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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No.

OZIE POWELL, WILLIE ROBERSON, ANDY
WRIGHT, AND OLEN MONTGOMERY, PETI-
TIONERS,

vs.

STATE OF ALABAMA

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

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[Caption omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE OF ALABAMA

vs.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN
MONTGOMERY, and EUGENE WILLIAMS

INDICTMENT—Filed March 31, 1931

THE STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT, SPECIAL MARCH TERM, 1931

The Grand Jury of said County charge that before the finding of this indictment Haywood Patterson, E-ge-e Williams, Charlie Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the Grand Jury are otherwise unknown than as stated forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

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

No. 2402. State of Alabama, Jackson County. The State vs. Haywood Patterson et al. Indictment. Rape. No Prosecutor. Witnesses: Ruby Bates, Victoria Price, Orvall Gilley, Dr. R. R. Bridges, Dr. Linch, C. M. Latham, C. S. Broadway, C. F. Simmons, Tom Taylor Rousseau, Jim [fol. 2] Broadway. A true bill. J. N. Ragsdale, Foreman Grand Jury.

[File endorsement omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT

No. 2402

WRIT OF ARREST

To any sheriff of the State of Alabama, Greeting:

An indictment having been found against Haywood Patterson et als at the Special term, 1931 of the Circuit Court of Jackson County for the offense of Rape. You are therefore commanded forthwith to arrest the said Haywood Patterson et als and commit them to jail, unless they give bail to answer such indictment at the said Circuit Court of Jackson County in the sum of — Dollars.

Witness my hand this 31 day of Mar., 1931.

C. A. Wann, Clerk.

Executed by arresting the within named Defendants and Jail.

3-31-3.

M. L. Wann, Sheriff.

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE

vs.

HAYWOOD PATTERSON et als.

JUDGMENT ENTRY

April 8th, 1931.—Comes H. G. Bailey who prosecutes for the State of Alabama in this behalf and came also the defendants, Eugene Williams, Ozie Powell, Willie Rober-

son, Andy Wright and Olen Montgomery in their own proper person and by their attorneys of record and the said defendants demanded a severance in this case, and the same was granted by the Court, the said defendants did also file motion for change in venue to which the court overruled and the defendants did except to the ruling of the Court; The said defendants being now in open Court were duly arraigned and having the indictment read over to them and each individually for his plea thereto said that he was not guilty;

Issues being joined, there came a jury of good and lawful men to wit, Lem R. Jones and eleven others, who being empannelled and sworn, according to law, upon their oaths do say: "We the jury find the defendants guilty of rape as charged in the indictment and fix their punishment at death.

(Signed) Lem R. Jones, Foreman.

April 9, 1931.—The said defendants, the said Eugene [fol. 3] Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery being now in open Court and being asked by the Court if they had anything to say why the sentence of the law should not now be pronounced upon them and the said defendants and each of them says nothing. It is therefore considered by the Court and it is the judgment of the Court and the sentence of the law that the said defendants the said Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery be sentenced to death by electrocution at Kilby Prison in the City of Montgomery, Montgomery County, Alabama, on Friday the 1st day of July, 1931.

April 18, 1931, the Clerk of this Court did write death warrants for the said Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery and the same directed to the warden of Kilby prison commanding him to fail not in executing the said sentence and make his return as to how and when he executed the same.

Defendants appeal to Supreme Court and sentence suspended pending said appeal.

IN CIRCUIT COURT OF JACKSON COUNTY

THE STATE OF ALABAMA

VS.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN
MONTGOMERY, and EUGENE WILLIAMS**Bill of Exceptions**—Filed Nov. 30, 1931

CAPTION

Be it remembered that upon the trial of the foregoing styled cause, in the Circuit Court of the Ninth Judicial Circuit of Alabama, beginning on, to-wit: the 8th day of April, 1931, present and presiding the Honorable A. E. Hawkins, Judge of said Court, the following proceedings not otherwise appearing of record, were had, to-wit:

On the 6th day of April, 1931, the defendants Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams filed in said cause their petition for a change of venue, said petition being also signed by other defendants, and a severance as to the defendants in this cause, to-wit: Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, was granted upon motion of the State.

Said petition for change of venue is in words and figures as follows, to-wit:

PETITION FOR CHANGE OF VENUE

To the Hon. A. E. Hawkins, Judge of the 9th Judicial Circuit Court:

Your petitioners, the undersigned, who are defendants in a cause now pending in said court, charged with the offense of rape, respectfully represents that they nor either of them can have a fair and impartial trial in this county; that [fol. 4] the newspapers published in this county have so persistently tried the cause asserting the guilt of the defendants in such terms of these defendants, as to inflame the public mind to the extent that the Sheriff of said county

had the Governor of this state to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflammatory statements contained in said newspapers which are circulated all over this county, the minds of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publications are hereto attached marked Exhibit "A" and "B" and made part of this petition. That the public generally have already convicted them. Wherefore, petitioners prays your Honor to make an order removing this trial to some other county and the defendants hereby make oath that all the foregoing statements are true.

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

Sworn to and subscribed before me this 6 day of April, 1931.

C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

Said Exhibit "A", attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "A"

Jackson County Sentinel

Scottsboro, Ala., March 26, 1931.

[fol. 5]

Nine negro men rape two white girls, charge.

Threw white boys from freight train and held white girls prisoners until captured by posse.

All negroes positively identified by girls and one white boy who was held prisoner with pistol and knives while nine black fiends committed revolting crime.

National Guard called here and escorts prisoners to Gadsden for safe keeping until Tuesday.

Two girls and seven white boys were attacked by negroes as freight train left Stevenson; girls' home Huntsville.

Case has no parallel in crime history. Assault took place in mid afternoon as freight train sped through this county.

Special term of Grand Jury and court called for next Monday and April 6th.

This afternoon (Thursday) eleven National Guard officers and seventy Guardsmen are on their way to Gadsden, Alabama, escorting nine negro men to the jail at that city for safe keeping. Every one of the nine blacks is charged with raping one or both of the two white girls they held prisoner on a fast through freight train as it was passing through Jackson County Wednesday afternoon between noon and three o'clock after they had attacked and thrown from the train six white boys and held one white boy a prisoner with pistol and knives.

The negroes have all been positively identified by the two girls and all of the white boys, all of whom are now in Scottsboro to await the convening of the Jackson County grand jury called for special term next Monday, March 30th, to investigate the case.

The girls were Victoria Price and Ruby Bates, who gave their ages as 17 and 19 years, and gave Huntsville as their home. They stated that they had been in Chattanooga looking for work and were broke and decided to hobo back home with the white boy companions. Both girls were garbed in overalls.

The names of the white boys were John Gleason, John Ferguson, Roy Thurman, Lindsay and Odell Gladwell, Lester Carter and Orville Gilley.

All of these white men gave addresses in other states except Gilley, who stated his home was at Albertville in Marshall County. Gilley was the one held prisoner by the negroes and is an eye witness to every assault. The negroes, as hard looking lot as ever marched into jail [fol. 6] here gave their names as Ozey Powell, Chas. Weems, Clarence Morris of Atlanta, Olen Montgomery of Monroe, Ga., and Roy and Andy Wright, Eugene Williams, Haywood Patterson of Chattanooga, and Willie Roberson

of Columbus, Ga. These last four named negroes were identified by Chattanooga police as being "the worst young negroes in Chattanooga" and all of them have police records in that city.

Negroes Accuse Each Other

This morning one of the younger negroes was taken out by himself and he confessed to the whole matter but said "the others did it." He was taken back to point out the guilty ones and the negroes immediately began accusing each other of the crime.

Surprise Attack Overpowered Whites

According to the general story told by both the girls and white boys, the two girls and seven white boys were in a gondola car (or coal car) which had about two feet of gravel in the bottom of it. They were beating their way to Huntsville from Chattanooga. When the fast freight pulled away from the coal chute west of Stevenson, the nine negroes and maybe one or two more jumped down in the car and attacked them, the negroes showing a pistol and knives. Several of the smaller white boys were bodily thrown over the gondola sides and the fight was soon left to only three or four white men and they fought until one by one of the black brutes overpowered them and threw them over the side of the car.

One white boy, Orville Gilley, was struck over the head with a pistol and left in the corner for dead, but he roused up and found a knife held at his throat by two negroes who told him they intended to kill him. While some of the negroes held the two white girls others of the fiends raped them, holding knives at their throats and beating them when they struggled.

Splendid Capture by Deputy and Posse

The first white boy thrown from the train struggled his way back to Stevenson and gave the alarm but the freight had already passed Scottsboro and word was flashed to Paint Rock, where Deputy Sheriff Latham, of Trenton, who happened to be in Paint Rock, quickly formed a big posse of heavily armed citizens and they lined up on both

sides of the railroad and stopped the train and got every negro brute as he dropped from the cars.

The white girls were found in the car in a terrible condition mentally and physically after their unspeakable experience at the hands of the black brutes. They were hurried to Scottsboro and given medical attention.

The negroes were lined up at Paint Rock and Sheriff [fol. 7] Wann and the posse brought all nine of them to Scottsboro where they were identified by two girls and all of the white boys.

A great crowd gathered at the jail and it was thought that the prisoners were being carried to Huntsville for safe keeping, but the Sheriff changed his mind. Mayor Snodgrass and other local leaders addressed the threatening crowd and pled for peace and to let the law take its course and after an hour or two the crowd dispersed and all was quiet.

As a precautionary measure Governor Miller had been asked to send troops to Scottsboro and Major Joe Starnes of Gunterville, with ten other officers, commanding Alabama National Guard Companies E, F, G, arrived here within less than three hours' notice from the time his men were called, establishing a splendid record for the Guard as to ability to "get there when called." However, all was quiet, the soldiers relieving the sheriff and many of his deputies who had been on watch throughout the night. Today it was decided to send the negroes to Gadsden and the Nation- Guard will escort them to that city, also escort them back to Scottsboro for arraignment and trial.

Some of the white boys thrown from the train were badly beaten up and bruised and were given attention by local doctors.

Case Without Parallel in Country

This crime, the news of which was flashed around the whole county as a "first" Associated Press story, stands without parallel in crime history. Nine Negroes charged with rape, all of them being seen by three white eye-witnesses in open daylight, and this heinous attack following an assault and attempt to murder on the seven white boys who tried to protect the girls.

Calm thinking citizens last night realized that while this was the most atrocious crime charged in our county, that

the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by a legal process. The citizens and officers are also commending the citizens of Paint Rock for their splendid and courageous stand in helping uphold the law at a most trying time.

Special Term of Court Called for April 6th

Circuit Judge Alf E. Hawkins and Solicitor Bailey arrived in Scottsboro Thursday morning and immediately went into conference regarding a special term of the grand jury and circuit court. The grand jury was summoned to reconvene next Monday, March 30th, and the Circuit Court, [fol. 8] to reconvene the Monday following. April 6th, County Court has been postponed to the first Monday in May.

All members of the present grand jury are given notice to please be at the court house next Monday morning, the convening of the jury at about 10 o'clock.

This jury consists of J. N. Ragsdale, foreman, Charles Morgan, James 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, Robert E. Hall, Raymond Hodges, C. D. Paul, Walter Berry.

According to legal procedure in a case of this grave nature it is necessary to allow certain time to elapse for legal procedure between the indictment and trial. Many citizens had hoped to get a speedier trial even than this date set, but under the law it is properly set and we feel sure that Jackson County people will accept this verdict and be a part in keeping peace in this time when it is hard to be lawabiding. Judge Hawkins and Solicitor Bailey have secured Judge Speake and Solicitor Pride of Madison County to hold their court at Gunter'sville week after next in order that they might give this early trial to these negroes.

