

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 and THE
FIDELITY CASUALTY CO. OF N. Y.
Defendants

JURY TRIAL AT

AMERICUS, GEORGIA,
FEBRUARY 4-8, 1963.

VOLUME 4

PAGES: 843 to 1154

ORIGINAL

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of Defendants, testified on

DIRECT EXAMINATION

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BY MR. BLOCH:

Q Mr. Cherry, I believe you were identified earlier?

A Yes sir.

Q You are Chief of Police now?

A Yes sir.

Q Now, at the time of your arrest of James Brazier on
April 20, 1958, how old were you?

A I was 31 years old.

Q And how tall are you?

A 5 ft. 9, 8½ or 9.

Q How much did you weigh at that time?

A I weighed approximately 175 to -80 pounds.

Q You've been in the courtroom all during the week
since this trial has been going on, haven't you?

A Yes sir.

Q Did you hear a colored man named Will Roberts, I
think his name was?

A Yes sir.

Q Testify about your having made a visit to him?

A Yes sir.

Q Will you state to the Court and jury just what that
was?

A I went after - it was a couple of weeks or longer

after this incident; and in making an investigation, there had been several stories in the papers, different conclusions and write-ups and slanderous remarks; and I went to the general area -

MR. HOLLOWELL: If it please the Court, I object to the "slanderous remarks", Your Honor, as a conclusion.

THE COURT: Well, I think he can - were they about you?

The Witness: Yes sir.

THE COURT: I think he's entitled to put his estimate on them.

A The Witness: And I went to the general area of this incident and checked in the neighborhood with any one that I thought may have witnessed this incident on that Sunday afternoon; and at the time I went to Bill Roberts, he stated to me on his front porch that he did not know anything about it at all; that he saw nothing, and could not give me a statement on it. And I told him, I said "Now, Bill, if you are afraid of anything whatsoever, of anyone in the neighborhood, you can forget about that, and if you know anything, let me know."

Q Is that all?

A That's all.

Q There's been a book referred to several times in evidence, which was identified on October 10, 1962 at the time

of the taking of the depositions, identified by Mr. Joiner as Plaintiff's, with a circle around it, "2" "CJJr, 10-10-62", what do you call that book?

A That is the jail log that the City used to keep a record of prisoners that were locked up in the county jail at Dawson, Georgia.

Q Was that book produced at that hearing of October 10, 1962, at the request of counsel for the Plaintiff?

A Yes sir, it was.

Q Without going into what's on these cards at all until I ask you about them specifically, are these records - is this card a record of the Dawson Police Department?

A Yes sir, that is record of the arrest and -

Q Wait just a minute, is it a record of the Dawson Police Department?

A Yes sir.

Q As to whom, as to what individual?

A As to James Brazier.

Q Now, I show you on that card in the left-hand corner "4-20-58, threatening an officer and resisting arrest"; and then written over in the right-hand side "deceased": whose handwriting is that?

A That appears to be Mr. - it appears to be Mr. Lee's handwriting. I couldn't swear to that.

Q Well, that is the incident about which this case

is, is it?

A Yes sir.

Q Now, immediately above that, on the line above it, is "11-2-57 DUI and speeding"?

A Yes sir.

Q Now, on this jail - what do you call this book?

A Log.

Q Jail log, on page 84 --

MR. HOLLOWELL: Mr. Bloch, may I interrupt you just a moment? Your Honor, I presume that the objection relative to any other arrests that was made yesterday is still continuing without the necessity of counsel to make an individual objection each time?

THE COURT: Yes, that's true.

MR. BLOCH: I so understood it as continuing throughout the trial.

Q I show you on the third line of this jail log on page 84, in the first column is "11-2-57"?

A Yes sir.

Q And then, in the column named is "James Brazier"?

A Yes sir.

Q And then in the column "Charge, DUI and speeding"?

A Yes sir.

Q And then in the column "Officers, C & W":

A That would be for Cherry and Williams.

THE COURT: Now, what was that date?

MR. BLOCH: November 2, '57.

Q Then, over on page 85, on the third line, opposite what I just read to you, under the column "days" is "2"?

A Yes sir.

Q Under the column "keys" is "2"?

A Yes sir.

Q And under the column "Date out" is "11-3-57"?

A Yes sir.

Q What does this "days - 2" mean?

A That means that we owed the County for two days jail board.

Q And what do "keys" mean?

A It means that we owed the County for two keys, one in and one out.

Q Is that what they call "turn-keys"?

A Yes sir.

Q And then "date out" "November 3, '57"?

A That was the day he was taken out of jail.

Q And he got out the day after he got in?

A Yes sir.

Q Do you happen to remember what day of the week, November 2, 1957 was?

A The best I remember, it was on Saturday.

Q On a Saturday?

A Yes sir.

Q And he got out on Sunday?

A Yes sir.

Q Now, going back to the card "11-2-57, DUI and speeding", now coming over in that last column under "remarks, \$150 CB"?

A Cash bond, \$150 cash bond posted.

Q Well, does that indicate then, those records indicate - well, I had better start over - What do those records indicate?

A That indicates that he posted a cash bond before the Mayor's Court on Monday Morning at 9 o'clock.

Q And got out?

A Yes sir.

Q Although Monday Morning would have been November 4?

A Yes sir.

Q Now, do you remember the arrest, do you remember, aside from the card and the entry on the log, do you remember the incident of the arrest of him on November 2, 1957?

A The best I can recall, we got after him on Johnson Street close to the intersection of Johnson and Main; and in pursuing him, he went west to Vine Street, made a right turn; went north on Vine Street until that street dead-ended at the Terrell County stockyard; made a right turn, went one block, turned left back on to North Main Street; and we

apprehended him at approximately one mile north of there, where he came back into North Main Street. And at the time he was running anywhere from 60 to 80 miles an hour; and up until the time that he was stopped and placed under arrest, he had reached speeds exceeding 100 - 110 miles an hour.

Q Was there anybody in the car with him?

A No sir.

Q Was he drunk?

A He was drinking, yes sir; he was under the influence.

Q On that occasion did you have any trouble with him in the arrest?

A No sir.

Q And he was under the influence?

A Of intoxicating beverages, yes sir.

Q Subsequently to that, I show you on the jail log, on page 86, the topline, date 12-15-57?

A Yes sir.

Q "Name, James Brazier"?

A Yes sir.

Q Charge - D & D" - what does that mean?

A Drunk and disorderly.

Q "Officer"?

A That should be Hancock.

Q And he stayed in the jail 2 days?

A Yes sir.

Q And out December 16, '57?

A Yes sir.

Q Now, looking at this jail, this Dawson police department record as to him, I don't see any entry there of that arrest of December 15, '57?

A No sir.

Q Why is that?

A I couldn't say. I didn't keep that record personally.

Q Do you remember anything about that incident?

A Off-hand, I do not.

Q Did you hear Hattie Brazier's testimony yesterday?

A Yes sir.

Q You heard what she said about it?

A Yes sir, I certainly did.

Q Prior to April 20, 1958, did you ever have any complaints from Hattie Brazier as to any violent conduct?

A Yes sir.

Q Of James Brazier?

A Yes sir.

Q Can you tell how many?

A No sir, I cannot. They were numerous.

Q In connection with this arrest of December 15, 1957, do you recall any complaint of hers to you or in your presence with reference to his treatment of her?

A What date was that?

Q That was the December 15, '57 arrest?

A No sir, I do not off-hand. I did not see or she did not talk to me at that time.

Q Just tell, as best you can, how many complaints she made to you and what she said in them?

A That would be hard -

Q I'm talking about her personally now, that she personally made?

A That would be hard to say as to how many complaints she has made, because as I've stated, on numerous occasions she has called us, when she needed police assistance, when James Brazier had run her away from home and wouldn't let her back in the house; when she would go somewhere else and have the police called. And I have been there at times when she called and when I got there, he had ran, and was unable to be located. And it would be a hard matter to say as to exactly how many times that has happened.

Q Well, from the nature of the complaints that you had had about his conduct, both from her and from others, what would you state as to his reputation for peacefulness or disorderliness?

