petitioners, Ada Wright and Mamie Williams desire that the case against their boys be appealed to the Supreme Court of the State of Alabama.

Claude Patterson shows unto the court that George W. Chamlee had been his attorney in legal matters several years ago and recently in the early part of 1931, Claude Patterson employed Mr. Chamlee, as his attorney to defend a case against his son, Julian Patterson of Chattanooga, Tennessee, and that they had made a contract with Mr. Chamlee to represent their boys in these cases at Scottsboro, Alabama, and also on appeal from the case at Scottsboro, Alabama, and that they had not employed any other attorney and they had not authorized any other attorney to represent them, or to bind them in the premises.

They further show unto the court that since their boys have been arrested that they had only had one opportunity of visiting their boys and that was in the City of Birmingham, Alabama, and that their boys told them that they had signed a request in the form of a contract asking Mr. Chamlee to represent all of them on appeal in their cases, and that all of the defendants in Birmingham jaul stated to these petitioners that they had likewise signed such a contract and that they wanted Mr. Chamlee as their counsel, but there was no time on this occasion to make any reasonable investigation of the cases, and the defendants were all in company with each other in their joint cells in jail and no opportunity to write or take notes of what each one had to say about his case and no opportunity for a private conversation whatsoever with the defendants.

Petitioners carried their attorneys with them and was informed that if their attorney had not been with them that they could not have seen their boys and that they would soon be removed from Birmingham to Kilby prison at or [fol. 89] near Montgomery, Ala. Petitioners then set about planning to have their attorney visit these defendants at Kilby Prison at Montgomery, Ala., and on April 29th, 1931 their attorney communicated with the Warden of Kilby Prison and was informed that no one could see the defendants except upon written order of this Honorable Court and for them not to come to Montgomery, Alabama, with the expectation of seeing them without an order from this Honorable Court.

Petitioners are advised that important evidence, touching the merits of the cases of these defendants, has been discovered since the trial and that in order for newly discovered evidence to be presented under the laws of the State of Alabama, that the defendant must make an affidavit or show a good cause why he did not have the evidence on the regular trial and give a meritorious reason for not producing it when he was tried before it would be available on the hearing of the motion for a new trial.

Petitioners further show unto the court that the defendants were arrested on the 25th day of March, 1931, and were indicted in the last days of March, 1931, and the first days of April, 1931, and were put on trial about the 6th, 7th, and 8th and 9th of April, 1931, and that these petitioners were not permitted to see them prior to the time of the trial and they have only seen them one time since the trial. They are advised that under the laws of the State of Alabama that the parents of children under twenty one years of age, when in company with responsible and reputable counsel, have a lawful right to a conversation with their children separately and apart from other persons, one at a time, for the purpose of preparing the cases for trial.

These petitioners have not read the transcripts of the records in these cases and do not know the merits of the testimony introduced on the trial, but have been informed that there was some antagonistic interest involved between certain of the defendants and that separate trials ought to have been had by some of them in order to avoid conflicting interest prejudicing the case or cases against others.

These petitioners are all colored people and they were afraid to visit Scottsboro at the time of the trial and are afraid to visit Scottsboro now, and if the defendant, Haywood Patterson, has to be brought to court when the motion for a new trial is heard, they would petition that the hearing be had at Montgomery, Alabama, or at Kilby Prison so that no risk of violence would be assumed and that they might attend the hearing in person when the motion for a new trial was heard.

Petitioners further show and represent that they are advised, that in view of new facts and newly discovered evidence, that has been learned of since the trial, that the [fol. 90] hearing of a motion for a new trial ought to be

continued from May 6, 1931, until some later date, in order to prepare the motion for a new trial to be presented to Your Honor.

Petitioners especially appeal to this Honorable Court to afford them and to their counsel every reasonable opportunity to present such evidence as they may have, or may obtain on the hearing of the motion for a new trial and to afford them an opportunity of presenting additional affidavits from witnesses of whom they have heard, and which said witnesses one of whom is reported to be at Paint Rock claims that when Victoria Price first got off the train, she was asked if any of the defendants had done anything to her, and that she said they had not.

Affiants desire to file this petition as parents and next friend of their children, and especially does Claude Patterson desire to file it on behalf of Haywood Patterson, whose motion for a new trial has been set for hearing May 6, 1931, and that as Haywood Patterson is in Kilby Prison and as the keeper of that prison has informed G. W. Chamlee, attorney, that he could only see Haywood Patterson upon a written order from the Judge of the Circuit Court of Jackson County, that this affiant desires to file that affidavit, to be considered on the motion as a reason why the affidavit of Haywood Patterson is not filed herein.

Affiant Claude Patterson, further makes oath that Haywood Patterson told him that threats were made against him when he was arrested to lynch him, and that all of the defendants were scared, and if it had not been for the military company coming he believes that all of them would have been killed.

Affiant further stated that Haywood Patterson told him that when the jury reported in the case against Weems and Norris, and gave them a verdict of death, that the people in the Court house clapped their hands and some of them hollowed, and a few people left the court house and went outside and in a minute or two the crowd outside commenced hollowing and that there was great demonstration out in the streets of Scottsboro.

Affiant further states that he was afraid to go to Scottsboro and was afraid to go to Gadsden, and that he was utter helpless, *and at* before the trial, as far as rendering any assistance to his boy was concerned or getting him any witnesses.

Ada Wright and Mamie Williams join in this affidavit, and say their boys told them about the demonstration in the court house when Norris and Weems were convicted, and about the threats against their lives.

[fol. 91] Affiants further state that they are advised that there are a number of witnesses who saw the train leave Chattanooga and going by Lookout Mountain where it had to go through a tunnel and that there was about twenty or twenty-five negroes on the train besides the white girls and boys, and that they are advised that the trouble on the train was provoked by the white boys and that after the alleged fight that about ten negro boys got off the train between the time of the alleged fight and the reaching of the station at Paint Rock, and that these parties are evading giving any information about it because they are afraid of the consequences of such disclosures.

Affiants further state that they have talked to a number of people in Chattanooga who claim to know Victoria Price and Ruby Bates and who say that they were women of bad character and reputation and unworthy of belief on their oaths in a court of justice.

They will file with this petition such affidavits as they can get and they hereby make application to this Honorable Court for permission to file other affidavits, including affidavits of the defendants, in support of the motion for a new trial in the case against Haywood Patterson and such other evidence as they may be able to obtain material thereto.

The premises considered, the petitioners pray that this Honorable Court will make an order addressed to the Warden of the State Prison of the State of Alabama at Kilby Prison at Montgomery, Alabama, directing or permitting that counsel for Haywood Patterson et al. be permitted to confer with them in private so as to prepare their legal evidence in the motion for a new trial of Haywood Patterson, and for the appeal of the cases against the other defendants who have been tried.

II

That an order be made authorizing the Warden of Kilby Prison to permit the parents and relatives of the defendants to see the defendants in the presence of the Deputy Warden, or guards, such as may be provided by the rules of the

prison, so that the petitioners will not be denied the right to visit their children while they are confined in Kilby Prison awaiting the execution of the death sentence.

III

That the hearing of the motion for a new trial of Haywood Patterson set for May 6th, 1931, at Scottsboro, Alabama, be continued for thirty days, or for some reasonable time, and that it be heard at Montgomery, Alabama, or if [fol. 92] the defendant is not required to be present at the hearing, that he be granted time to file additional affidavits while the State is making its reply to such as he has filed.

(Signed) G. W. Chamlee, Attorneys.

Duly sworn to by Claude Patterson et al. Jurat omitted in printing.

[File endorsement omitted.]

On the 19th day of May, 1931, the defendants filed in said cause and spread upon the motion dockets of said court, a further amendment to said motion for new trial, which said amendment to said motion is in words and figures as follows, to-wit:

SECOND AMENDED MOTION FOR NEW TRIAL

Comes the defendant, Haywood Patterson, in the above styled cause of the State of Alabama v. Haywood Patterson, and moves the court to set aside the verdict and judgment rendered in this case No. 2402 against him on the 7th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant him a new trial and he assigns the following reason and causes separately and severally, to-wit:

I

[fol. 93] The indictment on which the defendant was tried was void and illegal; (a) In that it was vague, indefinite and uncertain; (b) in that it set forth no facts constituting the crime therein alleged, nor the exact date when and the exact place where the alleged crime was committed by the de-

fendant; (c) in that it failed properly to appraise and inform the defendant of the exact nature, basis and grounds of the charge against him and which he was called upon to meet; (d) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of said indictment the defendant could not properly and adequately prepare to meet and defend himself at the trial: (e) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of the indictment the defendant has become and is subject for the same offense to be twice put in jeopardy of life or limb in violation of said defendant's rights under the Constitution of the United States, amendment 5, which provides: "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb" and the rights under the constitution of the State of Alabama, Article 1, Section 6; (f) in that the said indictment by reason of its vagueness indefiniteness and uncertainty was a denial of the defendant's rights under the Constitution of the United States, amendment 14, Section 1 which provides "—no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws", and under the constitution of the State of Alabama, Article 1, Section 6 which provides; "That in all criminal prosecutions, the accused—shall not be deprived of life, liberty, or property, except by due process of law." For these reasons the judgment ought to be arrested and a new trial granted.

II

The defendant on trial for his life was entitled and had a right to be tried by a jury entirely free from bias, prejudice, hostility, vindictiveness or passion, and free from outside or extra-legal influences and communications which might tend to disturb or distract their minds f*ree* a free impartial, unbiased and dispassionate consideration of the merits of the case and of the evidence before them; and where, as in this case, it was evident in advance of the trial [fol. 94] that by reason of the hostile sentiment and feeling which dominated the inhabitants of the county from which

a jury was to be chosen, the jury's minds would be or become influenced against the defendant by the prevailing sentiment and feeling of hostility in said county, a change of venue to another and different county should have been granted by the court and the court's refusal to grant a change of venue was a denial to the defendant of his right under the Constitution of the United States, Amendment 14, Section 1, and the constitution of the State of Alabama, Article 1, section 6, and was an abuse of judicial discretion and constituted reversible error. A new trial should therefore be granted.

III

A new trial should be granted in that the rights of the defendant under the Constitution of the United States, Amendment 14, Section 1, and under the Constitution of the State of Alabama, Article 1, Sec. 6, were violated for the following reasons: (a) Defendant, while under arrest, was not afforded nor did he have an opportunity to employ counsel to aid and advise him; (b) he had no opportunity to employ an attorney to represent him; (c) he had no opportunity or sufficient time in the 12-day period between his arrest and trial to prepare properly for the trial on the outcome of which his life and liberty depended; (d) he was in prison in a jail situated in a city far away from his home, where his parents and kinsfolk resided and he had no opportunity to communicate with them, his parents and kinsfolk, who, when they finally learned of his plight, dared not visit him for frear of personal violence from a hostile and excited populace; (e) due to race feeling and prejudice which prevailed in the county where the trial was held, he could not have and was denied a fair and impartial trial before an unbiased and unprejudiced jury; (f) immature in years and lacking the advantages of an education, he was too ignorant and did not know how to prepare for trial or how to obtain the attendance of his witnesses in court or how to obtain the services of an attorney and the financial means with which to pay for such services, and he was entirely unacquainted and ignorant of the rules and principles of law; (g) repeatedly threatened, intimidated and put in fear of death, he neither knew how nor could communicate with his father and mother to employ an attorney in his case and to advise him about his rights until

the very day when the case was called for trial; (h) while the trial was on, the jury in his case was asked by the court to withdraw to an adjoining room, and the jury in another case, [fol. 95] to wit: State of Alabama vs. Weems and Norris, entered the court room and announced that they found the said defendants, Weems and Norris, guilty, and recommended the penalty of death to the sound of great applause, stamping of feet and jubilant shoutings from the spectators which crowded the court room and from those who filled the environs of the court house, all of which the jury hearing the evidence in the trial of this defendant could not but have heard, to the irreparable hurt of this defendant then on trial for his life; (i) continuously and throughout the trial, a crowd of people dominated by prejudice and hostility towards this defendant filled up the court room and by bearing and dem-anor influenced the jury adversely to the defendant; (j) that while this defendant was on trial, a crowd of people to the number of about ten thousand gathered from among the inhabitants of the county where the trial was on and adjacent counties, with a band of music playing noisily, surrounded the court house and enacted demonstrations hostile to the defendant, and also a violent demonstration outside the court house greeted the announcement of the conviction of Weems and Norris, of all of which the jury could not but have known; (k) that the defendant was tried in a county where mob hostility towards him raged with such violence that the Sheriff of said county and the Governor of the State of Alabama deemed it necessary to call out a military force to protect this defendant against a threatened lynching by the mob which assembled around the jail where he was held, and to guard him on the way from the jail to the court house and back, and to surround and protect the court house during the entire trial against threatened mob violence to defendant and to guard him after the trial back to jail; all to prevent the threatened efforts repeatedly made to lynch the defendant from being carried out; (l) that the trial of the defendant, who, with either other negro boys, was charged with the crime of rape, alleged to have been committed against two white women, was conducted under stress of great excitement, mob hostility, lust and vindictiveness, and at a time when these evil passions and race prejudice completely dominated the minds of the inhabitants of

this county and adjacent counties and were further stimulated by the county's and adjacent counties' newspapers, which published in advance of and during the trial of the defendant the supposed details of the defendants' crime and their guilt in headlines and language which screamed with a lust born of hate and race prejudice and appealed to [fol. 96] vicious and degrading lynch sentiment which they roused in and fed to the people of this country and adjacent counties, thereby making it impossible for this defendant, as well as the other defendants, to have the benefits of a fair and impartial trial, and rendering the verdict of the jury and the judgment entered thereon illegal and void; and for these reasons a new trial should be granted.

IV

A new trial should be granted in that while the trial of this defendant was on, the jury hearing evidence in his case was asked by the court to withdraw to an adjoining room within thirty feet, more or less, of the court room, and the jury in the case of State of Alabama vs. Weems and Norris entered the court room and announced that they found these defendants guilty of the crime of rape and recommended the penalty of death. Thereupon the spectators of the court room made a demonstration and with clapping of hands, stamping of feet, and noisy shouting manifested their approval of said verdict. At that time, the jury hearing evidence in the case of this defendant was in an adjoining room distant about thirty feet from the court room. In that adjoining room a transom opened to the court room, thereby allowing the jury in the case of this defendant to hear everything which transpired in the court room. Outside the court room, the crowd which filled the environs of the courthouse joined in a shouting chorus which swelled and reached out into the furthest ends of Scottsboro and in the business sections thereof, and the band of music struck up with a noisy vigor in manifestation of their approval of the verdict of the jury in the case of State of Alabama vs. Weems and Norris. This, too, the jury in the case of this defendant heard. This demonstration was calculated to and did prejudice the minds of the jurors who were trying this defendant, and was also calculated and did prejudice the minds of the jurors who soon thereafter were to try the five remaining defendants and

made it impossible for any of the defendants to obtain an unprejudiced, impartial and unbiased jury in the trials of their cases. The failure of the court to declare a mistrial in the case of this defendant, upon the happening of the foregoing seri*ou*s of incidents, was reversible error and a new trial should therefore be granted.

V

The court further erred in failing to continue the case of this defendant on his own motion when the jury in the case of State of Alabama vs. Weems and Norris reported its verdict and the demonstration in the court room ensued.