Said Exhibit "B," attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "B"

Jackson County Sentinel

Scottsboro, Ala., April 2, 1931.

Negroes Indicted on Charges of Rape

Grand jury finds 20 indictments against blacks charged with rape of two white girls on train.

Negroes plead not guilty to most serious charges in legal history of the country.

Trial set for next Monday at Scottsboro; 100 jurors summoned to try case; troops form constant guard to alleged rapists.

Surrounded by a cordon of soldiers bristling with automatic rifles, pistols and riot guns, nine negro men stood up in the Jackson County court house last Tuesday morning and were indicted on the most serious charges known on the statute books of Alabama, rape. The negroes were Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, all of whom pled not guilty to the charges of having raped Victoria Price and Ruby Bates, two white girls.

[fol. 9] Twenty Indictments Against Negroes

The Jackson County Grand Jury went into session last Monday Morning investigating the case and Tuesday morning reported twenty indictments for rape against the nine negroes. There were nine individual indictments against the negroes for the alleged rape of Victoria Price, nine against them for the alleged rape of Ruby Bates, and two indictments against the whole nine negroes collectively for the alleged rape of both Victoria Price and Ruby Bates. This place- three indictments against each negro for the alleged crime of Wednesday of last week when it is said these negroes attacked the two white girls after overpower-

ing or throwing from a moving freight train seven white boys who were in the same car with the two white girls.

The grand jury, under the direction of Solicitor Bailey, and County Solicitor Thompson, called before it a number of witnesses, including the two girls, Victoria Price and Ruby Bates, whose homes are in Huntsville, the boys who were with them and thrown from the train, the boy who was held prisoner and alleged to have witnessed the entire assault, the doctors, several officers and others who had information on the case.

No Disorder at Arraignment

The negroes were brought to Scottsboro from the Gadsden jail where they had been carried Thursday of last week.

They had an escort and guard to and in Scottsboro of Sheriff Wann and deputies and Major Joe Starnes of Guntersville in command of 25 picked soldiers from the Alabama National Guard. These soldiers were armed with automatic rifles, riot guns and pistols and kept order in the court room and kept "crowding" at a minimum. A great crowd of people was present or tried to get into the court room. However, the general temper of the public seems to be that the negroes will be given a fair and lawful trial in the courts and that the ends of justice can be met best in this manner, although these case charged against the negroes appears to be the most revolting in the criminal records of our state, and certainly of our county.

Defense Lawyers Appointed

A Chattanooga lawyer, a Mr. Broddy, was at the court Tuesday he said, "to investigate the case of the negroes for interested parties in Chattanooga, but said he at that time had not been employed as counsel to defend them at the trial. Judge Hawkins appointed the entire Scottsboro bar not otherwise excluded from the case, to act as temporary [fol. 10] attorneys for negroes or active counsel for them if it appeared they would have no other counsel. Mr. Broddy also agreed to be listed as a temporary attorney for the defense. So at this time it is not known positively just who will defend the negroes and there may be outside legal talent from several places. It is understood that the Scotts-

boro law firm of Proctor and Snodgrass has been retained to assist in the prosecution of the negroes.

Trial Set for Next Monday

The trial of the negroes is set for next Monday, April 6th, in the special term of Jackson County Circuit Court. Judge Hawkins has drawn 100 regular and special jurors to appear for service. The list of jurors appears on this page of the Sentinel.

We are informed the State will make effort to try all the negroes at the same time under one indictment. If this is accomplished the matter will be made brief. If it becomes necessary to try each defendant separately it will take hundreds of jurors and many days court time.

100 Guards here next Monday. Major Starnes will command picked Troops at trial next Monday.

Major Joe Starnes of the Alabama National Guard stated to the Sentinel Monday that he expected to bring at least one hundred picked men for escort and guard duty to Scottsboro on next Monday when the nine negroes charged with rape on two white girls are brought here from Gadsden to be tried in the Jackson County Circuit Court.

The units coming here will be from Guntersville, Albertville and Gadsden and will be officered by about eleven men. These troops will remain here during the duration of the trial at least.

Major Starnes and his men made a record answer to the emergency call that was sent to them last Wednesday night by the Governor of Alabama, arriving in full military equipment at the Scottsboro jail in less than three hours from the time the Major got orders to come to Scottsboro. It was in the night and his men had to be notified at their homes in many parts of Marshall and Etowah counties.

Jurors Drawn for Special Term of Court

The following is a list of regular jurors drawn to appear next Monday morning for service at the special term of the Jackson Circuit Court which will try the nine negroes in- [fol. 11] dicted for rape:

A. H. Hill, Bridgeport, Lem. R. Jones, Bridgeport, Geo. R. Joyner, Bridgeport, J. M. Barnes, Bridgeport, Luther Hart, Bridgeport, Lm. M. White, Bridgeport, W. C. Lind-

say, Stevenson, Luther Ballard, Stevenson, John St. Clair, Stevenson, John N. Coffey, Stevenson, Virgil Knight, Stevenson, Horace McCrary, Stevenson, A. L. Akins, Stevenson, G. C. Reeves, Bryant, James Walker, Fackler, Clay Shrader, Fackler, Albert Rash, Bash, James D. Allen, Rash, Lee Hicks, Olalee, Ed Matthews, Ollalee, Arthur Gamble, Olalee, C. C. Allen, Olalee, A. L. Starkey, Hollywood, Wade S. Rowe, Pishgah, Will G. Sartin, Pishgah, Griff Callahan, Langston, Chas. Utter, Langston, T. Gaines Elkins, Tupelo, Steve J. Mitchell, Tupelo, Perry B. Hall, Larkinsville, J. B. Selby, Larkinsville, Pleas Kennamer, Woodville, Wm. Bishop, Woodville, P. W. Page, Woodville, Roy Wilbourn, Trenton, Richard Hill, Collins, Chas. Grady Swaim, Collins, Tom Austell, Collins, John W. Butler, Bishop, P. R. Sanders, Kyles Spring, O. C. Proctor, Scottsboro, Wm. McCutchen, Scottsboro, Tom W. Flowers, Scottsboro, L. D. Dean, Scottsboro, J. Exum Sumner, Scottsboro, John L. Staples, Scottsboro, J. W. Austell, Scottsboro, J. H. Harris, Section, J. A. Galloway, Section, McKinley Gilbreath, Section, J. A. Staten, Section, Granville Carter, Section, Luther B. Whitten, Section, J. A. McFarlin, Garth, J. A. Houk, Garth, J. G. Enochs, Hollytree, W. C. Scroggins, Dutton, Fred Morris, Dutton, Robert Hope, Dutton, Tom J. Dean, Dutton, Sam Dobbs, Dutton, T. M. Holloway, Dutton, Joe M. Kennamer, Gross Spring, Albert Britt, Haigwood, R. D. Bryant, Haigwood, John D. Culpepper, Haigwood, W. G. Isbell, Limrock, W. B. Clark, Princeton, J. F. Wilkins, Winger, M. P. Adams, Rosalee, Alfred James, Deans, M. H. Moore, Deans, Eli L. Brown, Deans, J. E. Creswell, Deans, B. M. Bradley, Deans.

Special Jurors

The following is a list of 25 special jurors drawn to supplement *to* regular list above of 75. According to law only 100 jurors can be summoned at one time and if more are needed during progress of Court the judge is empowered to draw them as needed. The following jurors also report next Monday morning:

Wm. E. Moore, Pishgah, Mose Dawson, Scottsboro, John Strawn, Section, Joe L. Outlaw, Section, Marion Johnson, Limrock, Lee Golden, Princeton, W. Gordon Harris, Holly-wood, John L. Blevins, Stevenson, Wm. E. Glover, Limrock,

Tom Shepard, Swaim, Willie J. Wells, Paint Rock, John N. Hatchett, Swaim, Geo. O. Cook, Paint Rock, Hub. F. Everett, Paint Rock, Avery Steele, Olalee, J. Walter Clunn, [fol. 12] Princeton, John Golden, Princeton, Tom Arnold, Pisgah, John W. Sumner, Scottsboro, Albert Hoga, Tupelo, Charles S. Sewell, Flat Rock, Lee Sahby, Maxwell, Joe A. Ross, Woodville, Geo. R. Allison, Stevenson, Jesse C. Smith, Section.

Jackson County Sentinel

Scottsboro, Ala., April 2, 1931.

Alleged Negro Attackers and Their Victims

(Picture Appearing in Newspaper)

[fol. 13] Jackson County Sentinel

(Editorial)

Scottsboro, Ala., April 3, 1931.

The Case of the Negroes

The editor of the Sentinel is informed that the attorneys for the nine negroes being held for rape of two white girls on a train in Jackson County, last Thursday will petition for a "change of venue" under the claim that newspaper stories and other propaganda have made it impossible to get a fair and unprejudiced trial in Jackson County for the negroes. This claim is without foundation at all. The citizenship of Jackson County just wants one thing—justice. They would want the same thing for white men charged with this offense just the same as they want it for the blacks. Under most trying circumstances our citizenship has acted fairly and, we believe, most wisely. If these negroes are guilty of the heinous crime of which they are charged they should get the severest penalty of the law, is our honest opinion. If they are not guilty, they are the most mistreated so far as charges are concerned, of any

men ever arrested in this county. None of the parties, either negroes or white, are residents of Jackson County. Jackson County certainly gets no pleasure out of the matter. But in justice to the Sentinel and the article it printed last week regarding the affair, we tried very hard to temper the story down to keep from inciting the people rather than to do so. There was testimony of the two girls that was entirely too revolting to go in any paper or even be made public property. If these stories are true, these nine negroes are all guilty and should pay. The negroes have offered nothing to refute these charges except their mumbled "not guilty" answers in the court Tuesday. It is their privilege and the privilege of their attorneys at the trials next week to prove these charges false if they can do so. The citizenry of this county and this state wants these negroes to have every opportunity to prove their innocence before a verdict is rendered. If they cannot prove innocence the law is expected to do its full duty.

Next Monday should be orderly in Scottsboro in every way. A tremendous crowd will be here, most of them out of curiosity. The town will have a hundred or more soldiers in it too. Every body is urged to keep down any and all friction with the troops. They are nice, gentlemanly young men from our neighboring counties who will carry out their every obligation to their state and country and are not sent here as "bullies" to intimidate citizens.

[fol. 14] The Sentinel is not prejudiced. The nine negroes face the gravest charges ever docketed at one time in Jackson County or Alabama. The evidence against them is corroborated and witnessed. It hardly seems possible that all evidence can be broken down, but these negroes will be given every right of defense of their own liberties and lives. Jackson County lives by the law; it will accept the settlement of this matter by the law. But we just want the world to know that these negroes were not scooped up on vague charges and slammed in jail on the pretense of a rape charge. The editor of this paper heard and saw the two poor white girls identify and point out the negroes and heard and saw the white boys who were thrown from the train and the one who was held prisoner and witnessed, he said, the wholesale rape of these two helpless white women, identify and point out every one of the nine blacks, as parties to the rape and

assault. This white boy was bruised and scratched, he said by the negroes choking and beating him.

The Sentinel is not trying to convict the negroes without a trial, it just resents the insinuations of those who accuse our citizenry of being acting on race prejudice, when evidence and not prejudice is what is holding and indicting these negroes. We fail to see where a change of venue could benefit the negroes very much, if any. The testimony would be the same, and the witnesses are as well known elsewhere as in this county and court.

A Hideous Blot

(Chattanooga News)

How far has our vaunted Southern chivalry sunk when we must contemplate two young women being forced out into the world to find work, and when we review the fact that they were then forced to return home in overalls, stealing a ride in a gravel car on a freight train. How far has humanity sunk when we must contemplate the frightful things which occurred in that gravel car. How much farther apart than night and day are the nine men who perpetrated those frightful deeds and a normal kind-hearted man who guards his little family and toils through the day, going home to loved ones at night with a song in his heart.