A He had a very bad reputation for peacefulness and disorderliness.

Q Are you in position to state whether that reputation was accentuated when he was under the influence of liquor?

A Yes sir.

Q Did you ever have any complaints about his conduct from a man named Vick Hammock?

A Yes sir.

Q Is he present in court?

A I believe he is, yes sir.

Q Did you ever have any complaints about his conduct from anybody else, who can be named specifically?

A Off-hand, I cannot name anyone else other than Hattie B. Brazier.

Q And Vick Hammock?

A That's right, yes sir.

Q Well now, let's come back to April 20, 1958, at the time you went out to make the arrest on that occasion, did you ever hit James Brazier?

A Yes sir, I hit him on that occasion.

Q Did you hit him with a pistol?

A No sir, I never hit any one with my pistol.

Q With what did you hit him?

A Slap-jack.

Q Is this a slap-jack here?

A That is not the slap-jack, no sir.

Q That is not the slap-jack?

A No sir.

Q It differs from the slap-jack that you had at that time?

A Yes sir. It is of a similar pattern but that is all.

Q Have you got the one that you had at that time?

A I believe we can produce it, if necessary.

Q Why did you hit him with the slap-jack?

A Because he hit at Mr. McDonald and knocked his cap off.

Q At that time was he drinking?

A Yes sir.

Q I mean, did he show evidences of having been drinking? Was he under the influence?

A Yes sir.

Q Where, with respect to you and Officer McDonald and Brazier, James Brazier, was his wife?

A She was standing back in the yard.

Q Did you see anybody else around there on that occasion?

A No sir, there was no one there, other than Hattie Brazier and James and her children.

Q Did you use any obscene, profane or vile language toward him?

A No sir.

Q After you arrested him, you and Officer Hancock arrested him and you took him to jail, in what cell did you

put him?

A We put him in Cell #2. I would like to make a statement, Mr. Bloch, before we get to that, if it is permissible.

Q Go ahead, if it pertains to this incident?

A Something that was said, a statement that was made at the time of this incident by Hattie Belle Brazier. She made the statement at that time of his arrest, she said "James, why don't you go on and behave yourself"?

Q Was that before you hit him or after you hit him?

A That was during the time that we were having trouble with him.

Q Do you definitely remember that?

A Yes sir.

Q Well now, after you got him to jail, did you put him over in the east wing?

A Yes sir.

Q In cell No. 3? I believe?

A No. 2

Q No. 2. Was he at any time during the night moved from that cell?

A No sir.

Q Where was it that Dr. Ward first saw him?

A He first saw him in the office.

Q Was that before he had been initially put into the cell?

A Yes sir.

Q How did Dr. Ward happen to see him?

A I called Dr. Ward.

Q Why did you call Dr. Ward?

A Because as a usual thing, if we have trouble with someone and something could happen, we like to have a doctor or physician to attend them.

Q You called Dr. Ward without the suggestion of anyone?

A Yes sir.

Q When Dr. Ward came, did he examine James Brazier?

A Yes sir.

Q In your presence?

A Yes sir.

Q In your presence in the office of the jail?

A Yes sir.

Q That's the one that's shown here in the picture?

A Yes sir.

Q Pick it out (handing group of photographs to witness)?

A I believe it's Exhibit #2, Mr. Bloch, and it does not show - it shows less than half of that office.

Q It shows less than half of the office?

A Yes sir.

Q But that is the office?

A Part of the office.

Q Part of the office?

A Yes sir.

Q And how far is that located from cell No. 2?

A Well, you have to go out this door, you have to proceed out this door and then you've got the thickness of this wall, plus -

Q The jurors can't see it.

A This is just a partial picture. It doesn't show the door coming in from the street which is on the east side of the jail. It just shows the door going out of the office into the back screen porch, which is 3 foot wide; and the thickness of this wall; and it's approximately 6 feet from the corner of this door to the door going down (exhibiting another photograph). In other words, that is this door here on the hall. In other words, you come out and turn here and then there's another door here on the left, which is not shown on there. That is a storage room. It enters a hallway, which is this hallway right here. In other words, that is the door that enters this hallway. And this is the second cell, which is the cell that James Brazier was incarcerated in, right there (pointing on photograph). . .

Q All right, now here is a diagram, which purports to be a floor plan of the jail: Is this where my finger is marked "D" right at the end of the hallway?

A Yes sir, that's the door.

Q Is that this door right here?

A Yes sir, that is that door there.

Q The door with one of the lamps hanging over it?

A Yes sir.

Q And that is Exhibit No. 13, PLAINTIFF'S EXHIBIT No. 13; that door is this door here, is that right?

A Yes sir.

Q Now then, beyond the door there's a hallway that's 30 feet by 6 feet?

A Yes sir.

Q So that, the door to the office would be 6 feet from that door that you were just talking about?

A Yes sir.

Q And cell No. 2 is the one marked with a "2" on this plat?

A Yes sir.

Q And that would be this cell where the second handle is?

A Yes sir, the second handle right there.

Q Well, how far is it from the door of cell No. 2 to that doorway to the hall?

A I don't know. I couldn't say exactly, Mr. Bloch. It is approximately, from the doorway to cell #2, I would say off-hand is approximately 10, approximately 10 foot.

Q So that, the distance from the doorway to cell No. 2 to the officer is about 16 or 18 feet in all?

A Yes sir.

Q You can go back to the stand. Now, after Dr. Ward examined him, was he taken back; did you then put him in cell No. 2?

A Yes sir, he was then put in cell No. 2.

Q Had he ever been in cell No. 2 before, I mean on that evening?

A No sir.

Q Was Odell Brazier anywhere around?

A No sir.

Q He had been arrested that same afternoon, of course, hadn't he?

A Yes sir.

Q Where was he?

A He was in the west wing of the jail. It would be this wing here (pointing on plat). . .

Q That's over there where I have written "West" in ink on this plat?

A Yes sir.

Q And that's across the court and in the so-called bull-pen or run around?

A Yes sir.

Q Now, after you put or after James was put in

cell No. 2, did you, independently of Mr. McDonald, go look at him during the night?

A Yes sir, each time we were both together.

Q Why did you do that?

A Well, we just always have made it a habit that when we work together at night, as a usual thing the two men stayed together at all times, unless it was during the lunch hour or they happened to be on the sidewalk turning out lights of the stores around 10 o'clock at night; and then we were no more than the distance of the street from each other.

Q Had Dr. Ward made any suggestions to you and to Mr. McDonald about visiting James during the night?

A Yes sir.

Q And were you following his instructions in going to see him?

A Yes sir, I was.

Q You've been in the courtroom while Officer McDonald testified?

A Yes sir.

Q Is your version or your recollection as to the times, the number of times and the hours at which you and he visited Brazier about right, as best you can remember?

A As near as I can recollect, yes sir.

Q On either one of those visits to him, in accordance

with Dr. Ward's request, did you or Mr. McDonald strike him?

A No sir.

Q Did anyone else strike him?

A No sir.

Q Who was in cell No. 1; was there anybody?

A I believe cell No. 1, the best that I can remember, I couldn't say for sure, but I don't believe anyone was in cell #1.

Q What?

A I don't believe that anyone was in that cell.

Q Where was Marvin Goshea?

A Marvin Goshea was in the west wing of the jail.

Q Over there in the same place that Odell Brazier was?

A Yes sir.

Q Marvin Goshea is dead, isn't he?

A Yes sir.

Q Did you have anything to do with his death?

A No sir, other than investigation.

Q What did you find out to be the cause of his death?

MR. HOLLOWELL: May it please the Court, the record would be the highest and best evidence.

THE COURT: I'm sorry; I didn't hear you.

MR. HOLLOWELL: I say, the record would be the highest and best evidence.

THE COURT: Why do we need to go into this at all?

The Court:

Before I rule on your objection, Counsel - why do we need to go into this at all?

MR. BLOCH: Only because there has been some suggestion in the courtroom as to the mysterious circumstances of Marvin Goshea's death, with the intimation that somebody might have tried to put him out of the way.

THE COURT: Well, we won't take any notice of any intimation or insinuations about that. I think we had better stay away from that, unless it has some direct connection.