[fol. 97]

VI

The court's refusal to grant the defendant a special jury or a special venire or jurors upon the demand therefor by defendant's counsel when from the special venire already summoned a jury had been drawn to try Weems and Norris and which special venire was therefore familiar with the testimony concerning the crime alleged to have been committed by defendant, and further, when it was evident that the defendant could not have a fair and impartial trial by a jury selected from among the inhabitants of the county where the trial was held and at a time when the sheriff of the county and the Governor of the State of Alabama deemed it necessary to call in a military force to guard and protect the defendant against threatened mob violence and lynching, and to guard the courthouse, was a denial to this defendant of his rights under the Constitution of the United States, Amendment 14, Section 1, and the Constitution of the State of Alabama, Article 1, Section 6, and was in contravention and violation of the jury law of the State of Alabama as is provided by the Statutes of Alabama.

VII

The court erred in not questioning and in failure to qualify the trial jurors as to race prejudice and as to whether or not they could and would, in view of the fact that the defendant was a negro, and the complainant and prosecuting witness a white woman, give the defendant a fair, impartial and unprejudiced trial, and the court further erred in failing to call this fact to the attention of the jurors;

and if it had appeared that any juror entertained a prejudice in regard to negroes or that any juror could not or would not, in view of the fact that the defendant was a negro and the complainant and prosecuting witness a white, give the defendant a fair, impartial and unprejudiced trial, such juror should have been disqualified and discharged from jury duty. The failure of the Court in this respect was a denial of the defendant's rights under the Constitution of the United States, Amendment 14, Section 1. For this reason a new trial should be granted.

VIII

The exclusion of negroes from the list of jurors from which the defendant's jury was drawn was a denial of the defendant's rights under the Constitution of the United States, Amendment 14, Section 1, and a new trial should be granted.

[fol. 98]

IX

The court erred in that it permitted the jurors to remain in the court room during the preliminary argument and discussion of the case between the court and a group of attorneys appointed by the court to represent the defendants. This argument and discussion between the court and counsel was calculated to and did prejudice the minds of the jurors. A new trial should therefore be granted.

X

A new trial should be granted in that public sentiment and feeling against the defendants and the crime charged and the language of the newspaper which published the same throughout the northern part of the State of Alabama and in the State of Tennessee and Georgia were of such a character that the defendant- could not get a fair, impartial and unbiased jury.

XI

The verdict of the jury and judgment entered thereon are supported by no competent or sufficient legal evidence that they are against the weight of evidence and against the law, and that all the credible evidence preponderates against the verdict of the jury and that the evidence adduced at

the trial failed to establish the guilt of this defendant beyond a reasonable doubt; for these reasons a new trial should be granted.

XII

A new trial should be granted because of evidence which has been discovered since the trial of the case tending to prove that the defendant is innocent of the charge made against him, and which said evidence the defendant did not and could not know and discover before the trial. Said newly discovered evidence will be properly presented to the court on the day of the argument of this motion for a new trial.

XIII

The court erred in refusing to permit defendant's counsel to interrogate the prosecuting witness, Victoria Price, touching her character and reputation as a common prostitute, and the court's refusal to allow such evidence and the interrogation of the prosecuting witness thereon was reversible error, for which a new trial should be granted.

[fol. 99]

XIV

The court committed error in refusing to permit defendant's counsel to ask the doctor, who had examined Victoria Price, as to whether or not she suffered from a venereal disease. A new trial should therefore be granted.

XV

The court further erred in permitting the prosecuting attorney to put leading questions on direct examination to the State's witnesses and for this reason a new trial should be granted.

XVI

A new trial should be granted in that the court committed error in failing to charge the jury as to consciousness of innocence, evidenced by the fact that the defendant, although he knew of the severity with which the crime of rape is punished and the swiftness with which such punishment is visited in the south, remained on the train and made no effort to flee, a circumstance which, together with his conduct on the day of his arrest, supports the infer-

ence of defendant's innocence; the failure of the court to state these facts in his charge and to instruct the jury as to the law thereon was reversible error.

XVII

A new trial should be granted in that the State, although it had in its control a number of white boys who were on the train when the alleged crime of rape was committed, among them a boy named Gilley, who, the indictment establishes, testified before the grand jury, failed to produce and call them, and especially Gilley, as witnesses to support the testimony of the prosecuting witness, Victoria Price, the inference being inescapable that if the testimony of such witnesses and especially the said Gilley, would have supported the testimony of the prosecuting witness, Victoria Price, the State most certainly would have produced them in court as witnesses for the prosecution. Nor did the State offer any reason for not producing these witnesses. The State's failure in this respect not only throws grave suspicion upon the testimony of the prosecuting witness, Victoria Price, but completely invalidates and impeaches her testimony. The fact that these boys, and especially Gilley, [fol. 100] in the control of the State, were not produced as witnesses in court and were not permitted to testify, supports the inference that their testimony would not have benefited the prosecution but would have benefited the defendant, and moreover, would have exonerated the defendant.

XVIII

A new trial should be granted in that the proof in the record of the trial establishes the following: that the train on which Victoria Price and Ruby Bates claim to have been riding had on it from fifteen to eighteen Negro boys and seven white boys; that between the time of the fight alleged to have been had between the negro and white boys in the neighborhood of Stevenson, Alabama, and the time that this train reached Paint Rock, Alabama, about forty or fifty minutes elapsed; that approximately from three to six of the negro boys had left the train between the time it left Stevenson, Alabama, and the time it reached Paint Rock, Alabama; assuming, therefore, as it is claimed, without, however, conceding, that all this

trouble occurred while this train was in Jackson County, Alabama, the time was too brief for everything to have happened as contended for and by Victoria Price and Ruby Bates; and that, furthermore, since some of the Negro boys were not arrested, it is impossible for these girls to identify positively all the members of the crowd and to make such identification and proof beyond a reasonable doubt.

(Signed) G. W. Chamlee, Atty. for Deft., Haywood Patterson.

[File endorsement omitted.]

Thereupon, on the 19th day of May, 1931, the defendant filed in said cause, in support of his said motion for a new trial, the joint affidavit of Haywood Patterson, Clarence Norris, Charlie Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams, which said affidavit is in words and figures as follows, to-wit:

[fol. 101] IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402 and 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery, Eugene Williams

AFFIDAVIT OF HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE ROBERTSON, ANDY WRIGHT, OLEN MONTGOMERY, AND EUGENE WILLIAMS

The undersigned affiants make oath in due form of law that they were defendants in the above styled cause, tried at the special session of the Circuit Court of Jackson County in April, 1931, at Scottsboro, Alabama.

Affiants further state that when the court was organized and their cases called for trial, that they did not know who would be their counsel and that they had been in jail ever

since they were arrested, March 25, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinfolks or friends and had no chance to procure witnesses and no opportunity to make bond or to communicate with friends on the outside of the jail.

They further show that there was a discussion between the trial judge and Mr. S. R. Roddy and Mr. Milo Moody and some other attorneys about the cases of these defendants and a copy of that discussion taken from the official record will be filed and marked Exhibit #1 and made a part of this affidavit as fully as if copied and set out herein.

That the case against Clarence Norris and Charlie Weems was tried first and prior to the trial that the Governor of the State of Alabama had provided military forces with 107 men and officers with six or eight machine guns and rifles commonly used in military warfare to guard the courthouse and jail and to guard these defendants, prior and during the trial and these military officers had surrounded the courthouse and were keeping the hostile mob [fol. 102] or at least keeping away from the courthouse persons that had no business in the courthouse and who might wish to do violence to the affiant or someone of the defendants and while these guards were on duty, the case against Clarence Norris and Charlie Weems was tried and there was great excitement prevailing throughout the county and in Scottsboro at the time and when the jury reported in this case, the case against Haywood Patterson had been started and his jury was in the jury room adjoining the court room when the jury in the Clarence Norris and Charlie Weems case made its report imposing death penalty, and thereupon there was a demonstration in the courthouse by citizens clapping their hands and hollowing and shouting and soon thereafter a demonstration broke out on the streets of Scottsboro and not long thereafter the Hosiery Mill band came into the business district apparently celebrating the victory of the State and paraded through the public street and long in front of the courthouse making music for the entertainment of the crowds and at a time when the whole atmosphere was surcharged with excitement and this demonstration was carried on in the presence and hearing of jurors who had to try the third case

composed of Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams and the excitement which had been produced by the seriousness and enormity of the charge made against the defendants and added to this the newspaper and press circulated stories through Jackson County which were generally read and accepted as the facts, when in truth these stories were, many of them, utterly untrue and when these defendants had no newspaper to print anything for them and when they had no attorney to write or publish anything on their side or in their defense, or showing that they were innocent and why their identity could be easily mistaken, but notwithstanding these disabilities and these unfortunate circumstances there was a hostile demonstration in the court room and a hostile demonstration through the streets and on the sidewalks in the town of Scottsboro and then a parade by the Hosiery Mill band apparently celebrating and felicitating the jurors upon their verdict and musical demonstration in cooperation with the demonstration put on by the citizens in the streets and on the sidewalk following the verdict in the case against Clarence Norris and Charlie Weems. The jurors who were summoned in the cases next to be tried were exposed to these demonstrations and celebrations (possibly they participated in the celebration) and they would have to be more than human not to be [fol. 103] affected by these demonstations, and the effect upon the jurors could not help but be adverse to the defendant then on trial and yet to be tried.

These demonstrations were produced because of high excitement in Jackson County, and that the people who had gathered at Scottsboro to witness these several trials had produced so much excitement that apparently a general holiday was being taken by the Hosiery Mill band so that at the most inopportune time for the interest of these defendants this Hosiery Mill band was parading the streets of Scottsboro and it is reported that they played (such pieces as "Hail, Hail, the Gang's All Here" and "There Will Be a Hot Time in the Old Town Tonight"), but whatever it was and whether this band was innocent and appeared as a mere coincidence or whether it was purposely on the streets can make no difference because the effect on the jurors at that time trying Haywood Patterson and the

next jury later selected from the crowd that tried the other five defendants was adverse to them and manifestly to their disadvantage and detriment, and the fact that jurors were or might have been adversely affected by matters happening outside of the court room which adversely affected the interests of the defendants or anyone of them was a denial of due process of law to the defendants and adversely affected the defendants and necessarily denied to them a fair and an impartial trial by free and unbiased and imparial jurors.

Affiants further state that because of the enormity of the charge in the first instance they were not given a fair trial. Second, that because they were negroes and paupers and locked in jail without an opportunity to confer with or employ counsel they were not given a fair trial. Third, that the alleged victim was a white woman. Fourth, publications in newspapers averring that the proof of guilt was most positive and falsely alleging that some of the defendants or all of them had confessed their guilt, which was not true, but the public throughout Jackson County was made to believe that such were the facts, rendered an impartial trial impossible; the fact that the defendants were compelled to go to trial represented by attorneys who, by their own admission in open court, stated that they were not prepared and had made no preparation whatsoever, constituted a denial of due process to the defendants and prevented a fair and impartial trial; this is especially true because in fact the defendants were neither represented by [fol. 104] counsel retained by them or anyone on their behalf authorized to make such retainer, nor was such counsel appointed by the court as trial counsel, according to the record of pages one to eight of the Weems-Norris record annexed hereto and marked Exhibit 1, and made a part hereof, proves that so far as Mr. Roddy is concerned, he made no pretensions that he was retained as attorney for the defendants, and the record shows that he was not appointed as attorney for the defendants; he was, in fact, present merely as an observer by his own admission and made no pretensions at having prepared the case for trial, but sought a change of venue, and that the record shows Mr. Roddy was appointed for the purpose of arraignment only, and when Mr. Roddy appeared the court released all

the members of the Scottsboro Bar after arraignment, and when the trial was about to start during the discussion Mr. Mood*d*y agreed to assist Mr. Roddy who was never employed and who appeared only by the courtesy of the court, and the defendants were never asked, according to this record, their wishes or desires in the premises and yet the lives of all eight of them were at stake and were later demanded at the hands of a jury at a trial about to begin without an opportunity to tell their trial lawyer their separate defenses, and when forced into trial without witnesses and without an opportunity to secure any witnesses, and in a county hostile to their race and when there was no chance to communicate with the outside, to either parents, relatives or friends, and when they had no money and no one to advise them of their legal or constitutional rights and when they were overawed and intimidated and threatened by a mob of hostile citizens from the day they were arrested until after the sentence of death was pronounced upon them and because of their immature years and because seven of them can neither read nor write anything of consequence and are ignorant of the law and did not know how to prepare their case for trial or how to protect their rights or themselves from insult, embarrassment and intimidation and especially when a mob had gathered in Scottsboro after they were arrested and the Mayor and public officials had to make speeches to try to persuade the mob to adjourn and it was necessary for military forces to come to Scottsbor- and to by force of arms disperse this hostile and enraged gathering and to require them to leave the town of Scottsboro and from the County of Jackson the trial jury for all the defendants had to be selected and by reason of a custom of long standing there was not one negro selected for the entire trial, throughout the whole county where a population of 30,000 people when a large number of negro land-owners were [fol. 105] qualified jurors, or for jury service and members of the negro race; all of these indubitable and undisputable facts lead directly to the inevitable and irresistable conclusion that these defendants did not have and can never have a fair and an impartial trial in Jackson County as they are entitled to have under the law of the State of Alabama and under the law of the land.

Affiants further show that the trial was unfair because damaging evidence was admitted in the trial against some of them about Ruby Bates and they were not indicted or called upon to answer any charge about her and any testimony with reference to her should have been excluded and not considered by the court or jury under the indictment upon which they were tried.

Affiants further state that before reaching Paint Rock, Alabama, they did not leave the train because they were not guilty and had no motive or reason to run and they did not run or make any attempt to leave the train or to get away, but a number of other negroes did leave the train and did get away and were never arrested.

Affiants are advised that the prosecuting witness, Victoria Price was a woman of bad reputation and bad character and that the defendants ought to have been permitted to prove on the trial that she was of bad character and bad reputation and the refusal of the court to permit her to be cross-examined on this subject was error and for which a new trial ought to be granted. See affidavits of Silas Johnson and others filed in this cause. Affiants are advised that newly discovered evidence touching the character and reputation of Victoria Price and Ruby Bates has been filed in this case and these affiants did not discover or know about this evidence and its importance until since the trial, but if they had known about it they had no chance to have procured it and to produce it on the trial at Scottsboro, because the witnesses who made the affidavits were afraid to go to Scottsboro to attend the trial and lived out of the State of Alabama where they could not be compelled to attend the trial by court process of this State.

Affiants are advised that there were no safeguards thrown around the jury prior to the starting of the trial in order to keep them free from contact with the population in general and that they were permitted to read hostile newspapers and to witness the demonstration in the Courthouse and on the streets of Scottsboro and to witness the parade of the Hosiery Mill band through the streets when [fol. 106] Clarence Norris and Charlie Weems were convicted and that there was no effort on the part of military authorities to keep jurors, not yet placed on the jury, separate and apart from the people in general and these jurors were exposed to excitement, hostilities and prejudicial news-

paper articles combined with public feeling surcharged with excitement produced a situation impossible of correction and the result of which adversely affected the defendant, confused counsel who tried to represent them, overawed the men who sit on the jury and rendered an impartial, orderly, quiet, judicial hearing impossible and as a direct result thereof these affiants are about to be deprived of their lives without due process of law and in violation of the most sacred constitutional rights ever provided for in this State and under the laws of the land.

Affiants made application for a change of venue and in their application swore they could not get a fair trial and the events which happened during these several trials confirmed and verify that contention and the trial should have been removed from Scottsboro to some other county as requested in their application for a change of venue.

Affiants are advised that the trial judge did not question the jurors who tried these defendants on the subject as to whether or not they held racial prejudice and whether or not they would give a negro the same fair, patient, impartial hearing that they would give a white man under similar circumstances and that this prejudiced their rights in this case because from all that happened at Scottsbor-, there was no man on any of these juries under all the excitement that was qualified to meet the legal requirements of an impartial uninfluenced and unbiased juror as provided for by the laws of the State of Alabama and the laws of the land.