How is it possible that in the vesture of man can exist souls like those nine, while others in the vesture of man can dream such beauty as Keats dreamed, or can paint as did Raphael, or sing as Caruso, or play as Kreisler? The beasts of the fields do not differ among their own kind as do men, who are either blessed or cursed with imagination.

[fol. 15] The terrible story of the ride on that freight train between Chattanooga and Scottsboro was strangely depressing to all the South. It lay like a weight on the heart of those who read it. The News urges the Alabama grand jury to return speedy indictments. We still have savages abroad in the land, it seems. Let us have the solace of knowing that at least we have arisen above the justice of savages.

Mob Violence Again Averted
(Montgomery Advertiser)

Sheriff Wann, of Jackson County, is a cool, sensible and determined officer of the law, the sort of man whose neighbors must have learned *no* respect before they had occasion to test his mettle. Otherwise those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls. But with nine deputies and one volunteer standing by his side the sheriff sent word, to the impassioned men without, that he would fight before surrendering the prisoners. They stood around a while—300 of them, say the dispatches—when the weather turned cold unexpectedly and to be comfortable they dispersed and went to their homes. The circumstances were peculiarly trying. Some of the negroes have confessed that 12 of them attacked two white girls, two of the negroes having escaped capture. Ordinarily it would be next to impossible to restrain the mob spirit in such circumstances. But two factors entered into the success of Sheriff Wann in protecting his prisoners. The first is that the angry citizens without must have known that the Sheriff was in earnest. The second is the growth of anti-lynching sentiment in Alabama. Today mobs are more reasonable and tractable than they used to be because it has been the policy of public officials, especially Governors, and the policy of newspapers, for many years to condemn mob action. Alabama Governors generally have been vigorous in their efforts to combat the mob spirit. Governor Miller acted promptly and in the best Alabama tradition in sending National Guardsmen to Scottsboro. This was *was* wise precautionary measure.

The courts are acting promptly in arranging for a grand jury investigation of the crime. In other words, in the face of extreme provocation, Alabamians have again shown that they are willing to let the law have its way.

[fol. 16] Defendants separately and severally offered in evidence, in support of their petition for change of venue,

said Exhibits "A" and "B", separately and severally, and the same were accordingly admitted in evidence, separately and severally. In support of said petitions for change of venue, defendants separately and severally offered the following oral testimony:

M. L. WANN, having been duly sworn, testified as follows:

My name is M. L. Wann. I am Sheriff of Jackson County, Alabama. To bring these defendants to Court to trial today I did call this National Guard unit to accompany the prisoners in court, although I did have a crowd here, I did not see any guns or anything like that and I did not hear any threats. I had this National Guard unit so accompany the prisoners to court when they were brought here several days ago. As Sheriff of this county I deemed it necessary for the protection of the defendants for the National Guard unit to bring them to court. That was not only on account of the feeling that existed here against these defendants, but by people all over the county. I deemed it necessary not only to have the protection of the Sheriff's force but the National Guard.

Cross-examination:

The Solicitor for the State propounded the witness the following question:

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?

Defendants separately and severally objected to the question on the ground that it is leading; on the further ground that it calls for a mental operation of the witness; on the further ground that it calls for a conclusion of the witness; on the further ground that it calls for an unauthorized conclusion of the witness; on the further ground that it calls for incompetent, irrelevant and immaterial testimony.

The court overruled the objection; to this ruling of the Court defendants separately and severally reserved an exception.

The witness answered: A. Yes, sir.

The witness testified further: It was more on the grounds of the charge that I acted in having the guards called than

it was on any sentiment I heard on the outside. I have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse. It is my idea, as Sheriff of the county that the sentiment is not any higher here than in any adjoining counties. [fol. 17] I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial.

Redirect examination:

I have troops here right now to keep the crowd back from the court house, and there is a great throng around this court house right now that would come in if I did not have the troops; they are from different counties here today. I know there are lots of them; there are several from Madison, Marshall and DeKalb. There are hundreds of them around the court house at the present time. They are not allowed by the guards to come to the court house. That is the rule. At the time these prisoners were arrested and brought to this jail I estimated the crowd at around two hundred. Then I took precautions to protect them. I thought that was my duty as an officer. I think there are three or five units of the National Guard here, protecting these defendants at the present trial, if I understood Major Starnes. I have five units of the State militia here now.

JOE STARNES, having been duly sworn, testified as follows:

Direct examination:

I am Major Starnes, of the Alabama National Guard. I have one Hundred and seven enlisted men here protecting these defendants. There are five units of the National

Guard represented. I have eleven officers. I have one hundred and seven enlisted men and some non-commissioned privates. Two companies accompanied these defendants to this court.

Several days ago I had a picked group of twenty-five enlisted men and two officers from two of my companies to bring these defendants over for arraignment. I received the call — the State Adjutant General at Montgomery at nine o'clock P. M., on the evening that the attack occurred in the afternoon. On every occasion I have been in Scottsboro I have found a crowd of people gathered around, and at the present time I have issued orders to my men not to let any come in the Court house or court house grounds with arms. That situation exists right now, and has existed not only today but under orders of the Court on every appearance [fol. 18] of the defendants. My units of the National Guard have protected these men and have been with them on every appearance they have made in this court house. Every time it has been necessary, and for the arraignment of the defendants I have brought them here and have carried them away. After these men were arrested I first brought them back on Tuesday of the past week, is my recollection, March 31st. I brought them back here for arraignment. We arrived here at 10:30 and left at 4:00 o'clock. I brought them at 10:30 in the morning and left at four in the afternoon and took them back to Gadsden; then I brought them back here and arrived at 5:15 o'clock this morning. I have had them here twice from Gadsden. I brought them here and carried them back.

Cross-examination:

I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have *have* made here from Gadsden. In my trips over to Scottsboro in Jackson county and my association with the citizens in this county and other counties, I have not heard of any threats made against any of these defendants. From my knowledge of the situation gained from these trips over here, I think these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any

of these defendants. I have seen a good deal of curiosity but no hostile demonstration. *My* my judgment the crowd here was here out of curiosity, and not as a hostile demonstration toward these defendants.

The foregoing is all the evidence offered on the hearing of said petition of defendants for a change of venue.

ORDER OVERRULING PETITION FOR CHANGE OF VENUE

“The petition for change of venue having been heard on this — day of April, 1931, before the Honorable A. E. Hawkins, Judge, presiding, on the evidence introduced in open court and the exhibits, the copy of the Jackson County Sentinel and the proof introduced for the defendants, and for the state, and the court being of opinion that said petition is not well taken, the same is overruled and disallowed. It is, therefore, ordered and is the judgment of the court that the defendants’ petition for a change of venue in this cause be and the same is hereby dismissed. The defendants duly excepted to the action of the court in dismissing their petition for a change of venue.”

Upon motion of the State the court granted a severance as to the defendants in this case, to-wit, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene [fol. 19] Williams, and the case proceeded against said defendants.

Before proceeding to strike the jury in this case defendants separately and severally 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 defendants 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 vs. Charley Weems and Clarence Norris, to which action of the court in not allowing them a special venire in this case, and requiring them to select a jury from the regular venire and the special venire drawn in the case of the State of Alabama vs.

Charley Weems and Clarence Norris, defendants separately and severally reserved an exception.

Thereupon, after the striking of the jury for the trial of this case, the following proceedings were had:

VICTORIA PRICE, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Victoria Price. I live at Huntsville. I am twenty-one years old. I was before the grand jury *ar* this term of the court.

Before that grand jury, on or about the 25th of March, I was on a freight train traveling through Jackson County, from Stevenson to Paint-Rock. I got on the train at Chattanooga. Ruby Bates was on the train with me; there was nobody else. I had left my home at Huntsville the day before and rode on a freight train to Chattanooga. Ruby Bates was with me the day before. On the 25th of March I saw these defendants over there five of them, back there on that first row, on that freight train. The train was right on this side of Stevenson in Jackson County, when I first saw them. I saw these defendants come over the top of the car box. I was in a gondola car at that time. That is a car without a top to it, with sides extending up. Gravel or chert was in that car. It was not full to the top with gravel; it was up about waist high. These defendants came over the top of a box car which was next to the gondola car. As these defendants came over the top of the box car I was in the end of the gondola next to where they came over. There were seven white boys and the Bates girl and I in there as these defendants came into the gondola car, and all of these defendants got into the gondola car where we were. When the defendants got into the gondola car they began to knock the boys off and told them to unload; they began to knock them off and after they got them all off they attacked us two girls. The first one of these five defendants [fol. 20] that put his hands on me was the one sitting there with the sleepy eyes, Olen Montgomery; he ravished me; he had intercourse with me. His private parts penetrated my private parts. While he was having intercourse with me that one sitting yonder, Eugene Williams, was telling

me I had better keep my legs open. He had a knife open in his hand. He was standing up right over me, almost. While Olen Montgomery was having intercourse with me this Eugene Williams said if we told it any way at all he would kill us if he had to come to the house and hunt us up. The rest of the defendants were standing there waiting on him, standing up over me, at the time Olen Montgomery was having intercourse with me. Each one of the defendants had a knife in his hand. While Olen Montgomery was having intercourse with me they told him to hurry up. They said the train would soon stop and they wanted their share. When Montgomery was having intercourse with me that defendant sitting right there had me by the leg, that one sitting there on the end, that one with his hands on his jaw. I don't know his name. There were twelve of them that came into the car, and these defendants were included in the twelve. They engaged in a fight with the white boys, putting them off the train. While Olen Montgomery was having intercourse with me and the other one hold me, the others were going up by the side of the car, looking and keeping the white boys off, telling them that they would kill them, that it was their car and we were their women from then on.

They had knives in their hands at that time. There was one of these white boys, that Gilley boy, on the train. I got off the train at Paint Rock. These defendants were in the car there when the train stopped at Paint Rock. When the train stopped at Paint Rock I climbed on the side of the gondola after I got my clothes fastened up, and started to get off and fell off. I had on overalls and a shirt and this coat and hat. That old big one sitting back yonder took my overalls off. That defendant sitting yonder with his hand up to the side of his head helped him take my overalls off me. I stayed in Paint Rock after I got off the train about an hour and twenty minutes, I guess. I was sitting in the store in Paint Rock when I came to myself. Ruby Bates got off the train at the same time and went with me into the store.

They put me in a chair and taken me up there. When I left Paint Rock I came here. Ruby Bates was with me. Some doctors made an examination of me that afternoon. [fol. 21] About an hour and a half or two hours after I got

off the train at Paint Rock the two doctors made an examination of my person in Scottsboro. All five of these defendants were in that car there with their knives open. They came over together and jumped into the car of gravel.

Cross-examination :

When I got on the train at Chattanooga I intended to go to Huntsville to my home. When the train stopped at Paint Rock nobody suggested or told us to get off. We got off of our own account. I did not know any officers were at Paint Rock but there was several there and had the train surrounded. I got off the train there because I did not want to go any further. I wanted to see what they done with those negroes. I knew they were going to get them because they had the train surrounded and they called up from Stevenson. I learned that after the train got to Paint Rock. About an hour and a half or two hours after I got off the train at Paint Rock I went to the doctor. I went to the doctor's office myself. I had my right sense when I was at the doctor's office. That big one back there is the first one of these boys I saw coming over the top. That is one of the defendants. When the boys came over we were standing in the corner, and as the white boys went to get off one came to where I was; I threw my legs over to get out and one jerked me back by the legs and threw me back. That old big boy is the one that did that. He threw me down.

