W. Callahan, Judge."

7. If you believe that Victoria Price swore falsely as to material facts in this case, and that her testimony was either willfully or corruptly false as to such material facts, then you may disregard her testimony in its entirety and refuse to believe any part of it.

Endorsed: "Given, W. W. Callahan, Judge."

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 may also consider the fact that she is the person alleged to have been raped.

Endorsed: "Given, W. W. Callahan, Judge."

9. If any of the state's witnesses have exhibited malice against the defendant or anger, and thereby satisfied the jury that they have not testified truly and are not worthy of belief and the jury think their testimony on these accounts should be discarded, they may discard it altogether.

Endorsed: "Given, W. W. Callahan, Judge."

[fol. 36] 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.

Endorsed: "Given, W. W. Callahan, Judge."

11. I charge you that in determining what weight you shall give to the testimony of any witness, you may consider his or her demeanor on the witness stand and you may determine for yourselves 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 witness is worthy of belief.

Endorsed: "Given, W. W. Callahan, Judge."

12. In weighing the evidence of the witness 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.

Endorsed: "Given, W. W. Callahan, Judge."

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 the statements.

Endorsed: "Given, W. W. Callahan, Judge."

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.

Endorsed: "Given, W. W. Callahan, Judge."

18. If on the whole evidence adduced the jury cannot 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.

Endorsed: "Given, W. W. Callahan, Judge."

19. I charge you that if after considering all the evidence 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.

Endorsed: "Given, W. W. Callahan, Judge."

[fol. 37] 21. I charge you that although you may find that 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.

Endorsed: "Given, W. W. Callahan, Judge."

22. The court charges the jury that the defendant is presumed to be innocent until his guilt is proven beyond a reasonable doubt and the evidence to authorize a conviction must be not a mere preponderance 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 innocent.

Endorsed: "Given, W. W. Callahan, Judge."

23. 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.

Endorsed: "Given, W. W. Callahan, Judge."

24. Unless each member of the jury, from all the evidence in the case, is satisfied beyond a reasonable doubt of the guilt of the defendant, then the jury cannot find the defendant guilty of rape.

Endorsed: "Given, W. W. Callahan, Judge."

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.

Endorsed: "Given, W. W. Callahan, Judge."

26. The defendant enters into this trial with a presumption of innocence, and this is a fact in the case which must be considered with the evidence and should not be disregarded.

Endorsed: "Given, W. W. Callahan, Judge."

27. If you find from all the evidence in the case that there is a probability of defendant's innocence, you should acquit him.

Endorsed: "Given, W. W. Callahan, Judge."

[fol. 38] IN CIRCUIT COURT OF MORGAN COUNTY

DEFENDANT'S REFUSED CHARGES

1. I charge you gentlemen of the Jury that if you believe the evidence in this case, you should acquit the defendant.

Endorsed: "Refused, W. W. Callahan, Judge."

2. Unless each and every member of the jury is satisfied beyond a reasonable doubt from all the evidence that the defendant is guilty as charged in the indictment, then you should acquit him.

Endorsed: "Refused, W. W. Callahan, Judge."

6. The jury must be satisfied of the defendant's guilt beyond a reasonable doubt before they can convict him.

Endorsed: "Refused, W. W. Callahan, Judge."

13. 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.

Endorsed: "Refused, W. W. Callahan, Judge."

15. 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.

Endorsed: "Refused, W. W. Callahan, Judge."

16. The enforcement of the law demands the acquittal of the accused unless his guilt is 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 do not require nor sanction the conviction of a defendant whose guilt is not proven to a moral certainty.

Endorsed: "Refused, W. W. Callahan, Judge."

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 acquit him.

Endorsed: "Refused, W. W. Callahan, Judge."

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 Chattanooga on the 25th of March, then such semen would not constitute evidence against the defendant in this case. [fol. 39] Endorsed: "Refused, W. W. Callahan, Judge."

B. If the jury is not satisfied that a rape has been committed by the defendant beyond all reasonable doubt, they may then go to a consideration whether — 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 of the crime of assault and battery they should then consider whether the defendant under the evidence has been proven guilty of simple assault beyond all reasonable doubt.

Endorsed: "Refused, W. W. Callahan, Judge."

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.

Endorsed: "Refused, W. W. Callahan, Judge."

[fol. 40] IN CIRCUIT COURT OF MORGAN COUNTY

2366

STATE OF ALABAMA

VS.

HAYWOOD PATTERSON

JUDGMENT AND SENTENCE—January 20, 1936

Comes the State by its Solicitor, and the defendant, Haywood Patterson, in his own proper person and by attorney into open court, and the said defendant, Haywood Patterson, being arraigned upon the indictment in this cause, pleads not guilty thereto. Issue being now joined, came a jury of good and lawful men, to wit, John Burleson and eleven others, who having been duly empaneled and sworn according to law, and having heard the evidence introduced and the charge of the court, upon their oaths say,

on this the 23rd day of January, 1936, "We the jury find the defendant guilty as charged, and fix his punishment at seventy-five (75) years in the State penitentiary, "John Burleson, Foreman." It is therefore considered, ordered and adjudged by the Court that the defendant, Haywood Patterson, be and is hereby adjudged guilty as charged, and that his punishment be fixed at seventy-five years imprisonment in the penitentiary of the State of Alabama.

Now, on this the 24th day of January, 1936, the defendant, Haywood Patterson, being personally present in open court, and by attorney, and the said defendant being asked by the court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered, ordered and adjudged by the court that the defendant, Haywood Patterson, in accordance with the verdict of the jury, be and he is hereby sentenced to imprisonment in the penitentiary of the State of Alabama for a term of seventy-five years as a punishment for said offense.

Before passing sentence, the Court proceeded to ascertain by examination of said convict that he is of the colored race, male sex, health good, 23 years of age, unmarried and his mother's name is Janie Patterson, 910 West 19th Street, Chattanooga, Tennessee.

The said defendant, Haywood Patterson, desiring an appeal and now, on this the 24th day of January, 1936, in open Court gives notice of an appeal to the Supreme Court of Alabama and requesting a suspension of the execution of this judgment and sentence of this Court, pending his said appeal: It is therefore hereby ordered by the Court that the judgment and sentence of this Court be and the same is hereby suspended pending the said appeal, and it is further ordered that said defendant, Haywood Patterson, be held in custody.

[fols. 41-48] IN CIRCUIT COURT OF MORGAN COUNTY, ALABAMA

STATE OF ALABAMA

VS.

HAYWOOD PATTERSON

Bill of Exceptions—Filed June 18, 1936

Be it remembered that upon the trial of the above styled cause in the Circuit Court of the 8th Judicial Circuit of

Alabama, beginning on the 6th day of January, 1936, present and presiding, Honorable W. W. Callahan, Judge of said Court, the following proceedings, not otherwise appearing on record, were had: to-wit:

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

Motion for removal to the United States District Court omitted. Printed side page 13, ante.

[fol. 49] OPINION ON MOTION FOR REMOVAL

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 Fourteenth Amendment to the Constitution of the United States with reference to the colored race. That is the origin of the whole matter—is that Fourteenth Amendment.

Now, the Supreme Court of the United States has consistently held that this removal statute is not as broad as the provisions that undertake to guarantee to the colored citizen 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 protected 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.

Now, 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 *Ex 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 doctrine, and stated it a little broader than was stated in the *Wells* case. Since then it has been passed upon repeatedly. The late 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 Harlan in the opinion handed down by him for the Supreme Court, and a recitation of the facts [fol. 50] 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 Harlan, 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 inveighed against the defendant as infringing his rights must appear—reasonably appear or be 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 following 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.

Now, that being true, I don't see how you have any standing in court on this motion. Of course, you set up a great many things 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 only when some hostile 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 wasn't true then all a defendant in a case would have to do would be to come into 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 certainly 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 matters set up in it, states a cause for removal.

[fol. 51] Now, if it is determined that the facts and 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 or sense to deny it. There is nothing to that,—there is nothing to deny. That is a statement of law that cannot be disputed.

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

COLLOQUY

Mr. Fraenkel: I will simply note my exception. May 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. Fraenkel: I want it noted on the record.

The Court: I will not make such entry.

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. Fraenkel: I note an exception to that ruling.

Whereupon counsel for defendant informed the court that they desired to file an application for a change of venue, but were not ready to do so at the time. The court suggested setting the case and hearing the application the next week. Defendant's counsel requested more time. Whereupon it was agreed by court and counsel that the case and the application for change of venue be set for January 20, 1936.

In the meantime, and on, to-wit, January 13, 1936, the defendant filed in court his application for a change of venue. Many affidavits offered in support thereof was filed prior to January 20, 1936. The court informed defendant's counsel that the court would hear any oral testimony he desired to offer in support of his application.

Counter-affidavits of about sixty-four citizens of Morgan County, Alabama, to the application for a change of venue were offered by the state.

[fol. 52] Whereupon the court inquired of counsel if they desired to argue the application for a change of venue, and defendant's counsel said they did not care to argue the application. After careful reading of the application and the affidavits, both for and counter to the application, the court rendered from the bench a lengthy opinion, reviewing the application and affidavits and pointing out their merits and demerits, and rendered a judgment overruling the application for a change of venue.

Whereupon the following took place:

Mr. Watts: Now, if the court please, we have a preliminary 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.

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

The Court: I would like to ask you a question. What is the point?

Mr. Watts: The point is this: We are informed Mr. Knight, as Lieutenant Governor of Alabama, appears by special 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 prosecuted 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 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 someone who, in the face of the Constitution of Alabama, has no authority to appear and prosecute these cases.

We want to reserve that point.

[fol. 53] The Court: I haven't passed on it.

Mr. Watts: We would like to raise that point, is what I mean.

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

The Court: On your constitutional proposition, I don't think a lawyer is an officer of the State of Alabama. He is a mere 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 prosecution of these cases?

Mr. Knight: I do not.

Mr. Watts: Not by title, but as a matter of fact, that is your authority, isn't it?

Mr. Knight: 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. I thought I had answered you fully. I will be paid. Let the court decide whether I am deputized. I do not hold a commission as a special assistant.

The Court: The Court declines to force an answer to that question.

Mr. Watts: I except. As we see it, we have here an officer,——

The Court: Well, the ruling is all past now.

The Court: Anything further?

Mr. Watts: No, sir.

The State announced ready for trial.

The defendant announced he was not ready for trial if the State is prepared to produce as a witness Orville Gilley, unless the defense be given an opportunity to get a transcript of his conviction for robbery in the State of Tennessee. The court stated it was inclined to do that; that if [fol. 54] defendant got the evidence here before the evidence closed, it may be introduced out of order.

Whereupon the court demanded to know of State's counsel if they intended to use Gilley as a witness.

The defendant's counsel informed the court that the defendant had a witness in a sanitorium that they thought they could get here. Whereupon the court informed de-

fendant's counsel that if he failed to come, a showing as to his testimony would be allowed or they would be permitted to offer his testimony on former trial.

Whereupon the court, after preliminary questions and organization of the regular jury for this week, began to qualify the venire for this case; the court had called from six to twelve in a group into the jury box and heard oral testimony of any witness he desired to introduce.

The defendants also offered in support of the application for a change of *revnue* certain records from the Circuit Court of Jackson County, Alabama, and contains records in the case on a former trial in the Circuit Court of Morgan County, Alabama.

On January 20, 1936, at 8:30 A. M., the court met according to previous agreement of all parties and an order of court. The defendant's counsel not being present, court adjourned until one o'clock, P. M. that day, at which hour, in open court, in the presence of defendant and his counsel, the State filed and qualified them at great length.

When the court had finished, the defendant's counsel was allowed and did examine each venireman at great length. The defendant's counsel was allowed to continue this unusual process with each prospective juror for more than five hours until all had been so examined.

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, 1931, 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.

[fol. 55] 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 gondolier. The best way I can describe it, it is sloping at the top, hollowed out, and it had chat in it,—what I have heard it called,—little, fine rock. It was an open top car, 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.

After the train left Stevenson we got in there, and me and her was sitting in the end next to the caboose. There was a car box joining us. I heard some hollering 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 pistols. 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 gondolier 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, Alabama. Well, after they got in there and got all the white boys knocked off and seen they were not going to get back in, I was standing up on the chat fixing to jump off. Ruby Bates was standing there.

This defendant, Haywood Patterson, grabbed me in the back and hit me with a pistol on my head and threw me down in the gondolier. One of them held my legs, and this defendant held a knife on my throat. They took my over-[fol. 56] alls off me and tore my stepins apart, and attacked me, one holding my legs, and one with a knife on my throat, and the rest of them serenading up and down there to see nothing happened. This defendant there had sexual intercourse 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 overalls 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 State offered in evidence the stepins. The defendant objected. The Court sustained the defendant's objection.

I had a knife with me on that occasion, a pocket knife 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 Scottsboro in the court house. Well, one of the law had it, but I don't know which one. One of the officers there, at Scottsboro.

Q. Were you on that train when it stopped at Paint Rock, Alabama?

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 overruled.

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 stop—

The Court: Somebody stopped it. That is an argument. Objection overruled.

Mr. Watts: We except.

Q. Did the train stop anywhere before reaching Paint Rock?

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

I was in the gondola car when the train stopped at Paint Rock. Me and Ruby Bates and those colored boys, and Haywood Patterson, the defendant, was in there. When the train stopped the defendant and other defendants 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 [fol. 57] 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 gondolier. 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, too, when she got off. Then I went back to Scottsboro, with Ruby. I saw this defendant when I got to Scottsboro.

(The court again refused to permit the State to introduce the stepins in evidence on objection of the defendant.)

Cross-examination.

By Mr. Watts:

I left Huntsville the 24th. Ruby Bates and no one else was with me. I know Jack Tiller. He was living at Huntsville at that time. I did not see him on the night of the 23rd of March, 1931, or on the morning or afternoon of the 24th of March, 1931. I travelled from Huntsville to Chattanooga on the 24th day of March, 1931, in a box car. I had on a pair of stepins, three dresses, a pair of overalls, 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. Hutson: 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. I left Chattanooga will not say for sure, but from eleven-thirty to one, —the best of my recollection—when I left Chattanooga. I will not be positive, but it is in my other statement. I told you I left Chattanooga next day about eleven-thirty to one is the best of my recollection. 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. In answer to defendant's question she said 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 [fol. 58] 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 Gilley and Lester Carter did not board the train with me and Ruby Bates. They didn't. There were seven white boys on the other end of the oil tank. I got off the oil tank at Stevenson. I rode the oil tank from Chattanooga to Stevenson. I stayed at one and the same place. When I got to Stevenson, I changed into a gondolier. That gondola was next to a box car. I got into the end of the gondola next to the box car.

At that time, I was a normal woman physically; I 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, crushed rock—to the best of my recollection. If I did testify before this car was loaded, in my best judgment, within a foot and 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. And remained on it till I got to Paint Rock. I got off train at Stevenson and changed from oil tank to the gondola.

Q. Now, I want to ask you if it isn't a fact that Lester Carter and Orville Gilley went into this gondola with you at Stevenson at the time you and Ruby Bates boarded the car?

A. Me and Ruby Bates got to one end of the gondola 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.

Q. 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.

Q. I want to ask you if it isn't a fact they got on with you and helped you up to the stirrup of the car?

A. No, sir, they did not.

Q. How fast was the train traveling after it left Stevenson at the time you say the colored men boarded the gondola?

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.

[fol. 59] Q. About twenty-five or thirty-five miles an hour?

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

Now 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, I was struck along there, the best of my recollection (indicating); I know it was on the side of my head, right across there. My head did not bleed, so so much; busted the skin, though. It did bleed a little bit. I know 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 a forty-five. Maybe I said also there was a thirty-eight, but I don't

know anything about guns. Maybe I said 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. I don't know what caliber means. Don't know what 38 or 45 looks like.

Q. Well, you haven't any judgment about what sort of gun—

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

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

Mr. Knight: We object to the argument.

The Court: Objection sustained.

Mr. Watts: We except.

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

This defendant had intercourse with me. He completed 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 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 [fol. 60] 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. I was bunged. I was not asked this question: "Who else struck you?" and didn't you say, "Practically all of them." No sir, I was not. "I am asking you about the places on your face?" and didn't answer, "That is on my face."

Q. In the other trial wasn't you asked this question and this answer made. "Who struck you a blow on the face besides Patterson and you answered Practically all of them."