MR. BLOCH: That's all I want.

THE COURT: Well, let's stay away from it.

MR. BLOCH: I assume Your Honor will protect me if it's mentioned again.

THE COURT: Oh yes, I don't see any reason for anybody to mention it. It has nothing to do with this case that I know anything about; and, if it doesn't, let's don't go into it. We've gone on other snipe-hunts already and let's don't get off on another one. So, let's just don't go into it.

MR. BLOCH: All right, sir.

Q Now, on the occasion, on that night, did you ever see James' wife around the courthouse or around the jail?

A No sir.

Q Did you see Mr. Ragan Arnold?

A Yes sir.

Q When he came?

A Yes sir.

Q Was any request made of you that evening by either Mr. Ragan Arnold or James' wife or anybody else to let James out on bond?

A No sir.

Q What time did you leave the jail that night?

A I left the jail around 5:00 A. M. the next day.

Q You had seen James within a half anhour?

A Yes sir.

Q Before you left. What was his condition at that time?

A The same as before-hand.

THE COURT: Well, what was that condition? You say his condition was the same as before. What was that condition, the last time you saw him before you left at 5 o'clock, as I understand the time?

A The Witness: He seemed to be as normal as he was the day before, I mean during the night before; when I saw him around 4:30 the next morning, we woke him and he talked to us, and I presume went back to bed when we left the jail.

Q Mr. Bloch: The question was; you said his condition was about the same as it was before; What did you mean by before?

A I didn't see anything wrong with him before.

Q Well, what do you mean by before?

A The times that we had checked him beforehand, on Dr. Ward's orders.

Q Then, his condition was the same at the time that Dr. Ward saw him the first time on the evening of April 20 until you last saw him on the early morning of April 21, is that it?

A Yes sir.

BY THE COURT:

Q At that time did he stand up?

A Yes sir.

Q Did he talk to you?

A Yes sir.

Q Did he talk coherently?

A As far as I could tell, yes sir.

Q Did he make any complaint to you of any kind about any physical condition or mental condition?

A No sir.

Q Or any complaint of any kind?

A No sir.

Q All right, go ahead.

BY MR. BLOCH:

Q Did you at any time during the night of April 20-21 cause or permit James Brazier to be severely beaten about the head to the point of unconsciousness?

A No sir.

Q Did he at any time that night, was he at any time that night taken from the jail or leave the jail?

A No sir.

Q And he was not unconscious at the last time you saw him?

A No sir.

MR. BLOCH: That's all.

THE COURT: Although this witness has already been under rather extensive cross-examination, I anticipate that you will want to examine him further, Mr. Hollowell?

MR. HOLLOWELL: You anticipate correctly, Your Honor.

THE COURT: So, we'll take a recess at this time before you begin your cross-examination; and I will ask the jury to be back at 2 o'clock. Now, everyone remain seated until the jury has gone.

LUNCH RECESS: 12:50 PM - 2:00 PM FEB. 7, 1963

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q Mr. Cherry, where was it that you saw Roberts, at a

time when you interrogated him?

A At his house, his residence.

Q Did this grow out of a newspaper article you say?

A It grew out of different reports that was coming from newspapers, yes.

Q And I believe you said that you went and checked in the whole area to see if you could find anyone who had any information concerning this matter, isn't that right?

A Yes, that's right.

Q And yet, you testified on deposition that you made no investigation at all; isn't that right?

A I don't remember what I testified on deposition.

Q Let me show you this on page 83, where there is a marking, and ask you would you want to refresh your recollection?

A I don't care about reading it. I'm not testifying from the deposition.

Q Well, I will ask you then, is it not true that you were asked "How many persons have you interrogated pertaining to it" and you said "None"?

A I couldn't - I don't remember what questions I was asked.

Q Do you deny that you said that?

A No, I don't deny it.

MR. BLOCH: Your Honor, I find it impossible

Mr. Bloch:

to hear when he stands right up there by the witness and the witness doesn't talk loud.

THE COURT: All right.

Q Mr. Hollowell: Now, how many people did you actually visit?

A I don't recall how many I did visit.

Q Sir?

A I don't recall.

Q Isn't it true that in connection with the interrogation you were asked this question or these questions and you gave these answers: "And yet you didn't inquire as to the cause of his death?" And your answer was "No, I didn't."

A As I've stated before, I do not remember what I testified to in the depositions or in the interrogation.

Q Is it also true that you were asked: "Well, weren't you concerned", and the answer was "Sure I was concerned. Question: To what extent; I mean, you didn't inquire about him if you had any concern?" And you answered, "people die every day and I don't go around inquiring about their death". Isn't it true that you were asked those questions and you gave those answers?

A As I have stated previously, I do not remember whether that question was asked or not.

Q But you don't deny that it was asked?

A I do not deny it.

Q And you do not deny that the report is accurate?

A No, I do not deny that.

Q I believe on your direct examination you said that you went up to Roberts' house and you asked him, "Now, you don't need to be afraid; if you've got anything or you think you're afraid, you can forget about that". . . Is that not what you testified to?

A I believe that is correct.

Q Well, why did you want him to forget about being afraid at this time?

A Because there's numbers of times on numbers and numbers of cases, where we have had instances - I would like to explain this - that there has been instances where there may have been cuttings or knifings, when there was up to 2- or maybe 300 people gathered around; and when you were called, when you got there, you might get one of them, the one that had gotten cut and out of 2- or 300 people, nobody would know who he was.

Q Well, what did that have to do with his being afraid?

A Just what I have just explained to you.

Q Actually, he knew that you had already killed two men, didn't he?

A I don't know.

MR. BLOCH: I object to that as immaterial.

THE COURT: Yes, I sustain the objection.

A The Witness: I had not already killed two men.

THE COURT: Well, I sustain the objection.

MR. HOLLOWELL: May it please the Court, I would like to address myself to it. It was brought out on the direct examination, it was his language that brought out the fear, his language.

THE COURT: But your question was, did he know that you had already killed two men; that's what I'm sustaining the objection to.

MR. HOLLOWELL: Well, I'll phrase it another way.

THE COURT: He said he hadn't anyway.

MR. HOLLOWELL:— I'll rephrase it, Your Honor.

____Q Well, how many have you killed?

MR. BLOCH: I object to that as immaterial.

THE COURT: I sustain the objection, I sustain the objection.

____Q Mr. Hollowell: So that, the only reason then you suggested that, you used the language, "Now, you don't have to be afraid, you can forget about that", was because of some activity as you have described a moment ago, is that right?

A As I have just got through describing, yes; an investigation where there had been knifings and cuttings and witnesses to it and none of them would identify the person

that did the cutting.

Q Now, I believe you said that at the time you made the arrest, which you were permitted to testify to over our objection, relating to Brazier having exceeded the speed limit on an occasion and having been arrested for being under the influence, you said you had no trouble with him, isn't that correct?

A I did not have any trouble with him, no.

Q Now, you made mention of an 8-12-57 in the log - where is that log? Is this the one?

MR. BLOCH: The what?

MR. HOLLOWELL: The log, the City jail log?

MR. BLOCH: Oh, the log? Here it is (handing

log book to counsel) . . .

Q Mr. Hollowell: What was the date, do you recollect?

A I don't recollect any date of 8-12-57 being mentioned in any of my questioning.

Q If I said April 12, I'm sorry, I said August 12?

A I don't recall that date being mentioned.

Q You don't recall any such date being mentioned?

A No.

Q Do you recall testifying to any arrest in August of '57?

A I believe the two dates that were mentioned in my previous testimony was 11-2-57 and 12-15 of '57.

Q Are those the only two?

A I think that is correct.

Q Did you make both of those arrests?

A No, I did not.

Q You did not?

A No.

Q Have you ever had any visitations with people in the Negro community on a social basis?

A No.

Q You've never been to church where they were?

A No.

Q You've never been to parties where they were?

A Not on a social basis, no.

Q Sir?

A No.

Q You haven't been to parties where they were?

A No.

Q Have you had any relationship with them, other than in a regular police capacity?

A No.