It took three of them to get off my overalls. There was so many hands you could not tell which three of them took off my overalls, but he was the ring leader. I could tell two of the others that held me; one is the big one sitting back there, I said, and the other one is the one that was sitting in the chair this morning. I testified yesterday the big one took off my overalls first. I do not know his name. I don't know the names of any of them. I saw knives in the hands of every one except two, and they had guns, and he got hold of a knife some way after he put the gun down and held it to my throat. I see the men that had the guns now. There was two that had guns absolutely, a .38 and a .45 I did not see the men searched. All except two carried knives. They had the knives open when they came over the box car down into the gondola. I did not board the gondola at Chattanooga. I was on an oil tank when I left Chat-

tanooga. I first saw the negroes at Stevenson. I did not say all five of these defendants had intercourse with me. There was six that had intercourse with me. There was three of these defendants that had intercourse with me. [fol. 22] The one sitting right yonder, and that one sitting yonder, and that one over yonder had intercourse with me. There was three *three* that had intercourse with the other girl. The ones that had intercourse with her did not have intercourse with me. I absolutely saw them have intercourse with the other girl. I did not take a good look at their faces but I knew they were over there where she was. I did not testify yesterday which one had intercourse with me first and go on down the line with six of them. I did not point out on yesterday the six that had intercourse with me. I know the faces of the ones that had intercourse with me. I could not tell which was the first, second, third, fourth, fifth and sixth, because they began to get down so fast I could not keep account of it. I could not recognize them all the way down. I had plenty of sense, and I remember the faces of the six that had intercourse with me. That old big one is the first one that had intercourse with me.

Redirect examination.

That defendant right there next to the last one had intercourse with me (Andy Wright); also that old sleepy eyed one (Olen Montgomery), the second from this end there, and also the last one (Eugene Williams). While one was having intercourse with me the others were running up and down the car box hollering, "Pour it to her, pour it to her." They had knives in their hands at that time. While the first and third ones were having intercourse with me on that occasion that first one there (indicating) was holding a knife against the Gilley boy, the white boy that was on the car. While this was going on the third one over there with the other girl a part of the time and was back there with Gilley boy. He had an open knife in his hand.

The third one, Willie Roberson, was one of them that was running up and down inside of the car. That third one held me; he pulled my legs apart once or twice. That is Willie Roberson. He is the one that had me by the legs and he and the others said, "Jerk her legs this way" and he just caught hold and jerked my legs that way.

Recross-examination:

The guns were not held on me all the time. They drew their guns on us once when I went to get off and when he drewed the gun on me I told him to shoot me and then all commenced surrounding us up there and threw us down there, that old big one did, and the other boys in the car walked up and down inside of the gondola keeping the white boys off and shot five times over the gondola where the [fol. 23] boys were. I didn't testify yesterday there was only one shot. I know what I said yesterday. I say today there — seven shots fired in all, from the time the racket started until it ended. I have lived in Huntsville eleven years. I live at 313 West Arm Street.

RUBY BATES, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Ruby Bates; I live at Huntsville. I am seventeen years old. On or about the 25th of March of this year I was on a freight train running between Stevenson and Paint Rock in Jackson County, Alabama. Victoria Price was with me. There was no one else with me. I was riding on a gondola car shortly after the train left Stevenson. There was gravel in that car. Victoria Price was in there with me. I saw those five negroes on the front row, these five defendants, in that car after the train left Stevenson, Alabama. I saw all five of them. When I first saw them they came over the end of the car box. That car box was attached to the gondola I was in. They all came over in a bunch. They had guns and knives in their hands. They had two pistols, and I saw some knives in their hands. The knives were open. At the time they came over that box car there were seven white boys in that gravel car besides Victoria Price and I. Victoria Price and I were in the end of the gondola at the time these negroes came over the box car. We were in the end next to the boxcar. When these defendants came over the box car they told the white boys to unload, and then they attacked us girls after they got the white boys off the train.

They hit two of the white boys in the head with pistols and drew the knives on the rest of them, and the guns. These negroes were in the bunch that came over the box car. All five that I am now looking at got down into that gondola car. All five of them were engaged in that fight with the white boys. The white boys got off the train. They fought these negroes until they couldn't fight them. I had on overalls and shirt on that occasion. I had a coat on over the overalls and had a hat on. My overalls were taken off me. None of my other clothes were taken off; just the overalls. The colored boys ravished me then. They put their hands on me.

Cross-examination.

The overalls were the only article of wearing apparel taken off me. One of the colored boys took them off; I could not say which one. I could not point him out at all. [fol. 24] I don't know whether he is one of the defendants or not, but I know he was one of the colored boys. They all came over in a bunch, including the five now being tried, all right behind the other, as soon as they could get down in the gondola. There were twelve alltogether. I don't know which one of them ravished me. I just know an intercourse was held with me. I was ravished six times. I came from Huntsville to Chattanooga on the 24th. I stayed all night in Chattanooga at Mrs. Brochie's. A boy that lived in Chattanooga directed us to Mrs. Brochie's house. I did not, neither did Victoria know him. I just met him on the street. He did not go with me to this home. I have not seen him since. Mrs. Brochie lived on Seventh Street, but I do not know whereabouts on Seventh Street; I could not tell that. I have never since seen the boy that directed me out there. There were some boys in the car with me going from Huntsville to Chattanooga. I did not talk with them, didn't say a word to them. I don't know how many there were in the car. There were several white boys in the car, but I don't know how many. I was not acquainted with them. Victoria did not talk to them. There wasn't a word passed, and we were in the same car.

There were seven boys in the car on the 25th when we started back to Huntsville. They were not the same boys or any of the same boys that were on the train with us the

day before. I had never seen any of these seven before. I had not talked with them; had not had any conversation at all; I had never seen any of those boys before. I just don't know who of them had knives but all of them except them that had guns; I don't know whether them that had guns had knives or not. Just two had guns. Every one of the colored boys I say that day had intercourse with me or with Victoria. I could not be mistaken about that. I was not so excited that I didn't know and couldn't point out any of them.

Redirect examination:

I went to Chattanooga looking for work. Victoria Price went along with me. We were both dressed in overalls. We went to Chattanooga on Tuesday and started back on Wednesday. We rode a freight train up there and rode a freight train back the next day.

Recross-examination.

I rode a box car from Huntsville to Chattanooga, and there were several white boys in that box car.

Dr. R. R. BRIDGES, a witness for the State, being duly [fol. 25] sworn, testified as follows:

Defendants' counsel stated to the court that the qualifications of the witness as a physician were admitted.

I recall the day it is said this freight train was stopped down at Paint Rock and some negroes taken off. On that day I made an examination of the women, Victoria Price and Ruby Bates. I was in my office when I made that examination. It was about four o'clock or a little later, in the afternoon. I found that both girls had a few minor scratches on their hands and arms and the Bates girl had some bruises on the lower part of the groin right in there on each side about the size of a nickel or a little larger, and she had a bruised place on her shoulder, and the Price girl, if I remember, had a bruise place or blue place here on the throat and on her hip behind, in the lower part of the back, right along the lower part of the hip, and a few

scratches on the forearm, and they both had vaginal secretions that showed male germs, the spermatozoa. That is about all I think we found as I remember. I found semen in the vagina of each one. I put that under a microscope. In my judgment as a physician sexual intercourse had been had with each one of these women. I could not say as to the minute or the hours how long it had been since they had had sexual intercourse, but the vagina was still loaded with secretions, and especially in the Bates girl; her vagina had more secretions than Mrs. Price; both had plenty of the semen in there, plenty of the male germ. There were no recent lacerations. In my judgment as a physician six negroes could have gone to these women without lacerating them or tearing the genital organs.

Cross-examination:

The semen did not move, and we don't swear as to whether it is dead or alive unless we see it move. There was nothing to indicate as to how long it had been since intercourse. I could not swear as to the time. I have observed and examined the privates of one of these defendants, Willie Roberson. He is diseased with syphilis and gonorrhoea, a bad case of it. He is very sore. It would not be very painful for him to have intercourse; I think it would be painful but not very painful; it is according to how much anaesthesia, how much deadening he has. I do not know how much deadening he has. I just conducted a superficial examination. It is possible for him to have intercourse. I have seen them that had it worse than he [fol. 26] has. I think it would be attended with some pain.

Redirect examination:

The territory between Stevenson and Paint Rock on the Southern Railroad here is in Jackson County, Alabama.

Recross-examination:

I testified I did not find any recent lacerations. I could tell from the appearance of their organs that there was present intercourse and from Mrs. Price there were three tags of lacerated hymen. I could not say how old it was. It might have been a slight laceration from child birth. I believe she admitted a miscarriage. It could have been done

there or the first intercourse. Mrs. Price admitted intercourse with her husband, and the other said she had.

Redirect examination:

Mrs. Price admitted to me that she had miscarried, and also admitted she had been married.

TOM TAYLOR ROUSSEAU, a witness for the State, having been duly sworn, testified as follows:

I live at Paint Rock, Alabama. I was out there at Paint Rock in this county on the day when these negroes were taken off the train there. I saw those five on the front row over there about the train that day. They were on the freight train when I first saw them. They were in a gondola car. I saw some women there; they were in the back end of the same car. I saw the women when they were in the car and saw the negroes when they were in the car. The negroes were still on there as far as I know right then. I later saw them after I got down there. The next time I seen them they were bringing one of the girls up in a chair. They brought her up there in town in front of the doctor's office. That was Victoria Price. She was unconscious. She was in a chair and they were toting her and her head was over this way and her eyes closed, from the depot to the doctor's office. I saw those five negroes there in that car where the girls were. I seen them get out of the car. I did not see anybody else in that car at Paint Rock.

Cross-examination:

I did not talk with the girls when they got out of the train. I could not tell you who did talk with them. All I know is some of the fellows brought her up there, W. A. Mize, the signal man for the Southern Railway. I don't know whether he took her off the train. I was not there when they removed the girls at all. I don't know any thing about what went on on the train except what I have [fol. 27] heard. I just saw the negroes on the *time*; I just saw them coming out of the car. I helped to catch them and from my observation of them one time I ought to recog-

nize all of them. I went to the station for the purpose of helping catch them.

T. M. LATHAM, a witness for the State, having been duly sworn, testified as follows:

I am a deputy sheriff. I live at Trenton. I was down at Paint Rock the day these negroes were taken off the freight train there. I saw those five defendants on the front row on or about that train on that occasion. They were in the coal car, or gravel car, rather, when I first saw them there. That car is known as a gondola car. I saw these girls Victoria Price and Ruby Bates after they got out on the ground. I saw them get out of the gondola car, the same car the negroes were in. One of these women, Victoria Price, could not walk. They took them up in the boiler room of the hosier- mill there at Paint Rock first; then I think they took them to the doctor's office. I had charge of the prisoners and I did not go with them.

Cross-examination:

All I know is that I got word to go *down* to the station and arrest them and I took them off the train.

T. L. DOBBINS, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live this side of Stevenson, about thirty yards, I guess, from the right-of-way of the Southern Railroad. I live about two miles this side of Stevenson. I remember the day it is said these negroes were taken off this train down at Paint Rock. On that day I observed a freight train passing along the railroad near my place up there headed this way toward Huntsville. I guess that was about twelve o'clock, between eleven and one o'clock somewhere. I seen several people on that train as it passed. I could not tell much what they were doing only I seen some people in a gondola and they were scuffling and I jumped to the door

and before I could see to tell what they were doing my view was cut off. That was a gondola car. I could not tell whether they were white or black. I saw some scuffling going on. I did not see anybody get off the train or thrown off the train. There was a fellow running back this way [fol. 28] on a box car, back in behind. I knew him. That was Will Cox. After the train passed I did not pay any attention to anybody along the right of way there. I just saw it pass.