A. No sir, I don't remember if they did. I don't think I swore this.

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 breast; also probably 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. 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 say leg. I said legs. I didn't say blood. I said scratches. 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 legs with flakes of blood in it; on both of them. The scratches were all over them. There were bruised places on my breast. There were scratches all across here, and more across here. They were not bleeding. 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.

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.

Q. Do you deny your testimony that they—

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

[fol. 61] 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: "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."

Ans. It wasn't asked me.

Q. 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?

A. If it is in the first trial, it is true.

Q. Then, on your other trials—

A. If it is in there in the same way, it is true.

Q. 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 kinder swollen after the rape was over. They were bleeding inside a little bit. My checks were swollen a little bit. That was from being smacked. My nose was not bruised. Not 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 asked me: "Was your nose bruised too?" and if I answered "Yes, sir, Kin'ly."

I had a snuff box with me on this trip. I did not lose it. I had it at Scottsboro, the best of my recollection I had it. At the former trial before Judge Callahan I was asked: "What about your snuff box; did you lose that?" Answer I don't know whether I did or not. I never looked for it." 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."

Question. I will ask you if this question wasn't asked you on that trial on the same page of the record. The question is That the last time you had it was in Chattanooga?

[fol. 62] Ans. No sir. I don't think it was. My answer to that question was not: "Yes, sir."

In my judgment there were about seven gondola 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 gondola was a box car. It is not a fact that I was in the middle gondola car in that train. I was in the gondolier next to

the box car. The gondola I fell from when I got off at Paint Rock was the one next to the box car. — string of gondola cars on the train from where I was on to the engine. They were lined up together in front of us. There was no other string of gondola 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, I guess. 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 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. When I got there to the jail yard I did not find the boys that had been off the train had been brought down from Stevenson to the jail at Scottsboro. 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 want 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 [fol. 63] are my brother." I did not tell the authorities, the sheriff,—Sheriff Wann, 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 Ruby 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 there several days while I was in Scottsboro, 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 around. I washed clothes in the run around. I asked to do that.

Q. And you cooked there?

A. Cooked?

The Court: What is the use of that? What is your point?

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. Watts: Not only in jail together, but traveled together.

The Court: What 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 over to the Doctor's office in Scottsboro I don't remember whether I was crying when I was in the Doctor's office. I have been married twice before this trouble.

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 Scottsboro. I testified before Judge Horton once. Then I testified two times before Judge Callahan; this is the second time.

The court asked State's counsel, at this part, to furnish the sheriff the names of two defendants to be tried next week. Counsel gave the names of two defendants in the Scottsboro case, Charlie Weems and Andy Wright.

Whereupon the case proceeded with the redirect examination of the witness Victoria Price.

The defendant's counsel asked this witness on cross-examination a great many questions and the witness made [fol. 64] answer thereto, which are not set forth in this bill of exceptions because not deemed material.

Redirect examination:

I go by the name of Victoria Price. 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:

At the request of defendant's counsel the Court permitted defendant to recross on matters already gone over by defendant.

I did not do the talking in the Doctor's office, nor did Ruby Bates do the talking. The Doctor done the talking. My maiden name was Price.

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

Direct examination.

By Mr. Bailey:

I know the defendant Haywood Patterson. I was night guard at Kilby Prison in '34, in November; somewhere about Nov. 22, 1934. The State asks this question, "Did you hear him make a statement then in the prison about what had occurred on a freight train traveling through Jackson County, Alabama, back in March, 1931?"

Mr. Watts: We object.

The Court: What is the ground?

Whereupon the following transpired—

Mr. Watts: Well, we think it calls for immaterial, irrelevant, inadmissible, illegal testimony.

The Court: Well, I don't know what he is going to say.

Mr. Watts: Well—

The Court: At the present I will overrule the objection.

Mr. Watts: We except.

Q. Where was it you saw him there in the prison—

The Court: Do you want this matter tried out now in the presence of the jury, or just in the presence of the court?

Mr. Knight: Perfectly agreeable to us if the jury—

The Court: The practice is to go along, but technically this question is before the court, and both sides have a right to put their evidence in on that question if they desire, or you can put it in as the case goes on. I don't know that it makes any difference. The practice has been to proceed just as we are, but the courts have held, technically speaking, it is a matter for the court, and the court can stop the [fol. 65] proceedings and hear the evidence on both sides to determine whether or not the evidence is admissible.

Proceed.

Q. Who was present when he made that statement?

A. No one.

Mr. Watts: We will consent to the jury retiring, if you want to do that.

The Court: What is that?

Mr. Watts: We will consent to the jury retiring, if you want to do that.

The Court: Well, I wouldn't have them retire without your consent.

Mr. Watts: We will consent the jury retire.

The Court: Take them in this room. Gentlemen, there is a matter for the court to pass on. I will have to hear evidence on that. I don't think it is just the proper thing for you to hear it.

(Thereupon the jury retired from the court room.)

The Court: All right; you may proceed.

Q. You say that occurred in Kilby prison?

A. Yes, sir.

Q. Who was present besides you and this defendant when that statement was made, anybody?

A. No, sir.

Q. Now, before he made the statement to you, or in your presence, did you, or anybody in your presence or hearing, make him any promises or threaten him in any way?

A. No, sir.

Q. Did you offer him any reward, or make any inducement to him to get him to talk about this matter?

A. No, sir.

Q. Did anybody else in your presence or hearing do that?

A. No, sir, no more that there was some more men up there in the other cells.

Q. Were there any more men in the cell with this defendant at the time?

A. No, sir; they were in separate cells.

Q. Well, did any of those men say anything to him before he made the statement?

A. No, sir. I am night hall,—head hall man there at night at that time.

[fol. 66] The Court: You mean watchman?

The Witness: Yes, sir, key man. I locked and unlocked and got them up and fed them and made rounds around the condemned cells just the same as I did the big cells. In other words, I was the head hall man.

Q. Did you make regular inspections around?

A. Yes, sir. One every hour through the night.

Q. When did this occur; was it at night time?

A. Yes, sir.

Q. Was it when you made your inspections?

A. It was about eight fifteen. We locked up, lights down—

Q. What did he say to you?

A. He called me by there and wanted to talk to me, and I said, "What is it?" He said he wanted to see the warden, Mr. George B. Wall, the warden. I told him the warden wouldn't be around until the next morning about six o'clock. I asked him if that was all, and started off, and got to the door, and he called me back and said he was guilty of the crime, and also Norris and the other seven boys.

Q. What did he say to you in that conversation?

The Court: Tell him the conversation as well as you can. Of course, you can't tell it all. Tell what you said and what he said.

The Witness: Yes, sir. That is about the words that were passed.

Q. What was it again; just repeat that, please, sir.

A. He first asked me about the warden. I told him the warden wouldn't be in until six o'clock the next morning, or six-thirty.

Q. What did he ask you about the warden?

A. He said he wanted to talk to him.

Q. Is that all he said about the warden?

A. Yes, sir.

Q. Then what did you say?

A. I told him it would be about six o'clock the next morning before the warden, Mr. Wall, would be in.

Q. Then what did you say?

A. I asked him if that was all, and he said yes. Then I started to the door, and he called me back.

The Court: What did he say; what language did he use?

The Witness: He said, "Captain Golden, I want to talk to you a minute." I told him all right, to tell it. I was in a hurry. He said he was guilty of the crime, and he was [fol. 67] ready to take what was coming, and also Norris was, and the other seven boys, and him and Norris got in an argument at that time, and I told them both to shut up, so I left them up there. I just make a round in the condemned cells and throw a flash light in the condemned cells, each one of them. I cut the lights out when I come out on that round.

Q. Mr. Golden, did you make any statement to him it wouldn't do him no good to tell that story?

A. No, sir; I told him it wouldn't do no good to tell me about it.

Q. What did he say?

A. He asked me if there was anything I could do to help him and I told him no.

The Court: Help him in what?

The Witness: Help him in this case, and I told him I would have to see the warden about that.

Q. Where was Norris; was he in the next cell?

A. No, sir, Clarence wasn't in the next cell; there was a cell between them.

Q. Norris could hear?

A. Norris could hear. He was near enough to hear.

Mr. Watts: We object to that. Of course, it is before the court anyway.

The Court: I think he patched it up by saying "near enough".

Mr. Bailey: That is all.

The Court: Do you all want to ask him anything?

Cross-examination.

By Mr. Watts:

Q. He didn't tell you what he was guilty of?

A. He said he was guilty of this crime.

Q. Didn't say what crime?

A. Yes, sir, he said them two girls.

Q. He didn't say what two girls?

A. Well, I wouldn't say positively.

Q. Now, I believe you say this was about eight o'clock at night?

A. No, sir; this was about eight-fifteen.

Q. Eight-fifteen at night?

A. Yes, sir.

Q. This man called you back there and wanted to get the warden, and confessed to some crime or other to you?

A. He asked me—he wanted to see the warden. I told him [fol. 68] the warden wouldn't be back until six-thirty or six o'clock the next morning.

Mr. Watts: That is all, I believe.

The Court: Did you have him in there holding him on any other charge than this charge?

The Witness: No, sir.

The Court: All right.

Mr. Knight: Ready for the jury to come in.

The Court: Are you through with this witness?

Mr. Knight: We are through with him except to use him before the jury.

The Court: I mean on this question.

Mr. Knight: Yes, sir.

The Court: Any other witness you desire to offer on this question?

Mr. Knight: No, sir, not at this time.

The Court: Do you gentlemen want to offer any evidence on this particular question?

Mr. Watts: I believe not.

The Court: All right. Let the record show that. Let the jury come back.

Mr. Watts: Wait just a minute, if the court please.

The Court: I will give you the benefit of any evidence you have got on that subject through the course of the trial if you want it, and rather not ask it now.

Mr. Watts: What I wanted to ask you, if you would receive the evidence of the defendant at this time on this issue.

The Court: If you desire to offer it.

Mr. Watts: Well, we will not offer it at this time.

The Court: All right; let the jury come in. Now, Mr. Watts, it is not necessary, as I understand it, to go over all these qualifications again. They have laid sufficient predicate. If he hasn't, you have got the advantage of it.

Mr. Watts: Yes, sir.

The Court: So, there is no need of going over that—but the details of what happened.

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

The Court: All right, gentlemen; You don't have to go through the qualifying again. Just put your questions with [fol. 69] reference to the material facts.

Direct examination resumed.

By Mr. Bailey:

Q. Mr. Golden, you are night guard at Kilby Prison?

A. I was at that time. Now, I am on day time.

The Court: When was that time? I don't believe I found that out.

The Witness: That was in '34, in November; somewhere between the 20th and the 25th. I wouldn't say—

The Court: All right, proceed.

Q. And about what time of night was it you heard him make this statement, Mr. Golden?

A. It was about eight-fifteen.

Q. Now, just tell the jury what was said in that conversation both by the defendant and by you.

The Court: From start to finish.

A. Well, we locked up there. Fifteen minutes until eight we ring the bell. Everybody is supposed to be in their cells, and we lock up. I got done locking up about eight o'clock—

Mr. Watts: May it please the court, it is not responsive.

The Court: No, it isn't. It is not hurting anybody or helping anybody; taking up a little time.

Mr. Watts: I think I have done a little bit of that myself.

The Court: Go ahead.

A. We get done about eight o'clock locking up the big cell. I go down and lock up the detention cell. That is down below the big cell. Then I go back to the big cell and lock up there. That was about eight fifteen.

The Court: Where was the defendant?

The Witness: In the condemned cells.

The Court: Now, Go ahead.

The Witness: Now, when I came down to lock 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. What is in your mind?

Mr. Watts: He hasn't shown what was said—

The Court: He hasn't gotten to that yet.

[fol. 70] 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. Knight: I understood the court to offer them an opportunity—

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 ahead. Your objection is overruled.

Mr. Watts: We except.

Q. Go ahead, Mr. Golden.

A. Well—

The Court: You had gotten to where he said he wanted to see the Warden.

The Witness: I told him he would have to wait until morning to see the warden, he wouldn't be back until 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 asked you what is the trouble.

Mr. Watts: Well, whether he wanted to see the warden has nothing to do with the issues in this law suit.

The Court: If that is your view of it, I will overrule the objection.

Mr. Watts: We except.

Mr. Knight: Go ahead.

The Witness: I said it would be six o'clock or six-thirty before he could see the warden.

Q. Then what happened.

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

Q. What did he say?

A. He says, "Captain Golden, come here. I want to tell you something." He says, "I am guilty of that crime," and says, "Also Clarence Norris, and also those other seven up there in Birmingham Jail," He says, "What could you do for me?" I told him I couldn't do nothing.

The Court: Is that all you said?

[fol. 71] The Witness: He says, "Well,—" no, at that time Noris head him, and Noris told him it was a lie, he wasn't guilty, and Haywood told him yes, he was, and he was guilty, and also Clarence Norris, 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. Is that all the conversation that occurred between you and him there?

A. Yes, sir.

Mr. Watts: I move to exclude the statement because it is not shown what crime he had reference to, and it is not shown what women he had reference to. I don't think he has mentioned any woman.

The Court: I don't believe he has told what he was talking about.

Mr. Knight: I think he testified the only offense—

The Court: He told me, but this is before the jury.

Mr. Watts: We don't want any speeches.

Mr. Knight: This is not intended to be that. I am answering your contention now. He recited to the court—

Mr. Watts: We object to that.

The Court: Let him recite it to the jury. I am going to sustain one part of your objection.

Now, gentlemen of the jury, anything that is said about Norris being guilty, and the other seven, or anything that he says Norris said on that occasion is not evidence in this case, and you must not consider it, but what he says this defendant said about it is evidence.

Mr. Watts: Now, we want to move to exclude the statement of the witness because it is not shown—

The Court: What was he talking about—

Mr. Watts: We move to exclude the witness' statement.

The Court: Wait a minute.

Mr. Watts: Beg pardon.

The Court: I am going to see, before I rule, what I am doing. What was he talking about?

The Witness: He was speaking about the case he was tried, and in there, and convicted on, I imagine.

Mr. Watts: We object to that.

By Mr. Lawson:

Q. 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 [fol. 72] 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 Norris and the other seven—that is not evidence.

Did you have him in there on more than one charge?

The Witness: No, sir.

The Court: Anything else?

The Witness: No, sir.

The Court: What was he in there for?

The Witness: On the Scottsboro 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: We except.

The Court: All right; anything further?

Mr. Lawson: Nothing.

The Court: Cross examine.

Cross-examination.

By Mr. Leibowitz:

Q. 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.

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

A. Well, that is what he was waiting for at that time.

Q. He was in the condemned cells; that is where the people that are to be executed are put, a separate part of the prison?

A. Yes, sir.

I knew this defendant was in there on the Scottsboro case. I had followed the case, after a fashion, in the papers. I didn't know this defendant was first tried in Scottsboro back in 1931. I didn't know trials were had in Scottsboro. 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 Scottsboro negroes. At this time he was waiting there to see what the Supreme Court done with Clarence, I think. I didn't know that the case had been 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 [fol. 73] not heard he had been tried before Judge Horton and found guilty, and the verdict 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. There was paper and pencil in the prison I could get. 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 be passed on to the attorney general. In the two years I 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. Question, Did you think of it? Ans. No, sir. 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.

I saw the warden the next morning. He came in as I 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 subpoenaed 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 or any other time 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. I told the warden Haywood wanted to see him. We 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 at that time.

At this time Charles Weems and Andy Wright being in court the Court set the trial of these defendants and drew venires.

The defendant on cross examination asked this witness a very great many questions and received answers thereto that are not included herein because immaterial.

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

Direct examination.

By Mr. Bailey:

On March 25, 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. My house is West of Stevenson. 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 high. I saw people on that train. I believe six or seven cars back from the engine—on a gondola, they were open top-ed. I saw 8 negroes in that train in the car. Two white women were also in there. I saw six white boys in there thrown off that car by the negroes in less than four hundred yards. They were in that gondola car. 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 right at the crossing, 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 scuffling with the negroes. I saw the negroes with their hands on the white girls.

[fol. 75] 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 I saw were on the sixth or seventh car back from the engine. I am not reasonably 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 scuffling with the white boys who were trying to get out. The women were scuffling 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. It looked like they had on overalls.

I wear glasses. If I am filing a saw, or particular work, I wear glasses. I can see all right without them, except reading and close work. I can tell what I am looking at quite a distance.

The negroes were absolutely fighting. Getting rid of these white boys. I seen six white boys 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. A great many questions were asked by defendant and answers made by the witness not herein incorporated and not deemed material.