Q And the only instances that you are referring to, instances that you are referring to where there were arrests prior to this one, was the one where you said "DUI and speeding, 11-57" and December of '57, 1957, is that correct?

A I believe it was December 15, 1957, the best I

remember, was mentioned previously.

Q Now, did you make that arrest on December 15?

A No, I did not.

Q Did you go with the person who made that arrest?

A No, I did not.

Q Do you deny - I take that back- Do you know anything about the circumstances of that arrest?

A Nothing except what I was told.

Q Do you know anything of your own knowledge about the arrest?

A No, nothing except what I was told about it.

Q Would you show me any other arrests of James Brazier?

A Yes, I can show you other arrests.

Q Do you have the one in April of 1958, is that correct?

A I don't know if it's in there or not. I believe it is, April 20, 1958, on page 90, I believe.

Q You only believe it's in there but you know the page on which it appears, is that right? (Exhibiting jail log)?

A Page 90, 4-20-58, James Brazier.

Q And you entered that in here?

A No.

Q Who entered that in there?

A I believe Chief Lee entered that.

Q Why do you believe he did?

A Because he normally kept the jail log and did the book work at that time.

Q Now, these are the instances to which you have referred, is that correct?

A That's right.

Q And these are the only instances that you know of?

A They are the only ones that have been referred to, yes.

Q I say, those are the only ones that you know of?

A Off-hand at this time, yes.

Q And so, all of your testimony relating to bad character and so forth and relating to violence, that is a matter of any official record at all, is what you have testified to, isn't that correct?

A Ask that question again?

MR. HOLLOWELL: Would you repeat it, sir?

THE REPORTER: "And so, all of your testimony relating to bad character and so forth and relating to violence, that is a matter of any official record at all, is what you have testified to, isn't that correct?"

A The Witness: As far as I can recall at this time, yes.

Q Mr. Hollowell: Now, when you arrest a man for being drunk and disorderly - let me rephrase that and put it

this way: If you saw a man on the street and he appeared to be in an intoxicated condition, and you went up and said, "All right, come on, ole chum, looks like you've had a little too much", you would take him to jail and you would book him on D & D, wouldn't you, drunk and disorderly?

A No, I would not.

Q You would not?

A Public drunkenness.

Q What would you charge him with?

A Public drunkenness.

Q Public drunkenness?

A That's right.

Q But suppose that he was in the house and he was talking too loud, say sitting in a public place, and he was just talking a little loud; he wasn't, you know, in bad shape but it was evident that maybe he had had a little too much; and the proprietor felt that it wasn't good for his business and he didn't want to leave; so, the proprietor called you and you went and got him: What would you charge him with?

A That all depends. He could be talking too loud and not be drinking or creating a disturbance.

Q With those facts in the hypothetical, I mean the facts of the hypothetical which I have given to you, what would you charge him with?

A If he had been drinking enough to be charged with

public drunkenness or with drunk and disorderly, that's what the charges would be.

Q Well, how much would he have to have in order to be charged with drunk and disorderly?

A I couldn't say; different amounts affect different people different ways.

Q Well, I mean regardless of how it affects the person, presuming that it has affected this person enough, how much then? What would be the character of the thing that a man would have to be doing for you to charge him with being drunk and disorderly?

A He would have to be under the influence of intoxicating beverages and creating a disorder.

Q Like what?

A Well, he could be disorderly just by using boisterous language or disturbing -

Q By using what kind of language?

A Or disturbing the peace of the quiet of that establishment; if he's raising enough sand for the proprietor to call the police, certainly he's raising enough sand to be disorderly.

Q And that "enough sand" that you're talking about would be a matter of just talking too loud, in a sort of argumentative way with his companion who had been drinking with him?

A He would not necessarily have to be talking too loud.

Q I mean that is one of the bases, is it not?

A It could possibly be.

Q And I believe your testimony was that you did not know what the circumstances were at all involving the D&D charges on the 12th or the 12-15, is that not correct?

MR. BLOCH: Just a minute, Your Honor. That isn't what he testified. He said he didn't know of his own knowledge.

Q Mr. Hollowell: And you don't know of your own knowledge, do you?

A That is correct.

THE COURT: Allright, you can clear it pp on redirect.

Q Mr. Hollowell: As a matter of fact, on direct examination you said you don't remember about December, '57, isn't that correct?

A I could possibly have said that, yes.

Q And now you say you don't know of your own knowledge; now, which is it, you don't remember or you don't know of your own knowledge?

A I believe that I have stated previously that one of the other police officers told me about that particular incident.

Q One of the others told you and so, you can't tell anything about it of your own knowledge?

A (No answer). . .

Q Who told you to call Dr. Ward?

A No one.

Q No one at all?

A No.

Q You did this at your own instance?

A That is right.

Q I'll ask you whether or not the jail windows on the right wing and the left wing also are very often rolled open when it's warm?

A It could be possible.

Q I'm not asking whether it's just possible; I mean it's very often done, is it not?

A I don't know. I don't stay in the jail that long.

Q I mean, you can see the windows from the outside, can't you, Mr. Cherry? I'm talking about the exterior windows along the corridor. Referring to PLAINTIFF'S EXHIBIT #10, I'm talking about the windows along what would be the inside of the court on each side?

A I know what windows you're referring to.

Q Those are the kind of windows that have a handle that you can turn and the windows will come out this way, aren't they?

A That's correct.

Q And in the summer time when it's warm weather, it's not uncommon for them to be rolled out?

A I couldn't say that they have ever been rolled out.

Q And you couldn't say that they haven't either, could you?

A No.

Q And they were open on the right wing and because of the fact that in the run-about or bull-pen on the men's side, as shown in PLAINTIFF'S EXHIBIT #14, the men can come up to the outer edge of the bars; and it would be not a difficult thing for a person standing out in the court - I'm talking about the jail court - or at the gate, to be able to holler to someone and be heard and to hear someone who would holler back at them, isn't that true?

A You mean holler from the back gate of the jail yard?

Q I mean from this gate that's right here in PLAINTIFF'S EXHIBIT #10?

A If they hollered unusually loud, I expect they could be heard, yes.

Q Now, you heard Mr. McDonald's testimony to the effect that the two of you made visitations throughout the city on your beat, sometimes walking, sometimes in the car, during the night of April 20, '58, both prior to and after midnight: do you agree that this was done?

A I don't recall him making any statement about us patrolling other than in the car.

Q Other than in the car?

A Off-hand, I do not recall that he has, no.

Q You don't deny that he said that he walked some too, do you?

A No, I do not.

Q What parts of the city did you visit that night, do you recollect?

A I could not say off-hand.

Q As a matter of practice, do you drive around in the various parts of the city during the course of your tour from 5:00 P.M. until 5:00 A. M.?

A Mostly the business district.

Q Mostly in the business district?

A That's right.

Q But you do some other, is that correct?

A Sure.

Q Can you tell what's the longest time that you absented yourself from the jail during the course of that night?

A It would be a very short period of time.

Q What do you call a very short period?

A Maybe 10 minutes.

Q You never at any time came over into the jail except

on those occasions when you came in with Mr. Cherry-
I'm sorry, Mr. McDonald - to visit the deceased, James
Brazier during all of that night, did you, except when
you say that the doctor came to see the alcoholic, is that
correct?

A No, I did not except when the doctor came to check
on the alcoholic who was in jail at that time.

Q Did you go with him when he made that visit?

A Yes, I did.

Q Now, other than that visit and other than the
visits which you have testified that you and Mr. McDonald
made of James Brazier, pursuant to, as you say, doctor's
orders, did you make any visitations of the jail otherwise?

A I do not recall any.

Q You don't recall any?

A No.

Q And I believe you said that you made - he said that
there was one made - excuse me, I believe you said, yes -
that you made one before midnight and one after midnight -
and two after midnight, the last one being about 4:30, is
that correct?

A It could have been one or more.

Q I mean it could have been a thousand, Mr. Cherry,
but how many do you suggest that you made?

A I don't recall the exact number. It could have been

one or more, or it could have been as many as three, more or less.

Q One or more or as many as three, more or less?

A That's right.

Q Was there as many as three prior to midnight?

