

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
AMERICUS DIVISION

HATTIE BRAZIER, widow of  
James Brazier, deceased,  
Plaintiff

Civil Action

v.

No. 475

W. B. CHERRY, RANDOLPH McDONALD,  
ZACHARY T. MATTHEWS, et. al.  
Defendants

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AT: AMERICUS, GEORGIA,  
OCTOBER 10, 1962.

- O R I G I N A L

CLAUDE JOINER, JR.  
OFFICIAL COURT REPORTER  
204 POST OFFICE BUILDING  
MACON, GEORGIA

PHONE 3-6136

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W. B. CHERRY, RANDOLPH McDONALD,  
ZACHARY T. MATTHEWS, SHIRAH  
CHAPMAN, HOWARD LEE and THE  
FIDELITY CASUALTY CO. of N. Y.,  
a corporation,

Defendants

Americus, Georgia

10:00 A. M.,

OCTOBER 10, 1962

Depositions of W. B. CHERRY, RANDOLPH McDONALD,  
Zachary T. Matthews, Defendants, and EUGENE MAGWOOD, each  
called by Plaintiff at Americus, Georgia, in chambers of  
U. S. District Court, beginning at hour and date above shown.

Depositions taken before Claude Joiner, Jr., Official Reporter  
of above Court, and Notary Public, Georgia, Bibb County.

A p p e a r a n c e s:

For Plaintiff: MR. DONALD L. HOLLOWELL,  
859½ Hunter St. N. W.,  
Atlanta, Georgia.

MR. C. B. KING,  
221 S. Jackson St.,  
Albany, Georgia.

For Defendants: BLOCH, HALL, GROOVER & HAWKINS,  
710 Walnut Street, Macon, Ga.  
MR. CHARLES J. BLOCH, of counsel.

MR. H. B. WILLIAMS,  
Americus, Georgia.

S t i p u l a t i o n:

Depositions taken by agreement of counsel for all parties,

1 with all formalities being WAIVED. Reading and signing of  
2 depositions waived by all counsel and by each witness. All  
3 objections, except as to form of question, RESERVED to the  
4 time of trial.

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5 MR. HOLLOWELL: What is your name, sir?

6 EUGENE MAGWOOD: Eugene Magwood.

7 MR. BLOCH: I didn't agree to take his testi-  
8 mony.

9 MR. HOLLOWELL: Well, he's here and we'll see.

10 MR. BLOCH: He lives within 50 miles of the  
11 place of holding court and there's no reason for taking  
12 his testimony.

13 MR. HOLLOWELL: What do you mean?

14 MR. BLOCH: I didn't agree to take his testi-  
15 mony; you didn't give me any notice of taking his  
16 testimony.

17 MR. HOLLOWELL: Well, I'll put it this way: We  
18 plan to take it.

19 MR. BLOCH: Well, I don't plan to take it.

20 MR. HOLLOWELL: You can be here if you want to.  
21 He's been subpoenaed and we plan to take it. All the  
22 witnesses have been sworn, haven't they?

23 THE REPORTER: Yes, all witnesses have been sworn.

24 MR. HOLLOWELL: I'll ask for the rule.

25 THE REPORTER: He asks for the rule, Mr. Bloch?

1 MR. BLOCH: These men are parties.

2 MR. HOLLOWELL: I mean that would exclude this man.  
3 (Eugene Magwood sequestered from hearing room) . . .

4 Let me see, what records do we have here,  
5 gentlemen? Do you have the records that we asked for?

6 MR. BLOCH: Mr. Cherry has a book and the  
7 Sheriff has a book, and that's all the records we have.  
8 What do you call this book, Mr. Cherry? That I just  
9 gave counsel?

10 MR. CHERRY: That is City jail log.

11 MR. BLOCH: City jail roll?

12 MR. CHERRY: Log.

13 MR. BLOCH: And Sheriff, what is this book  
14 we've got here?

15 SHERIFF MATTHEWS: That is the County jail log.

16 MR. BLOCH: Are those the only records that  
17 you all have in response to the notice that was given  
18 you by counsel?

19 MR. CHERRY: Yes sir.

20 SHERIFF MATTHEWS: Yes sir.

21 MR. HOLLOWELL: I presume, Mr. Bloch, that the  
22 objections are waived except as to form, I mean the  
23 usual objections waived; is that all right?

24 MR. BLOCH: Yes.

25 MR. HOLLOWELL: Plaintiffs call Police Chief,  
W. B. Cherry, on cross examination.

a Defendant, called as adverse party by Plaintiff, being first duly sworn, testified on

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q Let me see, you were sworn?

A Yes.

Q Officer Cherry, give your full name for the record?

A Weyman B. Cherry.

Q What does the "B" stand for?

A The "B" stands for Burchle.

Q Spell that, sir?

A B-u-r-c-h-l-e (spelling). . .

Q And that's Cherry like the fruit?

A C-h-e-r-r-y (spelling).

Q Mr. Cherry, where do you live presently?

A I live in Dawson, Georgia.

Q Do you have an address there?

A 807 Randolph Avenue.

Q And I believe you are presently the Chief of Police there?

A That's right.

Q Are you married?

A Yes.

Q Do you have a family?

A Yes.