By permission of the Court the defendant introduced a witness in defendant's behalf out of order and after examining him at length the evidence was ruled out by the Court on a motion of the State. The Court informed defendant he would be given an opportunity later to offer this evidence if he saw proper.

The State offered W. H. HILL as a witness.

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 [fol. 76] off it. It was in the afternoon, about one or two o'clock, between one and two, I would say. I was at the station when the freight train came up and stopped. I saw negroes on that train — an open car, what we call the chat car, but what most people call an open car; what is sometimes called a gondola, but it is really not a gondola. I couldn't say positive; there were seven negroes on that car. When they passed the depot, most of them were around the edges of the car attempting to crawl off or get off. The car 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 after that train stopped. They were standing on the ground at the end of the car that gondola car. That was the same car that I saw these negroes 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 have been, was one of them. I learned afterwards the other was Ruby Bates. I didn't know at that time. Victoria Price was the one that apparently had fainted. There were quite a crowd around there. They were taking these negroes off, the officers were, when I looked and saw the women standing down by the side of the gondola car the negroes were being taken off the car. The officers marched them up town to a store building. Nine 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. Leibowitz:

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 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.)

[fol. 77] 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 picture) 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 Number 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 chute, the water tank. (The said picture was thereupon marked and received as Defendant's Exhibit Number 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 Number 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 Huntsville. The water tank is on the left hand side looking towards Huntsville. The coal chute is about four or five hundred feet from the station. I would not be positive. 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 was standing at station when this train passed. I saw these negroes, and I saw the women on the ground near a gondola car, which was about the sixth or seventh car 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 see them back there. I just saw them at one place. I saw them after they carried them up town, too, from there. I did not notice a string of gondolas, some six or seven or eight [fol. 78] of them hooked up together on that train. I don't recollect that there were that many. There were three or four at least. I didn't see the women come off any car. I couldn'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 the women or the negroes. They all had on overalls. When I recognized they were women they were on the ground. The train pulled by me; the engine pulled by me and it stopped at the coal chute, and then I left the station and started to move towards the engine. At no time did either of these women or both of them pass me. I did not see any women come from any part of the rear of the train and pass by me to get over to the place about two hundred feet east of the coal chute.

The defendant propounded a great many questions and received answers thereto that is not here set out because not material. The defendant also showed and explained each picture to the jury.

Redirect examination.

By Mr. Knight:

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

Recross-examination.

By Mr. Leibowitz:

At no time—assuming three hundred and one feet is the correct distance between the water tank and the coal chute, at no time were these women further away from the water tank than three hundred and one feet. If they were I did not see them.

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 or about it as it pulled into Paint Rock. Well, I was right on the north side of the depot when this train pulled up opposite the station. 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, when I first saw them, 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. When I first saw him, they were all coming out of the car. Haywood Patterson was with them. Well, some of them came up a little further towards the engine out on top of the box cars. Some of them got out of the gondola and climbed on the box car or ran towards the engine. I helped to take or catch three or four next to the depot, I was on that side. On the side of the train next to the depot. I did not see any women there about that train not then. After we brought the negroes back up 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 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 closed. 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.

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 coming out of that, don't know whether they all came out or not, none of them had gotten on the ground. Not when I first saw them. They were running towards the engine. 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 I see it does is take up a lot of time. I will let you identify your train. The Court at the beginning of the cross-examination of the witness Price had suggested the train be identified.

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

Direct examination.

By Mr. Leibowitz:

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. I can't tell how many cars was in the train because I haven't got [fol. 80] the list.

The Court: How many gondolas?

The Witness: We had eight loaded with chat.

The Court: That is open top cars?

The Witness: Yes, sir.

The Court: Loaded with what?

The Witness: We call it chat.

The Court: Ground up rock?

The Witness: Yes, sir.

The Court: You had box cars, and eight of those, and any other kind of cars?

The Witness: There were a tank car, and a flat car loaded with lumber.

Q. You had the official record of the make up of that train on the other trial?

The Witness: Yes, sir.

The Court: Point out the one that had lumber on it.

The Witness: It ought to be right behind that box car.

The Court: Wait a minute. Is that flat car in that makeup there now?

The Witness: No, sir.

The Court: Any other left out?

The Witness: Yes, behind that box car I said there was a car of lumber, and then a tank car—

The Court: Then what was behind the car of lumber?

The Witness: Tank car.

The Court: What behind the tank car?

The Witness: Several box cars and a refrigerator.

The Court: And a refrigerator?

The Witness: That much that is there is right.

The Court: Is that the kind of box car that followed that—

The Witness: Yes, sir, a box car followed that chat.

The Court: What was behind that box car?

The Witness: A flat car.

The Court: What was behind it?

The Witness: Some box cars and some refrigerators.

The Court: What?

The Witness: Meat cars, such as they haul perishables in.

[fol. 81] The Court: What kind of car was next to the tender?

The Witness: Next to the tender?

The Court: Yes.

The Witness: A box car.

The Court: How many?

The Witness: There ought to be two box cars next to the tender, and a coal car loaded with coal.

The Court: A coal car?

The Witness: Yes, sir.

The Court: Then what followed?

The Witness: If you will let me tell you how it was—

The Court: I am just asking you plain questions.

The Witness: As we left there, there were four box cars ahead of the chat, but we picked up one of the box cars at Stevenson.

The Court: Now, we are not asking about Stevenson. All right; go on.

Q. Now, I want to definitely determine whether, as I call them off, that train as you read into Paint Rock from Stevenson, was exactly as I am calling them off.

A. Just like it is standing there.

Q. Between Paint Rock and Stevenson you had the train as it is made up before the jury?

A. Yes.

Q. You first had an engine?

A. Yes.

Q. Then a tender?

A. Yes.

Q. Two box cars?

A. Yes, sir.

Q. A coal car?

A. Yes, sir.

Q. Then four box cars?

A. Yes, sir.

Q. Then eight gondolas?

A. Yes, sir.

Q. Then another box car, and some other cars behind that I am not interested in?

A. No, they are not in there.

[fol. 82] Q. There isn't enough space to put them anyhow.

A. No.

Q. Were those eight gondolas hooked up with one another?

A. Yes, sir.

Q. Can you tell us the length of these freight cars, how long they were?

A. Run forty or fifty feet long.

Q. Between forty and fifty feet?

A. Yes, sir.

Q. Let's get the size of these cars as we go along. How long was that engine, do you know?

A. Well, I couldn't tell you exactly. It is one of them big engines. I don't know how long they are.

Q. Well, give us your best judgment.

A. I suppose they are something like one hundred feet, something like that; maybe more.

Q. About one hundred feet. Does that include the tender?

A. Yes.

Q. Between the engine and the tender there is one hundred feet?

A. Something like that.

Q. How long were those two box cars, as near as you can recollect, those two box cars near the tender of the engine?

A. What did you say?

The Court: He wants to know the length of the box cars next to the engine.

A. I would say they were about forty feet cars.

Q. How long was that coal car between the series of box cars on either side?

A. About forty or fifty feet,—something like them cars back there.

Q. 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—

A. 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.

[fol. 83] 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?

The Court: Yes, sir.

Mr. Leibowitz: Victoria Price testified she was in the last in this series of gondolas.

The Court: Yes, sir.

Mr. Leibowitz: That is fifteen cars from the engine?

The Witness: Yes, sir.

The Court: What is important about that.

Mr. Leibowitz: Every witness from Paint Rock 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. Leibowitz: Well, I want to explain to you—Now, 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 coal chute, which was hundreds of feet away from the car—

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 ahead.

Mr. Leibowitz: An exception.

The Court: I don't see the force of that.

Mr. Watts: We except to the statement of the court.

The Court: What statement?

Mr. Watts: 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 ahead. Now, you except to what?

[fol. 84] 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 it left Stevenson. 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 gondolar car or the car ahead, 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. The witness said this was a through train.

Redirect examination.

By Mr. Leibowitz:

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. We made no stop there.

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 depot on the other, and as well as I remember, some dwelling houses on this side. Hollywood is the next station. We passed through Hollywood. 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 along the road; a few houses on either side of the road all the way down. Scottsboro 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 scattered around there. Then Woodville. There are stores and houses there. And beyond [fol. 85] Woodville is Paint Rock. I was looking out of my window there as I went down from Scottsboro to Paint Rock. Lots of times you see people along there. Yes, most of the time the operators are standing out there, maybe.

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?

Q. From Stevenson down to Paint Rock, didn't you see some 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.

Q. Do you call your mind back to this day as you rode from Stevenson 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 gondolar cars?

A. Yes, there are highways that go over some of those hills you could look down into the cars.

Recross-examination.

By Mr. Knight:

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. Leibowitz:

I was in a few feet of the women, fifteen or twenty feet. 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. Knight: Yes, sir.

Mr. Leibowitz: 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. Watts: 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 another."

The Court: Yes, sir, and I mean it.

[fol. 86] Mr. Watts: And we except to that statement.

The Court: Very well. Go on with the witness.

Prior to this the defendant had asked a very many questions of this witness that are not here incorporated. Also defendant had spent much time cross examining the foregoing witness not here appearing.

Mr. Leibowitz: I just have one question.

The Court: Well, ask it.

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

Mr. Bailey: We object to that.

The Court: Objection sustained.

Mr. Leibowitz: We except.

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

Direct examination.

By Mr. Bailey:

On March 25, 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 West I saw a freight train pass along there while I was there. It was somewhere along about ten or eleven o'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 wagon. I was about half a quarter — from the track when the train passed. I saw the train, I guess, about five or six hundred yards from the time it came 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 gondola 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 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 gondola car, and walked back about half way of the car in the gondola car. When they got in the gondola I could see them from about their waist up. There was—well, there was eight or nine or ten of them that went from the box car into the gondola. 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 [fol. 87] the opposite side of the train from me. They threw two off over the top of the car. I was coming towards the railroad from down in the field, and I came up to where the railroad made its turn, and come 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 handkerchief 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 (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.

The defendant excused the witness without examination.
(Witness excused.)

The court took a short recess and then resumed.

The Court: All right.

MOTION FOR MISTRIAL

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—

The Court: Well, 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 to state, I would like to hear it.

Mr. Watts: We feel, if the court please, the irritability manifested by the court—

[fol. 88] The Court: The what?

Mr. Watts: The irritability, the comments of the court in the presence of the jury in tending to minimize the evidence offered by the defense, whether calculated to do that or not—

The Court: Nothing particular? Certainly, if I have been irritable, I didn't know it.

Mr. Watts: The record throughout the trial has shown the comments of the court, is what we have reference to; the stenographic 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 go through the stenographic record and call up all these things.

The Court: It would be very difficult for me to make any change, make any apology. I am not above apologizing. If I have made a mistake, I will be glad to correct it. I am certainly entitled to an opportunity to know what it is. That I am irritable and you couldn't get a fair trial?

Mr. Watts: Lack of patience—

The Court: Lack 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 spoken several 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 going [fol. 89] into certain minute details—

Mr. Watts: Well, the train as evidence—

The Court: Until Mr. Leibowitz stated his purpose, and I said, "Go ahead", 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. Watts: 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—we move for a mistrial.

The Court: What did you say?

Mr. Watts: We move for a mistrial.

The Court: Your motion is overruled.

Mr. Watts: 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 case 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 and 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 has said. The counsel has a right to register his objection to anything 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 jeopardized 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 innocence 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, [fol. 90] 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 ahead.

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

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 was in sight of me as it passed, from a hundred and fifty to two hundred yards, both approaching and going. The train was a freight car. I seen some people on the train in a gondola. They were scuffling and wrestling around. I thought it was brakemen trying to throw off hoboes. It looked like they were fighting and fussing around. I didn't see anybody get off. I couldn't tell if they were white or colored. I never paid much attention. The train was running about twenty-five or thirty miles an hour. They were scuffling; looks like they were trying to throw them off. I live South and West along the railroad from Mr. Morris about three quarters of a mile. Towards Paint Rock. It was between twelve and one o'clock, I reckon; right about one o'clock when it passed.

Cross-examination.

By Mr. Leibowitz:

This train that came by me had already passed Mr. Morris' place. And at that time I still saw the scuffling 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 together. I

looked at this train as it passed by, the rear end. I saw one darky in a box car next the caboose. Standing at the door. This scuffling was up towards the front, and this one was standing in a box car near the caboose.

Mr. Leibowitz: That is all.

W. E. 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 [fol. 91] March, 1931, 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. The train stopped at the coal chute. 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 were getting off the front part of the train.

Q. About how far were 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.

Q. What is your best judgment or recollection about that, Mr. Branham?

Mr. Leibowitz: He says he don't know. I object 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 cars back of the engine these folks were getting off?

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

Q. What kind of a car was that that you saw anybody get off from there when the train stopped?

A. It looked to me as coal cars or something like that. It wasn't box cars. It was a coal car. It was colored folks getting off that car.

Q. How many did you see?

A. I wouldn't say but two on my side. They were just rustling around over the top of this coal car when I first saw them. 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 down the 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.

Q. Did you see her on that occasion?

A. 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 women. There was one of them [fol. 92] 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 forgot about that. The distance from the water tank to the depot is between six and seven hundred feet.

Cross-examination.

By Mr. Leibowitz:

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. If 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 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 at Paint Rock. I don't think there were two. They didn't go to Scottsboro with us with the darkies. I never noticed but one, that went to Scottsboro with us with the darkies.

Mr. Hutson: If the court please, the State desires to rest with the permission of the court to show those measurements 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.

Thereupon the State rested.

Defendant's Evidence

The Court: First witness for the defense.

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

Direct examination.

By Mr. Leibowitz:

I was the fireman on this train, on March 25, 1931. I [fol. 93] testified in the trial before Judge Horton. I also testified in the two trials before Judge Callahan. When I left Stevenson I was on the engine. I was firing the engine. I begun firing on the railroad October 29, 1920. When this train reached Paint Rock where it stopped I got up on top of the tender to take water. I got out of the place where the fireman stays on the engine and climbed up on the tender to the tank where the water is. The train hadn't stopped when I got on top. It did finally stop. At this point I have to pull a lever down, to get the water. Pull this lever down in order to open the valve in order to get the water, and we are 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 ap-

parently about the middle of the train. There were about thirty-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 car from the tender. I couldn't say for sure, but just looking at it—of course, a box car is larger,—it wasn't so very far; four or five cars, something like that. They got off a chat car or coal car, and started to come up towards the engine, and were surrounded. The car they came out of wasn't the first chat car. The first chat car was the seventh car from the tender. 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 car 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 woman in the front was trotting, and if I am not mistaken they were, both of them. One right behind the other. They were both together. One had on overalls and the other a dress.

Cross-examination.

By Mr. Knight:

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.

Q. Did you see men all along the track?

A. I saw men coming from behind buildings and out from behind piles of cross ties. They had guns. They did not [fol. 94] start at once taking these negro 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 cars way back, and I saw one that was taken off up near that—looked, from the arrangement of

that, near that chat car there. (Mr. Leibowitz: He means that red car.) I saw the girls get off a chat car back a pretty good piece there. Well, something 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 car right ahead of the—about two or three cars from the engine there. My position was right here on the tender. I was looking down the train. I did not see any colored persons coming out of any car that were loaded with chat. I didn't see anybody come out of any of those cars, but I did see a man on a chat car, and I don't know whether 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 Gap in a chat car. I don't know whether he was colored or white. It could have been a woman 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 chat cars. I was looking on both sides, 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 out of two different sets of box cars, and the girls they got off that chat car, and the men that came 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 cars down there.

(Witness excused.)

COLLOQUY

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. Watts: 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 [fol. 95] continually in the trial of this case. Your Honor knows 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 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 tomorrow morning.

The Court: I will have to go on a while longer.

Mr. Watts: We except.

The Court: I don't see anything unreasonable about 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. Watts: Commonplace labor don't work that long, if the Court please.

The Court: Well—

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

The Court: I am very sorry, but I can't agree with you.

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

I wish to say, in connection with the map, we took the precaution to call Judge Mooney of Jackson County, and asked him whether or not Jackson County had a county surveyor. He told me they did not have a surveyor in 1931 and did not have a county surveyor at this time, and told me that Mr. Eyster 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 Probate 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. Watts: 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. Harlin.

[fol. 96] 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 Honor 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 am willing to give it to you, but I really don't see any good reason why you couldn't use the defendant.

Mr. Watts: Take the stand, Haywood.

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

Direct examination.

By Mr. Leibowitz:

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. Knight: 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 about 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. Leibowitz: All right; step down.

(Witness excused.)

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

Direct examination.