Cross-examination:

I just saw the train pass on that day with people in the gondola car. I don't know anything about who they were.

SEE ADAMS, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson. I recall the day it is said this train was stopped at Paint Rock and some negroes taken off it. On that day I was near the railroad when the train passed coming this way going toward Huntsville. I saw a bunch of people in a car box, negroes, in a coal car. I don't know the name of the car, but they were in a coal car. I was on the left hand side of the railroad and I saw striking this way (indicating), and the train ran on a little piece and I saw a man go out over the car over on the right hand side of the road from me, on the opposite side from me. He went off down on the other side from me. I just saw him go over. The backs of the men doing the striking were to me. After the train passed I saw two white men coming back up the railroad, going in haste back towards Stevenson.

Cross-examination:

Those men had *there* backs to me and were striking that way and then of course, there was a whole raft of negroes—no, they were negroes in the car—some were sitting on the side of the car and some were standing up. I know they were negroes. They were standing looking on, looking

that way, in the gondola car. There was a whole host of them standing there looking on, somewhere around ten or twelve or fifteen, something like that. They were fighting and scuffling; not all of them; I saw, I think two personally and the others were standing around looking on.

At this point the State rested its case.

[fol. 29]

DEFENDANTS' EVIDENCE

OZIE POWELL, one of the defendants, having been duly sworn, testified as a witness in behalf of the defendants as follows:

My name is Ozie Powell. I was on that freight train traveling out of Chattanooga toward Huntsville on the 25th of March. I boarded the train at Chattanooga. That boy right there (indicating) was with me when I boarded the train. I met him in Chattanooga. That is the only boy I knew, and I did not know him real good. My home is in Atlanta.

I got on a crosstie car, got on the flat car with crossties on it, and there was just one boy with me when I got on the train. I just met him in Chattanooga. I did not run on the other boys. I crossed over and got between the gondola and a box car and I did not see him until I got to Chattanooga again; that is when I missed him, down to Paint Rock; that is when I missed him, when I got down between them cars. I was not with him on that train; he was going to Memphis and I was too. I was not in the fight that took place on the train. I do not know what car on the train the fight took place. I don't know when it first started up but when I seen it, it was in the gondola car.

I saw the fight then. When they were fighting in the gondola I was between the gondola and the box car. This fight was going on in the gondola. I could not tell you about how many gondolas there were in the train; a right smart, I know, though. I do not know how many negroes and white boys were in this gondola fighting. I had not been with any of them. I did not see any women in that car. I did not see no women until I got to Paint Rock. I never

said anything to any woman on that train. I did not grab any woman. I did not hear anything said about women before I got to Paint Rock. I did not hear nobody say nothing about no women until I got to Paint Rock. That is where I found this buddie of mine that was with me; after I left him on the crosstie car and *gown* down between the gondola and the box car. I never did get over in the gondola; I never was in the gondola. I did not have a knife. The officers searched me and didn't find a knife. I did not have a pistol. I had not thrown away a knife. I did not even have any knife.

Cross-examination:

I don't know what negro I was with. They call him Willie, the one standing right yonder, the one in the front [fol. 30] seat on that side on the end. When I looked over in the gondola I didn't see him over there. I got on the train in Chattanooga. I got on a car that had crossties on it. I didn't know how many cars was between that car and the gondola car where I saw these negroes all in there; there were about three or four. There wasn't anybody over there when I crossed over from the crossties to the gondola. I crossed over on a box car and then I climbed down between the box car and the gondola. I did not see anybody up on top of the box car, did not see a soul. While the fight was going on I seen some over my head, coming in the gondola, and I saw fighting going on in the gondola. I did not see any pistols or knives. I did not know any negroes fighting in there. They were fighting with white boys. I don't know what they did with the white boys. The white boys hopped off. I don't know how many hopped off. I don't know what part of the road that happened on. I don't know nothing about the road at all.

We stopped one place from the time we left Chattanooga until we got to Paint Rock. I don't know the name of that place. I would know it if I heard it. It was Stevenson. That is not where I changed over.

I had done changed over. I did not know these other negroes were on the train. I knew there was a gang on there, but I did not know all of them. I did not see them and the white boys together up at Stevenson. I did not see any at Stevenson. While I was at Stevenson I was

between the gondola and the car. I crossed over from the crosstie car to the gondola car when I first come through the tunnel, I left the crosstie car and came to the gondola car because the wind was blowing and I got down in there to keep the wind from striking me. I- would not have been better to have stopped between the box car and the gondola car to keep the wind off, because a gondola car made like this you can get up under them. I was sitting back under there. That kept the wind off me. I did not see the white boys or the negroes walking along the ground while I stopped at Stevenson. I rode from just after I passed through the tunnel down to Stevenson under that gondola. While I was stopped at Stevenson I did not see any of these negroes at all. I don't know what became of my *bunch*. I knew he was on the train when I left him, but I don't know where he went. I did not see any of these boys or girls or negroes either all along the road until I got to Paint Rock. I did not see them after I left Stevenson crossing over, getting in that gondola. I did not see them at all. Right after I passed Stevenson I saw them jump off the box car into the gondola. I saw the negroes going [fol.31] into the gondola, crossing up overhead above me. They would not come down on the place I was. They just jumped over the gondola from the top of the car. I don't know how many crossed over. I did not count them. There was a gang of them. I did not hear them say anything.

I heard them cursing. I heard fighting. I heard some boy say, "Get off," I don't know who it was. The other boy said he was not going to get off unless they threwed him off. I did not hear anybody throw him off. I seen him climb off. I saw the boys getting out of there. There were seven white boys. I did not hear a pistol fire. I sat there from Stevenson all the way to Paint Rock and never heard a pistol. I heard two or three words cursing in there. I did not hear a woman scream in there. I didn't hear a woman holler. I didn't look up in there to see who was in there and I don't know who was in there. I don't know whether any girls were in there or not then. Nobody saw me back under there.

I guess the white boys seen me after I poked my head around. I never did see the girls.

Redirect examination:

There was a good deal of noise made by the train. I don't know exactly where the train was when the fighting first started, but it was on this side of Stevenson. That is the first I knew of any fighting.

There were a good many negro boys on that train that are not here now. There was a gang of them. I don't know what became of them. I don't know anything about them at all.

WILLIE ROBERSON, one of the defendants, having been duly sworn, testified as a witness for the defendants as follows:

Direct examination:

My name is Willie Roberson. I live at Memphis, Tennessee. I had not known any of these boys before that day I met them on the train. Ozie Powell and I got on the train together at Chattanooga. I met Ozie Powell in Chattanooga. He got on one end and I got on the other. I was by myself when I got on the train at Chattanooga. I don't know what became of Ozie Powell. He got on one end and I got on the other. After I got on the car I stayed where I got on it, between two box cars and after it stopped at Stevenson I walked back and got in an empty box car by myself, the third car from the caboose. I got on a log car, a flat car, when I first got on at Chattanooga. That car [fol.32] had a lot of logs on it. Then I rode until it stopped, and after it stopped I walked back down and got in a box car and laid down. I continued to stay in the box car until I was taken off the train at Paint Rock. I did not see the other boys on the train going down. I did not see but one, and that was Ozie Powell, and I saw him when I first got on the train in Chattanooga. I did not see any other negroes on the train until I was taken off at Paint Rock. I did not know anything about the fight. I did not know there had been a fight on the train until I was told about it at Paint Rock. I am the boy that the doctor testified was suffering from syphilis and gonorrhoea. I went to Atlanta to the Grady Hospital for that. I have had that trouble four months. They did not take me in the Grady Hospital. They asked me if I stayed in Georgia and I told them no, sir, and he told me to come in and they would give me a treatment for gonorrhoea and syphilis.

They said they could not take me in Atlanta because I wasn't registered there. I suffer now from both diseases, syphilis and gonorrhoea. I have chancres. They are swollen and sore. I could not have intercourse. I am in such shape that I could not have intercourse. I exhibited my person to the doctor yesterday. That trouble I have is painful. It pains and hurts me all the time. I was sick on the train, lying down in the box car. I was in the box car from the time I left the flat car until I got to Paint Rock. A man came in and threw a pistol on me. I was not armed in any way. I did not have a pistol. I did not have a knife. The officers did not find a pistol or knife on me. I knew about none of these other negroes except Ozie Powell.

The reason Ozie could not find me on the train was because I was in a box car, in there lying down on one end. There was something the matter with my privates down there; it was sore and swelled up. It hurt me to walk. I can not lift anything. I am not able to have sexual intercourse. I couldn't have.

Cross-examination:

My name is Willie Roberson. I just met Ozie Powell in Chattanooga.

I am the one that had syphilis and gonorrhoea too. I didn't hold the other little girl's legs while the other one ravished her. I did not hold her legs open and say "Hold your durn legs open." I did not take my hands and pull her legs apart for two of them while two ravished her. I swear that I did not do that. I was traveling in a box car when they arrested me in Paint Rock. They took me out of a box car. I never saw any of the other negroes anywhere along there. I went in the box car after it stopped [fol. 33] there. I was feeling bad and I walked back down there and got in the box car and stayed there all the time. I am not the one that held her legs open while two of the other negroes had intercourse with her.

ANDY WRIGHT, one of the defendants, being first duly sworn, testified:

Direct examination:

My name is Andy Wright. My home is in Chattanooga, Tennessee. I have lived there all of my life. I drive a

truck for the B. L. Tally Produce Company there; he is a wholesale produce dealer. I am nineteen years old the 23rd day of this month. I got on this train at Chattanooga. Haywood Patterson, Roy Wright and Eugene Williams were with me. Ozie Powell nor Willie Roberson was with us. I had not seen them in Chattanooga. I did not know they were on the train; I did not find out they were on the train till after I got to Paint Rock. I boarded an oil tank car, and stayed on that car until the train was going into Stevenson. I got off the train at Stevenson. When I got on the train again, I got on a gravel car, and at that time Eugene Williams, Roy Wright and Haywood Patterson *with* with me. There was nobody in the gravel car at that time but just we foud boys. The gravel car was a gondola; there were six or seven of them in the train. They were not all in line, about four in line and them some others, and then box cars in between the gondolas. I did not see any girls. I saw some fighting between those colored boys and the white boys; I saw some hop off; I heard a boy hollowing and went to see what was the matter with him, and he told me to help him and I caught him in the belt and picked him up and helped him back on the train; that was a white boy. I did not see any girls in that car; I did not see the girls. I do not know whether there were any other negroes on the train other than those I was with.

I saw some negroes getting off of the train after I saw the white boys getting off. Those negroes are not here in court. I do not know how many got off the train; three got off before we got to Scottsboro, and then I saw two get off a little below there. The train did not stop at Scottsboro. I did not have a pistol or knife on me. The officers searched me at Paint Rock, but did not find any knife or weapon of any sort on me.

I did not have intercourse with a woman on that train.

I did not even see a woman on the train; I saw them after I got to Paint Rock; I saw two there, the two women [fol. 34] who are here in the court. That is the first time I had seen them. I had nothing whatever to do with them. I did not hit any of the white boys; I was not engaged in the fight. All I did was to reach out and help pull a white man back up in the train. I do not know how many white men left the train; I do not know what started the fight.

Cross-examination:

My name is Andy Wright. I saw the woman sitting over there in Paint Rock; I never saw her before I got to Paint Rock. I did not see that woman; I did not ravish her or curse her. I did not say to her, "God damn you, if you hadn't been so damn smart and fought like you did, we wouldn't have bothered you." I did not tell her, when I got through ravishing her, "Yes, you will have a baby after this." I did not have any such talk as that; I swear that I was not in that car where the women were; I never saw this woman; I never had any talk like you stated, none at all. I will stand on a stack of Bibles and say it.