1 Q What's the constituency of your family?

2 A I have a wife and two kids.

3 Q Are they youngsters or what are their ages?

4 A One 16 and one 8.

5 Q Male, female?

6 A One of each.

7 Q Which is which?

8 A The young one is the boy and the girl is 16.

9 Q Do you own your home?

10 A Buying it.

11 Q What other property do you own?

12 A None other than my car and furniture.

13 Q What kind of car do you drive?

14 A '57 Mercury.

15 Q Prior to working as Chief of Police, you were  
16 what, a patrolman?

17 A Patrolman.

18 Q A City patrolman?

19 A City patrolman.

20 Q When did you come into that office?

21 A The 1st of October, 1955.

22 Q What were you doing prior to that time?

23 A I worked at KeenanAuto Parts at Albany.

24 Q Were you formerly on the police department or a  
25 part of the police department in Albany?

1 A No, I've never worked police work anywhere except  
2 Dawson.

3 Q Have you ever done any detective work, private  
4 detective work?

5 A No.

6 Q What was your salary as a police officer?

7 A I believe it was \$200 a month; I believe that's  
8 right, at that time.

9 Q What is it as a Chief of Police?

10 A \$450.

11 Q And you became the Chief when?

12 A I believe it was June or July of '59.

13 Q Who did you supplant?

14 A Mr. Howard Lee.

15 MR. BLOCH: Who?

16 The Witness: Mr. Howard L. Lee.

17 Q Mr. Hollowell: You succeeded him?

18 A Yes.

19 Q In April of 1958 you were a police officer?

20 A That's right.

21 Q And Mr. Lee was the Chief of Police at that time?

22 A That's right.

23 Q Who kept the schedule of your working hours?

24 A Mr. Lee (Lee).

25 Q Do you have a record of the schedule of the

1 various persons who worked in the Police Department?

2 A No, we don't.

3 Q Don't you keep one on those policemen who are  
4 under your jurisdiction?

5 A We do now, yes.

6 Q You did not keep one back at that time?

7 A No, we just worked two shifts.

8 Q You worked two shifts?

9 A Yes.

10 Q What were those shifts?

11 A 5:00 to 5:00.

12 Q 5:00 in the morning until 5:00 at night?

13 A I worked from 5:00 in the afternoon until 5:00  
14 in the morning.

15 Q 5:00 P. M. to 5:00 A. M.?

16 A Yes.

17 Q Was that every day?

18 A Except one day, one day a week off.

19 Q What day did that normally fall on for you?

20 A At that time my day normally off was on Wednesday  
21 night.

22 Q How many officers are there on the police staff  
23 in Dawson?

24 A At this time there's seven counting myself.

25 Q At this time?



1 A That's right.

2 Q How many were there in the spring of '58?

3 A If there was a full force at that time, it  
4 should have been five.

5 Q Do you have the names, do you know the names  
6 of them, the names of the officers?

7 A Mr. Howard L. Lee was Chief; Mr. Shi Chapman was  
8 patrolman.

9 Q How do you spell that? Shi?

10 A S-h-i-r-r-a-h (spelling), I believe is the way  
11 he spells it.

12 Q And who else?

13 A Mr. McDonald.

14 Q What is Mr. McDonald's first name?

15 A Randolph McDonald.

16 Q Who else?

17 A Of course, myself. How many is that?

18 Q That's four; that's Lee, Chapman, McDonald and  
19 Cherry?

20 A Harold Jones.

21 Q Which of these gentlemen is Mr. McDonald?

22 A The one with the white shirt right here.

23 Q This is Mr. McDonald, I see. Now, who among the  
24 five is still there?

25 A I'm the only one that's still there.

1 Q You're the only one?

2 A Yes.

3 Q Now, what was Mr. Jones' name?

4 A Harold Jones.

5 Q Where is he?

6 A He's in Dawson; I believe he still lives out from  
7 Dawson.

8 Q What does he do?

9 A I couldn't tell you.

10 Q When is the last time you saw him?

11 A I don't know.

12 Q You don't recollect?

13 A No, I don't.

14 Q Have you seen him in '62?

15 A Yes, I've seen him; I don't remember what day it  
16 was though.

17 Q Have you seen him this summer?

18 A I imagine I have; I don't recall it.

19 Q Did you talk to him?

20 A No.

21 Q Do you know what direction he lives from Dawson?

22 A He lives northwest of Dawson.

23 Q About how far?

24 A About five miles.

25 Q Is there any particular section name that is given  
to the area in which he lives?

1 A He lives close to the Yeomans Community.

2 Q The Yeomans Community?

3 A That's right.

4 Q Now, what happened - while Mr. McDonald is here,  
5 he was Chief down in Edison, I believe, is that correct?

6 A I don't know.

7 Q How far is Edison from Dawson?

8 A Oh, it's approximately 30 or 35 miles, 32.

9 Q When is the last time you saw him before this  
10 morning?

11 A I saw Mr. McDonald one day last week, I believe.

12 Q Where did you see him?

13 A In Dawson.

14 Q Did you discuss this case with him at that time?

15 A No, I didn't.

16 Q When is the last time you discussed the case  
17 with him?

18 A Oh, it's been, I expect a couple - a year and  
19 a half or two years since I've discussed it with him.

20 Q You didn't tell him you were supposed to come  
21 down to take deposition?

22 A No, I didn't.

23 Q Who did you discuss that with?

24 A I don't believe - wait a minute - I haven't seen  
25 Mr. McDonald since we got the notice on the deposition.

1 Q You discussed it with the Sheriff?

2 A Yes, I discussed it with the Sheriff.

3 Q Did you discuss it with Mr. - let me see, the  
4 gentleman here, what's his name? Is he with you? Do you  
5 know this gentleman?

6 A No.

7 Q You don't even know him?

8 A No.

9 MR. HOLLOWELL: Who is this gentleman?

10 MR. PANTONE, Deputy Clerk: He's a Post Office  
11 employee.

12 THE REPORTER: He's custodian of the building,  
13 Mr. Autry.

14 MR. HOLLOWELL: Oh, I see. I didn't know.

15 Q You discussed it only with the Sheriff, is that  
16 right?

17 A Yes.

18 Q Well, you discussed it with your lawyer, didn't you?

19 A Yes, I talked to the lawyer this morning about  
20 it and over the phone about it.

21 Q You are under bond, aren't you?

22 A Yes, I am now.

23 Q Who has that bond?

24 A It's with R. D. Smith Insurance Company, Dawson,  
25 insurance agent.

1 Q He's the one that normally insures the Chief of  
2 Police?

3 A That's right.

4 Q How much bond are you under?

5 A \$2500.

6 Q Are any of your police officers under bond?

7 A No.

8 Q What other enterprises were you engaged in during  
9 the time you were on the staff of the City Police Department  
10 as a patrolman, what else did you do?