By Mr. Leibowitz:

[fol. 97] Q. Mr. Kingsberry, have you got your notes here with you?

A. No, sir.

Q. We can use this then. Mr. Kingsberry, 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. Knight: Yes, sir.

The Court: And he transcribed it correctly?

Mr. Knight: If Mr. Kingsberry identifies that.

Mr. Leibowitz: No; I want to prove that. I am not taking any concessions now from Mr. Knight.

The Court: Just a minute. I am getting rid of preliminaries. I am qualifying—

Mr. Leibowitz: I will qualify him.

The Court: I am going to qualify him. Do you gentlemen concede he took the testimony here before?

Mr. Knight: Yes, sir.

The Court: And that is a transcript of the testimony?

Mr. Knight: No, sir, not until after Mr. Kingsberry identifies it.

The Court: Go ahead.

Q. I show you this manuscript, Mr. Kingsberry, and ask you if that manuscript was prepared by you?

A. It was.

Q. What is that transcript?

A. It is a carbon copy of the testimony on the trial of the State of Alabama against Haywood Patterson, tried in

Decatur, starting November 27, 1933. This carbon copy was made at the same time that the original copy was made.

Q. Made by the same striking of the keys, wasn't it?

A. Yes, sir.

Mr. Knight: He has identified it.

Mr. Leibowitz: Well, I will prove that is——

The Court: I didn't hear you, Mr. Knight.

Mr. Knight: Your Honor, I wanted—the only proposition I was insisting on Mr. Kingsberry taking the stand for was to identify that. All I wanted him to do was to say just what he did say, that he did make that copy.

The Court: Do you admit that it was correctly transcribed? [fol. 98] Mr. Knight: Yes, sir.

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 copy before he required me to call Mr. Kingsberry.

The Court: Mr. Leibowitz; that is enough of that.

Mr. Leibowitz: I except.

Questions and answers found on page 90 of the testimony of Victoria Price in original transcript.

Victoria Price was asked this question and made this answer:

“Question: Did that blood come out on your clother? Answer: Yes, sir. Question: Did the doctor see that; did you show it to the doctor? Answer: I reckon I did.” She was asked this question and she made this answer: “Question: What 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? Answer: Yes, sir.” 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: Where 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: Practically all of them.” Now, 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. It was asked in testimony before Judge Horton. That was a question read from a previous record on page 64. The testimony before Judge Horton. I presume so. I am not sure.

Mr. Leibowitz: All right; thank you. That is all for Mr. Kingsberry.

The Court: Cross examine.

Mr. Knight: Gentlemen, are you through with Mr. Kingsberry.

Q. Will you also identify this record while you are here, Mr. Kingsberry; this is the Clarence Norris record.

A. The volume that I have in my hand is a transcript of the testimony in the case of the State against Clarence Norris, who was tried in Decatur, I believe, on the——

The Court: December 1st, started?

The Witness: Yes, sir.

[fol. 99] Q. That is a correct transcript?

A. This is a correct carbon copy of the transcript of the testimony as prepared by me, and was made at the same time that the original transcript was made.

Q. Made by the same touch on the keys on the typewriter?

A. Yes, sir, the same touch of the keys.

Mr. Leibowitz: That is all.

Cross-examination.

By Mr. Knight:

Q. I would like to identify a record. That is the Haywood Patterson case (handing volume to witness).

A. This is another carbon copy of the case of the State of Alabama against Haywood Patterson, tried beginning on November 27th——

The Court: What year.

A. 1933, here in Decatur, Alabama.

Q. It was made at the same time that the carbon copy Mr. Leibowitz holds in his hand was made?

A. And at the same time the original was made. This copy was furnished to Mr. Knight as attorney general for the State of Alabama, and the same is true with reference to the carbon copy of the State of Alabama against Clarence Norris.

The Court: Now, gentlemen, as I understand, you are identifying a record at the former trial of Norris with a view of avoiding bringing Mr. Kingsberry back so that you may use that in that trial?

Mr. Leibowitz: Yes, sir.

The Court: That is understood. Are you through with the witness?

Mr. Leibowitz: Yes, sir.

Mr. Knight: Yes, sir.

The Court: You are excused, Mr. Kingsberry.

(Witness excused.)

The Court: Mr. Bailiff, take charge of the jury.

(Thereupon the jury retired from the court room.)

The Court: Court is adjourned until 8:30 tomorrow morning.

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

(Thereupon the jury retired from the court room.)

Whereupon the following occurred.

MOTION FOR MISTRIAL

Mr. Watts: Now, if the court please, at this particular juncture, we wish to move for a mistrial in this case on the [fol. 100] ground that it was without our consent that the court brought around two other defendants charged under indictments in this case and drew 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.

The Court: I announced in open court during the 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 coun-

sel 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 no 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. Watts: We except, and as far as the statement—

The Court: You need not argue any further.

Mr. Watts: We except.

The Court: I don't care to hear any further argument. 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 ruling shut off argument.

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 [fol. 101] called, and being duly sworn, 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. Eight hundred and seventy-four feet.

Cross-examination.

By Mr. Watts:

I made the measurements with a fifty foot government 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.

COLLOQUY

Mr. Watts: Now, if the court please, at this time we have an affidavit of a physician of the sickness of Doctor Bridges and his inability to be here, and we will want to read—we want to file this with the court. Does counsel want to see it?

Mr. Knight: No; that is all right.

Mr. Watts: We want to file it.

The Court: That is all right. Well, are you showing that with a view of reading the testimony of Doctor Bridges?

Mr. Knight: And the State will object.

The Court: Is that agreed to?

Mr. Knight: No, sir, it is not.

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.

The Court: Yes.

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.

Mr. Watts: You do?

Mr. Knight: Yes.

[fol. 102] Mr. Watts: He is the doctor who examined the women and has testified in these cases before.

Mr. Knight: That was not the purpose of my concession a while ago, if the court please.

The Court: Gentlemen, I don't know anything about any agreement among yourselves.

Mr. Knight: There wasn't any agreement except what took place before you.

The Court: However, if they don't agree to it being read in evidence in the case, I don't think it would be legal. That is not the way to get his evidence here.

Mr. Watts: Then, we will have to ask for an attachment for Doctor Bridges, and it may kill him, but we have got that man here on trial.

The Court: If you feel that way about it, that it might kill him, I don't think the court would be justified in having him brought here.

Mr. Watts: But this man is on trial for his life, and in view of our agreement—

The Court: There is no conflict about our agreement. I have always allowed doctors to be examined out of order when you get them here.

Mr. Knight: Might I ask the court this: I know it has been the policy of this court and other courts to allow a doctor to be examined out of turn, but an examination is one thing, and reading his testimony on a former trial is another where the other side is precluded from cross examining him. For that reason we object to it.

The Court: I take it you are familiar with the law on that. If they insist on it, you couldn't read his testimony on another trial. I will give you the attachment if you want it.

Mr. Watts: We will ask for the attachment and we except to the exclusion of the reading of the testimony of Doctor Bridges under the showing for Doctor Bridges.

The Court: You did what?

Mr. Watts: I said we objected—

The Court: I thought you said something about a 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 Doctor Bridges on the former trial of Patterson.

The Court: I will give the defendant a showing for the [fol. 103] witness Bridges if he desires, and also issue the attachment,—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. Hutson: 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——

Mr. 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 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 showing——

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 then.

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 writ- 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't see any necessity of that in view of the position the court has taken. Let him read it and save all that time.

[fol. 104] 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. Knight: 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——

Mr. Watts: 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: You understand 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. Knight: If they will offer the record——

The Court: There is the questions and answers.

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 this in order to settle the matter. We will read from the testimony of Doctor Bridges on the former trial such portions as we want to [fol. 105] offer, and they can offer anything they want to.

The Court: as shown there.

Mr. Watts: Subject to legal objection?

The Court: Why certainly.

Mr. Hutson: Now, 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 and not read other parts.

Mr. Knight: He leaves us to read other parts.

The Court: Gentlemen, it seems to me you are arguing over nothing. If he picks out and reads what he wants, you can pick out and read the other. Is that agreeable?

Mr. Leibowitz: Yes, sir.

The Court: Of course, you gentlemen understand technically—of course, it is your evidence that you are offering—

Mr. Leibowitz: 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. Leibowitz: 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. Leibowitz: 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.

[fol. 106] The Court: I thought you said his testimony before Judge Horton.

Mr. Leibowitz: I wasn't speaking of the testimony before Judge Horton.

The Court: Well, I am just stating that is what I understood you gentlemen to say.

Mr. Knight: So did the State.

The Court: I wouldn't be arbitrary 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 proceed 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. Leibowitz: And we except to the court's burdening us with the testimony that they may read under the circumstances. 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: We except.

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. Leibowitz: We except to the statement of the court before the jury you are not going to be tampered with.

The Court: That is all right. Have you any other motion?

Mr. Leibowitz: No, sir.

[fol. 107] The Court: All right. We 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. Leibowitz: We except.

The Court: Gentlemen of the jury, that has got nothing to do with this case. You, I assume, have got sense enough 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 offensive to you, I will withdraw it.

The defendant here offered in evidence the former testimony of the witness, Dr. Bridges, who was called and examined as a witness for the defendant on the former trial of the defendant, Haywood Patterson, before Judge Callahan, at Decatur, Alabama.

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

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. Knight: That is what we want.

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

The Court: I understand.

Mr. Leibowitz: 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. Leibowitz: 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.

[fol. 108] The Court: I can't do that.

Mr. Leibowitz: Except.

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

OFFER IN EVIDENCE

Thereupon Mr. Leibowitz read from the testimony of Doctor Bridges given on the former trial of the case:

Not shown in transcript—"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 Scottsboro. 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 following then occurred:

Q. Each time you were subpoenaed 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 Judge Horton?

A. Yes, sir.

Q. As a witness for the State?

Court: That is the same identical thing you have asked twice. You have the legal advantage of your objection.

Q. Were you subpoenaed 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, 1931, 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 a medical man that her nose was swollen or any cuts on her nose. Abrasions, that means a [fol. 109] scratching off of the skin, that is right. I found no cuts on her cheek, nor any marks on her cheeks. I don't remember any lumps on her cheeks. I did not see any blood coming from her mouth. I don't remember that her lips — puffed up or swollen. I don't remember her exact condition, I don't remember whether I spoke to 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. She 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 wore 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 her 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 scratches on her wrist, slight scratches, small ones. Scratches that were made by a person coming in contact with freight trains, and things like that, would be large scratches. I think these were smaller than scratches you would get that way. These were small. I couldn't tell where the scratches came from. There were some blue marks in the small of the back, about here (indicating). They were small affairs, little small knots. I couldn't tell what those small blue marks came from except that the body had come in contact with some object. I think there were some scratches on her arm, on the forearm of the left

arm. This blue mark was down on the small of the back. I don't remember any other one. This was done in 1931, and I am liable to forget.

When she went off the table I read her pulse and it was normal. When a person, especially a woman is excited and 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. Knight: Now, your Honor, there is one portion of the testimony, and only one—it is all in—

The Court: That is right. Gentlemen, you must realize 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 a 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 [fol. 110] offer it. Your Honor has said it is in.

The Court: I have held you have offered it as evidence in the case.

Mr. Watts: We except.

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

Mr. Knight: 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. Knight: This is just a portion of the testimony that Mr. Leibowitz did not read.

Court: Go ahead and read it.

Mr. Knight: I asked the witness, Doctor Bridges, this question on cross-examination.

Q. "About what time in the afternoon did you make this examination?"

Mr. Leibowitz: Give me the page.

Mr. Knight: Page 348.

A. "After four o'clock."

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 vaginal canal by the prosecution.

Mr. Knight: I understood that the—

The Court: The whole evidence is already in, Mr. Watts.

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 making to the testimony of Doctor Bridges?

Mr. 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.

[fol. 111] 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. Knight: You will not have any opportunity to interrupt me further.

The Court: Go ahead, gentlemen; no side remarks.

Mr. Watts: Is that understood?

The Court: I have ruled it all in.

Mr. Leibowitz: 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. Leibowitz: They have offered that.

The Court: That is the ruling under which you have read 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.

Go ahead and read.

Mr. Knight: "I will ask you this question:"—this was a question asked by me to Doctor Bridges,—"from your examination of Victoria Price's 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 minute on it. I couldn't do that."

That is all the State cares to read.

Mr. Leibowitz: Is that all?

Mr. Knight: All the State cares to read.

Mr. Leibowitz: I understand that was the cross-examination in the record.

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?

The Court: Yes, you can read it all if you want to, but, 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.

[fol. 112] Mr. Leibowitz: 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 re-direct examination.

The foregoing is not all of Dr. Bridges' testimony in the former trial that was offered at this trial by the defendant.

LESTER 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.

Q. Where did you get acquainted with her?

Mr. Knight: I object.

The Court: Objection is sustained.

Mr. Watts: We would like to state to the court what we expect to prove by him.

The Court: That would be for my information alone, and I am satisfied with my ruling.

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, 1931, I left Huntsville in her company, for Chattanooga, Tennessee, by freight train, hoboeing with Ruby Bates, and there were several people in this box car in which us three as knowing each other were riding. We got off the train at Chattanooga, Tennessee, 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 Chattanooga you were in company with Victoria Price and Ruby Bates substantially the entire time you were there?

Mr. Knight: The State objects.

The Court: Objection sustained.

Mr. Watts: And the defendant excepts. We expect the witness to answer he was in her company substantially all the time she was in Chattanooga.

A. All but a very few minutes—

The Court: Wait a minute. Wait until he asks the question.

[fol. 113] Q. Now, I want to ask you if you know of your own knowledge whether Victoria Price, while in Chattanooga, had sexual intercourse with a man?

Mr. Lawson: We object, if the court please.

Mr. Knight: We object.

The Court: That objection is sustained.

Mr. Watts: And we except, and the purpose is to account—

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 intercourse,—we look upon it, notwithstanding the court's ruling, it is in the nature of cross examination of Doctor Bridges, and that is the purpose of it. We think we are entitled to show—

The Court: Doctor Bridges is your own witness.

Mr. Watts: I understand the court's ruling.

We remained in Chattanooga for the night, and most of 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 court 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—

[fol. 114] The Court: I don't care to hear any argument. I want to be courteous, 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 Chattanooga, four of us together, in one party, by freight train, we all four boarded the same part of the train. I and Gilley helped these women on the train. We 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 while riding on the box car. We got our arms around the women and held onto the stubs on the back end of this box car. We rode in that position 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 rolled a cigarette, 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. Negroes and white men. Between Chattanooga and Stevenson, seven white men were riding that train in addition to myself and Gilley. 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. There were darkies 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 Chattanooga 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 clods 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. The train was on a grade, going slow. It was going very slow. I am not so good at getting off and getting on a train, but I could have got off and caught the same 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 carried out later. The two [fol. 115] women and Gilley, that I was traveling with, left the freight train at Stevenson, Alabama. We got off while the engine was stopped there. The four of us caught that same train as it left Stevenson. I and Gilley helped these women on that car. 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 a string of cars of that type tied together in that train, a string of gondola cars like that on that train together. I didn't count them.

I would say there were nine or ten of those gondola cars in that particular string in that car. The car that I and Gilley and these two men got into was loaded with some kind of small, chipped stone. I would judge the car was loaded 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 boys 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 singing, also. There were no other people in that chat car with us four people at that time. Not at that time. We didn't stay in that position very long. Just after we left out of Stevenson this fight were getting refreshed up, and these boys had them some new stones they got in Stevenson, and the fight started out again. I mean Odell Gladwell and the boy from Arkansas got some new stones. His name was the Thurman boy—the boy from Arkansas. The white boys at that time were beyond us, towards the back of the train, nearer the caboose. They were in the next car—the white boys that were throwing stones at darkies. The negro boys never came into the car where we were. The darkies got into the car 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 car 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 called for Gilley and Lester to come over. 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 made 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. We walked back to Stevenson. We went from Stevenson to Scottsboro the same day by automobile. All five of us.

[fol. 116] Q. Now, did you later see Victoria Price and Ruby Bates and some of these negro boys at Scottsboro the same day?

— I don't know whether it was the same negro boys I seen at there. I seen some negro boys in Scottsboro, and I do know I seen Mrs. Price and Miss Bates. We went to the Courthouse and then we went to the jail house yard after we got to Scottsboro.

— Now, when you got to the jail house yard had Ruby Bates and Victoria Price got there?

— They was driving up while we was walking down that way. (The- drove up in a car.) Mrs. Price was sitting on the outside and Ruby Bates was sitting in the middle next to the driver.