Affiants further state that they were threatened with lynching, terrified by mob and confused and embarrassed through the trial by hostile words, threats and public demonstrations and the jury which tried them knew or had a chance to know and were exposed to these illegal influences, and their minds influenced by an atmosphere surcharged with hostility, partiality, prejudice, caprice and rancor against the defendants and their lives were demanded as a sacrifice therefor without due process of law, then they were not guilty of the charge contained in the indictment against them.

The defendants demanded a special venire or a special list of jurors for their separate trial and this request was refused and denied and the defendants had to go to trial

without the right to select or to be consulted about select-
[fol. 107] ing the jury to try these cases. These defendants did not challenge any juror and did not know that they had a right to challenge jurors.

The indictment in these cases fail to state sufficient facts in that no time or place or a statement of circumstances were set out giving the facts constituting the alleged offense so as to enable the defendants to properly prepare for trial and to be protected against double jeopardy. There was a number of white boys on this train who were available as witnesses for the State and were not introduced by the State and no reason given for not doing so and the name of one or more of them appeared on the indictment.

(Signed) Olen Montgomery. (Signed) Eugene (his X mark) Williams. (Signed) Willie (his X mark) Robertson. (Signed) Haywood Patterson. (Signed) Charlie (his X mark) Weems. (Signed) Andy (his X mark) Wright. (Signed) Clarence (his X mark) Norris. (Signed) Ozie (his X mark) Powell.

Subscribed and sworn to before me on this 15th day of May, 1931. (Signed) U. L. Heutees, Notary Public. My commission expires Feb. 27th, 1935. (Seal.)

[File endorsement omitted.]

[fol. 108] EXHIBIT No. 1 TO AFFIDAVITS OF THE EIGHT DEFENDANTS, STATE v. HAYWOOD PATTERSON ET ALS.

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSIONS, 1931

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLATENCE MORRIS

Appearances:

H. C. Bailey and Proctor & Snodgrass, attorneys for State.

Stephen W. Roddy and Milo Moody, attorneys for defendants.

This cause coming on to be heard was tried on this the 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of State vs. Haywood Patterson, et als. What says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as Your Honor knows, I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that; the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that Your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counseil I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in—I want to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar, Your Honor appoints; on account of [fol. 109] friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.

The Court: The only thing I am trying to do *si,* if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course, if they have counsel, I don't see the necessity of the court appointing anybody; if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it, Mr. Parks, and [fol. 110] that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it; if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and

not as paid counsel, and I certainly haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it, I would be glad to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial, and I think the boys would be better off if I step entirely out of the case, according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it; I don't know a thing about it. I am here just through the courtesy of Your Honor, if Your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court, and not to the defendants; I could not take the case for a fee, because I am not practicing in the general Court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath; that is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants, I don't think I ought to appoint counsel; if he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent.

[fol. 111] The Court: Well, gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't, of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now, Your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment, I met Mr. Roddy and had a talk with him, and I gathered from Mr. Roddy that he would be employed in the case, and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case, and I recognize the principle involved, and the fact that I took it for granted that Mr. Roddy would be here as employed counsel, and I was approached then to know if I was in a position to accept employment in the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk any duty, and I know my duty is whatever the court says about these matters, but I did accept employment on the side of the State and I have conferred with the Solicitor with reference to matters pertaining to the trial of the case, and I think it is due the court, I was not trying to sh-rk any duty whatever, and I want the court to understand my attitude in the matter; I am ready to obey any order of the court.

The Court: Of course, that is a matter with counsel; I know nothing about these affairs.

Mr. Proctor: I wanted the court to understand why it was I agreed to become assisted with counsel for the State; thinking they had counsel, I accepted employment on this side, thinking, of course, they had counsel, and I would be relieved from that duty, and I have been conferring with the Deputy Solicitor about matters pertaining to the trial. [fol. 112] I am ready to do whatever the court thinks is the proper thing to do.

The Court: I will leave that with the attorneys interested, Mr. Proctor, because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me, and I am willing to appear with

their assurance they will go ahead with me in the trial of these cases.

The Court: All right.

The Court: All right, now what says the defendant?

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue—Shall I pass it to Your Honor?

The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your Honor please, while the Solicitor is reading that, I wish to call the court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

The Court: All right.

Mr. Bailey: If the Court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have seasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue, I think, in the first place, comes too late.

The Court: I would not require you, of course, I will give you time to answer it.

Mr. Bailey: That is the first ground. If Your Honor permits the filing of it, I move to strike it because it is nothing except conclusions; there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper article, and that is a conclusion pure and simple; there is no petition concerning that newspaper article, no affidavit attached, and no witness in support of this. Now, we first object to the filing and the consideration of it. If Your Honor [fol. 113] permits them to file it, we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time, Solicitor; I know the circumstances sometime but I expect under the circumstances that is proper.

Mr. Bailey: Then we move to strike it because the substance of it is setting out a mere conclusion. The proof even of a newspaper article alone is not sufficient; there is no affidavit attached in support of it. Now, Your Honor might permit me to offer testimony on it, but to move to strike it and to demur to it.

Mr. Roddy: Your honor, I might suggest that the petition does not only base conclusions, but it tells facts about troops being here, and Your Honor, please, we offer the Sheriff at this time to show the reason for it and why—the matters set out in the petition itself.

The Court: Well, do you want time to answer it? Have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff, if the court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes, sir.

M. L. WANN examined as witness on defendant's petition:

Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this county?

A. Yes, sir.

Q. Did you deem it necessary to call out a unit of the National guard to bring these defendants to court to trial.

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I didn't see any guns there or anything like that, and I did not hear any threats, but——

Mr. Roddy: Did you call this National Guard unit to accompany the prisoners in court?

Mr. Wann: Today?

[fol. 114] Q. Yes, sir?

A. Yes, sir; I did.

Q. Did you when they were brought here several days ago?

A. Yes, sir.

Q. As sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?

A. Yes, sir; I thought so.

Q. That is on account of the feeling that existed against these defendants?

A. Not only here, but people all over the county—

Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?

A. Yes, sir.

The Court: Is that all?

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Proctor:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.

The Court: He has a right to lead, Mr. Roddy.

A. Yes, sir.

Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse, have you?

A. No, sir.

Q. Is it your idea as Sheriff of the county that the sentiment is no higher here than in any adjoining counties?

A. No, sir.

Q. Is it your judgment that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

Q. I will ask you whether or not this county—if it is your judgment or opinion from association among the popula-

[fol. 115] tion of this county, if they could have a fair and impartial trial in this case in Jackson County?

A. I think they can.

Q. Is that your judgment?

A. Yes, sir.

Q. You have heard nothing of any threats or anything in the way of the population taking charge of the trial?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes, sir.

Mr. Proctor: That is all.

Redirect examination.

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the court house?

A. Yes, sir.

Q. And there is a great throng around this courthouse right now that would come in if you did not have the troops?

A. Yes, sir; they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them; there are several from Madison and Marshall and DeKalb.

Q. And there are hundreds of them around the courthouse at the present time?

A. Yes, sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No, sir; that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail, that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir; I thought it was my duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understood Major Starnes, or five.

[fol. 116] Q. You have five units of the State militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Roddy: I might ask Major Starnes.

Major JOE STARNES, witness for defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defedants?

A. 107 enlisted men.

Q. How many units of the National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commissioned privates.

Q. How many officers?

A. Eleven officers.

Q. Those men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9:00 P.M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have in Scottsboro, you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?
[fol. 117] A. This is correct.
Q. That situation exists right now?
A. That is correct.
Q. And has existed on every appearance of the defendants?
A. Not only today but that under orders of the Court.
Q. Now, your units of the National Guard have protected these men and have been with them on every appearance they have made in this courthouse?
A. That is correct.
Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?
A. Yes, sir.
Q. After these men were arrested, when did you first bring them back?
A. On Tuesday of the past week is my recollection, March 31st.
Q. Why did you then bring them back here?
A. For arraignment.
Q. How long were they here?
A. We arrived here at 10:30 and left at 4:00.
Q. You brought them at 10:30 in the morning and left at four in the afternoon?
A. That is correct.
Q. Took them back to Gadsden?
A. That is right.
Q. Then when did you bring them back?
A. Brought them back and arrived here at 5:15 this morning.
Q. You have had them here twice from Gadsden?
A. That is right.
Q. You bring them here and then carry them back?
A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here of course under orders from the Governor?

A. Yes sir.

Q. And you have been here under his orders ever since?

A. That is correct.

[fol. 118] Q. You say you made how many trips here from Gadsden?

A. This is the third trip.

Q. In your trips over to Scottsboro in Jackson County and your association with the citizens in this county and other counties, I will ask you if you have heard of any threats made against any of these defendants?

A. I have not.

Q. From your knowledge of the situation gained from these trips over here I will ask you if it is your judgment these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?

A. I think so.

Q. Have you seen any demonstration or attempted demonstration toward any of these defendants?

A. Absolutely none; a good deal of curiosity but not hostile demonstration.

Q. Your judgment the crowd here was here out of curiosity?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all, your Honor.

The Court: Anything further for the State?

Mr. Bailey: No, sir; we don't care to offer anything further. Now, was our objection to the newspaper articles noted?

The Court: Well, the motion is overruled, gentlemen.

Mr. Roddy: We want to except to your Honor's ruling.

The Court: Yes, I will give you an exception. Let the motion be filed, Mr. Clerk—I give you an exception to it, Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called, we have some we are not sure about.

The Court: Call the State witnesses Mr. Clerk.

(Witnesses called by the Clerk for the State.)

[fol. 119] Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their ages to the court.

The Court: We will see about it when we get to it. What says the State?

Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first, Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, sir; we don't demand a severance.

The Court: No severance is demanded—now, do you want to try them all?

Mr. Bailey: The State demands a severance and we will try under the first joint indictment Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the Court please, I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

Mr. Bailey: Roy Wright is, yes, sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the Court.

The Court: I understand, but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think, if you can, you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these two boys.

The Court: I understand but I don't want to take that up now, I want to proceed with the others.

Mr. Bailey: As long as his age is not presented to the court, we want to proceed.

Mr. Roddy: Before these boys are placed on trial, we would like for Your Honor to pass on that.

The Court: I will pass on that, but we do that possibly some night when we are not engaged up here with the jury; of course, that is a matter, if it is raised, it comes up to be [fol. 120] passed on here first.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two, Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right, call your witnesses.

(Witnesses called by the Clerk for the defendants.)

Mr. Roddy: We want our witnesses, if the Court please, or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Roddy: Yes, sir.

The Court: I expect it would not be right to attach Mr. Ames; he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody, if the Court please, but we want our witnesses here; all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

Clerk: Yes, sir.

The Court: Who are the other two? I will give you a showing for Mr. Amos, of course. I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for those witnesses?

Mr. Moody: Yes, sir; we would like to get them here; if we cannot get them here, then we would like to have a showing for them.

The Court: I expect everyone of them on a telephone call would come. Sheriff, at the noon hour, you call these witnesses, and I expect they will come right on.

(Court adjourned for noon recess.)

The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out here, and if Your Honor will grant me a few minutes' time, I might simplify these matters. I want to be of all the help I can with the court and everyone concerned, but there are some very material facts in the case; I have no motive in this world in appearing down here ex- [fol. 121] cept to get the absolute truth in this matter, and if Your Honor will indulge me a few minutes——

The Court: All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know, your Honor please, about our witnesses.

The Court: What about the witnesses, Mr. Sheriff? All right, gentlemen, if we don't get the witnesses here, I will allow you a showing for them. Is that all right?

Mr. Moody: Yes, sir.

Mr. Bailey: Subject, of course, to legal objections.

The Court: All right, Sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

Indictment read to the jury by the Solicitor and the defendants by their counsel pleased not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State are put under rule, except as to the other defendants not on trial excused from the rule by court.

[File endorsement omitted.]

On the 19th day of May, 1931, the defendant filed in this cause, in support of his said motion for new trial the separate and several affidavits of Roberty Fearn, Bertha Lowe, Willia Crutcher, Allen Crutcher, the joint affidavit of Henry Cokley, Susie Cokley, and Georgia Haley, and the affidavit of Percy Ricks, which said affidavits are in words and figures as follows, to-wit:

[fol. 122] AFFIDAVIT OF ROBERTY FEARN

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law that she resides in the town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them. She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty

years old, as she understands. They associate and visit with negroes freely.

(Signed) Roberta Fearn.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public. Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

[fol. 123] AFFIDAVIT OF BERTHA LOWE

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath that she lives in the Town of Huntsville, Alabama, and that she has seen Ruby Bates and Victoria Price, the alleged prosecuting witnesses against the nine negro boys at Scottsboro, Alabama, and that these two girls live in Huntsville, Alabama, a portion of the time, and that she has seen them in Huntsville on various occasions, in negro section of Huntsville, and that Ruby Bates is staying now in a negro section living in a row of negro houses and associates with negroes almost exclusively in the row where she lives and that she associates with Victoria White, who as affiant is told, formerly lived in a negro section of Huntsville near where Ruby Bates now lives, and that these two girls appear to be about twenty or twenty-one years old, and they have been in these negro sections perhaps off and on for nearly three years, and at time affiant would see them often and again she would not see them for a month or longer.

She heard they visited Chattanooga, but she never knew them in Chattanooga, but she knew them in Huntsville, as

that is where she saw them, in negro sections of the City of Huntsville, and they were reputed to be prostitutes.

(Signed) Bertha Lowe.

Subscribed and sworn to before me, May 19, 1931. (Signed) Lewis C. Golson, Notary Public, County of ——, State of Alabama. My commission expires on the 1st day of May, 1935. (Seal.)

[File endorsement omitted.]

[fol. 124] AFFIDAVIT OF WILLIE CRUTCHER

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

VS.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law that she resides in the Town of Huntsville, Alabama and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with the affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive

negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Willie Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

[fol. 125] AFFIDAVIT OF ALLEN CRUTCHER

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute and she told affiant that she was going to make a trip in last year from Huntsville, and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Allen Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama, May 1, 1935. (Seal.)

[File endorsement omitted.]

[fol. 126] AFFIDAVIT OF HENRY COKLEY, SUSIE COKLEY, AND GEORGIA HALEY

IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON and EUGENE WILLIAMS et al., Defendants

STATE OF GEORGIA,
County of ——:

Georgia Haley, Henry Cokley and Susie Cokley, citizens of Bremen, Georgia, make oath in due form of law, that they are personally acquainted with Eugene Williams and his mother Mamie Williams of Chattanooga, Tennessee, and that Mamie Williams was married at Rossville, Georgia, near Chattanooga, Tennessee, on April 9th, 1916, and that Eugene Williams her son, was born on December 6th, 1917.

These affiants further state that they heard about a boy named Eugene Williams being in trouble in Scottsboro,

Alabama, but his age was reported as being 19 years old, and that they did not think it was Eugene Williams of Chattanooga, Tennessee, son of Mamie Williams, and for that reason they did not send an affidavit about his age earlier than this time, and that this is the first they heard that it was Mamie Williams' son and a grandson of Georgia Haley and a nephew of Henry Cokley and his wife, Susie Cokely.

We were living at Chattanooga, Tennessee, just across the State line from Rossville, Georgia, when Mamie Williams was married and were living with her at the time Eugene Williams was born, and we are positive about his age and the date of his birth, as set out in the foregoing affidavit.

(Signed) Henry Cokely. (Signed) Susie Cokely. (Signed) Georgie (her X mark) Haley.

Subscribed and sworn to before me on this the 4th day of May, 1931, at Bremen, Georgia. (Signed) S. O. Smith, Clerk, Superior Court, Haralson County, Ga. (Seal.)

[File endorsement omitted.]