11 A I have never been engaged in any other enterprise.

12 Q You didn't engage in anything else?

13 A It's against the City rules.

14 Q I see; this took up all of your time?

15 A That's right.

16 Q Calling your attention to Sunday, April 20,  
17 of '58, you were on duty on that occasion, weren't you?

18 A I was on duty on April 20, '58, yes.

19 Q You recollect that as having been on a Sunday?

20 A Yes.

21 Q You had the occasion, along with Mr. McDonald,  
22 to stop James Brazier's father? Is that right?

23 A No, I was not with Mr. McDonald at the time that  
24 he was stopped.

25 Q You were not with him?

1 A No.

2 Q When did you get with him?

3 A When I came back from supper.

4 Q When you came back from supper?

5 A That's right.

6 Q What time was that?

7 A That was close to 7 o'clock.

8 Q What time did you go to supper?

9 A 6:00.

10 Q Where were you between 5:00 and 6:00?

11 A On duty.

12 Q Where?

13 A In Dawson.

14 Q Where in Dawson?

15 A I don't know. I could have been anywhere in  
16 Dawson at that time.

17 Q I mean, were you on a patrol?

18 A We patrol the whole city, yes.

19 Q Were you patrolling that afternoon or were you in  
20 the office?

21 A I would have been on the street. I would not  
22 have been in the office.

23 Q When and where did you first see Mr. Dawson -  
24 Mr. McDonald, after you came from --

25 A I saw him when I came on duty.

Q Where was he at that time?

A At the courthouse at Dawson.

Q At the courthouse?

A Office.

Q The courthouse office?

A That's right.

Q Now, where is this office located? Inside the courthouse?

A It's located on the northwest corner of the Terrell County courthouse, was at that time.

Q The northwest corner?

A That's right.

Q Of Terrell County courthouse?

A That's right.

Q This is the office there where you go into the Sheriff's office?

A That's right. At that time we used the Sheriff's office for our office.

Q The Sheriff's office and the City police office was the same?

A At that time.

Q At that time?

A Yes.

Q And you worked together in answering calls and servicing the jail and servicing prisoners?

1 A No.

2 Q If a call came in, you answered it, would you not?

3 A If the call came in after 5 o'clock, we had a  
4 radio operator that worked at night and he did the answering.  
5 He answered the phone.

6 Q Who was the radio operator?

7 A Mr. Clyde Hooper.

8 Q Where did this radio operator operate from?

9 A At that time he operated from the Sheriff's  
10 office, paid by the City.

11 Q Paid by the City?

12 A Yes.

13 Q And he answered the phone for the City and for  
14 the County?

15 A At night, that's right.

16 Q At night from 5:00 to 5:00?

17 A To 4:00.

18 Q 5:00 in the afternoon until 4:00 in the morning?

19 Q A Well, it was 6:00 in the afternoon until 4:00 in  
20 the morning.

21 Q Let me see if we have it right: This person that  
22 you refer to as Clyde Hooper -

23 A That's right.

24 Q - was the radio operator paid by the City?

25 A That's right.



1 Q - who came on duty at 6:00 in the evening?

2 A 6:00 in the afternoon.

3 Q And worked until?

4 A 4:00 in the morning.

5 Q 4 o'clock in the morning?

6 A Yes.

7 Q Now, who answered from 4 o'clock in the morning  
8 to 6:00 in the afternoon? Whoever happened to be there?

9 A Whoever happened to be there. It was usually  
10 answered from the streets.

11 Q Now, if a call came in and Hooper was not there,  
12 then whichever officer happened to be around would answer the  
13 telephone, is that correct?

14 A That's correct, on the street or on the sidewalk.

15 Q On the sidewalk?

16 A Yes.

17 Q Well, suppose it rang inside?

18 A Well, it rang at both places.

19 Q Oh, it rang in both places?

20 A Yes.

21 Q And if one of the deputies was there, he might  
22 answer it or if you or any of the other persons who were on  
23 the staff of the City were there, they would answer it, is  
24 that correct?

25 A The deputy would not answer it unless we had

1 gotten the call and asked him to answer it for us.

2 Q Well, this was the same phone; there wasn't but  
3 one phone?

4 A We have one City phone, that's right.

5 Q How many phones were in the office?

6 A Two phones.

7 Q There were two phones?

8 A That's right.

9 Q What were the numbers of them?

10 A The City phone at that time was - they've changed  
11 those numbers - 10, I believe.

12 SHERIFF MATTHEWS: 126, I think.

13 A The Witness: 126, that's right.

14 MR. HOLLOWELL: Excuse me, gentlemen, I realize  
15 you're (Sheriff Matthews and Mr. McDonald) trying to  
16 be helpful but I think we ought to let him answer.

17 A The Witness: I don't remember the phone number  
18 right now, off-hand.

19 Q Mr. Hollowell: Well, suppose the deputies were  
20 off on a call, then the City officers would handle it, right?

21 A If we happened to be in the office and he asked  
22 us to catch the phone, yes.

23 Q I mean, if he didn't ask you to catch it and it  
24 rang, you would answer it?

25 A If no one was there.

1 Q If no one was there, and the same thing would be  
2 true otherwise?

3 A No, because unless we were on a call, if we got  
4 a call and went out on it, if it taken both police officers,  
5 then we would ask the Sheriff or the Deputy Sheriff, if they  
6 were in the office, to answer our phone for us.

7 Q And if they were in the office and they came --

8 A There was no one to answer it.

9 Q I mean if they weren't in the office and the phone  
10 rang and they came during the time you were out, then they  
11 would answer it?