A There would have been as many as one.

Q As many as one. Were there more than three prior to midnight?

A I wouldn't think so, no.

Q You wouldn't think so; what was the average space of time between those visitations?

A One hour and a half to two hours.

Q And that was between what hours?

A That was from about the time, from the time Dr. Ward gave us those orders until 5 o'clock the next morning.

Q Now, when did he give you those orders?

A It was some time in the early evening of April 20, 1958.

Q So that from - When you say "early evening" you mean 8:00 or 9 o'clock?

A Sometime between 5:00 P. M. in the afternoon and midnight.

Q Was it after you had locked up Brazier?

A No, it was the time he examined him before Brazier was locked up.

Q Was it after you had brought him to the jail?

A Yes, it was.

Q And what time approximately did you get to the jail?

A It was approximately 7 o'clock, I believe, in that neighborhood.

Q Allright; so, from 7:00 to 12:00, we've got 5 hours, and from 12:00 to 5:00, we've got another 5 hours; so that, in that 10 hour period, you made approximately 3 visits about an hour and a half apart?

A At least that, yes.

Q Well, within the framework of the time between these hour and a half visits, these three hour and a half visits covering a 10 hour period, this is when you were patrolling in the automobile, is that correct?

A Most of our patrolling was done in the car, yes.

Q During all of this time you didn't see anybody come to the jail other than the doctor, is that right?

A I didn't see anybody at the jail, no.

Q Other than the doctor?

A No.

Q But you cannot say of your own knowledge that there was nobody who came to the jail, other than the doctor, because you weren't there, were you?

A No, I couldn't say that there was anybody other than the doctor that came to the jail; no, I couldn't say that,

because the Sheriff's residence is upstairs over the jail.

Q I'm not speaking of the Sheriff?

A It's all in the same building.

Q You don't even know that the Sheriff didn't come down to the jail, do you, of your own knowledge?

A No, I don't know.

Q One moment, Your Honor. . . . Now, in connection with the condition of James Brazier, do I understand your testimony correct when you say that to you he looked the same at 4:30 to 5 o'clock A. M. on the 21st, 1958, that's the 21st of April, as he did when you first saw him with the doctor in the Sheriff's jail office approximately at 7 o'clock P. M. on the night of the 20th, is that correct?

A I did not see any difference in him, no.

Q You're not saying that there wasn't any difference in him, are you?

A I didn't see any difference in him, no.

Q Can you at all account for the fact that the decedent had a fracture that was approximately 9 inches long in his skull?

A No, I can't account for his having a fracture, no.

Q You didn't see anybody hit him other than yourself, did you?

A No.

Q And I believe your testimony was that you hit him

only twice?

A 2 or 3 times.

Q 2 or 3 times?

A I believe that is my testimony, yes.

Q Once where?

A He was hit on the forehead.

Q All of the blows that you made were on the forehead?

A They were at the forehead, yes.

Q At the forehead?

A That's right.

Q When you say "at the forehead" you mean generally -

A From here to here (indicating) . . .

Q Below the hair-bearing surfaces and above the

eyes?

A Well, I believe this part (pointing) would be the forehead too, anywhere in there.

Q Well, I guess that kind-of depends, Mr. Cherry; but at any rate, all you recollect is three blows and they were all in the generally frontal portion of the skull?

A That is correct.

Q And at no time during your visits to James Brazier, while he was in jail, that he made no complaint to you about the way he felt at all?

A No.

Q And that he was not unconscious or even in a semi-uncon-

-scious condition at each of the times that you visited him in the jail with Mr. McDonald?

A He was never unconscious from the time that he was arrested until I saw him the last time on the morning of the 21st of April, 1958.

Q And he was not even semi-unconscious, was he?

A I wouldn't say that he was, no.

Q Do you know when a man is unconscious?

A I'm not a doctor. I couldn't say.

Q Now, I believe you said that a Mr. Hammondtree, is that his name?

A Who?

Q Hammond or Hammock; you made mention of a Mr. Vick Hammock?

A I don't recall mentioning Vick Hammock off-hand.

Q Do you know him?

A Yes, I know Vick Hammock.

Q You don't recall having made any testimony concerning him? Sir?

A I believe that in my last testimony Vick Hammock was mentioned, yes.

Q You mentioned him, didn't you?

A I could have.

Q You don't remember?

A I could have mentioned him, yes.

Q Do you recollect what you said?

A I believe that I stated that on numerous occasions at times Vick Hammock had called me for Hattie Brazier, that James had run her away from home, and that I was told that on the 12th of December of '57 or 15th of December -

Q Now, who were you told by?

A By police officers.

MR. HOLLOWELL: Well, I would object as to what the police officers told him.

MR. BLOCH: Your Honor, I would object to two things: First, that he's interrupting the witness when he's answering; and secondly, if he was told, if he can't remember by whom, it doesn't make any difference because, if he got the information, he's entitled to act on the information that he got.

MR. HOLLOWELL: That doesn't mean that he would be entitled to recite what the information was.

THE COURT: Of course, under the ruling I previously made, Counsel, this relates to information which the officer may have had concerning the temperament and character and tendency to violence and so on; and he can testify concerning that within the sphere of that previous ruling that I made.

Q Mr. Hollowell: Now, you say that he had done this on numerous times?

THE COURT: Go ahead and answer the question now. An objection was made but go ahead and answer the question.

A The Witness: Let's see, where was I, Mr. Joiner?

THE REPORTER: The question was, "Now, who were you told by? Answer: By police officers." And that's as far as you got.

A The Witness: I believe in one particular case, in December of '57, the police department was called to Vick Hammock's place in relation to a fight and disturbance there between Hattie B. Brazier and her husband, James Brazier; and that he had beat her unmercifully at that time.

Q Mr. Hollowell: You say you believe that?

A That is the information that I have, yes.

Q Do you recall where you got that information?

A From someone in the police department; I don't recall.

Q Do you know who it was that you got that from?

A Off-hand, I do not.

Q Did you have the occasion to make an investigation of it?

A I believe I have stated earlier that I did not make the arrest on that, that that case was made by another officer.

Q Well, I ask you whether or not you had the occasion

to make an investigation?

A No, I did not make the investigation of that incident.

Q You did not?

A No.

Q Did you see James Brazier?

A No.

Q Did you see Hattie Brazier on that occasion?

A No.

Q Is this the same Hammock or Hammond that she accused you of selling illicit spirits to?

A I don't know that she's accused me of selling any illicit spirits to anyone.

Q Didn't you hear her yesterday, when she said "Yes, I know him"; she said "That's the man that asked me to call Mr. Cherry and have him to bring me 5 gallons of whiskey", you didn't hear that?

A I don't know of but one Vick Hammock in Dawson.

Q Is that the man that runs this place that you're talking about?

A He runs a juke joint there, yes.

Q But you didn't hear that, did you?

A I don't remember hearing it, no.

Q You don't deny that it was said?

A No, I don't deny anything that was said.

Q You don't deny anything that's said, is that right?

A Anything that's said?

Q Nothing that's said . . . All right. No further questions at this time.

MR. BLOCH: Come down, Mr. Cherry.

VICTOR HAMMOCK

witness called in behalf of Defendants,
being first duly sworn, testified on

DIRECT EXAMINATION

BY MR. COLLIER:

Q Will you state your name for the jury here, so they can hear it?

A Victor Hammock is my name.

Q Where do you live, Vick?

A Dawson, Georgia.

Q How long have you been living there?

A 59 years.

Q 59 years, is that how old you are?

A Yes sir.

Q Do you recall me talking to you previously about this case?

A Yes sir.

Q When did I talk to you about it?

A Last night.

Q Did I tell you to tell the truth?

A Yes sir.

Q Is that what you're going to tell?

A Yes sir.

Q Tell me what you know about the difficulties, if any, that James and Hattie Brazier had before the time that James died?

A Well, they had a little fight and called the law.

Q Well, do you know anything else about it?

A Well, he be drinking, I imagine.

Q Do you run -

MR. HOLLOWELL: I didn't hear that. I didn't hear you.

A The Witness: I say, he would be drinking and I would git after him about it.