— And how far away were you and the other boys at that time while they were sitting there?

— We was very close. Well, to begin with we took a few steps towards the car. To begin, we were about fifteen feet away, maybe. Victoria Price was smiling. I think she was smiling a little bit. She motioned for me to come over to the car. Not in touching condition of the car, but 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 your boys should tell the authorities you are my brother." She said they were picked up in Paint Rock, Alabama. Said they got off the train and tried to get away. She said there were so many damn people there she couldn't get away; she didn't know that there were that many damn people in the State of Alabama. A few immaterial questions asked. 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 lads 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. I do not know where the women were put. Later, I saw the women in jail,—the next day and the next night.

— Where did they stay in the jail with reference to where you and the white men were; what part of the jail did the women sleep in, if you know.

— Well, then, we were on the inside of this cage, you [fol. 117] see, and the two women were on the outside in this run-around. They slept there. In full view of the men in the cage. I think they stayed there most 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 Gladwell. Mr. Wann asked Mrs. Price, "Which one of these boys are 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." Now, later, and after that conversation, I heard another conversation there in the jail between Sheriff Wann and Victoria Price about Gladwell being her brother. Mr. Wann and the deputy sheriff they had there told this boys, "If you are not Mrs. Price's brother, you had better say so. This is going 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. I was never called as a witness for the state in the prosecution of any of these cases.

Cross-examination.

By Mr. Knight:

I came here Sunday from New York City. I was not with Ruby Bates Sunday or just before I left New York City. (Witness asked to indicate car he was in.) I wouldn't say for sure which one, but I was in one of these cars along 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 how far (exactly) from Stevenson. 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 ne-

groes in the adjoining car at the time I got off, in the adjoining car to the car 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.

Q. And a fight was going on between the white boys and the negroes?

A. Yes, sir.

Q. And five of you white boys were thrown off the train, is that not true?

A. We weren't thrown off, or I weren't. I got off.

[fol. 118] Q. You got off?

A. Yes, sir.

Q. Then that left no white boys there with the negroes, did it?

A. How was that?

Q. That left no white boys on that car when the fight was going on?

A. Gilley was in the car with the girls.

Q. Gilley stayed in the car?

A. That I don't know.

Q. Now, you walked to Stevenson?

A. Yes, sir. Now, I walked to Stevenson in company with the other white boys thrown off. I went to the station to get a drink of water. I didn't go on with the other boys to the store. I don't think any of these 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, "We are going to follow those negroes and whip them yet." Nothing was said about overtaking these negroes because the white girls were in the next car to them.

Q. But you left them there?

A. Yes, sir.

Q. You went on to Scottsboro?

A. Yes, sir.

Q. From Paint Rock?

A. From Stevenson. When I got to Scottsboro I was put in jail. The negroes were put in jail too.

Q. They were the same negroes you saw having that fight in that gondola car?

A. Not that I know of. I don't think they were the same lads I saw.

Q. You don't think they were the same lads?

A. I couldn't identify either of them, Mr. Knight, and be telling the truth.

Q. But in your presence Odell Gladwell said he was going back and catch a freight train and go back and overtake this train this fight was on and whip those negroes after all?

A. Yes, sir.

Q. What did you do?

A. I got in this car and went to Scottsboro.

Q. Did Gladwell go back?

A. He went with us in a car.

Q. Now, Lester, who drove you to Scottsboro?

[fol. 119] A. I don't know the gentleman's name.

Q. Was it a man who ran that store in Stevenson?

A. I couldn't say, Mr. Knight; maybe it was.

Q. Now, where did you just come from? You left New York, I believe you told me?

A. Yes, sir.

Q. How long have you been in New York?

A. I have been in New York for a year or so.

Q. You haven't left New York since you first appeared here as a witness for the defendants, have you, except to come here?

A. I don't know whether I have or not. I think I have.

Q. You have been down here twice from New York, haven't you?

A. Twice is all. This is the third time.

Q. This the third time?

A. Yes, sir.

Q. Did you come in company with Ruby Bates the first time you came?

Mr. Watts: Object.

The Court: Sustained.

Q. Who did you come in company with—

Mr. Watts: Object.

A. I came with two young men.

The Court: Overruled.

Mr. Watts:

Q. What was their names?

A. One of them was named Pete.

Q. What was the other one's name?

A. I don't know. He was a friend of Pete's.

Q. You had been in New York before?

A. Yes, sir.

Q. You had been staying with some of the counsel for the defense?

A. No, sir.

Q. Mr. Brodsky, for instance?

A. I didn't stay with Mr. Brodsky.

Q. I believe you testified Mr. Brodsky had given you the clothes you had on?

Mr. Watts: We object.

A. N-, sir, I didn't—

The Court: Wait a minute; objection is overruled.

[fol. 120] A. —testify to that.

Mr. Watts: Except.

Q. You said he had given you some clothes?

A. No, sir, he didn't give me any clothes.

Q. I don't mean the same clothes.

A. These are the trousers I have had on at every trial.

Q. All right.

A. I can't wear a bathing suit down here.

The Court: Never mind about that. Just leave that off.

Mr. Knight: No further question.

Other questions followed this above but were immaterial and had no bearing on the case.

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

I am twenty-three. I was born in Chattanooga. I was never convicted of any crime outside of this case. 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, 1931, we left Chattanooga on a freight train bound west from Chattanooga. Eugene Williams and the two Wright boys left with me on the freight train. Eugene Williams I think was fourteen at that time. Roy Wright

was thirteen or fourteen. Andy Wright was eighteen. We boarded the train out there on Twenty-Third Street. That is far away from my home. We got on an oil tank car. There wasn't anyone else on there. We caught the oil tank car next to a flat car on the end near the caboose. I think we were on the left hand side going out. I didn't see Victoria Price or Ruby Bates at that time. I did not know they were on the train.

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 car, you get a lot of soot on you from the engine. After we got out of the tunnel, going around the mountain there the train was running very slow, and some boys were transferring backward and forward on the train. At least three or four came 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 get by to ask me and I [fol. 121] would let him by, and they cursed us and we cursed back—They seemed to get hot about it, all right, 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 ahead 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 white boys were after the train pulled out from Stevenson. There were a string of gondola cars, a number of gondola cars hitched up together. These boys wasn't in the 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 (Gilley) 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 advised 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 car 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 car where we came from. We left the gondola 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 Scottsboro jail. I did not hit her on the head with a pistol. I never had any pistol. I did not hear any pistol shot off [fol. 122] 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.

Here the defendant's attorney propounded questions to the defendant which are not set out because not material.

We passed several little depots and saw houses along the road, and people at some of those houses. We saw stores near some of the stations and people at some of the stores. I wasn't paying any attention to the roads, but we crossed some.

Q. Did you notice whether or not at some of these roads there was some automobiles waiting at these cross roads to permit the railroad train to pass by so that the cars could continue on their way across the railroad track?

A. I don't think I did, if they was, I wasn't paying no attention.

Q. Paying no attention?

A. No, sir.

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. Knight: We object to that.

A. Yes, sir.

The Court: Sustain the objection.

Mr. Leibowitz: Except.

Q. I am going to ask you if you would have dared under any circumstances to ride along with two white women on an open car, along that railroad, by all these stations and all these houses, by these roads,—would have dared to rape a white woman on that car in view of people along that railroad?

Mr. Hutson: We object.

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

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 see- Victoria Price.

Q. Were you taken off any gondola car in Paint Rock?

A. Was I taken off the gondola car?

Q. Yes.

[fol. 123] A. Yes, sir, I was taken off.

Q. What car were you taken off?

A. The gondola car.

Q. You was?

A. The oil tank car.

Q. The oil tank car?

A. Yes, sir.

Q. Were the two Wright boys and Williams taken off?

A. Off the wooden car.

Q. Where was the wooden car?

A. It was next to the gondola car.

The Court: Next to what car?

The Witness: Next to the oil tank car.

The wooden car and the oil tank car were hitched up together. Williams was on that oil tank car with me. The two Wright boys was on the car with the wood. We were facing each other. Right next to each other on the ends of those cars. That is the place where we were at Paint Rock when they left the train. 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. None 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. 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. Nine 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 jail 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.

Here questions were propounded to the defendant by his attorney but were omitted from this bill of exceptions because they were immaterial.

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 Winter of 1934, an appeal was pending, to the United States [fol. 124] 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 six o'clock. I can write very well. I have met Attorney General Knight on these various occasions. Now Lieutenant Governor of the State. I knew where I could reach him if I wanted to reach him by 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, either 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 along.

Q. Almost daily you were writing letters to your lawyers?

A. Yes, sir.

The Court: Let's don't go into details on that.

Mr. Leibowitz: 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 writing from my lawyers. 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; and say that he told me the Warden wasn't there and then say he walked away, and say I called him back there again and say I made some statement to him, that I was guilty of messing around with them girls, that Norris was guilty and the other seven were guilty. I made no such statement. I did not at any time tell this man I was guilty. I haven't never had any talk with him, not only with him, but none of them there. I didn't talk with [fol. 125] anybody there at Kilby prison. I did not at any time say to him, "I am guilty of messing around with the girls", or any such language as that. I never asked him what he could do for me. I was asked to make a statement in writing that I was guilty, several times, by officials there and some I didn't know come and asked me were I guilty of raping them girls, and I tells them no, and walk away and sit down by myself in the cell, don't even come to the door to see what they want at times, and they get very—

The Court: Wait a minute. You have answered.

I had a pencil in my cell and stationery to write out letters. I never 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 Scottsboro, 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 Wright and Andy Wright and Eugene Williams. In Chattanooga I got on the oil tank. That was back of the line of chat cars. There was a box car between the oil car and the flat cars, the coal cars there, the gondolas. Right in front of me was a lumber car; they call it a flat car, it was loaded with lumber. Right in front of this lumber car was this box car. Right in front of the box car was a gondola car.

Q. In order to go from that oil tank you had to cross the lumber car & climb?

A. 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. The oil car was hitched or hooked onto the box car.

Q. When you went from the oil car to the gondola car, you had to climb over this box car?

A. Yes, sir.

Q. Climb up this side of the box car?

A. Had to climb over two box cars.

Q. And either jump from the box car to the gondola—

A. I crawled out.

[fol. 126] Q. How many jumped?

A. I couldn't say. I was looking forward. I wasn't looking back.

Q. You wasn't looking back?

A. No, sir.

Q. Were you in front or behind?

A. I was alongside two—

I went from the oil car to the gondola 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 ahead of me

crawled down. I was not leading that procession over anybody. There were two boys ahead of me. Andy Wright 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 came over that box car; I wasn't paying any attention to what was coming on. There was two of them joined up on the oil tank car before we went over to fight. We started before the other nine came.

Preliminary questions asked but left off the record because they were immaterial.

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.

Q. You decided to go over and attack them?

A. Yes, sir.

After we decided to go over and fight the boys, I don't know how long before the other eight came 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.

Q. What is your best judgment after you left Stevenson before you went to where the white boys was? I say it is about an hour or better.

When the fourteen were over there with me in that gondola 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 which was joining in the fight. They all got out. I don't know how far I was out of Stevenson. The train had been running an hour or better from Stevenson. That train was running more than two or three miles an hour. I don't know how many miles [fol. 127] an hour the train was running.

Preceding this answer there are several questions asked about the speed of the train which are left out of the record because they are immaterial.

I was in that car where the gravel was when the white boys 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 go 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 any 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 *and* sentenced to the death cell.

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

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

Mr. Leibowitz: 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 again?

The Court: I don't see any occasion of that.

Mr. Hutson: They brought it out.

The Court: I know they did, and you didn't object to it.

Mr. Hutson: I didn't have any objection to it.

The Court: You are just wasting time, Gentlemen.

Mr. Leibowitz: 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, if 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 another or to the court.

Mr. Hutson: Then the court don't desire me to cross examine any on the matters he brought out—

[fol. 128] 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. Leibowitz: Just to protect the record, we move for a mistrial.

Q. 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.

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 Court 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: Exception.

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 about 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 negro 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, [fol. 129] 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. Leibowitz: Except.

The Court: What was your answer? 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 like that.

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

Q. I will ask you, Haywood, when you were tried at Scottsboro, did you make the statement you saw all the negro boys that went into the gondola rape the women but three?

A. I did not make any such statement.

Q. And then, didn't you say you didn't remember making any such statement?

The Court: Wait a minute. He is asking you if you said on the trial down here you didn't remember whether you made such statement at Scottsboro?

A. No, sir, I didn't make any such statement.

Q. Didn't you say in this court, "I don't remember making a statement like that. I remember making a statement."

Mr. Leibowitz: We object.

Q. Didn't you—

The Court: Wait a minute.

Mr. Leibowitz: If your Honor pleases, will Mr. Hutson please read the entire answer?

Mr. Hutson: That is what I was going to do.

Mr. Leibowitz: All right.

The Court: Go ahead.

Mr. Hutson: I was trying to do it.

Mr. Leibowitz: Yes.

Q. "I don't remember making a statement like that. I remember making 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.

Q. You answer the question. Did you make that statement on that former trial?

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

[fol. 130] Q. You didn't make the statement you made a statement at Scottsboro?

A. No, sir.

Q. 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 car. I grabbed him and pulled him back on the car. They say there was another one left 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 car.

Q. Wasn't you asked this question, to refresh your recollection, on another trial—"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.

Q. You got down in between the cars?

A. Yes, sir.

Q. That is what you were meaning?

A. Yes, sir, because he was swinging off the step. That is the one they call Gilley.

Mr. Leibowitz:

Q. You told Mr. Hutson that the train was going about an hour before this fight took place?

A. I said about an hour or better.

Redirect examination.

By Mr. Leibowitz:

Q. What I want to know is was the train gone long out of Stevenson before the scrap started?

A. No, sir.

Q. Had it been gone very long?

A. No, sir, not very long; just a short distance. I say it had been traveling more than an hour. I mean it had been traveling more than an hour from Stevenson, not from Chattanooga. I mean the scrap started shortly after I left Stevenson. I am not attempting to give you any definite time.

[fol. 131] Recross-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 am?" 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 first time in court." And then the question, "Do you remember being asked this question, 'Where did you first see these girls?'" Do you remember being asked that question?

A. No, sir—

Q. Wait a minute. This is your former testimony, and you answered, "Yes, sir," do you remember answering yes, sir, on this former trial?

A. Yes, sir.

Q. 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.

Q. You didn't say that?

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

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. May that be read.

Q. Didn't you say at that trial, "No, sir, I did not see them. I seen the girls in Paint Rock."

A. I did say so.

Q. 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 these glasses I have on two years, one day and this month. I forget what day it was. I think it was two years next month, in February. (Witness exhibits glasses to the jury.) They are 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 [fol. 132] towards stick on the floor dropped by Leibowitz.) 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. Going to Memphis for what?

A. Just going around—

Mr. Hutson: We object.

The Court: Objection sustained.

Mr. Leibowitz: I want to show that he was going to a hospital to have his eyes fixed.

The Court: The objection is sustained.

Mr. Leibowitz: Exception.

Q. May I ask if you were going to Memphis for a purpose?

Mr. Hutson: We object to that.

The Court: The objection is sustained.

Mr. Leibowitz: Exception.

Preliminary questions asked but omitted from record because immaterial.

I got on the train at Chattanooga on an oil car. To my best judgment it was more near the back than it was the

front. I don't know. All I know it was an oil car. I just got on it. First time I hoboed in my life. First time I been on a freight train in my life. I did not know any of the other boys before I got on the train. I did not know them after I got on the train. The first time I knew who any of these other colored boys were that got on the train was at Scottsboro. I did not see another lad by the name of Powell get on the train. I did not know a boy by the name of Willie Roberson. I didn't know any of them boys. I was just sitting on that oil tank car, this arm wrapped around that little rod that went around the tank. I was about asleep when it stopped at Paint Rock. My arm was wrapped around there (indicating on the model train). Sitting on this end if that is the front end. I was not in any fight with any white boys. I didn't know there was any fight going on. If there was I couldn't see it. When I got on it I sat right there until it got to Paint Rock. Of course, the train stopped at some little places. I didn't get off. I just sat right there. I couldn't catch a train running.

Q. You are one of the nine boys taken off at Paint Rock?

A. Yes, sir.

Q. It has been testified to here by Victoria Price, the [fol. 133] complaining 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?

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

Cross-examination.