OLEN MONTGOMERY, one of the Defendants, being first duly sworn, testified:

Direct examination:

I am Olen Montgomery; I live at Monroe, Georgia. I got on the train in Chattanooga, on an oil tank. I was alone; no one was with me. I did not see any other negroes on the oil tank; I was the only one there where I was. I stayed on that car from Chattanooga to Paint Rock; I did not see anything of this fight; I did not know anything about it until I got to Paint Rock. I did not know there were other negroes on the train. I was not acquainted with any of the other boys at that time. The only acquaintance has been since I was arrested. I did not know women were on the train. I did not have anything to do with raping those girls; I had not seen them. If I had seen them, would not have known whether they were men or women; I cannot see good. I first saw them at Paint Rock. I did not see any of the other boys on the train because I was away back the seventh from the end. I was on an oil tank car. I do not know how many oil tank cars there were in the train; I saw four. I do now know how many cars there were in the train, about forty cars. The tank car on which I was riding was away back at the lower end of the train, the seventh from the end. I do not know where the gondola was that they were fighting in; I did not see in it and was not in the gondola.

[fol. 35] Cross-examination:

I did not know any of the boys. I live at Monroe, Georgia, forty-eight miles below Atlanta. I was going to Memphis. I left my native town on Tuesday before, I came to Atlanta. I was going to a clinic hospital in Memphis, to have my eyes worked on. I did not know of any these boys on the train; I was just on the oil tank. I reckon I could be seen on the oil tank; I did not see anybody on that oil tank. I rode all the way from Chattanooga to Paint Rock on that tank. I did not get off at Stevenson. I did not see any negroes or boys pass my car. I did not see anybody at Stevenson. I just stayed on there and went on to Paint Rock, and they took me off that oil tank when the train reached there. There were six cars between me and the caboose of that train. I do not know how many were between me and the engine, but a good many. I did not see the gondola that they claimed the fight was in when I got to Paint Rock. I did not see any of those boys up there at Stevenson; I did not see them walking along the track or anything. I can see the woman sitting over there. I will swear to the jury that I never saw that woman before. I am not one of the boys that ravished her on that occasion; I did not have anything to do with it. The negro, Willie Roberson, did not hold her legs while I raped her in that gondola car; I did not have anything to do with her.

I did not hear any shooting or any cursing on that train. I heard the brakeman and conductor talking back there at the caboose. They could have seen me if they had tried to do so. I do not know whether they saw me or not. I was back there alone. I did not have anything to do with those girls.

EUGENE WILLIAMS, one of the Defendants, being first duly sworn, testified in his own behalf, as follows:

Direct examination:

I am Eugene Williams. My home is at Chattanooga, Tennessee. I have lived here all of my life. My parents work there. I do not work there. I live with my parents. I was going to Memphis, Tennessee; just going over there

to be going, just riding. I had been to Memphis before; I have been there two or three times, and I was going back over there just to be riding. I was with Andy Wright, Haywood Patterson and Roy Wright when I caught the train. I do not know this Roberson boy or Ozie Powell. I do not know when they got on the train.

[fol. 36] I got on an oil tank. I did not see Olen Montgomery. I do not know him. I did not see him or know that he was on the train until after I got to Paint Rock. The oil car on which I got was pretty close to the cab of the train, that is the *rail* end of the train. The gondola where the fight started was not so very far from the car that I boarded. I stayed on this oil car until we got to Stevenson. I got off the train there, and the other boys with me also got off the train there. I had not joined any other boys on the train before I got to Stevenson; I had seen some boys sitting on the side of a cross-tie car. I do not know how many of them there were, about seven or eight. They were still on that flat car when the train left Stevenson. I did not go to the flat car where they were. I went over in this gondola when the train left Stevenson. There was nobody in there when we went over there. After we got in there, some others came over the top going toward the engine. I had come over the top of the box car down into the go-dola. There were no others in this car when we went down there except we four. There were no girls in there at all. I did not see any girls until we got to Paint Rock. A fight took place there in the gondola; we fought those white boys. I do not know how many white boys there were, about seven or eight. There were eight or nine of us boys. The girls were not in there. I did not see the girls at all until we got to Paint Rock. No shooting took place in that car; I did not hear any shots fired. One boy had a gun, a long tall, yellow boy with duck overalls on. He and two other boys jumped off the train. About five or six boys that were not arrested left the train; five or six got away. I had a knife; it was like that man had there; that was my knife. I did not use that knife in this fight, but kept it in my pocket. I was in this gondola car when I was arrested at Paint Rock. We started up toward the engine and saw a crowd down there with guns and things. I do not know whether they had the girls down there at that time. When

we got up to the depot, a man came running up there and said we raped those girls.

I had not done anything. I had not seen them until we got to Paint Rock. Olen Montgomery was not with us; I reckon he was by himself. I had not seen him. The names of the boys with me were Andy Wright, Roy Wright and Haywood Patterson; I was with them; they are the only defendants I saw; I got on the train with them. Some of the boys are over there that were fighting down in that car, but I did not see Olen Montgomery, nor did I see Roberson. I did not see him until we got to Paint Rock. I saw Ozie Powell. He helped to fight the boys but he did not touch [fol. 37] the girls. Andy Wright helped to pull one of the boys back up on the train; he was just helping him back on the train to keep him from falling off; I did not see anybody rape the women on the train. There were a good many negroes on that train, a right smart of them. About five or six left the train.

Cross-examination:

The train did not make a stop between Stevenson and Paint Rock. They jumped off of the train while it was running. I had that long knife that you (Solicitor) had this morning. (Witness is handed knife.) This is my knife. I did not lend it to anybody. I did not rape any girls.

I did not rape that one over there. I did not hold this knife at her throat while anyone raped her. I did not see anything of that kind.

This is my knife. The man down in Paint Rock took it off of me. He got it off of me. I did not lend it to anybody else. I kept it all the time in my pocket. I did not have this knife at that girl's throat while the other negroes raped her.

Here the defendants rested their case.
Defendants rest.

Rebuttal Evidence—State

VICTORIA PRICE, a witness for the State, being called in rebuttal, testified:

Direct examination:

I saw the negro that was just on the witness stand. (Witness is handed a knife.) I have seen this knife before. I saw it in the hands of two of the boys; one of them is the big boy sitting over there (indicating) and that one just now on the stand. The big one sitting over yonder (indicating) is the first one that had the knife, and the last one in the — also had it. The last one in the chair raped me; that was Eugene Williams. After he raped me, he gave the knife back to the big boy and he commenced holding it to throat, and held it there while Eugene Williams raped me. This is the knife, and those are two that raped me.

Cross-examination:

My companion and I have been held in jail since the 25th of March last month; her name is Ruby Bates. We have been in confinement here in jail ever since. I have gone to [fol. 38] the Doctor's office and to the barber shop with the deputies, with Mr. Wann here and with Mr. Charley. They keep us locked up at the jail, both of us locked up there.

Redirect examination:

On Monday, Mr. Wann took us to the drug store. We were only kept there for the purpose of being a witness in these cases. There were no charges against us. We were in the run-around of the cell. We go out in the hall or in the nurse's department of the jail. We are not confined down there.

WILLIE ROBERSON, a witness for the Defendants, being recalled by the State, testified:

Direct examination:

I have testified that I was sick; I am suffering with syphilis. I went up in a box car; that box car was just in front of the caboose, the third car from it. I got in the car on the right-hand side going toward Paint Rock. The door was not open; I went there and pushed it open; it was closed. I crawled in the car and lay down. I did not go to sleep; I

was suffering. I pulled the door half way to as I went in.

One door was pushed back and I left it half open. When I got to Paint Rock, I was taken out of that door. I do not know whether it was the officers who took me out or not; it was white men that took me off at Paint Rock. They got me out of that car; I did not jump off of that gondola and run. A man right behind a sand pile up there did not put a gun in front of me and tell me to stop. I did not apologize for running nor tell him that anybody would run under the circumstances; I did not do that. The door was half open all the time.

C. M. LATHAM, a witness for the State, being called in rebuttal, testified:

Direct examination:

I am a Deputy Sheriff down at Paint Rock. I saw Robertson that day at Paint Rock. I was on the West side of the train as it came into town; I was not on the East side. When I first saw this negro, he was up in the bunch and had his hands up. He was up there at the front of the train. I was not on top of the train, but was on the ground.

TOM TAYLOR ROSSEAU, a witness for the State, being called [fol. 39] in rebuttal by the State, testified:

Direct examination:

I suppose that I was deputized to assist in the arrest of these negroes down at Paint Rock; I was asked to go with them. I was on the left-hand side of the train the way it was going, which would be on the left hand side of *the train the way it was going, which would be on the left hand side*, or West side, as it came into the town. I did not see any doors open on the West side; I do not know about the East side; I was not on that side. When I first saw this negro here, the one on the end in front, he was up close to the engine on the train. He was between the gondola and the engine. They all came out of the gondola, going toward the engine, running on top of the freight train. I saw him

between the gondola and the engine; that was before the train stopped. They started coming out when the train came around the curve right below town and I could see them that far; that is the first I saw of him.

Cross-examination:

I recognize the defendant as the man I saw when the train was coming around the curve. They were all on there. All of them came out of the gondola. I reckon they all did. They could not have been stuck on there anywhere else; there was nothing else for them to get in. There was nothing open on the West side of the train for them to have been in. There was only one got off any way back there and he got off about as far as the back end of the court room right below me. We got them off of the train; we took them all off in a bunch. We took off eight on our side and the other one was taken off on the East side. He got off one car below me, I think. They were all scattered over about three box cars on this train. I did not count the number of cars in this train; it was a pretty reasonably long train; it wasn't so very short and wasn't so very long, between thirty-five and forty cars.

MR. BRANNON, a witness for the State, being called in rebuttal, testified:

Direct examination:

I was one of a number of citizens who assisted in the arrest of these negroes down at Paint Rock the other day. I was on the right-hand side of the train as it came into Paint Rock; that is what we call the East side. I think that I saw that negro over there on the corner, on the end of the front row, on the top of the gondola car.

[fol. 40] He got off the train on the opposite side from me; I do not know who arrested him. I was watching the train as it came in; -here were no box car doors open on the right-hand side; none of them was open. I was looking for an open box car and came back up the train and none was open. The first time I saw this negro over there he was sitting on an old oil stove up there by a brick building. He was already off of the train at that time. He got off the

front part of the train, just ahead of the gondola the girls were in; I saw him getting off. He was not *a* inside of any box car; he was not inside a box car there.

Cross-examination:

There were box cars on the train. I don't know whether they were sealed, empty or what; I did not pay any attention to whether they were loaded or not. I gave a little attention to the boy who got off on my side of the train; it was my intention to get every negro off of the train; that was what the wire said. I could not be absolutely positive about where I got that particular boy; I can pick out the boy I arrested.

I could swear positively that he was riding on the gondola; he got off that; he passed by me on top of the train. I could not say just where he had been riding, but that is where he was when I saw him. I saw him about the time the train passed the depot. I did not get on the train before it stopped; it was slowing down some when I saw it. I do not know whether this boy was walking or crawling on top of the trains; he was on all-fours. I do not know how many negroes I saw; I did not count them. I would think that all the negroes are now in court. We looked the train over and got the bunch that was on the train. I know how many we took off the train. At the time I saw them, I could now tell how many there were of them. When I first saw them, they were something like one hundred and fifty or two hundred yards or something like that, from me. At that time, I saw him begin to get up and as he passed me, they were all crawling, some on all-fours and some looked like they were trying to get off; that was near the front of the train. I was on the east side of the train. I do not know but just one certain officer that assisted in making the arrests; I was not an officer, but was deputized to assist. I know two that were deputized, myself and another man.