12 A No, they wouldn't.

13 Q You mean they would just let your phone ring?

14 A Not unless we had told them to.

15 Q Is that right?

16 A Yes.

17 Q Where is the office now?

18 A It's upstairs over the City Fire Department.

19 Q You don't operate from that office at all now?

20 A No.

21 Q Where is your jail now?

22 A We still use the County jail.

23 Q You still use the County jail?

24 A Yes.

25 Q Could you kind-of make a little sketch for me, Mr.

1 Cherry, of how the jail is laid out, to the best of your recol-  
2 lection, nothing fancy but as you recognize it or as it comes  
3 in your mind; a little sketch of the way the jail is laid out?

4 A Well, it's laid out in two wings.

5 Q Could you just demonstrate here?

6 A (Witness drawing pencil sketch of jail as directed)  
7 . . . This would be your east wing and this would be your west  
8 wing.

9 Q Do you want to label them? Put in the street  
10 and the courthouse in relationship to that, if you will?

11 A The courthouse would be right back here (drawing  
12 on sketch, P-1).

13 Q Let's label that?

14 A (So marking sketch, P-1. . .

15 Q Now, is there a street, if there are any streets  
16 between the courthouse and the jail, let's put them in,  
17 please?

18 A No, this is a lot back here, a parking lot.

19 Q A parking lot?

20 A Yes.

21 Q Just make some indication there?

22 A (Witness indicating on P-1 sketch). . .

23 Q Now, are there any fences around?

24 A There's a fence around (Indicating on P-1 sketch)

25 Q Suppose we make that a little "x" line there.

1 A (Witness marking out fence on P-1 sketch) . . .

2 Q Is this the back of the jail -

3 A That's right.

4 Q - or the front. Which way does the back of the  
5 jail face?

6 A North.

7 Q The back of the jail faces north?

8 A That's right.

9 Q Suppose we put us a little arrow here pointing  
10 down that way and we'll know that's north?

11 A (Witness marking P-1 diagram). . .

12 Q Are there cells in the east and west wings?

13 A That's right.

14 Q Kind-of divide that off there into the numbers -  
15 how many cells are there?

16 A I don't know.

17 Q You don't know?

18 A Not off-hand, I don't.

19 Q How many roughly?

20 A There's 4 or 5 on the east side and bull-pen.

21 Q Could you indicate how that is on the east side?

22 A (Indicating on P-1 sketch) . . . This would be  
23 the bull-pen here.

24 Q What is this?

25 A A hallway.

1 Q I see, this area which is immediately in front of  
2 the cells to the west is a hallway?

3 A Yes.

4 Q And that hallway runs in front of the cells on  
5 the east?

6 A That's right.

7 Q And into the bull-pen which is at the northern-  
8 most end of the building?

9 A That's right.

10 Q Now, what about this space that is in the center  
11 between the two wings here, what is that?

12 A An open yard.

13 Q This, do you want to put the word "open" in there  
14 so that we'll know?

15 A (Witness so indicating on P-1 sketch). . .

16 Q Do you have any windows in the cells?

17 A The cells have windows to the outside.

18 Q Windows to the outside, is that facing the street?

19 A On the east; facing the street on the east side.

20 Q I see; do you want to just put a little arrow  
21 there and make that read "windows"?

22 A (Witness so indicating on diagram, P-1). . .

23 Q In other words, you're saying that you can look  
24 out the rear of the cells and see the street, is that correct?

25 A These windows, I believe, are brick glass.

1 Q Glass brick?

2 A One of them was glass brick and I believe one,  
3 1 or 2 of them opened, not like this but rolled out.

4 Q The roll-out type?

5 A Yes.

6 Q How high are they?

7 A I couldn't tell you.

8 Q I mean, are they high enough so that you wouldn't  
9 be able to see through them? Can an individual, in other  
10 words, can an individual stand up or get up on something and  
11 look out into the street?

12 A He can stand up and look out into the street.

13 Q But it isn't large enough for an individual to  
14 get through?

15 A No.

16 Q About how wide are the windows?

17 A Oh, the windows are 4 x 5, about 4 x 5 foot.

18 Q 4 feet by 5 feet?

19 A Yes, it was metal frame and these windows narrow  
20 panes in between that roll out.

21 Q How wide are these narrow panes?

22 A I never have measured them.

23 Q I mean, roughly?

24 A I couldn't say.

25 Q Are they wider than those panes that are in those

1 book-shelves there (bookcases in Court's chambers)?

2 A No.

3 Q They're not that wide?

4 A No.

5 Q How wide would you say that is roughly (counsel  
6 indicating with hands)?

7 A Oh approximately 3 inches.

8 Q 3, wouldn't it be closer maybe to 4?

9 A I couldn't say.

10 Q Between 3 and 5 inches? Would you say?

11 A I'm not much on judgment of size.

12 Q Well, is the space larger than this space that  
13 you have called about 3 inches; that is, is the window space  
14 larger than that?

15 A I would say it's a little larger than that.

16 Q A little larger then; maybe not less than 3  
17 and not more than 5 or 6 inches?

18 A That's right.

19 Q In height?

20 A That's right.

21 Q And how wide?

22 A I'd say they are about 3 or 4 foot wide.

23 Q I see; so, a man might get his hand through there  
24 but he certainly couldn't get his body through?

25 A He could get his hand through but he couldn't get



1 through himself.

2 Q Now, what about the east side of the cell?

3 A That's the east side I'm telling you about.

4 Q I'm sorry the west side?

5 A The west side, they have the doors and then you  
6 just have a small barred window in the door.

7 Q Can you see into the court-yard?

8 A If the door window is open, you might, provided  
9 you were in front of a window.

10 Q The door, which door do you have reference to?

11 A The door in the cell door, where there's a window  
12 in your cell door, and there are windows in those doors that  
13 the window can be closed; have a cell window door in there,  
14 inside the door.