[fol. 127] Chambers of Judge Superior Courts, Tallapoosa Circuit

J. R. Hutcheson, Judge, Douglasville, Georgia

At Chambers,
Douglasville, Ga., May 6th, 1931.

I do hereby certify that the signature of S. O. Smith, Clerk of the Superior Court of Haralson County, Georgia, is his genuine signature to the attached four pages of typewritten pages.

(Signed) J. R. Hutcheson, Judge S. C., Haralson Co. Ga.

AFFIDAVIT OF PERCY RICKS

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402, 2404, and 2406

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, EUGENE WILLIAMS, OZIE POWELL, Willie Robertson, Andy Wright, Clarence Norris, Charlie Weems, Olen Montgomery

Percy Ricks makes oath that he was on the train that the above named defendants were riding from Chattanooga to Paint Rock, Alabama, on the day that defendants were arrested at Paint Rock, Ala.

That, when the train got to Stevenson, that he saw the two white girls, Victoria Price and Ruby Williams get into a freight box car, while this train was standing at Stevenson, and that he saw them when the train approached Stevenson, Ala., going towards Scottsboro, and that when this train reached Stevenson, one of them had on overalls and the [fol. 128] other one had on a dress, and that he saw them get on the train and they went into a freight box car.

Later he saw them get out of this box car when the train pulled over on the Southern track at Stevenson he saw them get back into the box car, and they were in it when he last saw them until they got to Paint Rock, and at Paint Rock and they were on the ground running along the train and the second girl was following the first one and looked like they were trying to get away from the train and the officers stopped them.

There was a number of officers there armed and that affiant saw them getting some of the boys out of box cars and some on top of the train, and scattered all along the length of the train.

He saw the car called the gondola on which the girls claimed to be riding and it was nearly full of crushed rock called "Chatt" and loaded within about two feet of the top of the car.

He saw one of these girls a week before this trouble and she was hoboing from Stevenson to Huntsville on a freight train.

He further states that the train was running about thirty-five miles an hour, from Stevenson to Paint Rock, and that the time was about one hour.

Affiant further states that he is not related to any of the defendants and does not know any of them except that he saw them when they were arrested and that he furnishes this information to counsel for the defendants in order that the truth might be known as far as stated in the foregoing affidavit.

(Signed) Percy Ricks.

Subscribed and sworn to before me on this the 16th day of May, 1931. Geo. W. Chamlee, Notary Public, Hamilton County, Tenn. (Seal.)

[File endorsement omitted.]

[fol. 129] Thereupon the defendant offered the following testimony in support of said motion:

Major Joe Starnes, a witness for Defendant, testified:

Direct examination:

I was in the court room. There was considerable demonstration in the court room when the jury rendered their verdict, by yelling and clapping of hands in the court room here. I know where the jury in the case of this defendant was at that time; it was in the jury room to my left, I heard some shouting on the outside of the court room.

Cross-examination:

The jury that was trying the case of this defendant was in the jury room at that time, and the door was closed. I did not say that there was a tremendous outburst of applause; I said there was considerable applause, and later on I heard some shouting out in the yard, someone hollowing; that is all I heard. The shouting was not in the courthouse, and the main part of the building was between the shouting and the room in which the jury was located; that shouting I heard was on the outside of the courthouse, on the North side of the courthouse hrere, and the jury that had the case of this defendant was in the Southeast side of the courthouse.

Redirect examination:

There were a number that shouted in the court room here, and some clapping of hands.

Captain ROLAND FRICKE, a witness of Defendant, testified:

Direct examination:

At the time the report of the jury in the Norris and Weems cases was handed in here, the jury in the case of the defendant was in the jury room. Just after the applause in the court room, I was in there and noticed that the transom over the door from the court room to the jury room was partly opened. My attention was called to it by you; the jury in the room there was about thirty feet, I guess, from the applause.

Cross-examination:

There was nothing I know of to indicate that the jury [fol. 130] knew or understood what the applause was about. The door was closed between the jury room and the court room at the time of the applause. I do not know and could not say that the jury knew what the applause occur-ed about. There is a brick wall between the two rooms, with the exception of the door there.

The hearing of said motion as last amended was contin-ed by the Court from time to time until the 5th day of June, 1931, at which time the following proceedings thereon were had:

T. G. ELKINS, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is T. G. Elkins. I live ten miles north of Scottsboro on Little Mud Creek. I was a member of the jury before when five defendants were tried. I don't remember their names. I was on Jury No. 3. I was not in the court house when the jury reported in the Haywood Patterson case. I was not in the court house when they reported in the Weems and Norris case. I don't — where I was, only I guess I was up at Davis' store. That was the second day of the trial of these negroes when the jury reported. That was when the first case was tried. I heard someone

out on the street holler "Whoopee," but I didn't pay any attention. When I walked out I asked what the fuss was, and they said the jury had reported. That didn't have any bearing on my decision. I did hear a fuss, but that didn't have any influence on me. I cannot say about a brass band playing on the streets of Scottsboro within a few minutes after the jury reported. If I heard a brass band that afternoon after the jury reported I don't know it. I didn't hear one the next day. I heard a band some time after that. I don't remember what day it was. I couldn't say about that. I heard a band some time but I didn't pay any attention. I was leaving town at the time. I cannot say whether it was the day the jury reported in that case. I gave it no consideration.

I read the Scottsboro papers about the attack on these girls. I believe I read the Chattanooga papers. I think those papers said these men, or some of them had confessed their guilt.

When I was examined as a juror, I was asked questions as to whether or not I held racial prejudice. I don't remember just what the question was about. I was asked if I held any racial prejudice, and my answer was no. I couldn't [fol. 131] say positively who asked that question. There is a hosiery mill band in Scottsboro. I couldn't tell you how many men are members of that band. I have seen them on parade a time or two, I couldn't tell you how many members in that band. I have seen them at a show here. I have not seen them recently. I live twelve miles from the court house by road. I had not been to Scottsboro previous to the day I was on the jury; that was the first day I had been here since it came up. That was Monday, I believe. I was not put on the jury the first day I got here. I was put on Jury No. 3. That was the jury that tried the five defendants. I was is Davis' store when the jury reported in the Norris and Weems case. I was not in the court house. Davis' store is something like a half block from the court house.

The hosiery mill is three or four blocks from the court house. I couldn't say what time of the day the Norris and Weems jury reported.

I didn't pay any attention to the time of the day. It was in the latter part of the afternoon. I didn't pay any attention to the hour.

I have no idea how many people were around the court house at that time; there were several here, a pretty good sized crowd. The military authorities were guarding the court house in Scottsboro at the time I was sitting on the jury. They had machine guns. I suppose the reason for that was to keep down mob violence; that is what I presume it was for*m*. However, I saw no indication of mob violence. There were something over one hundred armed men here in all, including the machine gun crowd. They were guarding the court house yard and keeping the crowd off the court house grounds. They also had them inside of the court house, upstairs. I don't know whether they searched the people to see if they were armed. They didn't search me. I couldn't say about them searching others. I did not hear either one of the other trials. I was sitting on the jury part of the time when the fourth trial was going on. I was sitting on the jury where they tried the man and the jury disagreed. I did not try that case. I was on number three where they tried five of them together. Jury No. 3 had the other case at that time. I didn't hear the fourth case. They were on this other case.

I saw several heavily armed soldiers in the court house, three or four, I couldn't say how many, as well as out in the street, during the progress of these trials.

[fol. 132] W. G. SARTIN, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

My name is W. G. Sartin. I live out on Sand Mountain. I was one of the jurors that tried five of the negro boys charged with rape. When the jury reported in the Haywood Patterson case, I should judge that I was down at the drug store. I suppose the Weems and Norris case, the first case tried, is the one you were speaking of. I do not recall what time the jury reported. I couldn't say about what time it was. It was in the afternoon, I think. I am not sure. I suppose it was after that report was made that I heard some noise. I just heard them hollering. I don't know as I heard any clapping of hands. I heard

them hollering. They were hollering around here on the square, seemingly, around the court house. I think the court house is within the square. There were several people around the court house at the time. I wouldn't say there were several thousand people around here. I don't know how many there was. Around the square is where I heard the hollering. I did not hear a brass band playing within a few minutes after the jury reported. I think it was that evening I heard the brass band playing. I wouldn't say positively. Any way, I heard one playing. I don't know whether that was the hosiery mill band. I was here in the court house at the time. There were several units of the State Militia around the court house during the progress of the trial of those negroes. I don't know how many armed soldiers there were here. I think there were eight machine guns around here. There were some boxes of tear bombs sitting around. I suppose there were sol*id*ers in the court house. They were not in the court room when I was in here. After I heard that demonstration I served on the jury in one case where five of the negroes were tried.

Cross-examination:

When I heard this demonstration about which I spoke, I was down about Payne's drug store. I heard some hollering. I heard a band; that is what I thought it was. When the band was playing I taken it to be af*r*ter court had adjourned and the soldiers were ready to go home; at the time I was in the court room, when it first began. I was not up here immediately after the rendition of the verdict. I am not sure just what time it was when the band was playing here on the square. I know it was after court adjourned. They were playing on the south side of the [fol. 133] square. The playing of the band or the hollering did not in the least influence me in my verdict. I did not know for what purpose, or what cause, or why they were hollering. When it began me and Mr. H. H. Hennegan were standing there talking. I don't know what the hollering was about. When I heard the band playing I didn't know what that was about.

Redirect examination:

Later I heard first one and another state what the hollering was about. They said they began hollering when the verdict was rendered. You can ask the court about what the verdict was. The man I was talking to said his information was that they had returned a verdict. I later found out what the hollering was about. That is what gave rise to it because the verdict was returned. I learned what the verdict was. I found out what they said about it. When I went on the jury and tried the five, I knew what this demonstration was about in the other case. Somebody had already told me about it but I don't know everything people tell me. When I went on the jury that tried the five negroes, Case No. 3, I understood what the people had said about it. They said a verdict had been rendered. I was down on the corner at Payne's drug store when I heard that noise. I don't know how far that is from the court house. I didn't measure it. It is a short ways down to the corner. I cannot tell you how far it is. I don't know how many people I heard hollering; there were several. I don't know whether I heard hollering up in the court house. The first time I seen the band on the street was just before sundown. I think it was the same afternoon I heard the hollowing. I do not know what that band was playing.

Recross-examination:

During the time of the trial, I did not see a demonstration about a truck with a big wheel and tire. I don't know what that was for. I did not see that truck pulling a big tire around the square.

L. R. JONES, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

My name is L. R. Jones. I live about three miles from Bridgeport. I was on the jury that tried one or more of the nine negroes convicted of rape. I was on the third jury, the one that tried five of the negroes. I was not in the court

house when the jury returned its verdict in the first case [fol. 134] tried. I was at home, or on my way home. I had left the court room, and left Scottsboro. I didn't hear any demonstration of any sort.

J. M. BARNES, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live at Bridgeport. I was one one of the juries that tried one or more of the nine negroes convicted of rape here some time ago. I was on the third jury. That was the jury that tried five of them. I don't know where I was when the jury reported in the first case, the Weems and Norris case, but I was somewhere between Scottsboro and Bridgeport or at Bridgeport. I did not hear any demonstration after the jury reported. I was not in Scottsboro.

WILLIE J. WELLS, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live four miles above Paint Rock. I was on the jury that tried five of the Negroes convicted of rape in this court house. I was in Scottsboro when the first jury reported, in the Weems and Norris case. I did not hear any sort of demonstration, any noise, immediately after the jury reported. I never paid any attention to any hollering. I couldn't tell you where I was. I heard a band playing. I couldn't tell you what time it was I heard a band playing. I don't remember whether it was in the afternoon. I didn't have any time-piece, and don't remember what time it was. I was not at Paint Rock when these men were arrested. I guess I was at home; I don't know. I live four miles, back up the river, from Paint Rock. I heard about this trouble. I just talked with people like we always do about such as that. I never heard no big lot of talk. Nobody in my neighborhood came to Scottsboro. I live in a farming section. I have never been on a jury before. I

r-member the questions that were asked me before they put me on the jury.

Counsel for movant then propounded to the witness the following question:

[fol. 135] Q. What did they ask you to qualify to as a juror?

The State objected to the question, the court sustained the objection, and to this ruling of the court movant duly and legally reserved an exception.

Counsel for movant thereupon propounded to the witness the following question:

Q. Were you asked whether or not you held racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

RICHARD HILL, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley. I was on the jury that tried some negroes convicted here. I was on the one that tried five of them. At the time the jury in the first case reported, I was in town somewhere. I was outside of the court house, somewhere on the street. I don't know what time of day that jury reported. It was in the evening some time. I heard some noise, hollering. I didn't pay any attention to it. I just heard hollering, coming up the street. There were several people around the court house at the time. I don't know whether the National Guard was all round the court house and inside as well; I was not up here. I don't know as I later saw a national guardsman in the court house. I was not back up here that evening. Later, when I came in the court room, I saw National Guardsmen in the court room. They had machine guns and other arms around the court house. I don't know for what purpose they had the arms. I did not hear a brass

band playing after the jury report. Nobody told me what that hollering was about. I never did learn what it was about. I have heard them talking since what it was about. I heard that some time the next week. I do not know what the population of Scottsboro is.

Cross-examination:

I said I never heard a band playing until the next week after the trial.

[fol. 136] Roy Wilbourne, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley, about thirty miles from here. I was on the jury that tried some of these negroes convicted of rape. I was on the one that tried five of them. I had gone home that evening when the jury reported this case. I was outside of Scottsboro. I did not hear any demonstration. I had left Scottsboro before the jury reported. I don't know as I heard about the demonstration the next morning. I heard about the verdict. I don't know as anybody told me what happened when the verdict was reported in the court house. I have heard since then all about it. I don't know whether I heard about the clapping of hands and hollering or not. I went home and was not here. I don't remember whether it was the next day, or the next day, when I was put on the next jury, the case I tried.

Counsel of movant thereupon propounded to the witness the following questions:

Q. Do you remember whether or not when you were examined—when you were examined as a juror, did they ask you whether or not you had racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

W. C. SCOGIN, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live on Sand Mountain. I was on the jury that tried some of these nine negroes. I was on the third jury, the one that tried five of them. When the jury reported in the first one of these cases, I was across from the sidewalk over there, towards the court house. I asked some man I met over there, and he told me the jury had reported in that case. I heard a lot of noise, hollering and shouts; several hollered. There were several around the court house. I do not mean several thousand but a good many people gathered around the court house. I don't suppose that demonstration, that hollering, lasted a minute. I don't [fol. 137] think there was a bra*nd* band on the street a few minutes later that day. That afternoon I did not hear a brass band parading around on the streets, and playing. I- could have been day before that—I don't remember what day it was—it was about one o'clock this brass band was playing out there, somewhere a little after one o'clock. It was the next day, I think, after the jury reported. I am pretty positive it was the next evening after this first jury reported, because we were summoned to be here at one o'clock, and we were in the court room when this happened. I saw National Guardsmen in the court room and about the court house. When this happened I was on the street between here and the sidewalk over there. I don't know how many men I heard hollering down there. Then I came on to the court house, out in the yard.

I had been in the court house that day. The crowd in the court house was about the same as the crowd in the court house now, I guess. I have no idea how many men are in the court house now. It looks like there are all that can be seated and a good many standing up. There are several standing around the walls.

Counsel for movant thereupon propounded to the witness the following question:

Q. How many would you say down this side of the court room are standing up?

The State objected to the question on the ground that it calls for immaterial and irrelevant testimony. The court

sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

Counsel for movant then propounded to the witness the following question:

Q. When you were qualified as a juror were you asked as to whether or not you held racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the court movant duly and legally reserved an exception.