Q Mr. Collier: Speak up loud. Do you run a place that serves beer and stuff?

A Yes sir.

Q How far was it from James Brazier's home?

A I guess it was about a block and a half.

Q Did he come in there often?

A Well, he come in there pretty regular.

Q Do you know the reputation of James Brazier for peacefulness or disorderly in the community?

A Well, I ain't never heard no more than him and his wife.

Q You just know about him and his wife?

A Yes sir.

Q Well, what is his reputation?

MR. HOLLOWELL: May it please the Court, I submit that that would not be helpful because he would not be eligible to state what his reputation is, as he hasn't said he knows it.

THE COURT: Yes. He's got to say he knows it first.

MR. HOLLOWELL: And he said he didn't know, only about him and his wife.

Q Mr. Collier: Did you know his reputation?
Did you know, when he was alive, what his reputation was?

A Yes sir.

Q What was his reputation?

A Well, he would drink a lot and I would git after him about it.

Q Has Hattie ever come to you place and asked for your assistance at any time?

A One time.

Q What did she ask you to do?

A She asked me could she use the phone.

Q To do what?

A To call the law.

Q Has James ever attacked Hattie at your place or

in or around it?

A It was around it, yes sir.

Q Did he beat her?

A Yes sir.

Q How bad?

A Well, they say he beat her pretty bad.

MR. HOLLOWELL: We object to that, Your Honor.

THE COURT: You can rephrase the question.

The statement "they say", of course, anything they told him or what somebody else said wouldn't be admissible.

Q Mr. Collier: Then, you did not see him beat her?

A I didn't see him beat her, no sir.

Q Did you see her afterwards?

A Yes sir.

Q What did she look like?

A Well, she looked like a lady had been beat.

Q Bad?

A Yes sir, and she lost some money and a wrist watch out there; so, we looked for it but we never did find it.

Q Did you ever see James Brazier on Sunday?

A Yes sir.

Q Would he be drunk or not?

A Well, I wouldn't say he was drunk but he be drinking.

MR. HOLLOWELL: May it please the Court, we must

Mr. Hollowell:

object to counsel continuing to lead the witness.

MR. COLLIER: I will rephrase the question.

THE COURT: That was leading and I suggest that the answer - rather, I direct that the answer be stricken.

Q Mr. Collier: Did you observe his person when you ~~saw~~ him?

A Yes sir.

Q What did he look like?

A He looked like he had been drinking.

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q When did he look like he had been drinking?

A You say when did he?

Q Yes?

A On Saturday night and Sunday.

Q What Saturday night and Sunday?

A I couldn't tell; I don't know the date.

Q You don't know any date, do you?

A I don't know the date.

Q Do you know what year?

A Don't know the year.

Q All you know is that on a Saturday night or Sunday

at some time -

A That's right.

Q - you have seen him. You don't remember having seen him in April of 1958, do you?

A No.

Q Was last night the first time you had ever talked to Mr. Collier about James Brazier?

A The first time.

Q The very first time?

A The first time.

Q You had never told him anything about this before?

A Never had.

Q Had you ever told Mr. Cherry anything about it before?

A Never had.

Q Had you told Mr. Randolph anything about it before?

A No sir.

Q Had you told the Sheriff anything about it before?

A No sir.

Q Had you told Mr. Bloch anything about it before?

A No.

Q Well, how would they know to come and get you?

A Well, Mr. Randolph over there, he made the arrest.

Q He made the arrest?

A Yes.

Q And this is the first time that they ever came to

you? He made what arrest?

A Bubber Brazier.

Q When?

A I disremember what date or what year.

Q Are you talking about the time when he got beat up and they put him in jail?

A I ain't talking about that time.

Q What time are you talking about?

A It was before that happened.

Q When was this then?

A I couldn't tell you exactly.

Q You wouldn't know when it was at all?

A I wouldn't know.

Q You're sure that you don't want to refresh your recollection on it?

A No, I wasn't thinking that it would ever, you know, come up any more. I wasn't thinking about nothing like that.

Q And your best testimony is that you don't know when it was?

A I don't know when it was.

Q Is that right?

A Yes sir, I don't know when it was.

Q Has Mr. McDonald been back and talked to you about this matter?

A He sho hasn't.

Q He never has. Have you gone to him and talked to him about it?

A I haven't.

Q And the first time you were contacted at all, you were contacted by Mr. Collier?

A That's right.

Q And when was that?

A Last night.

Q And where was that?

A Dawson, Georgia.

Q Where do you get your license to operate your place?

A From the City of Dawson.

Q You've got a license from the City of Dawson; whom do you have to get it from?

A I get it from Lawyer Jones.

Q From Lawyer Jones, do you know where his office is?

A Yes sir, so I know where his office is.

Q Do you know what his official capacity is?

A He's City Clerk, they say.

Q City Clerk, and that's where you go to get it?

A That's right.

Q What time do you close up at night?

A Oh around 10:30 or 11 o'clock.

Q Sometimes you stay open later?

A Hardly ever.

Q Hardly ever but sometimes you do?

A And sometimes I close before then.

Q Do you sell beer?

A Yes sir.

Q And you sell whiskey?

A No sir, I don't sell whiskey.

Q You don't sell whiskey?

A No.

Q Not over the counter at least, is that right?

A Don't sell it no way.

Q Never sell it anyway, is that right?

A Not at all.

Q Is that right?

A That's right.

Q Where do you get your whiskey when you sell it?

A I don't sell it.

Q You don't sell it?

A No.

Q You don't give it away?

A I don't have any.

Q You don't have any?

A No.

Q At no time?

A At no time.

Q Have you ever been arrested for having whiskey?

A I have.

Q Well, what did you do with that?

A What did I do with what?

Q That that you were arrested for?

A They got it.

Q Who got it?

A The law.

Q How many times were you arrested for whiskey?

A The second time.

Q The second time; when was the last time?

A Oh, been 3 years ago.

Q When was the time before that?

A Oh, about 5 years ago, I guess.

Q They just hadn't caught up with you the other times?

A I ain't sold no more; I quit. It cost me so much money I just quit.

Q Who arrested you when you were locked up the last time?

A The man that arrested me, his name was Mr. Mansfield.

Q Mr. Mansfield arrested you?

A The Deputy Sheriff.

Q Where were you when they arrested you?

A I was at home.

Q At home; where do you live in relationship to your place?

A I don't live there.

Q I mean where do you live in relationship to where your place is located?

A My place is located on 14th Avenue.

Q And where do you live?

A I live in Shield's Alley.

Q Shield's Alley?

A Yes.

Q And this is where you were at the time that they got this whiskey?

A I was at home.

Q You were at home?

A Shields Alley.

Q They came to your house and got the whiskey?

A They went in my mule stall and got it, dug it up.

Q How much whiskey was it?

A It was about 3 gallons.

Q I see; and who came and got it?

A Mr. Mansfield.

Q How did they know it was there?

A I don't know. I didn't know.

Q Beg pardon?

A But somebody told them, I guess.

Q Somebody told them; you didn't tell them?

A I goes there one night with a flashlight to get

some and somebody see'd me, I reckon.

Q I see; now, what about this other time?

A Well, the other time the Revenue got that.

Q They got that; do you know who brought them out there?

A Don't know.

Q You don't know?

A No.

Q And those are the only twotimes you've ever been arrested?

A That's right, for whiskey.

Q For whiskey; now, when you say for whiskey, what else have you been arrested for?

A Well, that was all of them.

Q Well, that's all of them but that's not the only times you've been arrested?

A Well, that's the only time I can think of.

Q Those are the only times -

A I've been arrested twice.

Q You've been arrested twice?

A Well, one time I was arrested for whiskey but somebody set it behind my place and they said it was mine and it wasn't mine.

Q This is another time; so, that's three times?

A They arrested me that time but they didn't lock me

up; I give bond for it.

Q I see, and then you went to court and you paid a fine?

A Paid a fine.

Q You let the bond stay up there?

A Paid a fine.

Q So, that's the third time; now, when was the next time?

A There wasn't no other time.

Q There wasn't any other time?

A No.