15 Q Is it a solid?

16 A Yes, it is.

17 Q It is solid?

18 A That's right.

19 Q There's a little door which will cover the window?

20 A That's right.

21 Q That is in the door?

22 A That's right.

23 Q Are these normally open or shut? Normally, they  
24 are open, aren't they?

25 A I don't know; I wouldn't say.

1 Q Well, if they were open, could one see into the  
2 yard?

3 A It's possible.

4 Q What would restrict their view at all?

5 A Well, you've got a wall on this side here and  
6 that wall may be right in front of that door.

7 Q I see, you have a wall that is running down the  
8 west side of the walkway, which is in front of the east cells?

9 A That's right.

10 Q Now, how high is that wall?

11 A I couldn't tell you; it goes to the top of the  
12 building.

13 Q Is it a continuous wall?

14 A That's right, a part of the building.

15 Q It's a part of the building?

16 A Yes.

17 Q Actually, are there any windows in it at all?

18 A There are windows in it.

19 Q Where are the windows located?

20 A I couldn't tell you because I don't know.

21 Q You've been using the jail for what, seven years,  
22 Mr. Cherry?

23 A But I've had no reason to count windows.

24 Q Well, I mean, you would know whether the windows  
25 were on eye-level or whether they were up at the top or where

1 they were?

2 A I'd say from the ground that they are about head  
3 level.

4 Q About head level?

5 A Yes.

6 Q How high would you say that they are, that is  
7 in depth? 12 inches?

8 A You mean from the bottom of the window?

9 Q From the bottom of the window to the top of the  
10 window?

11 A I would say they are approximately the same size  
12 as all the other windows in the jail, on the outside wall.

13 Q In other words, this window which you described  
14 as from 3 to 5 inches in depth and 4 to 5 feet in width,  
15 is this what you're saying?

16 A I haven't described a window as being 3 to 5  
17 inches in depth, nor in width.

18 Q Well maybe I misunderstood you?

19 A I said the panes might be that size.

20 Q Well, this is what I had reference to, the panes?

21 A All right.

22 Q That the pane, the window pane, that is in this  
23 wall to which we make reference, which is the wall that would  
24 run along the east side of the court really in front of the  
25 east wing - are we together?

1 A Yes.

2 Q - that the windows in that wall are about what  
3 size? I'm talking about the size of the window pane?

4 A I don't know the exact size on the window panes;  
5 like I told you a little while ago, I said the windows were  
6 narrow and long and that they rolled out; and a complete  
7 window was approximately 4 x 5 foot.

8 Q 4 x 5 feet?

9 A Approximately 3 to 4 foot wide and approximately  
10 4 to 5 foot high.

11 Q Oh, I see, I was thinking you had said --

12 A With a metal frame in each window.

13 Q So, the window pane is approximately 3 or 4 feet  
14 high from -

15 A No, not the window pane.

16 Q Well, this is what I'm talking about, the window  
17 pane?

18 A I told you a while ago the window panes were  
19 approximately 3 to 4 inches wide.

20 Q This is what I'm talking about?

21 A And that they rolled out.

22 Q How many of them are there in each window frame?

23 A I couldn't say as I've never counted them.

24 Q Well, I mean if you have one window frame, how  
25 many panes are there in the frame?

1 A I don't know.

2 Q Is there a top and a bottom pane?

3 A There's different numbers of panes in there.

4 Q They are?

5 A Because they're different size windows.

6 Q In the jail?

7 A No, I didn't say in the jail.

8 Q Well, this is what we're talking about, in the jail?

9 A I never had any reason to count the panes to see  
10 how many there was in there.

11 Q Is it your testimony that you don't know?

12 A That's right. I don't know how many panes are  
13 in the jail windows.

14 Q All right, you don't know how many panes there  
15 are in any single window?

16 A No, I don't.

17 Q In the jail?

18 A No, I don't.

19 Q And you've been there seven years?

20 A That's right.

21 Q How do you get into this east wing?

22 A Well, you can go in through the back here and come  
23 over to the door that comes down here (pointing on P-1 sketch).

24 — Q — Suppose you put those doors in there?

25 A (Witness so marking P-1 sketch). . . The door goes

1 in right here and comes down this point and this hallway  
2 leads across to there (pointing on P-1). . .

3 Q Now, where is the door coming in from the courtyard?

4 A From the courtyard would be right over here and  
5 there's the hallway (pointing on P-1).

6 Q Suppose you just make a little arrow that runs  
7 from the entrance right on over to the court-yard?

8 A From here?

9 Q Well, either way, let it run -

10 A (Witness marking P-1 as directed) . . .

11 Q Now, if you wanted to go over to the west side,  
12 how would you go there?

13 A (Witness continuing to draw on diagram, P-1). . .

14 Q Now, what is this portion of the building which  
15 you've drawn which is at the top, that is the south-most or  
16 southernmost portion?

17 A That would be the Sheriff's quarters.

18 Q Oh, the Sheriff lives right there too?

19 A That would be his residence.

20 Q Does the Sheriff have an office there?

21 A There's an office right in here (pointing, P-1),  
22 which is a jail office. That is just a jail office. His  
23 office is at the courthouse.

24 Q Suppose we run us a line right up there and then  
25 put "Sheriff's office" there?

1 A Well, the door comes out this side (pointing on  
2 P-1), opens out here to a porch, and then you have to come  
3 around and go in here to get in to his quarters.

4 Q I see; well, let's put us a little line up there  
5 and mark that "Sheriff's office"?

6 A Now, this is the Sheriff's office right here  
7 (pointing on P-1).. .

8 Q What I'm saying is, just put a little arrow there  
9 and let your line run up to it, so you can write the words  
10 without writing it right in the building; you see what I mean;  
11 and then run the line in to there with a little arrow to the  
12 office?

13 A (Witness so indicating on P-1 sketch) . . .

14 Q All right. How many cells are there on the west  
15 side?

16 A On the west side you have a door that comes in  
17 here to a hallway like that (indicating on P-1). This is all  
18 solid bars all the way down, and this is the bull-pen, with  
19 barred cells down the side.