Cross-examination:

There were not very many people in the court house yard at that time.

There were several gathered around, but not a great crowd. It was late in the evening.

[fol. 138] B. M. Holloway, a witness for movant, having been duly sworn, testified as follows:

Cross-examination:

I live on Sand Mountain. I was on the jury that tried some of these negroes. I was on the one that tried five. I was down town when the jury reported in the first one of those cases. I was pretty close to Payne's drug store. That is right across the street from the court house. I heard hollering after the first jury reported. I did not hear a brass band playing within a few minutes after it reported. I left town in a few minutes after that. When I heard that hollering I heard someone say the jury had reported, and I walked on. I didn't pay any attention to it. They did not tell me about it personally. I just heard people talking. They didn't say that was the reason for this demonstration. I just heard them yelling. It was generally understood by everybody that that was the reason for it.

I think it was the next day after that I sat on the jury. I wouldn't say because I am not sure where the soldiers were that were guarding the court house, at the time of this demonstration.

Counsel for movant thereupon propounded to the witness the following question:

A. When you were put on the jury in the court house the next day to try the five, were you asked the question whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

Cross-examination:

I was on the third jury. I was about town while the other two cases were tried. I was about the court house and heard people talking about the Ford agency putting on a demonstration of cars during the trial and had a talking machine on wheels, on a truck or something like that. I heard the organ. I heard them going around. The Judge called us back at one o'clock. While I was in the trial, I heard the organ and learned the fact that it was the Ford agency playing the organ. I heard they had different kinds of Ford cars going around.

[fol. 139] Redirect examination:

I didn't see that. I was in the court room.

Counsel for movant thereupon propounded to the witness the following questions:

Q. Before you went on the jury did anybody tell you what those negroes were going to be tried for?

The State objected to the question, the court sustained the objection, and to this ruling of the Court movant duly and legally reserved an exception.

C. C. ALLEN, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live at Olalee. I was on the jury that tried some of these negroes charged with rape. I was on the third jury, the one that tried the five of them. I was not in court here

when the jury reported the first case tried. I was outside of the city of Scottsboro. We were excused and I left town. I did not hear any demonstration or noise. Later on I heard a little something about there having been a demonstration. I heard that when I came to town the next morning. I didn't hear any of it myself. I was out of town. I heard a little about the demonstration, but not much said about it. I did not hear any one of the other trials. When they tried the first case I was up in the country. I left here when they drawed the jury that went on the first case. I left here and went up to my aunt's, seven or eight miles away. I went home the next night. I was not here when they started the case of Haywood Patterson. We were dismissed and I left town and went home that night.

Counsel for movant thereupon propounded to the witness the following question:

Q. When you were qualified as a juror were you questioned on the subject of whether or not you entertained racial prejudice?

The State objected to the question, the court sustained the objection, and to this ruling of the court movant duly and legally reserved an exception.

Cross-examination:

I am not a minister of the Gospel.

[fol. 140] Lee Hicks, a witness for movant, having been duly sworn testified as follows:

Direct examination:

I live at Olalee, Alabama. I was on the jury that tried five of these negroes charged with rape. That was the third jury. I was not in the city of Scottsboro when the jury reported in the first case. I left as soon as they excused us and went out in the country about twelve miles. I came back to Scottsboro the next morning. At that time I did not hear there had been a demonstration by yelling and hollering. I didn't hear anything about that at all, neither did I hear anything about a brass band being on the street

a few minutes afterwards. The court house was heavily guarded inside and out by the National Guardsmen during the progress of those trials. Nobody said a word to me about the demonstration. I didn't talk to anybody at all.

Counsel for movant thereupon propounded to the witness the following question:

A. When they examined you as a juror were you asked the question as to whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the Court movant duly and legally reserved an exception.

LUTHER BALLARD, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama. I was on the jury which tried some of the negroes charged with rape. I was on the third jury, the one that tried five of them, I believe. When the jury in the first one of those cases reported, I was between here and Stevenson, or at Stevenson.

I was outside of the city of Scottsboro. I did not hear the demonstration immediately following the report of the jury. I came back to Scottsboro the next morning. I did not hear discussion on the street, people talking around about the demonstration that happened the day before. I never heard a word about it. I didn't hear anybody mention it at all. I suppose I came right on inside the court house. There was not a big crowd around the court house all during the progress of the trial. The crowd had lessened down. There were some people here. National [fol. 141] Guardsmen were armed and stationed inside and outside of the court house. I understood that the National Guard was at the court house to protect the negroes. I don't know what they were to protect them from and who; just said to protect the negroes. I never did hear the word "mob" suggested. They were just here for protection.

JOHN VENSON, a witness for the state, having been duly sworn, testified as follows:

Direct examination:

My name is John Venson. I live in Scottsboro. I am a Ford dealer here. While the trial of these negroes was in progress here the Ford people made a demonstration of cars. We had a Ford caravan of commercial trucks displayed, different bodies. I think there were about twenty-eight trucks. They came on Tuesday. They brought some music with them, had a graphophone with an amplifier on it, installed on a car. They had a parade here in town. I think it was about four o'clock. That amplifier made music so it could be heard for several blocks. That had no connection in the world with this trial. The hosiery mill band came out at six o'clock in the afternoon and played for Guard Mount. The soldiers were putting on Guard Mount. That was about six o'clock. I don't know anything about the adjournment of court, but it was about six o'clock. They broke up our demonstration, and I went over there. I didn't know until Monday that this Ford caravan was coming.

Cross-examination:

I never did know when the jury reported in the first case. I was down here somewhere about the square at that time. I did not hear the yelling and hollering. I r-member while we were down there on the corner after we had our parade and was giving a little musical entertainment someone came along and told about the jury reporting. I remember that, but I heard no yelling or anything to indicate that there was anything going on about the court house. There was a crowd, but most of the crowd was down there when we stopped. They were down there to see our demonstration. There was a crowd in town all day. There were more people in Scottsboro the first day than on Tuesday. I don't know how many were here the first day. There was a big crowd. I don't think there were ten thousand. I wouldn't think there were five thousand. I wouldn't guess there was [fol. 142] five thousand people at any one time on the street; I don't think so, but I don't know. The court house never

was full. There was a crowd around the court house. There were National Guard officers around. I just r-member while we were down there that evening—I know it was before the band concert at the Guard Mount—someone came along and told me the jury had reported and told me what the verdict was.

The soldiers putting on Guard Mount and the band playing for them broke up our demonstration. I don't know why the soldiers were putting on Guard Mount. The band played while they were putting on Guard Mount. I don't know what piece they were playing. I had heard them before. I had been on Guard Mount before. I don't know any of the pieces. That music lasted thirty minutes or more. I think I stayed out there until I was late for supper.

Redirect examination:

I did not see any mountaineers coming along on mules, carrying long rifles. I didn't see any rifles except what the soldiers had. I did not see any of our citizens from this county coming in and bearing any kind of arms, guns or rifles. I did not see any of them come in on ox carts.

Recross-examination:

I guess Ford cars have put the ox carts out of business, and freed the mules also.

Redirect examination:

Guard Mount by the militia is somewhat of a novelty to the average citizen. I suppose that was the only one they put on while here. In order to put on Guard Mount it is necessary to have music.

On said date, the 5th day of June, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits, filed by defendants, the joint affidavit of T. B. Reynolds, W. M. Wellman and J. V. Pollards, which said affidavit is in words and figures as follows, to-wit:

[fol. 143] IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2403

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF T. B. REYNOLDS, W. M. WELLMAN, AND J. V. POLLARDE

We, the undersigned, make oath in due form that we reside in the City of Huntsville, Alabama, and are superintendent, Secretary and Treasurer, and Pay master, respectively, and in the order in which our names are signed of The Margarett Mill of Huntsville, Alabama. We further certify that we personally know Victoria Price, a white girl who was in the employ of this Mull during 1929 and 1930. This is the same Victoria Price who alleges that she and Ruby Bates were raped by some negroes on a freight train in Jackson County, Alabama, some time in the early part of this year. We have this day examined the payroll records in our office and find that Victoria Price was in our constant employ during the months of October, November, December, 1929 and January, February, March and April 1930. The records show that she worked each week during the above months. We further certify that she was a good worker and her character around and in the mill was good, except that she possibly had a fight or two. We further certify that from our knowledge of her and opportunity to observe her over a long period of time she was absolutely above having anything wrong to do with negro men.

The other girl, Ruby Bates who is said to have been raped at the same time and along with Victoria Price came to our Mill about six to eight months prior to the time they were said to have been raped, and she was quiet and reserved and bore a splendid character, as far as we know. We never heard one thing against her.

(Signed) T. N. Reynolds, (Signed) W. M. Wellman, (Signed) J. V. Pollards, Affiants.

STATE OF ALABAMA,

Madison County:

Sworn and subscribed to before me, this the 3rd day of June, 1931. (Signed) Sallie A. Martin, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 144] On June 6, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits filed by defendant, the affidavit of L. L. Maynor, which said affidavit is in words and figures as follows, to wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF L. L. MAYNOR

STATE OF ALABAMA,
Jackson County:

L. L. Maynor makes oath in due form and according to law as follows:

My name is L. L. Maynor. I was born in Hollywood, Jackson County, Alabama, and am 39 years old. For the last 17 years, or thereabouts I have lived in Madison County, Alabama, and for about the last 8 years I have lived in Huntsville. In August, 1928, I went to the home of Mrs. Emma Bates in Huntsville, Ala., to board and have been boarding in her home since that time. She is the mother of Ruby Bates who together with Victoria Price, whom I also know, was said to have been raped by some negroes in Jackson County some two or three months ago.

During all this time that I was at Mrs. Bates, I was either hauling off logs of Monte Sano Mountains or working with the Allied Engineer Company and would return to Mrs. Bates every evening. During this time Ruby Bates stayed at home and kept house for her mother, who was working at the Lincoln Cotton mills in Huntsville. I am absolutely certain that Ruby Bates did not leave home and go to Chattanooga, Tennessee, any time during 1929 or 1930.

Ruby Bates was a quiet, modest girl and much of the time while I was there, she would go to church and Sunday school and I never heard any question of her character up until a little while before this trouble, and that was after she had begun to associate with Victoria Price.

There are dozens if not hundreds of people in Huntsville [fol. 145] who know that Ruby Bates did not live in Chattanooga, Tennessee.

(Signed) L. L. Maynor, Affiant.

Sworn and subscribed to before me this the 6th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On said date, June 13, 1931, the State filed in said cause, in rebuttal of the affidavits filed by defendant, the affidavit of P. W. Campbell, which said affidavit is in words and figures as follows, to wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

VS.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF P. W. CAMPBELL

STATE OF ALABAMA,
Jackson County:

P. W. Campbell, being duly sworn, deposes and states as follows:

I am a resident, citizens of Scottsboro, Jackson County, Alabama, and am at this time editor of the Jackson County Sentinel, a newspaper published at Scottsboro. Some four weeks ago I went to Chattanooga, Tennessee in company with J. K. Thompson, County Solicitor of Jackson County, for the purpose of investigating some affidavits which had been made by some negroes in Chattanooga, concerning the conduct and character of Victoria Price and Ruby Bates, women who were said to have been raped by some negroes in Jackson County.

We went to the office of Chief Detective Hackett and he placed at our disposal two of his men who went with us to

the part of Chattanooga where these negroes lived. After [fol. 146] considerable effort, we located some of them, with the following results: We found Asberry Clay and his wife, Savannah Clay, and Solicitor Thompson read to them the affidavits which t*eh*y were said to have made. They both said that there was certain statements in the affidavits which they did not make and which they did not know were in there. Especially with reference to these women living with negro men. They denied that they had ever seen them conducting themselves in such way. They also stated that they told those who procured the affidavits or statements from them that they were not certain as to whether the women they were talking about were the same women as shown them in pictures taken from one of the Chattanooga papers. They further stated that they did not know the women they had in mind as Victoria Price and Ruby Bates. Asberry Clay stated that he received his dinner and seventy-five cents as payment for the affidavit which he made. We then found Tom Landers, whose affidavit we read to him and he stated that at the time these girls were said to have been in Chattanooga, to-wit, the latter part of '29 and the early part of 1930, he was a convict in the State Penitentiary of Tennessee. He also stated that he told Mr. Chamlee, the attorney responsible for the affidavit, that he could not identify the women shown him in the newspaper clipping. We then went to a white woman by the name of Mrs. Wooten, who lived on the same street where these negroes said these white girls had been and whom they said the girls had lived with and Mrs. Wooten emphatically stated that no such girls had ever lived with her.

We then went to the City Hall to Police Headquarters wher- we talked with Mrs. Croft, Police Matron, who said that she had been constantly in the service of the City for the last twenty years or more and was quite certain that no such girls as these two had been up before her charged with any offense and that if they had, she would have had some recollection of it.

On the other hand, the Police Records in Chattanooga do show that two of the Chattanooga negroes, to wit, Haywood Patterson and Roy and Andy Wright have had Po-

lice Records and the Police authorities stated that they were very bad negroes and had given them quite a great deal of trouble.

Dated this the 15th day of June, 1931.

(Signed) P. W. Campbell, Affiant.

[fol. 147] Sworn and subscribed to before me this 13th day of June*k* 1931. (Signed) C. A. Cann, Clerk of Circuit Court.

(Signed) C. A. Cann, Clerk of Circuit Court.

[File endorsement omitted.]

The final hearing and disposition of said motion for new trial, as last amended, was continued by the court until June 22, 1931, at which time defendant offered in evidence, in support of his said motion, the following separate and several affidavits:

Affidavits of Oliver Love, McKinley Pitts, Isaac Hinch, J. P. Hobby, Annie Linson, Asberry Clay, Savannah Clay, Willie Douglas, Tom Sanders and Silas Johnson.

Joint affidavit of Haywood Patterson, Clarence Norris, Charley Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams; affidavits of Roberta Fearns, Bertha Lowe, Willie Crutcher, Allen Crutcher; joint affidavit of Henry Cokley, Susie Cokley and Georgia Haley, and affidavit of Percy Ricks. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

The State offered in evidence, in addition to the foregoing oral evidence offered in its behalf, in rebuttal of oral evidence and affidavits offered by defendants, the following separate and several affidavits:

Joint affidavit of T. B. Reynolds, W. M. Wellman, and J. V. Pollarde; affidavit of L. L. Maynor and affidavit of P. W. Campbell. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

The foregoing is all the evidence offered on the hearing of said motion to set aside the verdict and judgment founded thereon and to grant defendants a new trial.

ORDER OVERRULING MOTION FOR NEW TRIAL

On said June 22, 1931, after hearing and considering said motion, the Court overruled the same and refused to set aside the verdict of the jury and the judgment founded [fol. 148] thereon and to grant the defendants a new trial, and to this action of the court, defendant then and there reserved an exception.

The foregoing was presented to me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, and Judge presiding upon the trial of said cause, by the defendants in said cause, as a bill of exceptions of the trial and proceedings in said cause, on this the 17th day of September, 1931.

A. E. Hawkins, Judge.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing having been presented to me by the defendant in this cause, separately and severally, on the 17th day of September, 1931 within the time prescribed by law, as a true and correct bill of exceptions of the trial and proceedings in said cause, the same is accordingly signed and allowed of record as such by me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, on this the 10th day of November, 1931.

A. E. Hawkins, Judge.

[File endorsement omitted.]

[fol. 149] IN CIRCUIT COURT OF JACKSON COUNTY

CERTIFICATE OF APPEAL

I, C. A. Wann, Clerk of the Circuit Court in and for said County and State, hereby certify that the foregoing pages from 1 to 148, inclusive, contain a full, true, correct and complete transcript of the record and proceedings of the said Circuit Court in a certain cause therein pending wherein

the State of Alabama was plaintiff and Haywood Patterson was defendant.