Q What about - Where did you get your whiskey?

A I couldn't tell the man.

Q You couldn't tell me; why couldn't you tell me?

A I didn't know him.

Q You couldn't tell the man because you didn't know him?

A He say he live in Florida; I don't know where he lived at.

Q You don't know where he lived and you were buying his whiskey?

A Yes.

Q You might have poisoned somebody?

A Along at that time I'd bought some from you if you had any.

Q You'd have bought some from me?

A Yes.

Q As a matter of fact, you would have gotten some from any source, wouldn't you?

A That's right, because I was just selling it.

Q You tried to get Hattie Brazier to get some for you, didn't you?

A I don't remember I tried her to get none for me.

Q Well, don't you remember that you did?

A A No, I don't remember that.

Q You don't deny that you did; you just don't remember; you might have?

A I deny it because I ain't never asked her to take none. A

Q I say you might have; you just don't remember?

A No, ain't no "might" in it; I ain't asked her.

Q But you would have taken it from any source that you could have gotten it at that time, is that right?

A No, I was selling it myself. I didn't have no salesmen. I was just selling it myself.

Q Well, I say, just like you said you would have taken it from me, if I would have sold you some?

A I would have bought some from you if you got reasonable with it and not charge me too much.

Q And you wouldn't have cared what source it was, if it was pretty good moonshine?

A If it was pretty good moonshine.

Q Even if it came from the police department, it would still be all right if it came to you so that you could get it?

A I wasn't caring who it come from.

THE COURT: Any more questions of this witness?

. . . . You may go down. You're excused. You can go home.

DR. CHARLES M. WARD

witness called in behalf of Defendants,
being first duly sworn, testified on

DIRECT EXAMINATION

BY MR. BLOCH:

Q You are Dr. Charles M. Ward?

A Yes sir.

Q Dr. Ward, do you recall that on November 24, 1962, your depositions were taken in this case at Albany, and you were examined, you were called there by Mr. Hollowell of counsel for the Plaintiff?

A I don't remember the exact date but I think that's it.

Q Last November?

A I think that's correct.

Q On a Saturday?

A Yes sir.

Q You are a medical doctor?

A That's correct.

Q How long have you been practicing, Doctor?

A Since 1952.

Q Where did you graduate from medical school?

A I graduated from the Medical College of Georgia in Augusta in June 1952.

Q You are a licensed physician, of course, in the State of Georgia?

A Yes sir.

Q Where did you interne?

A U. S. Naval Hospital, Portsmouth, Virginia.

Q For how long?

A One year.

Q You had no residency training there?

A I had no residency training but I did have some training at School of Aviation of Medicine, the Navy School of Aviation in Medicine at Pensacola, Florida, for six months.

Q Did you have any medical experience with the Marine Corps?

A I spent one year with the U. S. Marines at Opelika.

Q As a licensed physician?

A Yes sir.

Q With what rank?

A Lieutenant Junior Grade.

Q Sir?

A Lieutenant Junior Grade, U. S. Naval Medical Corps Reserves.

Q In your practice you are a general practitioner?

A Yes sir.

Q Where is your office?

A At the present time it's on Orange Street in Dawson, Georgia.

Q Are you a staff physician at any hospitals?

A Yes sir, Terrell County Hospital, Dawson.

Q On or about April 20, 1958, did you have the occasion to visit a colored man named James Brazier at the city jail in Dawson?

A So far as the date is concerned, I think that is about the time; I'm not sure of the date but I did examine James Brazier in the jail at Dawson.

Q Did you ever visit James Brazier at the jail in Dawson except on the one occasion?

A I saw James Brazier in the jail on two occasions, I know, that same - during the same day and night.

Q The same episode?

A Yes sir.

Q — You mean you saw him twice on that particular night?

A Well, I saw him once early in the evening and once

during - between midnight and daylight the next morning.

Q Between midnight and daylight?

A ^{If} It was the 20th, it was on the evening of the 20th and the morning of the 21st.

Q Do you recollect who put in the call for you to come down there on the first of those two visits?

A I'm not sure who did put in the call. I think it was Mr. Cherry but I'm not sure.

Q Do you recall where you were at that time?

A At the time I was called?

Q At the time you got that call?

A No sir, but since it was on Sunday, I was probably either at home or at the hospital when I received the call.

Q That was the call in the early evening?

A Yes sir.

Q Could you approximate the time?

A Well, it was somewhere around sundown, late in the afternoon or early evening.

Q Near dark?

A Sir?

Q Near dark?

A Near dark; I don't remember exactly what time it was.

Q Well, on that occasion you went to the jail; did you see James inside of the jail?

A James Brazier was brought to the office in the jail

for me to examine him.

Q Did you go into the cell block at that time?

A Not at that time, no.

Q Or the run-around?

A Not at that time. I might have walked out there but I examined James Brazier in the office. He was brought into the office and I examined him there.

Q Do you remember who brought him in the office or was he there when you got there?

A Not right off-hand, I don't remember who brought him.

Q Did you see Mr. Cherry on that occasion?

A Mr. Bloch, that's been a long time ago and I'm not sure but I think Mr. Cherry was there; in fact, I'm fairly sure that he was there.

Q Do you know Mr. McDonald? There?

A Yes sir, I know him.

Q Do you know the Sheriff?

A Yes sir.

Q Do you recall seeing any of them there that night?

A Now, so far as the identity of any person there except James Brazier, I'm not sure. I think either one of them or both of them might have been there when I examined him, but I'm not sure who was there.

Q But you did see some police officers?

A Yes sir.

Q Is that right?

A To the best of my recollection, it was Mr. Cherry and possibly Mr. McDonald and the Sheriff, but I'm not sure of just who was there. The only person that I'm sure was there, the only two people, was James Brazier and me.

Q You did see him?

A Yes sir, I saw him.

Q Do you know Mr. Mansfield Matthews, the Sheriff's Chief Deputy?

A Yes sir, I'm well acquainted with him.

Q Do you know if you saw him?

A I don't recall. I'm not sure. He could have been there.

Q Do you recall how James Brazier was dressed at that time?

A Not -- no sir.

Q Do you know whether he was fully clothed or not?

A At the present time I couldn't say whether he was fully clothed or not. I know he had on some clothing but I'm not sure just what he did have on.

Q Would you be kind enough to indicate what the matters were relative to his physical condition that you noted at that time? In other words, just tell the Court and jury what you found on physical examination of him?

A When I was called to the jail, I went to the office,

as is customary when they have prisoners, and James Brazier was brought to the office. He came - he walked in under his own power. He was not too steady on his feet but he was walking.

On physical examination, one of the first things noted was little laceration on his forehead, very small; a bruise or hematoma above his left ear on the left side of his head, and a small cut or laceration on the back of his head.

Q What is a hematoma?

A Hematoma is blood clot beneath the skin.

Q Bruise? Or is it heavier than a bruise?

A Well, you would say a little better than a bruise.

It's more of a -

Q Did you know James prior to your visit there to the jail that night?

A I knew who he was, yes.

Q Did you speak to him?

A Yes.

Q State whether or not from indications he knew who you were?

A From all indications he did know who I was.

Q How was his speech at that time?

A It was not coherent. His speech was incoherent.

And there's one other thing: The odor of alcohol was present

on his breath. I was not sure as to whether it was due to injury or the alcohol, his incoherent speech. So far as other physical findings were concerned, in going over him I checked -

Q Just a minute before we get to that?

A All right sir.

Q I was going to ask you about the alcohol next.

Tell us some more about the alcohol?

A Well, in examining the prisoner, it was necessary to get down close to his face and the odor of alcohol was definitely present.

Q The laceration or abrasion, where was it?

A Well, there was one on the forehead, if I remember correctly, was in the right frontal area up near his hair line that was small; and then there was a small abrasion on the back of his head.

Q Did you suture either one of them?

A No sir, neither one of them was large enough to warrant suturing.

Q What is a suture?

A A stitch.

Q Stitching?

A A stitch.

Q Have you described now all of the physical signs of injury that he had?

A No sir, not completely.

Q Well, describe them completely?