20 Q Suppose you put your legend on that. These are  
21 the cells back here, is that correct?

22 A That's right, that's the individual cells.

23 Q All right, let's mark those off?

24 A (Witness so marking P-1 sketch) . . .

25 Q Just put a few lines in there; we're not saying

1 that that's the exact number?

2 A (Witness marking P-1 sketch) . . .

3 Q This space in front is the bull-pen?

4 A That's right.

5 Q All right, let's put "bull-pen" in there?

6 A (Witness so marking P-1 sketch) . . .

7 Q And this line right here, you say, are solid bars?

8 A That's right.

9 Q Let's draw a little line here and put "solid bars"  
10 there?

11 A (Witness so marking P-1, sketch) . . .

12 Q Now, this line that is next to the yard, what  
13 does it represent?

14 A It's the wall.

15 Q That's the wall?

16 A Yes.

17 Q Is that a wall like the wall across the yard on  
18 the other side?

19 A That's right.

20 Q Which has these same windows?

21 A The same type windows, yes.

22 Q Approximately, the panes of which are 3 to 4 feet?

23 A There's no panes 3 to 4 feet; I said the windows --

24 Q The windows are 3 to 4 feet?

25 A 3 to 4 feet wide and about 4 to 5 feet high.



1 Q 4 to 5 feet high?

2 A That's right.

3 Q And how wide?

4 A I said 3 to 4 feet wide windows.

5 Q How much depth?

6 A 4 to 5 feet high.

7 Q Now, when you say "high", Mr. Cherry, do you mean  
8 and are you saying 4 to 5 feet in depth or 4 to 5 feet from  
9 the ground?

10 A 4 to 5 feet from here (indicating on window in  
11 hearing room) . . .

12 Q From the sill to the top of the window?

13 A To the top of the window.

14 Q How close are they together?

15 A I don't know off-hand.

16 Q How many are there in there?

17 A I couldn't say.

18 Q If you wanted to come out and survey the prisoners  
19 or just survey what the condition was inside of the hall to  
20 the east and west cells, could you stand in the yard or come  
21 up close to the building on either the east or west side  
22 inside the court and look into the hall?

23 A No.

24 Q You could not?

25 A No.

1 Q Are the windows which are in the wall above the  
2 height of a man's head?

3 A I would say they are approximately head high.

4 Q So, they would run from head high to the top  
5 of the building approximately and that distance you're saying  
6 is from 3 to 5 feet?

7 A No, it doesn't run to the top of the building.

8 Q Well, to the top of the window then?'

9 A That's right.

10 Q The distance from head high approximately?

11 A The bottom of the window will be just about even  
12 with the top of my head in the yard.

13 Q In the yard?

14 A That's right.

15 Q And then, the window would extend up from 3 to 5  
16 feet?

17 A That's right, 4 to 5 feet.

18 Q 4 to 5 feet?

19 A That's right.

20 Q Now, you mentioned the fact that the Sheriff's  
21 quarters were also here: Is there any other entrance into the  
22 Sheriff's quarters other than this arrow that you have drawn  
23 from the Sheriff's office around to the Sheriff's door?

24 A There's an entrance on the west side at his  
25 driveway and there's one entrance that goes into the kitchen

1 right here (so indicating on P-1, sketch). . .

2 Q Now, there is an entrance then from the south  
3 corridor of the jail into the kitchen of the Sheriff's home?

4 A An entrance into the kitchen from this screen  
5 porch out here (pointing on P-1), not from his office; just  
6 from this outside screen porch where they fix the prisoners'  
7 meals out here.

8 Q Now, to make it clear, what I describe as a  
9 corridor running east and west along the southernmost portion  
10 of the jail is actually a screen porch?

11 A That's right.

12 Q Suppose we, do you want to put a little arrow  
13 there and put a little arrow - that's all right, good?

14 A (Witness marking sketch, P-1). . .

15 Q Do you want to indicate that there are windows  
16 along this wall, so that we can -- suppose you just, Mr.  
17 Cherry, excuse me a moment, do you want to just draw a little  
18 line running over to here, run it all the way back over into  
19 here (pointing on P-1)?

20 A (Witness so indicating on P-1).

21 Q That's right, now "windows in wall", would that  
22 be correct, "windows in wall", and then we will describe them  
23 as you have described them?

24 A (Witness so indicating on P-1). --

25 Q "Approximately head high" and "3 to 5 feet in

1 "depth" - will that be correct, 3 to 5 feet in depth?

2 A That would be 4 to 5 feet in height.

3 Q All right, "4 to 5 feet in height"?

4 A (Witness so marking sketch, P-1). . .

5 Q And how wide, "3 to 4 feet in width"?

6 A (Witness indicating on sketch, P-1).. .

7 Q Would you want to run another arrow right straight  
8 over to this one and that would be the same description;  
9 it's the same way, isn't it?

10 A That's right.

11 Q That makes it a little easier, so we don't get it  
12 all congested?

13 A (Witness continuing to indicate on P-1 sketch) ...

14 Q Now, is this area here a porch also, Mr. Cherry?

15 A There is an open porch out there, yes.

16 Q Let's make a delineation of that? Run your arrow  
17 back out and put it out in the margin there - that's right?

18 A (Witness marking sketch, P-1). . .

19 Q Now, what is in this area right here?

20 A A lawn.

21 Q That's the lawn?

22 A Yes.

23 Q Well, suppose we describe that because the way  
24 it is, it looks like -- run a little arrow out there?

25 A (Witness so indicating on sketch, P-1). . .

1 Q All right, thank you. Now, you say you got back  
2 from dinner or from supper about 7 o'clock on the evening of  
3 the 20th of April?