MR. KEEL, a witness for the State, being called in rebuttal, testified:

Direct examination:

I was down there at the time the freight train came into [fol. 41] Paint Rock. I was on the side-hand side as it was

going toward Huntsville; that is what is known as the East side. I was not instructed to look specially for open doors of box cars; I was instructed to look for negroes on there, and naturally was looking for them to be in box cars.

I have seen the negro Roberson; I saw him after we got them up town; I don't remember seeing him down on my side of the train. I did not see an open door in any box car on my side of the train; I did not get any negro out of any box car. I did see a bunch of negroes on the gondola; I did not know one from another. I did not see anybody get a negro out of a box car on my side of the train, and I was there until they got all of them.

MR. GILLEY, a witness for the State, being called in rebuttal, testified:

Direct examination:

I am a son of Sim Gilley that used to live in the upper end of this county. I now live at Albertville, in Marshall County. I was one of the boys on that train that day. I saw all the negroes in that gondola. The one on the end there was in the gondola.

Counsel for the State asked the question:

Q. How many in that row there, look at that row of five sitting on the front—Get up and walk over there if you cannot see them?

Counsel for defendants, separately and severally, objected to the question, because it was immaterial, irrelevant, illegal and incompetent and because it was a reopening of the case, which objection was overruled, to which ruling the defendants, separately and severally, duly and legally reserved an exception.

The witness answered: I saw those five in the car.

The Witness (continuing): I saw every one of those five in the gondola.

Counsel for the State asked the question:

Q. Were the girls in there?

Counsel for defendants, separately and severally, objected to the question, because it was immaterial, irrele-

vant, illegal and incompetent and because it was a reopening of the case, which objection was overruled, to which ruling the defendants, separately and severally, duly and legally reserved an exception.

The witness answered:

A. Yes, sir.

[fol. 42] The Witness (continuing): I saw all five of them in that gondola.

The above and foregoing was the evidence and all the evidence adduced upon the trial of this cause.

Thereupon, after the close of the testimony, the court inquired of counsel for the State whether he desired to argue the case to the jury to which he replied in the affirmative, and, upon a like inquiry being propounded to counsel for defendant, a negative answer was given, whereupon the court stated to counsel for the State, "Well, go ahead to the jury."

(Argument to jury on behalf of State)

Thereupon, at the close of the opening argument of the State to the jury, the court inquired of counsel for defendant whether defendant wished to argue the case to the jury, and upon a negative answer being given thereto, asked counsel for the State whether the State wished to further argue the case to the jury, the reply being in the affirmative, counsel thereupon objected, separately and severally to further argument to the jury on behalf of the State, which objection was overruled, to which ruling of the court, the defendants, separately and severally, duly and legally reserved an exception.

(Argument to jury on behalf of the State.)

Thereupon, upon the conclusion of the argument on behalf of the State, the court charged the jury orally as follows:

CHARGE TO JURY

GENTLEMEN OF THE JURY: The indictment in this case charges nine defendants jointly, I believe, with the offense

of rape; only five are on trial before you at this time, that is Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery. The others are not on trial before you at this time, only the five I have named.

The State charges that these defendants, together with others, some time ago, while on a freight train passing through this county, that they forcibly ravished Victoria Price a woman, against the peace and dignity of the State of Alabama.

In answer to this indictment, gentlemen of the jury, the defendants, each of them, plead not guilty. That puts the burden of proof on the State to satisfy you of the matters [fol. 43] set out and the charges made in this indictment, beyond a reasonable doubt, before you can convict these defendants, or any of them. Our law sets out what it takes to constitute rape, gentlemen of the jury, and it is as follows:

“To sustain an indictment for rape proof of actual penetration is sufficient when the act is shown to have been committed forcibly against the consent of the person assaulted.” Rape, in short, is where carnal knowledge is performed by a male against a female, or on a female when it is done forcibly and against her consent, then, under our law, gentlemen of the jury, that is rape.

The state charges that these defendants, as I stated to you a while ago, in company with several others, went into a freight car that was a part of a train going through this county, sometime ago where this prosecutrix was, together with another girl, and that these defendants there in conjunction together forcibly and against the will of this Victoria Price had intercourse with her; insists that while one was having intercourse forcibly and against her will, that these others were also in connection there with them having intercourse at the same time, or that they aided and abetted each other in the performance of that offense.

As I said awhile ago, the defendants plead not guilty, and that puts the burden of proof on the State, of course, to convince you of their guilt beyond a reasonable doubt, before they can be convicted. If one is guilty, or if two or three are guilty, and the others are not, were not there aid-

ing and abetting and helping the others to commit the offense, then they would not be guilty.

How that was, gentlemen of the jury, is for you to say and for you to pass on. If they were all there aiding and abetting each other in the performance of that act, and it was committed, and if it was committed by them, or either of them, and they were all together aiding and assisting in the commission of the crime, then they would all be equally guilty, whether they all had intercourse or not. If, however, any one of them, or any of them, or several of them, took no part, did not aid or assist others in the commission of the offense, did not have anything to do with the girls themselves, made no assault on them, or have anything to do with them, the fact if they were there if they were not there for the purpose of aiding or assisting in the offense, or having carnal knowledge of these women, of course, they would not be guilty. How that is, gentlemen of the jury, is for you to settle.

[fol. 44] If a man is guilty, and you are convinced of it beyond a reasonable doubt, then it would be your duty to so find. If, from the testimony, you are not convinced of the defendants' guilt, or any portion of them, then it would be your duty to acquit them. In other words, gentlemen of the jury, it is a question for you to settle.

The testimony comes to you, and you are the sole judges of it; you have heard the witnesses, the parties, and the defendants testify; you have seen them on the witness stand, and you take their testimony and weigh it, says our law, in the light of the interest of the parties or the lack of it, their reason for knowing or not knowing the facts about which they testify, and from all that, gentlemen of the jury, take the testimony and revolve it in your minds when you get to your jury room and endeavor to do what is right and just between the State on one side and the defendants on the other, and let your oaths as jurors bind you in the performance of your duty in this case.

As I said to you before, gentlemen of the jury, this is a matter in which I have nothing to say; it would be improper for me to intimate in the slightest what I think of the testimony or the testimony of any witness, or any part of it; that is improper on my part. You are the sole judges of the testimony from start to finish, and you take this case

and you do what you think is right and proper as good, law-abiding citizens.

If the defendants are guilty, and you are convinced of it beyond a reasonable doubt, it is your duty to return a verdict to that effect.

If they are not guilty, it is equally your duty to acquit them.

Every man, gentlemen of the jury, comes into court with the presumption of innocence in his favor, and these five defendants on trial before you now come into this court with the presumption of innocence in their favor, and that presumption remains with them throughout the trial of this case and till you are convinced from the testimony of their guilt beyond a reasonable doubt. Not beyond every doubt, but beyond all reasonable doubt, gentlemen of the jury, is the rule.

Now, you take the case and take the testimony and go to your room and do what is right and just between the State, as I said to you a while ago, and these defendants.

Gentlemen of the jury, under our law, — is punishable by death or by imprisonment in the penitentiary of this State for not less than ten years. The indictment, gentlemen of [fol. 45] the jury, by implication of *of* law also covers the lesser degree of an assault, or of an assault with intent to rape. If you are not convinced of the defendants' guilt of the higher offense you may, under this indictment, and it is my duty to outline and tell you this, the law is that you may find them guilty of an assault with intent to rape, or find them guilty of an assault and battery. The punishment for an assault with intent to rape is not less than two or more than twenty years, and for an assault and battery, a fine of not more than five hundred dollars.

The form of your verdict, gentlemen of the jury, I will give you the forms in the respective offenses charged and covered by this indictment.

If you find them guilty of the higher offense, as charged in the indictment, this is the form of your verdict: "We, the jury, find the defendants guilty of rape, as charged in the indictment, and we fix their punishment at death or at imprisonment in the penitentiary for"—so long, not less than ten years. If one is guilty, or more than one is guilty, of the higher offense, and the others are not guilty, from the testimony in your judgment beyond a reasonable

doubt, why, then you may find them guilty of whatever offense in your judgment is proven beyond a reasonable doubt. The punishment may be the same for all, or it may be different for the different defendants; that is another matter that comes to you to settle. You may find them all guilty of the higher offense, and you may fix their punishment at the same, or you may fix the punishment differently for each one of them; that is for you to settle.

The same in the next offense of an assault with intent to rape.

The punishment, gentlemen of the jury, you have nothing to do with that; you may find some guilty of the higher offense, and some guilty of the lower offense of an assault with intent to rape, or in that you may find some guilty of the higher offense and some of the lower offense, and some of the other charges of assault and battery. Gentlemen of the jury, if they are not guilty of any of the charges under this testimony, if you are not convinced of it beyond a reasonable doubt, then they are not guilty, and the form of your verdict is: "We, the jury, find the defendants not guilty."

I don't know whether I gave you the forms or not: "We, the jury, find the defendants guilty of rape, as charged in the indictment, and we fix their punishment at death or at imprisonment in the penitentiary for"—any number of years, not less than ten.

[fol. 46] Under the second charge I outlined to you, or the second offense of assault with intent to rape, it is: "We, the jury, find the defendants guilty of an assault with intent to rape, as charged in the indictment, the defendant or defendants," or "We, the jury, find the defendants guilty of an assault and battery, as charged in the indictment, and assess a fine against them of"—so much, or "We, the jury, find the defendants not guilty".

It means you may find there is a scale; you have five defendants on trial before you; if you don't find a verdict as to all for the same thing, then you designate which defendant for this or for that offense; or, in other words, if you find a different verdict as to some and different as to other-, then you state: "We, the jury, find the defendant, so and so, guilty of, so and so, and the defendant, so and so (naming them) and the offense, so and so, then it would take a separate verdict: "We, the jury, find the defendant, so and so (naming him) guilty of some offense I have out-

lined to you, and fix his punishment at"—whatever it is; it is for you to say, gentlemen.

Gentlemen, that is this case.

Thereupon, on the 9th day of April, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a motion to set aside the verdict and to grant the defendants a new trial, which said motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

EUGENE WILLIAMS, OLIN MONTGOMERY, ANDY WRIGHT, OZIE
POWELL, WILLIE ROBERSON

MOTION FOR NEW TRIAL

Comes the defendants and moves the court to set aside the verdict of conviction in this cause for that:

1st. The Court was in error in refusing to grant the petition of defendants asking for a change of venue and removing this cause to another county.

2nd. The defendants allege that before this trial came the jurors before whom they were tried were around and about the courtyard at the time the jury reported the death sentence in the case of Clarence Norris and Charlie Weems. That at same time of said report of said jury there occurred [fol. 47] a tremendous demonstration in the court room loud enough to be heard a block away. That immediately the same demonstration by clapping of hands and yells occurred on the outside of the court room and in the court house yard where the jurors who tried the defendants could have and did hear it. That such conduct was liable to have influenced the jury in this cause.

Rody & Moody.

[File endorsement omitted.]

On the 6th day of May, 1931, the defendants separately and severally filed in said cause and spread upon the motion

docket of said court an amendment to the foregoing motion for new trial, which said amended motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

EUGENE WILLIAMS, OLIN MONTGOMERY, ANDY WRIGHT, OZIE POWELL, WILLIE ROBERSON, Defendants

AMENDED MOTION FOR NEW TRIAL

Comes the defendants named in the above styled cause, Eugene Williams, Olin Montgomery, Andy Wright and Willie Roberson, by their attorneys and move the court to set aside the verdict of the jury and to grant them a new trial and for cause of new trial assigns the following reasons and causes separately and severally:

1

Because the court erred in refusing to grant the petition of the defendants asking for a change of venue and removing this cause to another county.