I further certify that the said defendant did obtain an appeal to the Supreme Court (or Court of Appeals) of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama.

Witness my hand and seal at office this the 16th day of January, 1932.

(Signed) C. A. Wann, Clerk Circuit Court.

[fol. 150] IN SUPREME COURT OF ALABAMA

SUPPLEMENTAL RECORD

Order Fixing Date for Special Session Grand Jury, Spring, 1931

STATE OF ALABAMA,
Jackson County:

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed and adjourned on the 13th day of March, 1931, subject to be recalled at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County, which is now at recess, and which was organized for this (Spring) session of this Court to be reconvened at the courthouse in Scottsboro on Monday the 30th day of March, 1931 to consider such matters as may be submitted to it by the Court, or that deserves their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931 at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

Clerk's Order to Sheriff to Summons Grand Jury, at Recess

STATE OF ALABAMA,
Jackson County:

To the Sheriff of Jackson County, Alabama, Greetings:

A- order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Cir-

cuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931, subject to re-call and it appearing to the Court that since adjournment or recess a necessity has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summon said Grand Jury to appear at the Courthouse at Scottsboro, Alabama, on Monday the 30th day of March, 1931 at 10 o'clock A. M., to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931, subject to re-call: [fol. 151] Chas. Morgan, Jas. H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robt. E. Hall, Raymong Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this the 26th day of March, 1931.

C. A. Wann, Clerk Circuit Court.

I have executed the within by summoning all the within named Grand Jurymen this March 30th, 1931.

M. L. Vann, Sheriff.

Order Fixing Date for Special Session of Circuit Court

STATE OF ALABAMA,
Jackson County:

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6th, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is therefore hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday 6th day of April, 1931, and to continue as long as necessary to dis-

pose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County is hereby ordered to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilty may be taken in criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

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

[fol. 152] SPRING TERM, SPECIAL SESSION, MARCH 31ST, 1931

No-. 2402 & 2404

THE STATE OF ALABAMA

VS.

HAYWOOD PATTERSON et als.

Arraignment and Order for Trials

The Defendants being in open Court in person and represented by counsel, and being arraigned plead not guilty.

This case is set for trial on Monday April 6th, 1931, being Monday of the first week of said Special Session of the Spring Term, 1931.

It is ordered that the venire from which to select the jury to try this case consist of 100 jurors, and it appearing to the Court that 75 Regular Jurors having been regularly drawn for said Special Session of this Court, it is ordered that 25 Special Jurors be now drawn, and the jury box of Jackson County, being brought into Court and being well shaken, the Court in the presence of the defendants and their counsel, publicly drew therefrom the names of said 25 Special Jurors ordered.

The Clerk will immediately make a list of all jurors, both regular and Special, drawn for the trial of this case and

issue an order to the Sheriff of this County to summon all of said jurors, both regular and special, to appear in Court on the day this case is set for trial to serve as jurors.

The Sheriff of this County will forthwith serve on the defendants a copy of the list of all jurors so drawn, both regular and special, the said list showing which are regular and which are special jurors, together with a copy of the indictment against the defendants.

A. E. Hawkins, Judge.

I have executed the within by handing a copy of the original indictment, a copy of the Regular Venire and a copy of the Special Venire to each of the within named defendants, to-wit: Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris.

This the 4 day of April, 1931.

T. F. Griffin, Sheriff Etowah County.

[fol. 153] Supplement to Appeal

Certificate of Appeal

STATE OF ALABAMA,
Jackson County:

I, C. A. Wann, Clerk of the Circuit Court in and for said County and State, hereby certify that this supplement of "Order fixing date for Special Session Grand Jury, Spring, 1931", "Clerk's Order to Sheriff to summon Grand Jury, at Recess", "Order fixing date for Special Session of Circuit Court", "Arraignment and order for trial", are a part of the record in the case of the State vs. Haywood Patterson case No. 2404, as it appears on the record of the Circuit Court of Jackson County, Alabama, and the same was inadvertently left out of the transcript in this case and I hereby certify that with this supplement to the transcript contains a full, true and complete transcript of the record and proceedings in the case of The State of Alabama vs. Haywood Patterson now pending.

To all of which I hereby certify to the Supreme Court of Alabama.

Witness my hand, and seal of office this the 16th day of January, 1931, at the Courthouse in Scottsboro, Alabama.

C. A. Wann, Clerk Circuit Court.

[fol. 154] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8th Div., 320

HAYWOOD PATTERSON

vs.

STATE OF ALABAMA

Jackson Circuit Court

ARGUMENT AND SUBMISSION—Jan. 21, 1932

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

[fol. 155] IN SUPREME COURT OF ALABAMA, OCTOBER TERM. 1931-32

8 Div., 320

HAYWOOD PATTERSON

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

JUDGMENT—March 24, 1932

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.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, Haywood Patterson, having expired pending this appeal, it is ordered that the Sheriff of Jackson County, Alabama, deliver the

defendant, Haywood Patterson, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison, at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 13th day of May, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of said Haywood Patterson until he is dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 156] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 320

HAYWOOD PATTERSON

v.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

OPINION—Mar. 24, 1932

BROWN, J.:

The appellant was indicted, tried and convicted of the offense of rape.

No question was raised on the trial as to the sufficiency of the indictment, which is in the form prescribed by the statute, and under the uniform decisions of this court was sufficient to advise the defendant of the nature and cause of the accusation he was called upon to answer.—Code, [fol. 157] 1923, § 4356, form 88; Myers et al. v. The State, 84 Ala. 11; McQuirk v. The State, Ib. 435; 5 Am. St. Rep. 381; Schwartz v. The State, 37 Ala. 460; Malloy v. The State, 209 Ala. 219, 96 So. 57; Doas v. The State, 220 Ala. 30, 123 So. 230.

We cannot, on the record before us, affirm error in the action of the circuit court on appellant's petition for change of venue. The only evidence offered in support of the petition was the oath of the movants; the articles appearing in the three newspapers; the testimony of Wann,

the sheriff of the county, and Major Starnes, who was in command of the military company. This falls far short of showing to the reasonable satisfaction of the judicial mind an all pervading prejudice against the accused in the county of the trial, that would prevent him from obtaining a fair and impartial jury for his trial.

The accused and his alleged accomplices, who swore to the petition for change of venue, were confined in jail and were not in a position to ascertain the state of the general public feeling and sentiment of the county, and as was observed in Hawes v. The State, 88 Ala. 36 [54], their testimony is entitled to very little weight.

The publications in the local paper—The Sentinel—were not inflammatory, and contained no undue assumption of the guilt of the accused, and "Nothing appears to have been stated for the purpose of arousing indignation, or tending to create prejudice, except so far as the publication of the facts and circumstances of the alleged crime as they were developed might have had that effect; and in stating the facts there appears to have been no disposition [fol. 158] to suppress whatever was favorable to the accused."—Hawes v. The State, 88 Ala. 54.

In fact these publications were in a sense conciliatory, apparently designed to suppress rather than create an unlawful hostile sentiment against the accused.

As to the publications appearing in The Montgomery Advertiser and the Chattanooga paper, there was no evidence showing to what extent, if any, said papers were circulated in the county from which the jurors were to be drawn, and in the absence of such proof these publications were entitled to little or no weight.—Malloy v. The State, 209 Ala. 219.

The testimony of the witnesses Wann and Starnes, the only witnesses examined who were in a position to ascertain and know the nature of public feeling, goes to show that no threats or hostile demonstrations were expressed or made against the defendant; that the crowds that gathered were not disorderly, and really dispersed when advised by some of the leading citizens of Scottsboro to do so, and there is nothing in the evidence going to show race prejudice against the accused, or local prejudice in favor of the girls who are alleged to have been mistreated.

In fact neither the defendant nor his alleged victims resides in Jackson County.

In short the evidence shows nothing more than the gathering of a crowd impelled by curiosity, and not for hostile or punitive purposes.

True the evidence shows that the sheriff requested the Governor to send a company of the State Militia to protect the defendant, and that prompt orders to this end [fol. 159] were given and carried out, and that they were present during the proceedings; but this, without more, is not enough to authorize the granting of the motion.

We are, therefore, impelled to hold that the appellant has failed to sustain the allegations of his motion by sufficient evidence, and that the petition was denied without error.—Godau v. The State, 179 Ala. 27, 60 So. 908; Seams v. The State, 84 Ala. 410; Jones v. The State, 181 Ala. 63, 61 So. 434; Williams v. The State, 147 Ala. 10, 41 So. 992.

The facts going to show hostile demonstrations and threats toward the prisoner in Thompson v. The State, 117 Ala. 67, do not appear in the report of that case, but the record in that case shows that threats of lynching were made, and that a hostile crowd gathered with the purpose of following the sheriff and his prisoner to Huntsville where he was carried for safety, for the purpose of taking the prisoner from the sheriff, and followed as far as Greenbrier, where they met with providential hindrances that caused them to forego their purpose. Moreover, the person abused in that case was a mere child and a resident of Decatur, the county seat of the county where the trial was had.

[fol. 160] The only question raised on the trial as to the venire of jurors from which the jury to try the defendant was selected, is stated in the bill of exceptions as follows:

"Before proceeding to strike the jury in this case, defendant demanded a special venire, in addition to the regular venire, for the trial of this case. The court declined to allow a special venire for this case and required the defendant to strike a jury from the regular venire drawn for the week and the special venire drawn in the case of The State of Alabama v. Charley Weems and Clarence Norris, to which action of the court in not allowing him a special venire in this case, and requiring him to select a

jury from the regular venire and the special venire drawn in the case of the State v. Charley Weems and Clarence Norris, defendant duly and legally reserved an exception."

The case of this appellant, which was numbered 2404, in the circuit court, was argued and submitted on this appeal along with the case of Charley Weems and Clarence Norris, which was a joint indictment against this appellant, Charley Weems, Clarence Norris, and others, numbered 2402 in the circuit court, and the record in this case, as well as the record in the other case, shows that all of the defendants, including appellant, were duly arraigned on March 31st, 1931, in cases numbered 2402 and 2404; that they interposed a plea of not guilty, and both of said cases were set for trial on April 6th, 1931; that the court ordered that the jury to try the cases so set, should consist of one hundred jurors, composed of the regular venire of jurors [fol. 161] drawn for the week beginning April 6th, consisting of seventy-five, and twenty-five special jurors, then drawn from the jury box of the county in the presence of the defendant and his counsel, and the sheriff was ordered to summon all of said jurors to be present on the date set for the trial, and to serve each of the defendants with a list of the jurors so drawn and ordered summoned, together with a copy of the indictment, and that said order was duly executed by such service by the sheriff, on April 4th, 1931. The venire of jurors so drawn and summoned constituted the special venire for defendant's trial, and was in strict compliance with the statute.—Code of 1923, §§ 8644, 8649.

The section of the Code last above cited—§ 8649—provides: "Whenever the judge of any court trying capital felonies shall deem it proper to set two or more capital cases for trial on the same day, said judge may draw and have summoned one jury or one venire facias of petit jurors for the trial of all such cases so set for trial on the same day."

Prior to the enactment of this statute the law required a special venire for each case, whether it was set for trial along with other capital cases or not.—Walker v. State, 153 Ala. 31, 43 So. 640; Adams v. The State, 133 Ala. 166, 32 So. 227; Rambo v. The State, 134 Ala. 71, 32 So. 650.

But the quoted statute changed this rule as applied to cases set for trial on the same day.—Umble v. The State,

207 Ala. 508, 93 So. 531; Stewart v. The State, 18 Ala. App. 92, 89 So. 391.

[fol. 162] The contention, therefore, of the appellant, that he was entitled to a special venire other than the special venire so drawn and constituted is without merit.

The State's witness, Victoria Price, the person alleged to have been raped, on cross-examination by the defendant's counsel, testified, inter alia: "I have been married; I have been married twice. Both of my husbands are not now living; one of them is dead." Defendant's counsel thereupon asked the witness: "Are you divorced?" This question was objected to by the solicitor, and the court sustained the objection, and properly so, because the question clearly called for immaterial evidence.

This witness was also asked on cross-examination: "Did you ever practice prostitution?" Objection to this question was likewise well sustained. There was no evidence at this time in the case, and, as for that matter, no such evidence was adduced on the trial, going to show that the defendant had intercourse with the witness by and with her consent; therefore, the question elicited immaterial evidence.—Griffin v. State, 155 Al. 88; Rice v. State of Florida, 35 Fla. 236, 17 So. 286; Story v. The State, 178 Ala. 98; 22 R. C. L. 1208, § 42.

Previous chastity is not an essential element of the offense charged in the indictment, and where this is so, rape may be committed on an unchaste woman, or even a common prostitute.—Bailey v. The Commonwealth, 82 Va. 107, 3 A. L. R. 87; 22 R. C. L. 1175, § 5.

For like reasons the objection of the solicitor to the question, "Do you know whether or not these girls had a venereal disease?", was properly sustained. Moreover, to have pursued the investigation proposed by this question would have engendered an unprofitable multiplication of the issues.—Southern Railway Company v. Plott, 131 Ala. 312.

[fol. 163] The remaining questions relate to the order of the court denying the motion for a new trial.

This invites a review: (1) of the evidence and its sufficiency to support the verdict; (2) of the proceedings on the trial for errors alleged to have been committed prejudicial

to the defendant, and, (3) whether or not evidence alleged to have been discovered since the trial is such as requires that a new trial be granted. These questions will be treated in the order stated.

The evidence without dispute proves the corpus delicti, — That is, that Victoria Price was forcibly ravished, — and the single litigated question was whether or not the defendant was one of the persons guilty of the offense,— a question of identity.

The evidence shows that the said Victoria Price, a white woman twenty-one years of age, on the occasion was riding on a fast freight train running between Chattanooga, Tennessee, and Huntsville, Alabama, in a gondola car partly laden with chert or gravel, with her girl companion, Ruby Bates, white, age seventeen years; that there were seven white boys in the same car. The girls were garbed in overalls; that twelve boys of the negro race attacked the white boys and forced all of them, except one Gilley, the smallest of the white boys, off the train while it was in motion, and then using force stripped the girls of their outer garments, and six of the negroes ravished Victoria Price and six ravished the other girl. The State witnesses identified the defendant as one of the ravishers of Victoria Price. The evidence further shows that when the train was stopped at Paint Rock, by the deputy sheriff and the Posse comitatus, the alleged victim, Victoria Price, was in a state of exhaustion, requiring immediate medical atten- [fol. 164] tion; that when the two young women were examined on the afternoon of the same day by Dr. Bridges, a physician at Scottsboro, to quote from his testimony, "I found their vaginas were loaded with male semen, and the young girl was probably a little more used than the other, the other not showing as much. On the body were bruises on the lower part of the groin on each side of Ruby Bates, that is the young one, and there was a bruised spot around the hips, or the lower part of the back, on the other girl, the Price girl, a few scratches, small scratches on the hands and arms, and a blue spot here (indicating) on the neck of one of them. I think that was Mrs. Price, I will not be sure about that."

The defendant's contention is, and he offered some testimony to sustain this contention, that while he was on the train he did not go on the car where the girls were, and did

not participate in the affray with the white boys, but remained on another part of the train. This was the substance of his own testimony. He testified, however, that one of the white boys walked by where he was before the fight and almost pushed him off the train, and some words passed between him and said white boys.