4 A I would say between 6:45 and 7 o'clock.

5 Q Where was Mr. McDonald at that time?

6 A He was at the back of the jail, met me between  
7 the courthouse and the jail in the parking lot.

8 Q Now, incidentally, this office that you said that  
9 was being used by the City and the County, is this office  
10 here that you've designated as the sheriff's office?

11 A It would be this office right here on the  
12 northwest corner of the courthouse.

13 Q Is it made in the courthouse?

14 A That's right, it's in the courthouse.

15 Q Suppose we indicate what that is "City-County  
16 office"?

17 A (Witness so indicating on sketch, P-1) . . .

18 Q So that, you used this City-County Sheriff's  
19 office here, which is in the northwest corner, is that correct,  
20 of the courthouse?

21 A It would be in the northwest corner of the  
22 courthouse, part of the northwest corner. It wouldn't be  
23 exactly on the northwest corner because there's a stairway  
24 going up outside behind it.

25 Q I see, near the northwest corner?

1 A That's right.

2 Q And they use that office and they also use this  
3 office, which is the office off of the screen porch there?

4 A The only time that office was ever used was to go  
5 in and out.

6 Q Just in and out?

7 A Yes.

8 Q Now, where did you keep the records, in the office  
9 here in the courthouse or the office here just off of the  
10 screen porch?

11 A The records are kept at the Police Department  
12 desk in this office right here (pointing on P-1).

13 Q And that was true of the Sheriff's records also?

14 A No.

15 Q He kept his records over in this other office?

16 A No, he kept his records there but his records  
17 were separate from ours.

18 Q But his records were also kept in the office  
19 which you describe as being near the northwest corner of the  
20 courthouse?

21 A That's right.

22 Q So that, both the City and the County records  
23 were kept there, though they were kept separately, of course?

24 A They were kept separately.

25 Q Did the City pay the County for the use of that

1 office?

2 A Not for that office, no. They paid the County  
3 board and turn-keys for prisoners. Other than that, we did  
4 not pay the County anything.

5 Q The County fed City prisoners as well as County  
6 prisoners?

7 A That's right, and still do.

8 Q And they still do?

9 A That's right.

10 Q And the City paid them?

11 A That's right.

12 Q Did you on occasions go out on pick-ups or  
13 still runs or other cases with some of the deputies?

14 A Not unless I was asked to go on my off-duty hours.

15 Q I see, you did this sometime on your off-duty  
16 hours?

17 A If they asked me.

18 Q If they asked you?

19 A Yes.

20 Q Were you paid for that?

21 A No.

22 Q You just did this as a volunteer?

23 A That's right.

24 Q What about the County helping the City officers  
25 sometimes in situations where there was some need and they

1 were asked to do so?

2 A If we asked them, they helped us.

3 Q And this was when they were on regular duty?

4 A The Sheriff's duty is 24 hours a day.

5 Q And the same was true then, sometimes they  
6 asked you, even when you were on duty and you were not  
7 busy at the time, you would help them?

8 A Not necessarily.

9 Q Well, I mean on occasions?

10 A If there was an emergency, we might, yes.

11 Q Now, who took care of the feeding of the prisoners,  
12 that is from the standpoint of personnel, who actually did  
13 that?

14 A The trusties actually feeds them, I believe.

15 Q Who were your trusties at that time?

16 A I believe Eugene Underwood, or -

17 Q Magwood?

18 A Magwood, I believe.

19 Q This fellow that was in here a while ago?

20 A He was the trusty there.

21 Q He took care of the feeding?

22 A That's right.

23 Q He carried the keys?

24 A Yes, he carried the keys.

25 Q And he would let the prisoners in and out?



1 A If we asked him to.

2 Q If you asked him to, and, of course, being under  
3 your supervision whenever you asked him to, why, he did it?

4 A If we asked him to open the door, yes, he opened it.

5 Q Who took care of the jail at night?

6 A Nobody was over there at night.

7 Q There wasn't any - no officers over there at night?

8 A Nobody up there at night, no.

9 Q Suppose a prisoner got sick, how would he communi-  
10 cate that to some officer?

11 A All he had to do was to holler for Gene.

12 Q And Gene would --

13 A He would relay it to us.

14 Q He would relay it to you?

15 A Yes.

16 Q And then, if you told him, he would go on and  
17 open the door?

18 A If we asked him to, yes.

19 Q Where did he live?

20 A He lived in one of these cells right here (point-  
21 ing on sketch, P-1). . .

22 Q You're pointing to what would be --

23 A (Indicating on sketch, P-1)...

24 Q What is that, sir?

25 A That's the back cell.

1 Q I mean, what is the legend that you put there?

2 A "Trusty's quarters".

3 Q Oh, this was "Trusty's quarters"?

4 A Yes.

5 Q This is the cell next to the bull-pen on the east  
6 wing?

7 A That's right.

8 Q Now, the City prisoners were kept where?

9 A In whichever cell we had to use.

10 Q Now, when you came back from supper, you met  
11 Mr. McDonald in the parking space, I believe you said, which  
12 is behind the courthouse?

13 A That's right.

14 Q And you went with him, did you, some place;  
15 you went with him down to Brazier's house, James Brazier's  
16 house?

17 A Yes.

18 Q And about what time was this?

19 A I would say it was close to 7 o'clock.

20 Q Where was Brazier at that time?

21 A He was standing out in the yard.

22 Q Was he dressed?

23 A Yes, he was dressed.

24 Q What is the address?

25 A You say, was he dressed?

Q Well, yes, that was the first question and then I

1 said, what is the address?

2 A It would be North Ash Street.

3 Q How did you go down there?

4 A Went in police car.

5 Q That's you and officer McDonald?

6 A That's right.

7 Q Went to James Brazier's house?

8 A That's right.

9 Q Was Brazier, Sr. already in jail at that time?

10 A Yes.

11 Q What cell was he in?

12 A I don't know which cell he was in.

13 Q Was he on the east side or west side?

14 A I couldn't say; I didn't make the arrest.

15 Q Beg pardon?

16 A I did not make that arrest.

17 Q You did not make that arrest?

18 A No.

19 Q So, you did not have the occasion to go into the  
20 jail when you returned from supper and met Officer McDonald  
21 behind the courthouse?