By Mr. Hutson:

I ain't seen anybody pass me going towards the engine. There wasn't anyone on the oil car 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. Leibowitz:

I don't know how many oil tank cars 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 men on that car and that six 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 innocent, but for you to weigh his testimony against the witness Victoria Price as to whether he was there and participated or knew anything about that transaction.

OFFER IN EVIDENCE

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:

(Defendant offered this testimony as their own in its entirety.)

Along in March, 1931, I lived this side of Stevenson. I was there at Mr. Dobbins' place on the 25th of March, 1931, when a freight train passed by there going towards Paint Rock. 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 [fol. 134] 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 Paint Rock. 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 Stevenson. Mr. Morris lived nearer to Stevenson than I was. Mr. Adams' farm was nearer to Stevenson than where I was. I seen some negroes in the doorways of box cars while the scuffling 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—a dozen or half a dozen. There was some in there, I can't say how many. As the train passed by, I saw negroes all 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. Clarence Norris.

SAM MITCHELL, sworn for the State, testified:

Direct examination:

My name is Sam Mitchell. 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, about 1 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 rastlin' on a gondola car. I can't tell how many of them there were. It was a mixed crowd.

Cross-examination:

I saw some negroes in some box cars all the way from the engine towards 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, from where I was standing at the wood pile, I saw some other colored men or boys on different cars along the train towards the caboose. Where 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 [fol. 135] looked like men to me.

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

HAYWOOD PATTERSON (c), being recalled, and having been previously sworn, 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 awhile 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 Paint 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 sworn, 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. Knight:

Q. You went back to Scottsboro, I believe you said, Carter, from Paint Rock?

Mr. Leibowitz: Your Honor, I must submit recross-examination should be limited to this specific point.

The Court: Overrule 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.

Q. 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 ahead.

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

Q. Were you in jail in Knoxville, Tennessee?

[fol. 136] Mr. Leibowitz: 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 ahead.

Mr. Leibowitz: Exception.

Q. Were you?

A. Yes, sir.

Q. 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 Witness: No, sir, I wasn't convicted on any charge in Knoxville, Tennessee.

The Court: Gentlemen of the Jury, the testimony of this gentleman he was in jail in Knoxville is not evidence. You will give no weight whatever in arriving at your verdict.

Q. From Knoxville where did you go?

Mr. Leibowitz: Objection—

The Court: Objection is overruled.

Mr. Leibowitz: Except.

A. I came back to Huntsville, Alabama.

Q. From Huntsville where did you go?

Mr. Leibowitz: Objection.

The Court: Overruled.

Mr. Leibowitz: Except.

A. I went back to Arkansas State.

Q. In Arkansas were you in a hobo jungle?

A. Yes, sir.

Q. And did you meet a preacher?

Mr. 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: Wait a minute. You must stop right there.

Mr. Leibowitz: I—

The Court: You stop right there.

Mr. Leibowitz: An exception.

The Court: That is what you are entitled to. I don't want [fol. 137] any of that insinuation you didn't get one thing and the State got another. I would advise you to leave that out from now on. Proceed.

Mr. Knight: 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 defendant or told about the happenings on this train or what he contends happened on this train,—that that was in a hobo jungle in Arkansas.

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 recited what happened on this train that day—a part of it. I don't know whether I recited all that happened on the train or not; maybe I did. I spoke to a number of preachers about what happened. I spoke to Preacher Gillespie in Knoxville, Tennessee, about this case.

The Court: Just a minute.

A. Mr. Gillespie told me to come back here.

The Court: Mr. Witness, look at me. When I say stop, you stop.

I first spoke to Victoria Price in Huntsville about it. I spoke to Mr. Gilley about it. Then I went to California. I met Mr. Gilley out at the Rose Bowl game—From there, I hiked back through the northern part of the United States part of the way, and then I turned north and went to Governor Roosevelt's office in Albany, New York. Then I went to the State of New Jersey. The first fellow I told my story to, who was a lawyer, I can recall, was lawyer Barnett in Knoxville, Tennessee, who communicated with Mr. Brodsky in New York City. I went to New 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. Brodsky?

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.

[fol. 138] Mr. Knight: Probably it is objectionable.

Q. Did you come back to Knoxville, Tennessee, from New Jersey before you came in contact with Mr. Brodsky?

Mr. Watts: We object to that.

The Court: The objection is overruled.

Mr. Watts: We except.

Q. From Knoxville where did you go?

Mr. Watts: We object.

Mr. Leibowitz: May I ask if this is still preliminary?

The Court: In a measure he has a right to know the general movements of the witness.

Mr. Hutson: His interest in going to New York.

Mr. Leibowitz: I want to note my exception to the remark and the insinuation behind that remark.

Mr. Hutson: No insinuation. I said we had a right to show his interest in going to New York to see the counsel for the defendant. That is what we mean.

The Court: Go ahead.

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

WILLIE ROBERSON (c), being called as a witness, and, being duly sworn, testified as follows:

Direct examination.

By Mr. Watts:

On or about the 25th day of March, 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 see any women on the train. I had gonorrhea 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 gonorrhea, and I want to prove how long he had had it.

The Court: Objection is overruled.

Mr. Leibowitz: Except.

A. About six months.

I had been that way six months. I had been in Atlanta for those six months. I was going to Memphis. I had been in Chattanooga one day. I got to Chattanooga (by catching a ride). I got on an oil tank in Chattanooga. 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 back there. On the box car there was a white fellow with me. I do not know his name. When 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. Watts:

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

OCIE POWELL (c), being called as a witness, and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Watts:

I was on a freight train that left Chattanooga on March 25, 1931. That ran from Stevenson to Paint Rock. I got on that train in Chattanooga, alone. I got on a gondola car leaving Chattanooga. The gondola car was empty. I didn't pay any attention how far that car was from the caboose. 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. I was between a Gondola car and a box car. The box car was back of me. And the gondolas were ahead of me. I didn't see those boys when they jumped off the box car into the gondola. I didn't testify in this case before. I remember testifying in this case and was examined by Mr. Chamlee of Chattanooga, but I didn't testify that I seen anyone. I did testify before—here in Decatur. In that trial Mr. Bailey did not ask me this question: "Pretty soon after you saw these colored boys go into that gondola, you saw these white boys jump off the train?" and I did not answer, [fol. 140] "Yes, sir." 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 was between the box car and the gondola. 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, (between that gondola and that box car). They carried me to Scottsboro, in a truck. They didn't talk to me.

Q. Let me refresh your recollection. Do you remember when they talked to you, one or two of them said they didn't do it, but these others did, and the others said they did it?

Mr. Leibowitz: That is objected to.

The Court: Objection is overruled.

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—

The Court: Wait just a minute. The question is do you remember the other part he asked you about?

The Witness: No, sir, I don't remember about that. Didn't anyone talk to me about it.

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

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

Direct examination.

By Mr. Watts:

I was on a freight train that left Chattanooga for Stevenson and from there to Paint Rock on the 25th day of March, 1931. I got on the train in Chattanooga. 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 Chattanooga on a box car. I couldn't tell you exactly how far the box car was from the end of the train. Nobody else was on that car with me. I changed before I got to Stevenson. I got on an oil car. [fol. 141] When I got to 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 after the train left Stevenson. 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 several of the gondolas that had gravel in them. These white boys were on the third gondola. I went over to where the white boys were. We engaged in a fight with them in that third gondola car. I didn't see any women in that car. 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. On the oil tank and stayed on the oil tank until they took me off in Paint Rock. I did not see any women on that train at any time from the time I got on it until I got to 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 my brother and Haywood, and then was on the other car. On the lumber car.

Q. Was the lumber car in front or back of the oil car?

A. 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 got on a box car back there. 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 know 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.

Q. Fifteen or seventeen minutes. Now, had they thrown any rocks at you from the time they left Stevenson?

A. Yes, sir.

Q. Where were they when they threw the rocks?

A. They were swinging off the car getting rocks, and swinging back on the car throwing them. They were on a [fol. 142] 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. Me and my brother and Haywood Patterson and Eugene Williams. We all agreed. I don't know how many there was in that crowd 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. We had at least six on our side; could have been more. I don't know which one was in front. I don't know whether Haywood was in the lead or not. We all went together. All I know, when we were there, we were there. And in going from there to there we climbed up over that box car.

Q. And you crossed the box car?

A. Yes, sir.

And we jumped from the box car down into this gondola. We were all together, in the third gondola. And these boys

were up here in this gondola. I remember going over two gondolas. I 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.

They took me off the oil car. I went back to the oil car. I ran back to the oil car because that is where I started from.

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 chert that you could ride as easy as an oil tank, and yet you—

Mr. Leibowitz: 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?

A. I went back to the oil tank.

Q. 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 girls—

Q. I want—

Mr. Leibowitz: Let him answer.

[fol. 143] Mr. Hutson: That is no- answering my question. I want him to explain why he left that gondola.

Q. If you hadn't attacked these girls in that gondola, why did you leave it; tell this jury.

A. I had no reason to leave it.

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

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, Haywood Patterson, was indicted by a grand jury of the Circuit Court of Jackson County, Alabama, charging him with what the law knows as rape, that is, that he forcibly ravished one Victoria Price. While that indictment was found by a grand jury of Jackson County, it, by due process of law, was transferred to this county and is to be dealt with under the same proceedings as if the grand jury of this county had indicted him, having jurisdiction of the case.

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

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

As I have said, the crime charged is known in law as 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 does 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 she yields on account of these things, he is guilty of rape. Where the female is not an imbecile, is not rendered unconscious, or bodily weak by the administration of drugs or other substances, force is an essential element of the offense of rape.

Now, force is either actual or constructive force. Actual force would be the application of personal violence literally. Constructive force is a force brought to bear on the mind and amounts to mental force or mental distress. Acquiescence obtained through duress of the mind of the

woman, or by putting her in fear, that is constructive force, and is as much forbidden by the law as actual force. If the act was committed by force actually or legally implied, which is constructive force, against the consent of the woman, it is rape without regard to whether the defendant put Victoria Price, the prosecutrix in this case, in fear of her life or fear of great bodily harm in the accomplishment of his purpose.

Consent or acquiescence obtained by duress or fear of personal violence will constitute no defense. The law regards 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 ceases 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 fear, and does not consent voluntarily, whether apprehension of bodily harm is reasonable or unreasonable. The law doesn't go in to ascertain those kinds of facts, to find out whether or not she had good reason. While the law arms the woman who is assaulted by a man with the intent to ravish her with the legal right to stand her ground, and if necessary, to kill assailant to protect her person from the gratification of his lust, the law does not compel her to resort to such means, and the fact she does not so resort does not strip the charge of the offense of rape in and of itself. All the circumstances surrounding the commission of the alleged crime are to be considered, and whether the prosecutrix does or does not repel force by force, and resists her assailant to the utmost, if the act of penetration is accomplished by force either actual or constructive [fol. 145] as I have defined these words, and against the will of the prosecutrix, the defendant is guilty of rape.

In considering all these questions, the relative size of the parties, the situation of the defendant, or his accomplices, if there are any, the social or racial conditions, are all matters to be weighed by you and are questions to be passed on by you as to whether all the elements of the crime exist, and when the elements of the crime are shown by the evidence beyond reasonable doubt, the crime is one of rape, although the prosecutrix may have been shown to have made no actual effort to resist. The act must not have been by the consent 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 presumption 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 color, creed or station in life. It is the glory of our law and this state and this Union that its protecting arms encompass all womankind. If she has been violated unlawfully, she may appeal to the courts with an abiding 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 aiding and abetting. One may be an aider and abettor in a case of this kind, although he did not actually rape the woman or have sexual intercourse with her. He is an aider and abettor if he advised by words or acts, or encouraged by word or deed, or suggested by word or deed some other person in the commission of the offense, if, by his encouragement of by his advice or by his conduct, purposely made therefore, did actually—was known to the participant, and did actually encourage him to do the deed. [fol. 146] To illustrate that, and for the purposes of illustration 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 he goes across the street and there shoots and kills Jim Jones, as a direct result of your act, 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 abettor 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 abettor 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 abettor. Of course, he wouldn't be an aider and abettor 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 abettor 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 Price was raped on this train on this occasion, the defendant 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 in law as a conspiracy.

A conspiracy is where two or more persons, either by 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 proximate and natural consequence of such act or acts.

A very wide latitude is allowed in proving a conspiracy, extending to everything said and everything done by any conspirator in the execution of the common purpose. The [fol. 147] conspiracy need not be proven by positive facts, but its extent and intent are to be determined by you from the acts of the parties charged in the conspiracy if shown to your satisfaction beyond all reasonable doubt in a case. They may appear by mere gestures, a mere nod. It may be determined that there was a conspiracy by consideration of all the facts and circumstances, and the situation of the actors at the time, provided these acts and the circumstances 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 considered by you in arriving at the truth of such charge.

Now, gentlemen, as I see it, that is a brief statement 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. That 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 accused 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 whenever, from all the evidence offered on the trial the jury is convinced beyond a reasonable doubt of guilt. But it is not answered or overcome unless the evidence rises to that degree of credence.

[fol. 148] Now, 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 forcibly 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 reasonable 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 I say who did it and you were 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. 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 further to try to see what the defendants did or didn't do. If nobody was raped that ends this case.

But if you do so conclude,—that a rape has been committed,—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 abet or conspire to commit the offense as I have defined those terms to you, and that, before conviction can be warranted, [fol. 149] 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 ascertain after a consideration of all the evidence and believe in the things you have found beyond all reasonable doubt from the evidence before you.

Now, 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 rest on suspicion, however, strong it may be, nor can his defense be bolstered 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 authorized 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 authorized to draw what we call 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.

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 [fol. 150] 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 at those tracks, you would know that a horse or a mule, whichever it appeared to you, made those tracks, although you weren't there, nor did you see them made. It wouldn't require any direct evidence from some source to appeal to your mind,—somebody to say I was down there and I saw the thing that knocked that fence down, and got over there and made those tracks, and it was a cow or horse or whatever it was. That is the application of common sense and past experience to the situation and that is circumstantial evidence.

You are present in a dark room,—another illustration,—and stay there a good long while; you lose count of the day and night, can't tell; a man comes in there and tells you he is just from the outside and it is a perfectly clear day, not a cloud in the sky. That is direct evidence. Another man comes in and tells you he is just from the outside, that it is noon, midday. Now, you don't need anyone to tell you that the sun is shining, because your past experience 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 corroborative evidence. Both sides have had a good deal to say about that. The law would authorize 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 convinced therefrom beyond all reasonable doubt that she had been ravished on this occasion. The law does not require that she be corroborated by some other witness to that act. There may be cases, however, where corroboration 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 corroborated satisfactorily, must be sustained by that kind of evidence, that there must be some other proof to come along and cor- [fol. 151] roborate 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 does mean to say that before being corroborative, it must aid or strengthen some material statement that that witness made.

Now, the state contends, and I am only telling you what the state contends, and later on, what the defendant contends; I am not telling you 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 Victoria Price; that is, they claim there was a fight, and as I understand it, that is not disputed, that there was a fight, and 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 was a fight, the state contends there is corroborative evidence of some material fact that Victoria Price stated, and, further, the State says that that fact, if it be one, is also corroborated by other witnesses, who saw what happened along that railway on that occasion. They claim—the State claims that they have offered evidence here showing 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 scuffle, some claim there appeared to be a fight, 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 corroborating 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 [fol. 152] a fight between the white boys 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 weighing the evidence and drawing conclusions from the evidence. The state claims or contends that that fight was a mere 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 conclusion 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 man'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 and getting into a fight with them and putting them off the train.

In arriving at all these facts or questions you apply your common sense, your reasoning power, your past observation and knowledge and experience.

It is claimed here, and whether that claim is true 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 certainly had had sexual intercourse with a man. Then, you give attention to the evidence in the case, if believed by you, to determine [fol. 153] 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 authorized just to begin to wonder whether it could have been Jim Smith or John Jones or Mr. Johnson or somebody else. Look 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 all these questions and contentions, however, gentlemen, you don't do it in a one-sided way, of course. When I say all the evidence, I mean all of it; that means that that is offered by the State and that that is offered by the defendant.

Now, gentlemen, it is further contended in this case, and disputed, that this defendant has 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 authorizes 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 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 con-[fol. 154] sidering the question of confession that the jury should examine the matter with great care and caution, as, for that matter, they ought to examine all evidence where a man's life and liberty is involved with great care and caution. 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 it. That is the chief thing for you to find out. Did he make it in the language used, or substantially so?

Now, I have repeatedly said believing things here 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.