2nd

Because the defendants allege that before this trial came before whom they were tried were around and about the court yards at the time the jury reported the death sentences in the case of Clarence Norris and Charlie Weems; that at same time of said report of said jury there occurred a tremendous demonstration in the Court room loud enough to be heard a block away; that immediately the same demonstration by clapping of the hands and yells occurred on the outside of the court room and in the court house yard where jurors who tried the defendants could have and did hear it. That such conduct was liable to have influenced the jury in this case.

[fol. 48]

3rd

That there is no evidence to support the verdict of the jury and the evidence preponderates against the verdict of the jury in this case.

4th

That a new trial should be granted because the defendants were not given a fair and an impartial trial as contemplated by the Constitution of the State of Alabama, and the laws of the State of Alabama in such cases made and provided. Section 6 of the Constitution of the State of Alabama provides, "That in all criminal prosecutions, the accused has a right to be heard by himself and counselor either; nor be deprived of life, liberty or property except by due process of law; etc. etc."

5th

A new trial ought to be granted because the rights of the defendants under the Fourteenth Amendment to the Constitution of the United States which reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of the United States; *not* shall any state deprive any person of life, liberty, or property, without due process of law," and these defendants are about to be deprived of their lives in violation of their rights under this provision of the Constitution because they were not given a fair and an impartial trial before a fair and impartial jury, free from excitement, free from indignation, and free from personal demonstrations against the defendants, and that such a demonstration occurred only the day before these defendants were placed on trial and while they were in the court house awaiting trial in this case, when the jury reported its verdict in the case against Norris and Weems.

6th

A new trial should be granted because the court failed to interrogate the jurors as to whether or not they held racial prejudice against the defendant on the ground that they were negroes, and the court should have *expalined* to the jury, that the defendants held certain legal rights under the Constitution of Alabama to sit on juries as a matter of law, and that while all negroes had been excluded from the jury box in Jackson County and none were summoned to sit on the jury trying the defendants, that equal and exact justice should be done to all persons in court irrespective of the race, color, creed, and irrespective of the charge

made against them. The defendants' rights were violated in this regard, and this was error.

[fol. 49]

7th

A new trial should have been granted because the Court refused to continue this case, on application of the defendants at the time it was called for trial.

8th

A new trial ought to be granted because the punishment imposed upon these defendants, in view of their ages, is too harsh, cruel and inhuman.

9th

A new trial ought to be granted because they were not given reasonable time to engage attorneys and to prepare their cases for trial, and in this way they were denied their legal rights to a fair and an impartial trial before an unbiased jury where they could present their evidence and show their innocence of the charges made against them.

10th

A new trial ought to be granted because of the fact that it was necessary to call out the militia officers and men in order to guard the court house to prevent violence towards the defendants and to preserve order at the trial, with machine guns and rifles, such weapons as are used in warfare.

11th

A new trial should be granted because the court failed to grant a special venire or special jury on motion of their attorneys when the case was called for trial.

12th

A new trial should be granted because of the matters set out in Exhibit No. 1, attached hereto, containing the testimony and the proceeding preliminary to the trial of Clarence Norris and Charlie Weems, with the motion for a change of venue and for a continuance and for a special venire, which proceedings and testimony is made a part

hereof as fully as if copied herein, and is desired to be made a part of this motion with the same force and effect as if set out and copied here in full.

G. W. Chamlee, Attorney.

EXHIBIT No. 1

To motion for New Trial in Case State of Ala. vs. Eugene Williams, Olin Montgomery, Andy Wright, Ozie Powell, and Willie Roberson

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION, 1931

[fol. 50]

STATE OF ALABAMA

vs.

CHARLIE WEEMS and CLARENCE NORRIS, alias CLARENCE MORRIS

Appearances:

H. G. 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 9th 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 al., 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 appears 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 counsel I appoint, but, I would not appoint counsel if you are

appearing for them, that is the only thing I am interested in—I *would* 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 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 [fol. 51] the purpose of arraigning the defendants and then of course I anticipated them to help 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 all 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 is 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 proposes 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, yet 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—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 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 no body I am interested in had me to come down here and has put up any fund of money to come down here and pay counsel. If they should do it I would be glad to [fol. 52] turn it over to counsel but I am 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 *w*poken 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 as 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.

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 any thing 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——

[fol. 53] 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 recognized 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 on the other side in the prosecution, and I though- under the circumstances I was. I am not trying to shirk my 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 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 shirk my 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 those 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. I am ready to do whatever the Court thinks is proper thing to do.

The Court: I will leave that with the attorney 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 assistance they will go ahead with me in trial of these cases.

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?

[fol. 54] 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 reasonable 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 this newspaper article, no affidavit attached and no witnesses in support of this. Now, we first object to the filing and the consideration of it. If your Honor 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 some time 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 we 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 [fol. 55] 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 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?

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:

[fol. 56] 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. Not any higher here than in any adjoining counties.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

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 population 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 any thing 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 courthouse?

[fol. 57] A. Yes sir.

Q. And there is a great throng around the 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 De Kalb.

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 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.

Q. Have you *have* five units of the state militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Moody: 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 defendants?

A. 107 enlisted men.

Q. How many units of 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?

[fol. 58] 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 P. M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been 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?

A. That 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 court house?

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.

[fol. 59] 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.

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 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?

[fol. 60] Mr. Bailey: No, sir, we don't care to offer anything further; now was our objection to the newspaper article 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.)

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.

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.

[fol. 61] 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 this 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 can 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 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 witness 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. Amos, 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 these witnesses?

Mr. Roddy: 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.)

[fol. 62] 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 I might simplify these matters, I want to be of all the help I can with the Court and every one concerned but there are some very material facts in the case, I have no motive in this world in appearing down here except to get the absolute truth about this matter and if your Honor will indulge me a few minutes—

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. Roddy: 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 plead not guilty thereto.

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

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION,
1931

No. 2402

STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE
MORRIS

[fol. 63] EXHIBIT TO AMEND MOTION FOR A NEW TRIAL,
SECTION 12—Above

Appearances:

H. G. 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 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 deefndants 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 counsel I appoint but I would not appoint counsel if you are appearing for them that is the only thing I am interested in—I would like 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 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—

[fol. 64] 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 is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga—

Mr. Roddy: I see his situation of course and I have not run out of anything yet, of course if Your Honor proposes 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 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 certainly I haven't any money to pay them and nobody I am interested in had me *on* 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 [fol. 65] 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 — 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 under-

stand 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.

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 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 could 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.

[fol. 66] On the 6th day of May, 1931, the defendants, separately and severally filed in said cause a petition, which said petition is in words and figures as follows, to-wit:

No. —

IN CIRCUIT COURT OF JACKSON COUNTY

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als., Defendants

PETITION OF CLAUDE PATTERSON ET ALS.

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

The petitioners, Claude Patterson, Ada Wright, and Mamie Williams most respectfully show unto the court that Claude Patterson is the father of Haywood Patterson, and that Ada Wright is the mother of Roy Wright and Andy Wright, and that Mamie Williams is the mother of Eugene Williams and that these petitioners employed George W. Chamlee, attorney-at-law, of Chattanooga, Tennessee, to represent their boys in the case of the State of Alabama v. Haywood Patterson et al., pending in the Circuit Court of Jackson County, Alabama, and which they desire to be appealed from that court to the Supreme Court of the State of Alabama, in the event a new trial is not granted Haywood Patterson, and if a new trial is granted for him, the 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 Scotts-

boro, Alabama, and that they had not employed any other attorney and they had not authorized any other attorney to present 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 jail stated to these petitioners that they had likewise signed such contract and that they wanted Mr. Chamlee as their counsel, but there was no time on this occasion to *to* make any reasonable [fol. 67] 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 whatever 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 near Montgomery, Alabama. Petitioners then set about planning to have their attorney visit these defendants at Kilby Prison at Montgomery, Alabama, 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 -his 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 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 [fol. 68] 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 hearing of a motion for a new trial ought to be continued from May 6th, 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 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 [fol. 69] 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 he was utter helpless, at and 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.

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 [fol. 70] son, 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

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 this the 19th day of May, 1931, the defendants separately and severally filed in said cause, in support of their motion for new trial, the following affidavit:

IN CIRCUIT COURT OF JACKSON COUNTY, ALABAMA

No. 2402 and 2404

THE STATE OF ALABAMA

vs.

[fol. 71] HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE MONTGOMERY, ANDY WRIGHT, OLEN MONTGOMERY, EUGENE WILLIAMS

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

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 25th, 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 witness 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 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 [fol. 72] of Scottsboro and not long thereafter the Hosierey 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 unofortunate 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, and the effect upon the jurors could not help but *to* adverse to the defendants 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 [fol. 73] 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 and adversely affected the defendants and necessarily denied to them a fair

and impartial trial by free and unbiased and impartial 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 aver-ing that the proof of guilt was most po-itive and falsely alleging that some of the defend-ants or all of them had confessed their guilt, which was not true, but the public through Jackson County was made to believe that such were the facts, rendered an impartial jury 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, con-stituted 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 counsel retained by them or any one on their behalf au-thorized to make such retainer, nor was such counsel ap-pointed by the court as trial counsel, according to the rec-ord 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 ap-pointed as attorney for the defendants; he was, in fact, merely present 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. Moody 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 [fol. 74] 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 to 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 Scottsboro and to by force of arms disburse 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 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 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 the irresistible 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

[fol. 75] 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 his 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 known about it* they had no chance to have procured it and to produce it on the trial at 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 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, hostile and prejudicial newspaper 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 con-[fol. 76] firmed 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 to a white man under similar circumstances and that this prejudiced their rights in this case because from all that happened at Scottsboro 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 rights to select or to be consulted about selecting 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 *constitution* 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) Willie (his X mark) Robertson. (Signed) Charlie (his X mark) Means. (Signed) Eugene (his X mark) Williams. (Signed) Raymond (his X mark) Patterson. (Signed) Andy (his X mark) Wright. [fol. 77] (Signed) Clarence (his X mark) Norris. Ozie (his X mark) Powell.

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

[File endorsement omitted.]

EXHIBIT NO. 1 TO AFFIDAVIT OF THE EIGHT DEFENDANTS

STATE

vs.

HAYWOOD PATTERSON et als.

Special Session, 1931

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE 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 The 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 counsel I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in—I would—to know if you appear for them?

[fol. 78] Mr. Roddy: I would like to appear voluntarily with local counsel of the bar, Your Honor appoints; on account of 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 all 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 is, 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.

[fol. 79] The Court: I think you are right about it, Mr. Parks, and 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 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.

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 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 on the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk 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 shirk 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, this is a matter with counsel; I know nothing about those affairs.

[fol. 81] 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. 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 [fol. 82] 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 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, Solicitors; 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 we 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. D. WANN examined as witness on defendant' 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: You did call this National Guard unit to accompany the prisoners in court?

Mr. Wann: Today?

[fol. 83] 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. Not any higher here than in any adjoining counties.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

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.

[fol. 84] Q. I will ask you whether or not this county,— if it is your judgment or opinion from association among the

population of this county, if they could have a fair and impartial trial in this case in Jackson County?

A. I think *t-ye* 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 trials?

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 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 understand Major Starnes, or five.

[fol. 85] 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 defendants?

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-commission 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 *my* 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 been 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?

A. That 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.

[fol. 86] 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.