Roy Wright, one of the defendant's companions traveling with him, who was not on trial, and who was not convicted on his subsequent trial, as was stated in argument at the bar, was offered as a witness by defendant, and testified:

"My name is Roy Wright. I know this boy that just left the stand. I was on the train with him. I have a brother here that was on the train. He works in Chattanooga for the Lookout Furniture Company. My mother works there and has been working there a pretty good while. I am fourteen years old. I got on the train with [fol. 165] this defendant at Chattanooga. Gene Williams, Andy Wright, the defendant and I all left Chattanooga together. We were intending to go to Memphis. This boy (defendant) did not have anything to do with those girls on that train. He was not down in the car with those girls; he was standing up on top of a box car. I saw a pistol. A long, tall, black fellow with duck overalls on; that is the only pistol I saw. This boy (defendant) did not have a knife. He did not open his mouth to the girls. I saw the girls on the train. They were on an oil car when I saw them. There were nine negroes down there with the girls and all had intercourse with them. I saw all of them have intercourse with them. I saw all of them have intercourse; I saw that with my own eyes. The defendant was not down there; he was never down there with the girls. The boys I left Chattanooga with were named Haywood Patterson, Eugene Williams and Andy Wright."

On cross-examination the witness testified:

"I first saw the girls on the oil tank; that was up in Chattanooga before we left the yards. I was by myself when I saw the girls. They caught the oil tank in front of the car Haywood Patterson, Andy Wright and Eugene Williams were on and I caught a box car and walked over the box car and passed by that car the girls were in and walked

on down to the oil car where they were. The girls were not in the gondola car then, but were in the oil car. I walked along the oil car until got to where these boys were. When I got down there, I found three boys there. The others were away up further; I did not see the other boys until we got to Stevenson.

"The girls rode the oil car down to Stevenson and then got off that car and got in this gondola, and then we boys got on the car together. There were fourteen colored boys on the car together. I had seen the girls in the gondola. [fol. 166] I did not tell the fourteen boys the girls were on the train; I did not tell them anything. I saw the girls myself. I do not know whether the other boys saw them, too. We met the other boys in Stevenson. We did not talk about the girls. I did not hear someone say, 'Let's go down there.' The way it was, those white boys, when we were laying back on the oil car, kept walking backward and forward across it and liked to have knocked the defendant off. When we left out of Stevenson coming this way, we were on a cross-tie car; we had gotten off the oil car. This cross-tie car was about three cars from the gondola these girls were in. We started on the cross-tie car from Stevenson. There were fourteen in the car when we started from Stevenson, all of us in the same car. There was nothing said about the girls being down in the gondola; we were talking about men. We knew that the men were down there, too. They had been passing by and we had a few little words. Haywood Patterson, Eugene Williams, Andy Wright and I were on the oil car and the white boys kept walking backward and forward and liked to have knocked Haywood Patterson off and Haywood said: 'How come you did not ask me to move,' and so the white man said: 'What do you care?', and Haywood said: 'I care a lot, I don't want to be knocked off,' and the white man said: 'We will settle it when the train stops.' It was the white boy that said that. He was on the train and he went up and got some more white boys and then the train stopped in Stevenson and they got off and went up in the gondola. The boys all got off and went up in the gondola. The white girls went up there with them, I guess, or they were up there. The negroes all got on a cross-tie car and stayed there. I was on the cross-tie car, all fourteen of us on the cross-tie car. The cross-tie car was not the next

[fol. 167] car to the gondola, but was three cars from it. We all got on the cross-tie car. After the train started off, the first one of the white men came over, the one that had a big, black belt, and we were telling the other boys about it, that they were intending to put us off, that is that the white boys were intending to put us off, but we overpowered them and put them off; that occurred down in the gondola. We all made it up among ourselves to put them off; we made it up while we were over there on the cross-tie car, and after we all had made it up among ourselves to go over and put the white boys off, we all came along the cross-tie car and got over the box car and jumped down in the gondola. I did not put any of the white boys off, but the little boy and I saved the life of one of them. They were intending to put him off and every time his feet would hit, it would throw him in between the cars, and we took pity on him and told him we would let him alone, and they reached down and pulled him back up and he got on the gondola and Haywood, Eugene and Andy went back over the top and left the rest in there, and I was sitting up on the box car, together with Patterson. He and I were on one box car and Eugene and Andy on the other one. I was sitting there looking in on the gondola, but Andy, Haywood and Eugene were not. Haywood was sitting as far as that man (indicating) from me and the others were back on the other box car. Andy went down in the gondola when [fol. 168] they were putting the men off; it was not at Paint Rock, but right after the train left Stevenson; that is not Andy Patterson sitting right there (indicating); his name is Haywood Patterson. We all went down in there when we went to put off the men. Patterson went down there with us; all four of us went down in there to put them off. I was in the gondola when I told them not to throw him off but to bring him back.

"The long, tall, black fellow had the pistol. He is not here. I saw none of those here with a pistol. I saw five of these men here rape the girl. After we put the men off, we went back on the box car and I was sitting up on the box car holding to that wheel, looking down at them. I did not tell the officers I saw everyone rape her but me. I did not tell them that. I did not tell them that I saw the defendant rape her. I did not see the defendant rape the Bates girl. I did not see him do anything except he just

helped put off the men. He was putting them off because they kept stepping across him and talking about putting us off. I saw one knife down in there. That boy back there (indicating) had it, Eugene; he is the one that had the knife. I did not see him hold it on the throat of that girl. He did not have hold of her throat, because he was sitting up on the box car. I saw one down in the gondola, a little white-handle knife. Clarence Norris had that knife; I do not know where he got it; I do not know what he did with it. He had it the last time I know anything about it. I am sure the defendant did not do anything."

[fol. 169] Some of defendant's other witnesses testified that the defendant was in the gondola car and participated in the affray with the white boys, but that he did not participate in the commission of the rape. This testimony tends to show a conspiracy between those who went into the car and forced the white boys from the train, and that this appellant aided and abetted in the commission of the offense.—22 R. C. L. 1176, § 6; State v. Burns, 32 Conn. 213, 77 Atl. 1083; 16 Ann. Cas. 465; State ex rel. Attorney General v. Tally, Judge, &c., 102 Ala. 25.

It is settled law, that an order refusing a new trial on the ground that the evidence is not sufficient to support the verdict, or that the verdict is contrary to the evidence, will not be disturbed, unless after allowing all reasonable presumptions of its correctness, the preponderance of the evidence against the verdict is so decided as to clearly convince the court that it is wrong and unjust.—Cobb v. Malone & Collins, 92 Ala. 630.

Prior to the enactment of the statute authorizing review on appeals of rulings on motions for new trials, such rulings were not reviewable, and the statute as first enacted applied only to civil actions at law. After its construction and application in the case cited and numerous decisions reaffirming the rule of that case, the statute was amended by the Act of September 22, 1915, p. 722, making it applicable to appeals in criminal cases, and since that amendment the rule announced in Cobb v. Malone & Collins, supra, has been repeatedly reaffirmed.—Dacs v. Lindsey Mill Co., 210 Ala. 183, 97 So. 647; Hatfield v. Riley, 199 Ala. 388, 70 So. 380; Price v. Price, Ib. 433, 74 So. 381. And the same rule is applicable to criminal cases.—Caldwell v. State, 203 Ala. 412, 83 So. 272.

[fol. 170] Applying this rule we are not able to affirm that the verdict of the jury is contrary to the weight of the evidence. On the contrary, the verdict is amply supported by the evidence.

We have heretofore treated all exceptions reserved during the trial, and have found nothing to warrant a reversal or justify the granting of a new trial.

But the appellant insists that he was prejudiced by the applause of the people in the courtroom when the jury, in another case involving the same transaction and other defendants, returned into court with a verdict of guilty and recommending the death penalty, and the court should have ex mero motu declared a mistrial and continued the case.

The only recital in the bill of exceptions which purports to give a full history of the trial is, after the examination of the first witness for the State was concluded, "Thereupon the following occurred: The Court: I think the jury is ready to report; Sheriff, take this jury into the jury room while the other jury reports. Thereupon the jury retired to the jury room." Following this another State witness was called and the trial proceeded. There is no recital of any disturbance or applause; nor was any question raised in respect thereto.

The motion for a new trial alleges that when the jury reported in the case of State v. Weems and Norris, after the jury in this case had been carried to the jury room and the door closed, but to which the transom was partly open, the spectators in the courtroom burst into applause, and this applause spread to persons on the streets around the courthouse, and that some were heard to exclaim "whoopee." And offered evidence aliunda, consisting of the exparte affidavits of the defendant and others, and the testimony of witnesses given ore tenus, some of which tended to prove these averments.

[fol. 171] The purpose of the statute which allows a bill of exceptions is to bring into the record all matters, not a part of the record proper, for the purposes of the appeal, that the court may have before it a history of the case, in so far as it is necessary to the questions presented for review, and all matters occurring during the trial in the presence of the court of which the court might take notice,

must be stated in the body of the bill in the order of their occurrence, and to be reviewable on appeal, the general rule is that some action of the court must be invoked in respect thereto.—Hendry v. State, 215 Ala. 635, 112 So. 212; Dempsey v. The State, 15 Ala. App. 199, 72 So. 773; Decatur Water Works Co. v. Foster, 161 Ala. 176, 49 So. 759; Sovereign Camp, W. O. W. v. Gay, 20 Ala. App. 650, 104 So. 895.

It is not permissible to inject such matters—occurrences during the trial in the presence of the court—by evidence aliunde on the hearing of the motion for a new trial, for the all-sufficient reason that such practice would inject into such hearing a controversy in respect to which the court might be advised by his own personal observation, leading to the conclusion that the issue was without merit.—Hopkins v. Commonwealth, 210 Ky. 378, 275 S. W. 881.

We therefore hold that this matter is not presented, and error in denying the motion for a new trial cannot be affirmed on this ground.

It is also urged that there was some commotion on the streets when the jury reported in the Weems and Norris [fol. 171½] Case, and that there was a band parade playing popular tunes such as "There'll Be A Hot Time In The Old Town Tonight." The evidence goes to show, in fact is without dispute, that the parade was put on by the Ford Motor Company in demonstrating Ford trucks, and had no connection with the proceedings in this case against the defendant; that the noise was made by a graphophone with an amplifier to attract the people in Scottsboro to inspect the caravan of Ford trucks, brought into Scottsboro by the "Ford people" in no way connected with that county, except they had an agency there. The only other music was by the hosiery mill band playing for the guard mount of the militia after six o'clock in the evening.

The evidence as to the extent of the commotion or applause in the street was in conflict, and the evidence fails to show that it was such as to reach the ears of the jury, which was then confined in the jury room in the courthouse.

There was, therefore, nothing in these matters to put the court in error for refusing a new trial.

No question was raised on the trial as to the constituent element of the venire from which the jury was selected, except as heretofore treated, and there is nothing in the statutes regulating the selection of persons qualified to serve as jurors, or in the interpretation of said statutes

by the courts that in any way discriminates against any citizen as to his right to serve as a juror; nor does the evidence show any such discrimination in this case.—Code of 1923, § 8603; Acts 1913, p. 59; Thomas v. State of Texas, 212 U. S. 278; Ragland v. The State, 187 Ala. 5, 65 So. 776. [fol. 172] The remaining ground to be considered relates to the question of newly discovered evidence, and as heretofore stated, there is nothing in the evidence, or the circumstances which any of the evidence tends to prove, going to show that the accused had sexual intercourse with the witness Victoria Price, by or with her consent, express or implied.

On the contrary, the evidence shows that she was forcibly ravished, and the defendant's sole contention is that he was not present in the car at the time the offense was committed, and did not aid or abet those who participated in the crime. In these circumstances evidence going to show specific acts of sexual intercourse between the alleged victim and other men, and her general reputation for chastity, was not material as going to show consent. Rice v. State of Florida, 35 Fla. 236, 17 So. 286; 48 A. B. R. 245; Griffin v. The State, 155 Ala. 88, 46 So. 481; 22 R. C. L. 1175, § 5; McQuirk v. The State, 84 Ala. 435, 4 So. 775.

It is the settled law of this State, which is in accord with the weight of authority, that newly discovered evidence which goes merely to the credibility of witnesses examined on the trial, is not such as authorizes the granting of a new trial. Fries v. Acme White Lead & Color Works, 201 Ala. 613, 79 So. 45; Southern Railway Company v. Wideman, Admr., 119 Ala. 565, 24 So. 764; Vanderburg v. W. W. Campbell, 64 Miss. 89, 8 So. 206; Goodwin v. Aaron, 203 Ala. 677, 85 So. 17; Harrell v. Gondolf, 6 La. App. 50; [fol. 173] Doiron v. Baker-Wakefield Cypress Co., 131 La. 618, 59 So. 1000.

The motion for new trial was, therefore, denied without error.

No reversible error appearing in the record and proceedings of the trial, the judgment of conviction is due to be affirmed. It is so ordered.

Affirmed.

Gardner, Thomas, Bouldin, Foster and Knight, JJ., concur.

Anderson, C. J., dissents.

[fol. 174] Clerk's certificate to foregoing paper omitted in printing.

[fol. 175] IN SUPREME COURT OF ALABAMA

No. 320

HAYWOOD PATTERSON, Appellant,

vs.

STATE OF ALABAMA, Appellee

On Appeal from the Circuit Court of Jackson County, Alabama

APPLICATION FOR REHEARING—Filed March 25, 1932

[fol. 176] [Title omitted]

Comes the appellant, Haywood Patterson, and hereby makes application for a rehearing of said cause and moves the Court to set aside the judgment of conditional affirmance rendered in said cause and to grant him a new trial and that said cause be reversed and remanded to the Circuit Court of Jackson County, Alabama, for the causes and reasons assigned hereinafter in this application.

G. W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allan Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Schrieber, Attorneys for Appellant.

[fol. 177] [Title omitted]

Now comes the appellant, Haywood Patterson, in the above cause and presents this his application for a rehearing therein, and prays the Court to set aside and vacate the judgment and opinion of conditional affirmance rendered in said cause and to enter a judgment in favor of appellant or reversing and remanding said cause, and in support of their application for a rehearing presents the following assignments of error with brief and argument in support thereof.

I

The Court erred and misconstrued appellants' assignment of errors, as set out in his brief and in this cause, and that his petition for a change of venue with the exhibits thereto and evidence in support thereof legally entitled him to a change of venue, and the action of the Circuit Court of Jackson County was reversible error and violative of their legal rights as provided by Article 6, of the Constitution of the United States, which provides that, "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[fol. 178] II

The Court erred and its conditional judgment of affirmance is violative of that portion of the Constitution of the United States in Article 14, Section 1, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III

The Court erred in not granting a new trial and reversing the judgment of the Circuit Court of Jackson County, because the appellants were denied a speedy and public trial by an impartial jury of the State and District wherein the alleged crime was alleged to have been committed, but was tried under the influence of a mob and a biased jury.

IV

The Court erred and a new trial should be granted because the indictment against the appellants merely charges

that the appellants "Before the finding of the indictment forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama", and said indictment was illegal and void, and the Act of the Legislature of the State of Alabama, upon which said indictment was founded, was unconstitutional and void and in conflict with the Constitution of the United States, which provides, that the appellants shall "be informed of the nature and cause of the accusation" against them at the time of the trial, and their rights were denied and abridged by the judgment of the Circuit Court of Jackson County, Alabama.

V

The Court erred and its conditional judgment of affirmance should be reversed and rescinded and the judgment of the Circuit Court of Jackson County reversed, because the jury was not interrogated as to whether or not they bore any race prejudice against the appellants, and because of the presence of a mob at and about the Court house while the jury trying these appellants was hearing the testimony and considering their case, a mob was demonstrating in the [fol. 179] Court house and about the streets in Scottsboro within the sight and hearing and in the presence of the jury trying these appellants, which deprived them of a trial by an impartial jury of the State and District wherein the crime was alleged to have been committed.