22 A No, I didn't.

23 Q You went with him directly at that time to  
24 Brazier's house, James Brazier's?

25 A Yes, we went to Brazier's house.

1 Q The deceased?

2 A We went to James Brazier's house.

3 Q And Brazier was in his front yard?

4 A No, he was standing between the front of the  
5 house and the back; he was sort of in the backyard.

6 Q How was he dressed?

7 A I couldn't say how he was dressed.

8 Q Was he fully clothed?

9 A Yes, he was fully clothed.

10 Q Who else was in the yard?

11 A His wife.

12 Q Anybody else?

13 A There were 2 or 3 more there.

14 Q I see, any children around?

15 A There may have been.

16 Q Did you go right on into the house?

17 A No, I did not go into the house at all.

18 Q Who went into the house?

19 A Nobody.

20 Q You came up to Brazier and you told him what?

21 A Told him that we had, that we were going to place  
22 him under arrest.

23 Q Did you have a warrant?

24 A Yes.

25 Q Who signed the warrant?

1 A Dan English.

2 Q Have you got a copy of the warrant?

3 A No, we don't have it with us.

4 MR. BLOCH: Who did he say signed the warrant?

5 The Witness: Mr. Dan English, J. P., D. F.

6 English, Sr.

7 Q Mr. Hollowell: Why didn't you bring that warrant?

8 A I don't have access to that warrant.

9 Q Who does have?

10 A Mr. Dan English has it and it would be in the  
11 Clerk's office.

12 Q What did you charge him with?

13 A He was charged with interfering with an officer,  
14 resisting arrest and threatening an officer, I believe.

15 Q James Brazier was first addressed on this  
16 occasion by whom?

17 A By myself.

18 Q What did you say to him?

19 A I told him we were placing him under arrest.

20 Q Now, this warrant that you had, were you the  
21 prosecutor?

22 A No, McDonald was the prosecutor.

23 Q The only thing you knew about it at that time  
24 was what McDonald had told you, is that correct?

25 A That's right.

1 Q What did Brazier say?

2 A He said "All right" and we started out.

3 Q Did you handcuff him?

4 A Not at that time, no.

5 Q Was he walking straight?

6 A Fairly straight, yes.

7 Q What do you mean "fairly straight"?

8 A Well, he was a little under the influence.

9 Q How did you determine that?

10 A Smell it and by his actions.

11 Q What action?

12 A The way he talked.

13 Q He hadn't said anything, you said, except "all  
14 right"?

15 A He was talking on the way to the car when we  
16 picked him up.

17 Q What did he say?

18 A I don't remember off-hand what he said.

19 Q You don't remember anything he said?

20 A Other than he asked what it was for and I told him.

21 Q After you told him, what did he say?

22 A He walked on to the police car with us.

23 Q And then what happened?

24 A He put his feet against the door and wouldn't get  
25 in, pushed back.

1 Q What did you do then?

2 A We tried to hold him and he started to fighting  
3 at us.

4 Q Where did he hit you?

5 A He hit at me; he didn't hit me.

6 Q He didn't hit you at all, did he?

7 A He never did hit me because I got out of his way.

8 Q He never did hit Mr. McDonald either, did he?

9 A I couldn't say; I think he did.

10 Q I mean, you didn't see him hit him?

11 A No.

12 Q Was that when you hit him with the black-jack?

13 A When he started fighting at us, yes.

14 Q And then, you hit him with the pistol?

15 A No.

16 Q Did you take your pistol out?

17 A I taken my pistol out and held it on him until  
18 we got the pistol-grip handcuffs on one arm and get him in the  
19 car.

20 Q Did you put it on the other arm too?

21 A No, one-hand pistol-grip handcuffs.

22 Q Did you put him then in the car or did you help  
23 put him in the car?

24 A We put him in the car.

25 Q Both of you?

- 1 A That's right.
- 2 Q How many times did you hit him?
- 3 A Twice.
- 4 Q Where did you hit him?
- 5 A In the front of the forehead right here (pointing  
6 on head) . . .
- 7 Q On both sides?
- 8 A I couldn't say, I hit him in the front of the  
9 forehead.
- 10 Q Did his head bleed at that time?
- 11 A No.
- 12 Q Not at all?
- 13 A No.
- 14 Q Was Officer McDonald helping you?
- 15 A He helped put him in the car, yes.
- 16 Q Did he strike him?
- 17 A No.
- 18 Q When you took out your gun, why didn't you shoot  
19 him?
- 20 A Because I had no reason to shoot him.
- 21 Q Well, you've shot many other men, haven't you?
- 22 A If I had a reason to, yes.
- 23 Q How many men would you say you have killed  
24 altogether?
- 25 A Two.



- 1 Q Who were they?
- 2 A I shot one that died.
- 3 Q Who were they?
- 4 A That was Willie Countryman.
- 5 Q You shot him and he died?
- 6 A Yes.
- 7 Q Who was the other man that you shot?
- 8 A I've never shot anybody else and killed them.
- 9 Q Well, who were the other people that you have shot?
- 10 A I shot Tobe Lattimore.
- 11 Q Tobe Lattimore?
- 12 A Yes.
- 13 Q L-a-t-t-i-m-o-re (spelling)?
- 14 A Yes.
- 15 Q Who else?
- 16 A There's one other one; I don't remember his name
- 17 off-hand.
- 18 Q When was that?
- 19 A In '57, I believe.
- 20 Q When was Lattimore shot?
- 21 A In '58.
- 22 Q When was Countryman shot and killed?
- 23 A In '58, I believe.
- 24 Q How many have you shot since that time?
- 25 A None.