Gentlemen, the character of the prosecuting witness 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. You do it by showing those who know her or are acquainted 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 veracity.

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 answer-[fol. 155] able 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 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 subpoenaed 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 witnesses. When a witness takes the stand to testify not only what he says becomes evidence, but he 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 demeanor on the stand. You do that for the purpose of ascertaining how much credence 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. Look to the evidence for everything along that line, though. Just don't jump at conclusions. You look at the evidence. I say again determine by his conduct of [fol. 156] his whole surroundings, as shown by the evidence in the case whether or not he is partisan 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 a witness has any interest or lack of interest in the prosecution, any reason you can find from the evidence that will shed any light on that subject to reach that kind of conclusion. Those things are all permitted to be looked at by you. That is only a recognition of human nature. The law says that the defendant is interested in the result of a suit, and that being true, the law says you may look to that—it doesn'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 more 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 partisan, 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.

Now, 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 may act upon it.

Now, gentlemen, that is about all I think it is necessary for me to say. Now, when you have done all that,—gone through with all of it, you have gotten up to the point 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 [fol. 157] 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 penitentiary. It cannot be less than ten, and any number of years above ten that you feel that the evidence justifies you in fixing.

Now, gentlemen, I have explained to you about believing 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 man 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 watching and listening for the purpose of jumping afoul of his argument and tearing it to pieces when he gets through according 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 men. The law doesn't say that you must believe a party

guilty to a mathematical certainty, that is, that there be no error, no chance for error. Well, the world is full of errors. All mankind is subject to err. You are not excused from arriving 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 verdict. The law has fixed another 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.

Now, 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 foreman, and bring it into court. [fol. 158] Now, 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 beginning, 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 probably bring more specifically certain questions to the attention of the jury.

(3) "Before the jury should convict the defendant, the hypothesis of his guilty 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 innocence, you should acquit 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 corruptly 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."

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 may also consider the fact that she is the person alleged to have been raped."

(11) "I charge you that in determining what weight you shall give to the testimony of any witness, you may consider his or — demeanor 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 [fol. 159] the witness is worthy of belief."

(12) "In weighing the evidence of the witness 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."

(9) "If any of the state's witnesses have exhibited malice against the defendant or anger, and thereby satisfied the jury that they have not testified truly and are not worthy of belief and the jury think their testimony or these accounts should be discarded, they may discard it altogether."

(13) "If on the whole evidence adduced the jury cannot 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 certainty", and I have already told you that means the same thing, no more or no less, than beyond 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."

(21) "I charge you that although you may find that 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 innocence, 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 [fol. 160] 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 innocent until his guilt is proven beyond a reasonable doubt and the evidence to authorize a conviction must be not a mere preponderance 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 innocent."

(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 moral certainty every reasonable hypothesis but that of defendant's guilt."

That expression, "moral certainty," is present in there again.

Mr. Watts: What is that, please, the number?

The Court: Four.

Mr. Knight: Number 27 was given relative to the probability. The Court: I reckon so.

(26) "The defendant enters into this trial with a 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.

(23) "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 just 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 all the evidence 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 awhile ago, that the two words mean different things. Beyond a reasonable doubt, as I said, is a stronger term than [fol. 161] 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.

(24) "Unless each member of the jury, from all the evidence in the case, is satisfied beyond a reasonable doubt of the guilt of the defendant, then the jury cannot find the defendant guilty- of rape."

Well, I will explain that to you. That is all that means. It means to tell you that you must all agree.

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."

EXCEPTIONS TO ORAL CHARGE

Thereupon in open Court and before the jury retired the defendant reserved the following exception to the court's oral explanation of defendant's written charges:

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 prepare a written request on the matters I called your attention 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.

Thereupon in open Court before the jury retired defendant reserved the following exception to the court's oral charge, to-wit:

Now, if the court pleases, we wish to reserve an exception to that portion of Your Honor'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 I understood Your Honor, or that he could be guilty of a conspiracy to commit rape, and, also, that entire [fol. 162] portion of the oral charge which is—also which is rather long and involved on the definition of what constitutes conspiracy, our theory being it is abstract insofar as this case is concerned, the defendant not being charged with conspiracy 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, refused to give, separately and severally, the following requested written charges, endorsing on each of said requested written charges the words, "Refused. W. W. 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:)

Defendant's refused charges omitted. Printed side page 38, ante.

[fol. 163] ORDER SETTLING BILL OF EXCEPTIONS

And the defendant, Haywood Patterson, here now tenders the foregoing as true and lawful Bill of Exceptions, This 20 day of April, 1936, being within the time allowed by law for the same; and prays that the same may be signed and certified to the Supreme Court of the State of Alabama, that the errors complained of may be reviewed and corrected, which is accordingly done this 17 day of June, 1936.

W. W. Callahan, Judge Circuit Court, Presiding.

I hereby certify that I have this day handed to Melvin Hutson, of Counsel for the State of Alabama, a copy of the foregoing Bill of Exceptions.

Dated, Decatur, April 18, 1936.

C. L. Watts, Of Counsel for Defendant.

The foregoing Bill of Exceptions was presented to me this 20 day of April, 1936; being within the time allowed by law.

W. W. Callahan, Judge Circuit Court, Presiding.

[fol. 164] The foregoing Bill of Exceptions was on this the 18th day of April, 1936 presented to the undersigned J. H. Green, Clerk of Circuit Court of Morgan County, Ala.

J. H. Green, Clerk.

[File endorsement omitted.]

[fol. 165] IN CIRCUIT COURT OF MORGAN COUNTY

CERTIFICATE OF APPEAL

I, J. H. Green, Clerk of the Circuit Court of Morgan County, Alabama, do hereby certify that in the above styled cause, which was tried and determined in the said Morgan County Circuit Court, on the 23 day of January, 1936, the defendant was convicted of the offense of rape and his punishment fixed at seventy-five years imprisonment in the penitentiary.

I further certify that on January 24th, 1936, the defendant, Haywood Patterson was sentenced to imprisonment in the State penitentiary for a term of seventy-five years.

The defendant on January 24, 1936, gave notice of an appeal to the Supreme Court of Alabama and asked that sentence be suspended pending said appeal, which was granted.

Witness my hand and the seal of said court, this the 29th day of June, 1936.

J. H. Green, Clerk.

[fols. 166-167] Clerk's certificates to foregoing transcript omitted in printing.

[fol. 168] IN SUPREME COURT OF ALABAMA

Present: Chief Justice Anderson and Associate Justices Thomas, Brown and Knight.

8 Div. 757

HAYWOOD PATTERSON

v.

THE STATE OF ALABAMA

Morgan Circuit Court

MINUTE ENTRY—May 27, 1937

Come the parties by attorneys, and argue and submit this cause for decision.

[fol. 169]

[File endorsement omitted]

IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1936-37

8 Div. 757

HAYWOOD PATTERSON

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

OPINION—Filed June 14, 1937

THOMAS, Justice:

The trial and conviction was for the offense of rape.

[fol. 170] The appeals on phases of the facts before us are: Patterson v. State, 224 Ala. 531, 141 So. 195, 286, U. S. 540, 76 L. Ed. 1278; Powell v. State, 224 Ala. 540, 141 So. 201; Weems & Norris v. State, 224 Ala. 525, 141 So. 215; Patterson v. State, 229 Ala. 270, 156 So. 567, 293 U. S. 554, 79 L. Ed. 656; Norris v. State, 229 Ala. 226, 156 So. 556; 293 U. S. 552, 79 L. Ed. 655.

For convenience, we will follow the order of discussion employed by counsel, of the several questions for decision.

Did the court below err in denying appellant-defendant's petition for removal to the United States District Court, under § 31 of the United States Judicial Code (28 U. S. C. A. § 74) and Section 32 of the United States Judicial Code (28 U. S. C. A. § 75)? These statutes are as follows:

"Sec. 74. (Judicial Code, § 31) Same: Causes Against Persons Denied Civil Rights.—When any civil suit or criminal prosecution is commenced in any-State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for re-

fusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty [fol. 171] of the clerk of the State court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony and other proceedings in the case. If such copies are filed by said petitioner in the district court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the district court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit, and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the district court, as herein provided, a certificate, under the seal of the district court, stating such failure, shall be given, and upon the production thereof in said State court the cause shall proceed therein as if no petition for removal had been filed. (R. S. § 641; Mar. 3, 1911, c. 231, § 31, 36 Stat. 1096)."

"Sec. 75 (Judicial Code, § 32.) Same: Petitioner in Actual Custody of State Court.—When all the acts necessary for the removal of any suit or prosecution, as provided in § 74 of this title, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said State court, it shall be the duty of the clerk of said district court to issue a writ of habeas corpus cum causa,

and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said district court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said State court a duplicate copy of said writ. (R. S. § 642; Mar. 3, 1911, c. 231, § 32, 36 Stat. 1097)."

The provisions for a change of venue in criminal causes, contained in § 5581 of the Code of Alabama of 1923, are as follows:

"5581. Removal to Nearest County, and But Once.—The trial must be removed to the nearest county free from exception, and can be removed but once."

[fol. 172] The decisions are not on an application for a change of venue, and on granting the motion for removal, the trial court must decide what is the nearest county free from objection. *Ex parte Benj. F. Hodges*, 59 Ala. 305. When an order for removal or change of venue is made, the jurisdiction of the county wherein the indictment is returned to try defendant ceases, and the jurisdiction of the county to which the case is removed commences. *Ex parte Lancaster*, 206 Ala. 60, 89 So. 721. The question then is, under the rules that obtain, has the state court the duty or right to determine the sufficiency of the petition and the facts authorizing removal to another jurisdiction, or change of venue?

In *Ex parte The State of Alabama*, 71 Ala. 363, it is declared that a mere application for removal to a federal court does not oust the state jurisdiction. It is only when the application is in proper form and conforms to the act of Congress, authorizing the removal, and "states facts bringing the case within the provisions of the Act" that it becomes the duty of the state court to yield obedience to the paramount law and cease to exercise its original jurisdiction in the premises. In *State v. Sullivan, et al.*, 110 N. C. 513, 14 S. E. 796, the observation is made of the Federal statute (Revised Statute, § 643) that the jurisdiction of the state court over the person and the subject matter enumerated in the Act of Congress is not ousted by the filing of a petition for removal in the circuit court. That result follows

only when the petition setting forth the facts required by the statute has been duly filed and the appropriate return has been issued and made known to the state court.

[fol. 173] In *J. Madison Wells, et al., Ex parte*, 3 Woods 128, 29 Fed. Cases No. 17,386, it is said that the state court surely is not forced to shut its eyes and yield to every application that comes to it (for removal). Though removal is a matter of right and not of favor, yet the court must have the right to see whether the application to remove comes within the meaning of the law. This latter reference applies to the right and power of the state court to examine and ascertain the compliance with Federal statute. *Virginia v. Rives*, 100 U. S. 313, 25 L. Ed. 667.

In *Virginia v. Paul*, 148 U. S. 107, 116, 37 L. Ed. 386, it is recognized that the petition must show a sufficient ground for removal and the case of *Virginia v. Rives*, supra, is cited. In that decision it is declared if the petition (for removal) filed in the state court before the trial and duly verified by the oaths of the defendants, exhibited a sufficient ground for removal of the prosecutions into the Circuit Court of the United States, "they were in legal effect thus removed, and the writ of habeas corpus was properly issued."

In the case of *Commonwealth v. Millen*, 194 N. E. 463 (certiorari denied 55 Sup. Ct. 74, 293 U. S. 563) it is said:

"There was no error in denying the defendants' petitions, and in ordering the trial to proceed. It is only when state legislation can be shown to exist which violates the constitutional guaranty of the equal protection of the laws and interferes with a party's right of defence that he can have his cause removed to the federal court under section 31 of the Judicial Code. *Virginia v. Rives*, 100 U. S. 313, [fol. 174] 332, 333, 25 L. Ed. 667; *Gibson v. Mississippi*, 162 U. S. 565, 16 S. Ct. 904, 40 L. Ed. 1075; *Kentucky v. Powers*, 201 U. S. 1, 26 S. Ct. 387, 50 L. Ed. 633, 5 Ann. Cas. 692. The mere presentation of a petition for the removal of a criminal cause from the state court to the federal court is not sufficient to arrest the jurisdiction of the state court, and that court still has the right to examine into the sufficiency of the petition.

• • • • •

"Furthermore, the formal and orderly process required by section 32 of the Judicial Code, where the state court refuses to recognize the defendant's right to remove the cause, was not complied with. The jurisdiction of the state court is transferred to the federal court only in case the suit is a removable one and the proceedings to remove it are regular enough to be effective. That the proceedings to remove the cause are regular is not sufficient to transfer the jurisdiction from the state court to the federal court."

It follows that the trial court did not err in examining the petition for removal to determine whether or not there was sufficient cause to remove the case to the Federal court.

What then of the correctness of the trial court's judgment in determining that the petition filed did not present such a case as came within the purview of § 31 of the United States Judicial Code? This depends on whether or not the appellant was denied an equal right by virtue of § 5581 of the Code of Alabama, providing that there shall be only one change of venue. It is hardly necessary to observe that the statute applies to all persons alike, without regard to race, color or previous condition of servitude.

The general rule is stated that the right of a change of venue in criminal cases is provided by statute, and the extent and manner of its exercise is of legislative declaration. *Stamp v. Commonwealth*, 253 S. W. 242; *State v. Backus*, 161 N. W. 759.

[fol. 175] Adverting to the rule in this jurisdiction, Section 6 of the Constitution states that by general law, the legislature may provide for a change of venue at the instance of the defendant in all prosecutions by indictment, and the application for such change of venue may be heard and determined without the personal presence of the defendant applying therefor; provided the defendant is imprisoned in jail or in some legal place of confinement. Thus the Constitution does not expressly guarantee to a defendant the right to a change of venue, but leaves the question to the discretion of the legislature.

The United States Supreme Court has determined that in order for a petitioner to come within the provisions of Section 31 of the Judicial Code, he must be deprived of an equal civil right by virtue of the constitutional or statutory provisions administered or applied.

In *Virginia v. Rives*, 100 U. S. 313, 25 L. Ed. 667, the Court said:

"The petition of the two colored men for the removal of their case into the Federal court does not appear to have been made any case for removal, if we are correct in our reading of the Act of Congress. It did not assert, nor is it claimed now, that the Constitution or laws of Virginia denied to them any civil right, or stood in the way of their enforcing the equal protection of the laws. The law made no discrimination against them because of their color, nor any discrimination at all. The complaint is, that there were no colored men in the jury that indicted them, nor in the petit jury summoned to try them. The petition expressly admitted that by the laws of the state all male citizens twenty-one years of age and not over sixty, who are entitled to vote and hold office under the Constitution and laws thereof, are made liable to serve as jurors. And it affirms (what is undoubtedly true) that this law allows the right, as well as requires the duty, of the race to which the petitioners belong to serve as jurors. It does not exclude colored citizens.

[fol. 176] "Now, conceding as we do, and as we endeavored to maintain in the case of *Strauder v. West Virginia*, just decided, 25 L. Ed. 664, that discrimination by law against the colored race, because of their color, in the selection of jurors, is a denial of the equal protection of the laws to a negro when he is put upon trial for an alleged criminal offense against a State, the laws of Virginia make no such discrimination. If, as was alleged in the argument, though it does not appear in the petition or record, the officer to whom was intrusted the selection of the persons from whom the juries for the indictment and trial of the petitioners were drawn, disregarding the Statute of the State, confined his selection to white persons, and refused to select any persons of the colored race, solely because of their color, his action was a gross violation of the spirit of the State's laws, as well as of the Act of Congress of March 1, 1875, 18 Stat. at L., 335, which prohibits and punishes such discrimination. He made himself liable to punishment at the instance of the State, and under the laws of the United States. In one sense, indeed, his act was the act of the State, and was prohibited by the constitutional Amendment. But, inasmuch as it was a criminal misuse

of the state law, it cannot be said to have been such a 'denial or disability to enforce in the judicial tribunals of the State' the rights of colored men, as is contemplated by the removal Act. Section 641. It is to be observed that Act gives the right of removal only to a person 'who is denied, or cannot enforce, in the judicial tribunals of the State his equal civil rights.' And this is to appear before trial. When a statute of the State denies his right or interposes a bar to his enforcing it, in the judicial tribunals, the presumption is fair that they will be controlled by it in their decisions; and in such a case a defendant may affirm on oath what is necessary for a removal. Such a case is clearly within the provisions of section 641. But when a subordinate officer of the State, in violation of state law, undertakes to deprive an accused party of a right which the statute law accords to him, as in the case at bar, it can hardly be said that he is denied, or cannot enforce, 'in the judicial tribunals of the State' the rights which belong to him. In such a case it ought to be presumed the court will redress the wrong. If the accused is deprived of the right, the final and practical denial will be in the judicial tribunal which tries the case, after the trial has commenced. If, as in this case, the subordinate officer whose duty it is to select jurors fails to discharge that duty in the true spirit of the law; if he excludes all colored men solely because they are colored; or if the sheriff to whom a *venire* is given, composed of both white and colored citizens, neglects to summon the colored jurors only because they are colored; or if a clerk whose duty it is to take the twelve names from the box rejects all the colored jurors for the same reason, it can with no propriety be said the defendant's right is denied by the State and cannot be enforced in the judicial tribunals. The court will correct the wrong, will quash the indictment or the panel, or, if not, the error will be corrected in a superior court. We cannot think such cases are within the provisions of section 641. Denials of equal rights in the action of the judicial tribunals of the State are left to the revisory powers of this court.