VI

The Court erred in not granting a new trial because the appellants were not represented by counsel and had no opportunity to prepare their case for trial and on account of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel and denied to the appellants due process of law.

VII

The Court erred in not granting a new trial because the jury commission and the officers executing the jury law of Jackson County purposely excluded all negroes from the special grand jury which brought in the indictment against the appellants, and also excluded all negroes from the

special panel or venire of jurors from which the jury was selected to try appellants, and such exclusion of negroes was based upon race discrimination and race prejudice because the appellants were negroes and the prosecuting witness a white woman and this constituted a denial of that provision of the United States Constitution, Article 14, Section 1, which provides, "equal protection of the law to all persons."

VIII

The Court erred and the judgment of the Circuit Court of Jackson County should be reversed, because there was present at the Court a mob threatening and menacing the appellants, embarrassed and coerced the members of the trial jury, intimidated and prejudiced the minds of said jury by a demonstration before the trial began, and a demonstration after the trial began and during the time that Court was in session, and because of the presence of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel, the appellants were denied due *rp*ocess of law, and the judgment against them was void.

[fol. 180]

IX

A new trial should be granted and the judgment of the Court below reversed, because the indictment was void and because Section — of the Code of Alabama, 1907, and Form 84 of Code Section 5407 is unconstitutional because in conflict with and repugnant to the Constitution of the United States, Article 14, Section 1.

X

The Court erred and a new trial should be granted because the Supreme Court of the State of Alabama follows in this cause a ruling laid down in said Court in the case of Malloy v. State, 209 Ala. 219, which said ruling is repugnant to and in contr*o*vention of the Constitution of the United States, as above cited, which provides that "No persons shall be put to answer any criminal charge except by indictment, etc. and that the indictment should inform him of the charge against him, and the ruling of the Supreme Court of Alabama in Malloy v. State, 209 Ala. 219, should

be overruled because repugnant to the Constitution of the United States, and because it deprives these appellants of their legal and constitutional rights to be informed legally of the charge against them.

G. W. Chamlee, J. R. Brodsky, Irving Schwab, Attorneys for Appellants.

I hereby certify that I served a copy of this petition to rehear with the brief attached hereunto upon the Honorable Thomas E. Knight, Jr., Attorney-General for the State of Alabama, on this the 25 day of March, 1932.

G. W. Chamlee, Attorney for Appellants.

[fol. 181] Brief and Citations of the Law in Support of the Above and Foregoing Assignments on the Petition to Rehear in This Cause

Point I

The venue should have been changed, as set out in assignmen*r* No. I of this petition to rehear, because the opi*b*ion of conditional affirmance of this Court is in direct conflict with the opinion and decision handed down in the case of Downer v. Dunnaway, United States Circuit Court of Appeals, 5th Circuit, in cause No. 6286 at *L*ew Orleans, Louisiana. Also it is in conflict with the decision of the case of Moore vs. Dempsey, 261 U. S. 86, and also because it is in conflict with the case of Thompson vs. State, 117 Ala. 67, and other cases cited in our original brief in the case of Ozie Powell, et al, vs. State of Alabama filed on the original hearing of this cause.

Point II

The Court erred in its conditional judgment of affirmance, because throughout this record there is disclosed a total disregard of the legal rights of these appellants to a fair and an impartial trial, and to *f*ue process of law, as provided for in the Constitution of the United States.

Downer vs. Dunnaway, U. S. Circuit Court of Appeals, 5th Circuit (not yet published) in case No. 6289.

Moore v. Dempsey, 261 I. S. 86.

Point III

The Court erred in its conditional judgment of affirmance, because all negroes of Jackson County had been excluded from the jury box and no negroes were summoned for the grand jury that indicted the appellants, or on the trial jury which tried them.

Neal v. Delaware, 105 U. S. 370, 397;
Rogers v. Alabama, 192 U. S. 226;
Carter v. Texas, 177 U. S. 442;
Strander v. W. Va., 100 U. S. 303;
Gibson v. Miss., 162 U. S. 565;
Ex. P. Virginia, 100 U. S. 313;
Green v. State, 73 Ala. 26;
Roberson v. State, 65 Fla. 97;
State v. Peoples, 131 N. C. 784;
Boneparte v. State, 65 Fla. 97;
Montgomery v. State, 55 *a*Fla. 97.

[fol. 182] Point IV

The indictment returned against the Appellants was illegal and void for the reason, "That general rule as to charging a purely statutory offense is subject to the qualification, declared to be fundamental in the law of procedure, that the accused must be apprised by the indictment, with reasonable *c*artainty of the nature of the accusation against him, so that he may prepare his defense and plead the judgment as a bar to a subsequent prosecution for the same offense."

United States v. Simmons, 96 U. S. 360, 24 L. Ed. 819;
Arizona—Earp v. State (Ariz.), 184 P. 942;
Arkansas—Glass v. State, 45 Ark. 173;
Holland v. State, 11 Ark. 214, 163 S. W. 781;
Florida—Edwards v. State, 62 Fla. 40, 56 So. 401;
Johnson vs. State, 58 Fla. 68, 50 So. 529;
Illinois—People v. Scatturn, 238 Ill. 313, 97 N. E. 332;
Kentucky—Commonwealth v. Cook, 13 B. Mon. 149;
State v. Jenkins (Mo. App.), 193 S. W. 604;
New Hampshire—State v. Peiroe, 43 N. H. 272;
New Jersey—State v. Kittredge, 86 N. J. L. 495;
State v. Nugent, 77 N. J. L. 157, 71 Arl. 481;
New York—People v. Taylor, 3 Dem. 91 Ses;
People v. Draper, 169 App. Div. 479, 154 N. Y. S. 1034;

Oregon—State v. Rosasco (Or.), 2-5 P. 290;
Texas—Portgood v. State, 29 Tex. 47, 95 A. M. Dec. 258; Kennedy v. State (Tex. Cr. App), 216 S. W. 1086;
Vermont—State v. Villa, 92 Vt. 121, A. 935;
"Joyce on Indictments, page 459."

When the statute creates the offense and defines it, it is sufficient if the indictment uses the words of the statute, unless the words be indefinite and vagie, ambiguous or general, in which case indictment must so particularize the act complained of that the party charged shall be in no doubt of the offense alleged against him. The certainty required is that which will enable him to plead the verdict in bar of any future action. U. S. v. Crosby, 25 Fed. Case No. 14, 893; 4 Cranch C. C. 517 Per Bond J.

And in a recent case in the United States Circuit Court of Appeals it is said that "where a crime is a statutory one, the indictment must set forth with clearness and certainty every essential element of which it is composed. It must portray the facts which the pleader claims constitute the alleged transgression so disrinctly as to advise the accused of the charge which he has to meet and to give him a fair opportunity to prepare his defense, so particularly as to enable him to avail hilself of a conviction or an acquittal in [fol. 183] defense of another prosecution for the same offense, and so clearly that the Court may be able to determine whether or not the facts there stated are sufficient to support a conviction."

Armour Packing Co. v. United States, 153 Fed. 116, citing Ledbetter v. U. S. 616, and other cases cited on page 545 of "Joyce on Indictments."

Point V

The Court erred in its conditional judgment of affirmance in this cause, because a new trial should be granted for the reason that members of the trial jury were not interrogated as to whether or not they bore racial prejudice against the appellants, and because of the presence of a mob at and about the Court House, and because of public demonstration prior to and during the trial, the appellants' rights were violated and the Constitution of the United States was violated, because under the Constitution it was provided

that appellants should have a fair trial and be represented by counsel, and they did not have a fair trial because of the presence of a mob threatening and intimidating, and because of a parade and demonstration put on in and around the Court house at and before their trial rendered the judgment illegal and void and here refers to cases cited on pages 38 to 61 of the main briefs filed with this Honorable Court in this cause, the brief being styled Ozie Powell, et al, vs. State of Alabama, but they call to the attention of the Court the following cases:

Moore v. Dempsey, 261 U. S. 86;
Frank v. Mangrum, 237 U. S. 309;
Downer v. Dunnaway, U. S. Circuit Court of Appeals, Fifth Circuit, No. 6206 (not yet reported);
Seay v. State, 207 Ala. 453, 93 So. 403;
Holladay v. State, 100 So. (Ala.) 86;
Clayton v. State, 123 So. (Ala.) 250;
Collum v. State, 107 So. (Ala.) 35;
Bradley v. State, 21 Ala. App. 539;
110 So. 157 (affd. 215 Ala. 140);
Collier v. State, 115 Ga. 803;
State v. Wilson, 42 S. E. (N. C.) 556;
Hamilton v. State, 57 S. W. (tex.) 431;
Voughan v. State, 57 Ark. 1;
Douglas v. State, 152 So. 379;
Liggon v. State, 200 S. W. (tex.) 550;
State v. Weldon, 91 S. C. 29.

[fol. 184] We are confident that this Honorable Court misconstrued our assignments of error on the hearing of this cause and that the judgment of the Circuit Court of Jackson County should be reversed and a new trial granted and the venue changed to some other county and remanded for another trial.

Respectfully submitted.

George W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allen Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Schrieber, Attorneys for Appellants.

[fol. 185] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 320

HAYWOOD PATTERSON

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER OVERRULING PETITION FOR REHEARING—April 9, 1932

Application for rehearing having been filed in this cause on March 25th, 1932, and each and every ground of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition be and the same are hereby overruled, and the application for rehearing be and the same is hereby overruled.

[fol. 186] IN SUPREME COURT OF ALABAMA

No. 320

HAYWOOD PATTERSON, Appellant,

vs.

STATE OF ALABAMA, Appellee

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

The petitioner, Haywood Patterson, Appellant, in the above styled cause most respectfully represents that on the 24th day of March, 1932, this Honorable Court announced its affirmance of the judgment of the Circuit Court of Jackson County, Alabama, imposing the death penalty upon this petitioner and fixing May 13, 1932, as the date for his execution, and that he filed his petition for a rehearing in this

Honorable Court, which was overruled and disallowed on April 9, 1932, and he desires to obtain a stay of proceedings or a recalling of the order imposing the death sentence upon him to give him and his counsel time to comply with the legal requirements in the preparation and filing of his petition for certiorari in the Supreme Court of the United States at Washington, D. C., for the purpose of having his case reviewed by the Supreme Court of the United States under the rules and pleadings prescribed for trials in that tribunal.

Your petitioner makes this application under the provisions of Section 8(d) of the Act of Congress of February 13, 1925, (U. S. Code, title 28, section 350), and in support thereof presents the following:

Your petitioner feeling himself aggrieved by the judgment of this Court and as he is advised by his attorney a petition for a writ of certiorari to the Supreme Court of the United States is to be filed, the grounds being in brief as follows:

[fol. 187] That the judgment of this Court in affirming the judgment of the Circuit Court of Jackson County has deprived, or is about to deprive, your petitioner of his life and liberty without due process of law and has denied to your petitioner the equal protection of the laws as provided by the 14th Amendment to the Constitution of the United States in that:

(a) A change of venue was denied to your petitioner although duly applied for compelling your petitioner to face trial in the presence of a hostile and threatening mob.

(b) The indictment did not apprise the petitioner of the charge against him with the certainty required.

(c) Your petitioner was denied an opportunity to employ counsel or to be properly represented by counsel and to prepare his case for trial.

(d) Mob spirit and hysteria dominated the trial, terrorized jury and counsel, interfering with the course of justice and denying to your petitioner his right to a fair and impartial trial under the law of the land.

(e) Negroes were improperly excluded from the grand and petit jury panels, and for any other reasons appearing in the transcript of this cause.

Your petitioner is advised by counsel that under the Federal Statutes and rules of the Supreme Court of the United States the following steps must be taken before the petition for the writ of certiorari is deemed "docketed," and submitted to the Supreme Court:

I

The transcript of the proceedings before this Court must be certified by the Clerk thereof (Rules of the Supreme Court of the United States 38 Subd. 1). Your petitioner is advised by his counsel that a præcipe for the preparation and certification of this transcript is being filed with the Clerk on the day of the presentation of this petition together with copies of the record on appeal, certified [fol. 188] copies of the opinion and all other records required by the rules of the Supreme Court which the attorneys for your petitioner may have in their possession.

II

The transcript must be forwarded to the Government Printing Office for printing. Rule 38, subd. 7, requires that the record of the Court below must be printed and filed prior to the submission of the petition for the writ of certiorari.

III

The printing of these records must be completed before the petition for a writ of certiorari and the brief in support thereof can be placed in final form. This is necessary in order that the proper references to the transcript may be made in the petition and brief.

IV

The rules of the Supreme Court also require that the petition for the writ of certiorari and the brief in support thereof be likewise printed before the application is deemed docketed.

V

All of the aforementioned procedural requirements must be completed before the Supreme Court will entertain the

petition for writ of certiorari. By the rules of the Supreme Court of the United States, the Acts of Congress, these procedural steps must be complied with within ninety days from the date of the entry of the final decree or the judgment of this Court.

Your petitioner is advised by his attorneys that they will proceed with the docketing of the petition for the writ of certiorari with dispatch and will complete same without any undue delay.

Your petitioner respectfully asks this Court to take into consideration, not only the aforementioned technical delays but the additional factor—the distances between the seat [fol. 189] of this Court, the seat of the Supreme Court of the United States and the offices of the attorneys for the petitioner, and your petitioner has been advised that it will take your petitioner and his counsel almost all, if not the entire ninety days allowed by Federal statute for the preparation and verification, certification and printing of the transcript, petition for the writ of certiorari and brief in support thereof.

Your petitioner respectfully asks this Court to also take into consideration the additional time required by the Supreme Court for the consideration and decision upon the petition for the writ of certiorari.

The record in the instant case is voluminous and your petitioner respectfully submits that the Supreme Court of the United States will need time to study the records in this case as well as in the two other related cases of Ozie Powell et al. vs. State of Alabama.

Even if it were practicable or possible to complete the docketing for the writ of certiorari before May 13, 1932, the decision of the Supreme Court of the United States will have to be made upon the petition before the writ of certiorari will issue.

Your petitioner respectfully submits to this Honorable Court that a stay of execution is necessary in order to give your petitioner an adequate opportunity to make application for review by certiorari by the Supreme Court of the United States. *They* respectfully prays that an order be made by this Honorable Court providing for a reasonable stay of execution pending the preparation and docketing of a petition for a writ of certiorari and pending the con-

sideration and decision of the Supreme Court of the United States thereon.

Respectfully submitted.

(Signed) Haywood Patterson, Petitioner, (Signed) by G. W. Chamlee, Atty. (Signed) G. W. Chamlee, Atty.

[fol. 190] *Duly sworn to by George W. Chamlee. Jurat omitted in printing.*

A copy of the foregoing petition was served on Honorable Thomas E. Knight, Attorney General for the State of Alabama, on this the 18 day of April, 1932.

(Signed) G. W. Chamlee, Attorneys.

[fol. 191] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 320

HAYWOOD PATTERSON

vs.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause it is made to appear to the Court by petition that defendant (appellant) desires to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendant, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoner Haywood Patterson having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932 to June 24th, 1932. It is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendant Haywood Patterson to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of said Haywood Patterson until he is dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 192] IN SUPREME COURT OF ALABAMA

No. 320

HAYWOOD PATTERSON, Appellant,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court:

You are hereby requested 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 on appeal in said cause, a copy of which we submit herewith.

2. The opinions of the Supreme Court of the State of Alabama, certified copies of which we submit herewith.

3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.

4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.

5. The petition for a rehearing, copy of which we submit herewith.

6. The final judgment and decision of the Supreme Court of the State of Alabama.

7. The copy of this præcipe.

8. Your certificate to the record that it is a complete record in said cause.

Dated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for Appellants.

[File endorsement omitted.]

[fol. 193] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.