[fol. 177] "Nor did the refusal of the court and of the counsel for the prosecution to allow a modification of the *venire*, by which one third of the jury, or a portion of it, should be composed of persons of the petitioners' own race, amount to any denial of a right secured to them by any law

providing for the equal civil rights of citizens of the United States. The privilege for which they moved, and which they also asked from the prosecution, was not a right given or secured to them, or to any person, by the law of the State, or by any Act of Congress, or by the 14th Amendment of the Constitution. It is a right to which every colored man is entitled, that, in the selection of jurors to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them because of their color. But this is a different thing from the right which it is asserted was denied to the petitioners by the State court, viz.: a right to have the jury composed in part of colored men. A mixed jury in a particular case is not essential to the equal protection of the laws, and the right to it is not given by any law of Virginia, or by any federal statute. It is not, therefore, guaranteed by the 14th Amendment, or within the purview of section 641."

In *Gibson v. Mississippi*, 162 U. S. 565, 582; 40 L. Ed. 1075, 1078, the following observation was made by the court:

"In view of this decision, it is clear that the accused in the present case was not entitled to have the case removed into the Circuit Court of the United States unless he was denied by the Constitution or laws of Mississippi some of the fundamental rights of life or liberty that were guaranteed to other citizens resident in that State. The equal protection of the laws is a right now secured to every person without regard to race, color or previous condition of servitude; and the denial of such protection by any State is forbidden by the supreme law of the land. These principles are earnestly invoked by counsel for the accused. But they do not support the application for the removal of this case from the state court in which the indictment was found, for the reason that neither the Constitution of Mississippi nor the statutes of that state prescribe any rule for, or mode of procedure in, the trial of criminal cases which is not equally applicable to all citizens of the United States and to all persons within the jurisdiction of the state without regard to race, color or previous condition of servitude."

[fol. 178] We have indicated that in the case of *Commonwealth v. Millen*, 194 N. E. 463, the Supreme Court of the United States reviewed a situation similar to that here pre-

sented, and the petition for a writ of certiorari was refused.—(293 U. S. 563, 55 Sup. Ct. Rep. 924, 79 L. Ed. 1706).

The case of *Kentucky v. Powers*, 201 U. S. 1, 50 L. Ed. 633, is a leading case on the subject; this is indicated in the opinions from which we have quoted. It is there said by Mr. Justice Harlan:

"The question as to the scope of § 641 of the Revised Statute again arose in the subsequent cases of *Neal v. Delaware*, 103 U. S. 370, 386, 26 L. ed. 567, 570; *Bush v. Kentucky*, 107 U. S. 110, 116, 27 L. ed. 354, 356, 1 Sup. Ct. Rep. 625; *Gibson v. Mississippi*, 162 U. S. 565, 581, 584, 40 L. ed. 1075, 1078, 1079, 16 Sup. Ct. Rep. 900. In each of these cases it was distinctly adjudged, in harmony with previous cases, that the words in § 641—'who is denied or cannot enforce in the judicial tribunals of the state, or in the part of the state where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States'—did not give the right of removal, unless the Constitution or the laws of the state in which the criminal prosecution was pending denied or prevented the enforcement in the judicial tribunals of such state of the equal rights of the accused as secured by any law of the United States. Those cases, as did the prior ones, expressly held that there was no right of removal under § 641, where the alleged discrimination against the accused, in respect of his equal rights, was due to the illegal or corrupt acts of administrative officers, unauthorized by the Constitution or laws of the state, as interpreted by its highest court. For wrongs of that character the remedy, it was held, is in the state court, and ultimately in the power of this court, upon writ of error, to protect any right secured or granted to an accused by the Constitution or laws of the United States, and which has been denied to him in the highest court of the state in which the decision, in respect of that right, could be had."

From all the cases, it will be noted, that the 14th Amendment to the Constitution of the United States is broader than the provisions of § 641, Revised Statutes. *Ex parte Virginia*, *Virginia v. Rives*, 100 U. S. 313, 25 L. Ed. 667.

[fol. 179] The statute of Alabama for change of venue, of which appellant complains, did not operate to deprive him of

a civil right given to members of any class, and was not prejudicial to him by reason of his race, color or previous condition of servitude. Petitioner does not point to any constitutional or statutory provision which in any way deprives him of a civil right given to others and hence we are of opinion that he was not entitled to have his cause removed to the Federal court.

We hold that § 5581 of the Code does not offend any provision of the state or Federal Constitutions; that § 74 of the Judicial Code of the United States, Title 28, providing for removal of causes to the Federal court in the district where the civil rights are denied, did not authorize removal of defendant's cause under the petition and proceedings had in the circuit court of Morgan County, Alabama, where defendant-appellee was tried and convicted, and from which judgment the present appeal is prosecuted to this court.

Appellant next contends that the trial court erred in sustaining objections to the following questions:

"I will ask you to state to the Jury whether or not during your stay in Chattanooga you were in company with Victoria Price and Ruby Bates substantially the entire time you were there?

* * * * *

"Now, I want to ask you if you know of your own knowledge whether Victoria Price, while in Chattanooga, had sexual intercourse with a man?

* * * * *

"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."

This contention was answered by the former appeal of *Norris v. State*, 229 Ala. 226, 156 So. 556, when Mr. Justice Gardner said for this court (p. 238):

[fol. 180] "Objections of the state to questions seeking to show adulterous relations on the part of the prosecutrix with certain named individuals the night before the commission of the alleged crime, or even the night before leaving Huntsville, were properly sustained. All of this bore no relevancy to any issue in the case under the rule firmly established in this jurisdiction. *Story v. State*, 178 Ala.

98, 59 So. 480; *Weems v. State*, 224 Ala. 524, 141 So. 215. Nor is there anything in this record, argued as existing in the companion case of *Patterson v. State*, 229 Ala. 270, 156 So. 567, which, upon any theory, would render this evidence admissible.

"Some other questions to prosecutrix on cross-examination were disallowed. They related to her movements in Chattanooga, whom she saw, to whom she spoke, and where she spent the night, or closely related matters, all of which, it does not appear, would be relevant to the charge of rape here considered. Though not to be too narrowly restricted (*Mitchell v. Birmingham News Co.*, 223 Ala. 568, 137 So. 422; *Pearce v. State*, 226 Ala. 436, 147 So. 617), yet the extent of cross-examination is a matter resting largely in the discretion of the trial court (*Doss v. State*, 224 Ala. 90, 139 So. 290; *Peterson v. State*, 227 Ala. 361, 150 So. 156; *Alabama Power Co. v. Berry*, 222 Ala. 20, 130 So. 541), and we find no abuse of that discretion in the instant case."

Appellant contends that inasmuch as there was evidence of semen found in the vaginal canal of Mrs. Price, defendant should have been allowed to show that she had had intercourse with other persons than defendant, prior to the date of the alleged attack of Mrs. Price. The facts in the *Norris* case were practically the same as the facts in the case now for consideration. The state did not introduce evidence tending to show the presence of semen in the vagina of the prosecutrix. Defendant offered Dr. Bridges who testified to such fact of semen in Mrs. Price's vagina, and upon this fact appellant *Norris* contended there was error not to allow the questions. This court will recognize a distinction in cases where the presence of semen is shown by the State, and where such fact is brought out by the defendant. This was the distinction pointed out by Mr. Justice Dargan, in *Nugent v. The State*, 18 Ala. 521, as follows:

[fol. 181] "We think the court clearly mistook the law, in refusing to permit the accused to prove that before, and near the time of committing the alleged offence, other persons had carnal knowledge of the girl, upon whom the offence is charged to have been committed, inasmuch as the State had previously proved that she was infected with venereal disease, and the parts were bruised and inflamed. The existence of the disease and the injury to her person were facts

corroborative of the testimony of the girl, for they tended strongly to show that some one had attempted to have sexual intercourse with her, and it was certainly competent for the prisoner to show that these facts could have existed consistently with his innocence; for such proof would to some extent weaken the presumption of guilt, that would result from the existence of the disease and the injuries to her person. It is true that these acts of sexual intercourse with others might have been rejected, if they had been offered for the mere purpose of discrediting the testimony of the girl, independent of all other evidence."

This is the rule also in other jurisdictions.—*State v. Menard*, 169 La. 1197, 126 So. 921.

In the instant case, Dr. Bridges, who had testified on a former trial for the defendant, did not appear at this trial. His testimony was available in the form of stenographer's notes. The defendant did not ask for a continuance on account of the absence of Dr. Bridges. The rule as to whether the state will be called upon to allow the admission of testimony given on a former trial by an absent witness for a defendant is addressed to the sound discretion of the court. *DeArman v. The State*, 77 Ala. 10. The trial court ruled in order for the defendant to take advantage of the testimony given at the former trial, it would be necessary that the whole of such absent witness's testimony be introduced in evidence. This is shown by the following extracts from the record:

[fol. 182] "The defendant here offered in evidence the former testimony of the witness, Dr. Bridges, who was called and examined as a witness for the defendant on the former trial of the defendant, Haywood Patterson, before Judge Callahan, at Decatur, Alabama.

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

"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. Knight: That is what we want.

"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 for-

mer trial, and you can read from that record such parts as you want.

"Mr. Leibowitz: If Your Honor please, we are offering this testimony to contradict Victoria Price.

"The Court: I understand.

"Mr. Leibowitz: 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. Leibowitz: 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 was your testimony, and you were offering it, and you could read such parts as you wanted to.

"Thereupon Mr. Leibowitz read from the testimony of Doctor Bridges given on the former trial of the case:
* * *."

The defendant read portions of the testimony showing the presence of semen, and the state then asked:

[fol. 183] "I will ask you this question:—this was a question asked by me to Doctor Bridges, * * * 'from your examination of Victoria Price's 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 minute on it. I couldn't do that'."

It is thus apparent that the question or fact of the presence of semen in the vagina of Mrs. Price was injected into the case by the defendant and not by the state. The rule laid down in *Nugent v. State*, 18 Ala. 521, and *Norris v. State*, 229 Ala. 226, 156 So. 556, has application to the instant question, and the rulings of the trial court were free from error in disallowing the answers to the questions we have indicated on the foregoing authorities. Moreover, the matter in question was not in direct conflict with the answer of Bridges.

We find no error of the trial court in rulings excluding evidence of alleged bias on the part of the prosecutrix as being in jail, and cooking there, at the same time with Gilley,

Carter, et al., and traveling with them on trains at the time of the alleged rape, and theretofore, to Chattanooga.

The cross examination of a witness rests largely in the discretion of a trial court.—*Peterson v. State*, 227 Ala. 361, 150 So. 156; *Norris v. State*, supra; *B. R. L. & P. Co. v. Lipscomb*, 198 Ala. 653, 73 So. 962; *Cox v. State*, 162 Ala. 66, 50 So. 398. The evidence disclosed that Victoria Price had known the witness for more than a month, and this was sufficient on the question of intent or bias.—*Ex parte State in re Johnson*, 199 Ala. 255, 74 So. 366. The cases cited from this court, relative to bias, show the following questions were asked in the trial of the causes: *Ex parte Morrow*, 210 Ala. 63, 97 So. 108, "You fell out with this man and his whole family after you were arrested for having a still?" and *Motley v. State*, 207 Ala. 640, 93 So. 508 (the record showing illicit relations and a recent "falling out") * * * "mad with this man because he would not come back?" The instant questions directed to defendant were not of this character or nature and were within the discretion of the court.

[fol. 184] The rules of law as to aiding, abetting and co-operating to commit a crime are well understood and need not be repeated.—*National Park Bank v. L. & N. R. R. Co.*, 199 Ala. 192, 74 So. 69. Where, by agreement, two or more persons enter upon the commission of a criminal offense, and it is carried out, each party is guilty.—§ 3196, Code of Alabama, 1923; *Sanky v. State*, 128 Ala. 51, 29 So. 578; *McMahan v. State*, 168 Ala. 70, 53 So. 89; *Montgomery v. The State*, 169 Ala. 12, 53 So. 991; *Jones v. The State*, 174 Ala. 53, 57 So. 31; *National Park Bank v. L. & N. R. R. Co.*, supra. There was evidence as to conspiracy, the reasonable tendencies of which, authorized and supported the instructions of the court as to aiding and abetting a conspiracy. The exceptions taken by counsel to such matters in the charge were that the same was abstract under the indictment charging rape. Conceding that the exception was sufficient under the rule that obtains (*Ex parte Cowart*, 201 Ala. 55, 77 So. 349), we have indicated that the instructions were not abstract, and not denial of due process. *DeJonge v. Oregon*, 81 L. Ed. 189.

We have examined the suggestions of error because of remarks of the court and find no reversible error. It is the rule in this jurisdiction that the granting or refusal

of motions to grant additional time usually rests on the sound discretion of the trial court; and when there is no abuse of that discretion, no error to reversal intervenes.

Appellant moved for a mistrial because of the reply of the court to appellant's counsel asking for delay. The counsel said:

"We renew our application now to prepare a showing for Doctor Bridges."

The court declined, saying:

[fol. 185] "I am not going to be tampered with in that fashion."

The court instructed the jury that,

"Gentlemen of the jury, that has got nothing to do with this case. You, I assume, have got sense enough 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 offensive to you, I will withdraw it."

If there was error, it was thus eradicated by this action of the trial court in its instruction to the jury, as above set out.

The cases cited by appellant are different in prejudicial effect. In *Griffin v. State*, 90 Ala. 596, the remark was upon the weight of the evidence; in *Moulton v. State*, 199 Ala. 411, 74 So. 454, the general atmosphere of the case was that of race prejudice, and the court exhibited impatience against appellant's counsel.—*Powell v. State*, 20 Ala. App. 606, 104 So. 551. In *Burns v. State*, 226 Ala. 117, 145 So. 436, and *Daggett v. Boomer*, 210 Ala. 673, 99 So. 181, the remark of the court reflected on the credibility of defendant's witness, as to a material matter of evidence.

In the instant case, the remark of the court was well understood, as the word was employed and used in common parlance. It was in effect that counsel may not unnecessarily consume the time of the court with matters that had theretofore been the subject of adverse rulings. That is to say,

the court meant, by the expression employed, and to which exception was taken, that counsel would not be permitted to further delay the court and the trial on a question theretofore concluded by rulings invoked by counsel for the defendant.

[fol. 186] When the record is examined, as has been done, we find no reversible error.

Affirmed.

Anderson, C. J. Brown and Knight, JJ., concur.

[fol. 187] Clerk's certificate to foregoing paper omitted in printing.

[fol. 188] [File endorsement omitted]

IN SUPREME COURT OF ALABAMA

8 Div. 757

HAYWOOD PATTERSON

v.

THE STATE OF ALABAMA

Morgan Circuit Court

JUDGMENT—Filed June 14, 1937

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 189] [File endorsement omitted]

IN SUPREME COURT OF ALABAMA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed August 16, 1937

To Robert F. Ligon, Clerk of the Above Entitled Court:

You are hereby required to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a writ of certiorari in said cause, the transcript to consist of:

1. The record of appeal in said cause.
 2. The opinion of the Supreme Court of the State of Alabama.
 3. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.
 4. The final judgment and decision of the Supreme Court of the State of Alabama.
 5. A copy of this præcipe.
- [fol. 190] 6. Your certification to the record that this is the complete record in said cause.

Dated, August 13, 1937.

Osmond K. Fraenkel, Attorney for Appellant.

[fol. 191] Clerk's certificate to foregoing transcript omitted in printing.