A On physical examination I went ahead and checked his eyes, ears, nose, throat and in examining the patient it was - well, starting with his ears, the left ear there was evidence of some blood either in the ear-drum itself or behind the ear-drum which couldn't be told exactly. It was not in the ear canal but it was either in the ear-drum or behind the ear-drum in the middle ear space.

On examination his pupils were equal and reacted normally to light. And I checked to see if there was any blood in his nose and his mouth and throat, and there was none in either place.

Q Did you look in his left ear?

A I looked in his left ear and that's where I found the blood behind - either in the ear-drum itself or behind the ear-drum.

Q Do you recall whether or not you checked his reflexes?

A Yes sir, I did.

Q What were they?

A They were normal at the time.

Q What do you mean by checking the reflexes?

A Oh, tapping on his knees with an instrument of some sort; and in that instance, I think I used my stethoscope,

which I usually do; checked his pupillary reflexes, checked them to see if they reacted to light.

Q Well, after finding the possibility of hemorrhage in his middle ear or the possibility of a hemorrhage somewhere, did you give any instructions to Mr. Cherry or whoever it was that was present with Mr. Cherry to put in a cell by himself?

A I most certainly did. That was not all of the instructions. They were told to put him in a cell by himself; he was to be - they were to go in and check on him at least every hour, to see if he could be roused; and, if at any time his state of consciousness changed for the worse that they could not rouse him, they were to notify me immediately.

Q Well, it so happened that there was another person in jail that required some attention, medical attention, from you, wasn't there?

A Yes sir.

Q That was not a colored person?

A No sir.

Q It was a white man who was an alcoholic?

A Yes sir.

Q And you went - Were you called to see him?

A I was called to see him some time between midnight and daylight, I don't remember what time it was.

Q The best you can place it, it was between midnight

and daylight?

A That's about as close, maybe 2:00 or 3 o'clock in the morning; I don't know exactly.

Q Well, when you went to see this other person, did you administer some sort of treatment to him?

A Yes sir.

Q Q And being there for the purpose of seeing the other person, did you go in and look at James then?

A Yes sir, I did.

Q Was he in a cell by himself?

A He was in a cell by himself.

Q Could you rouse him?

A Yes sir.

Q What was the condition of his speech at that time?

A Still incoherent, not coherent, not normal.

Q Did you give much weight to the fact that his speech was somewhat incoherent?

A No sir, not particularly because the odor of alcohol was still there. He would not necessarily have been - if he had been intoxicated, he would not necessarily have been sobered up by that time.

Q Did you see any of the police force there at that time?

A I'm pretty sure that I did but there again, I don't recall who it was. Somebody let me in to see the other person.

Q Well, whoever it was or whoever the policemen who were there, did you make inquiry as to whether they had been checking on him?

A I did.

Q As you asked them to do?

A I did.

Q And did you find that they had?

A Well, they told me that they had and I went in to check myself since I was there.

Q Do you recall who let you in when you went down to see the alcoholic?

A No sir, I do not.

Q Before you went on that visit to see the alcoholic, had you been at home in bed?

A Yes sir.

Q Do you recall the cell that James Brazier was in at the time you went in there?

A I could place it in either one of two cells; I don't remember exactly which one.

Q Well, how can you describe it?

A Well, as you go out of the office, there's a walkway and then you go down the cell-block and it was either the first or the second cell on the right.

Q The first or second cell on the right?

A I think it was the first but I'm not sure.

A

Q Where was Mr. Mattaway?

A He was back in what I call the bullpen.

Q I didn't mean to mention his name. Where was the alcoholic?

A He was back in the bullpen.

Q Huh?

A Back on the back side, on the north side of the jail on the right hand - on the northeast side of the jail.

Q When you went in that cell, you awakened Brazier?

A Yes sir.

Q Did you have any trouble in waking him?

A No sir, none --

Q Was he gone to bed?

A As best I recall, he was lying on the bed on his side, and I went in and roused him; and, if my memory serves me correct, I had him to sit up on the side of the bunk. But I did rouse him. I don't know whether I had him stood up or not but I did rouse him and I saw that he was not comitose or unconscious so that he couldn't be aroused.

Q Could you tell at that time or form an opinion whether his incoherent speech was due to alcohol or to head injury?

A No sir, I couldn't. I made no effort to determine anything right then except whether he could be roused or not.

Q Did you make any laboratory tests or any blood

tests for alcohol?

A No sir. To get a blood test for alcohol is rather difficult in this section of the Country.

Q Do you know a colored man, who acted as jailer there, by the name of Eugene Magwood?

A Yes sir.

Q Did you see Eugene Magwood during the course of either one of your visits?

A I cannot state specifically whether I did or not. I can almost say assuredly that I did because he was usually there -

Q But you have no independent recollection of seeing him?

A — No, I have no independent recollection of seeing Gene.

Q Now, when did you next see Brazier?

A The following morning or Monday, Monday morning.

Q Where was that?

A At the hospital, at the Terrell County Hospital, Dawson, Georgia.

Q About mid-morning?

A As best I recall, it was somewhere around 9:30.

Q That would have been on Monday, Monday morning?

A Yes.

Q Where did you see him in the hospital at that time?

That's the Terrell County Hospital?

A Terrell County Hospital.

Q Where did you see him at that time?

A Again, as best I can remember, it was in the x-ray room. There's a possibility it was the emergency room, but I think he was in the x-ray room.

Q Did you direct any x-rays to be made?

A Yes sir.

Q Do you have any of those x-rays? Did you look for them?

A I looked to see if any were made. I did not look for the x-rays; since he was sent to Columbus, there's a possibility that they were sent to Columbus with him. There's a possibility that they're still at the hospital in Dawson, but I don't know where they are.

I was asked to check and see, to be sure if some were made and I did check, and there's a card there stating that x-rays were made of his skull, but I did not try to find the x-rays.

Q Do you recall who brought Brazier to the hospital on that occasion?

A I remember seeing his wife there but I don't remember who else was with him.

Q Was there any difference in the condition of Brazier at that time from what it was when you had seen him earlier in

the morning?

A Neurologically or so far as his state of consciousness was concerned, there was quite a bit of difference. At the time he was comatose or unconscious or, we'll say, semi-conscious at best. And that's when I told them that he needed to be in Columbus in a hurry.

Q And to whom did you refer James Brazier?

A I called for Dr. Louis Hazzouri and Dr. Hazzouri was out of town and Dr. Durden was covering his practice while he was gone; so, he was sent to Columbus to Dr. Durden. He was sent actually to Dr. Hazzouri but Dr. Durden was covering his practice at the time; so, I think he's the one that saw him.

Q Did you get any written report back from Dr. Durden?

A I'm sure that I did but I'm not -- at the time I'm not aware of what's in it.

Q Have you tried to locate it?

A No sir, I have not.

Q Do you recall how Brazier was dressed when you saw him in the hospital, as distinguished from the time you last saw him in jail?

A No sir.

Q Were there any changes in his external appearance between the two times?

A So far as the actual evidence of injury, I saw

none. Of course, there was some swelling in the areas where the original injuries were, but that was to be expected in that period of time. Any time a person has a blow or an injury, they're going to have some swelling later on, edema or swelling.

Q When you saw him, was there any medication given him or any wounds dressed by you on any of the three occasions that you saw him?

A When I saw him at the jail, if I recall, the only thing I did was put a band-aid over the little laceration on his forehead.

Q Why didn't you -

A It was right along about his hair-line on the right side.

Q Did you examine the timpanic membrane?

A That's the ear-drum, yes sir.

Q Was it intact?

A It was intact.

Q Did you see Mr. Reginald Arnold - you know Reginald Arnold - Ragan Arnold rather?

A I either saw Mr. Arnold or talked to him over the telephone. James Brazier worked for him and I remember talking to him. I don't remember whether it was in person or over the telephone. I think I talked to him at the courthouse after I had examined James Brazier. I think that's

where it was. I'm not sure of that.

Q That was on your first visit?

A That was right after the first visit.

Q Did you have any occasion to talk with him?

A I just told him that I had examined him.

Q What's that?

A I told him that I had been over to see James.

Q Are you and he good friends?

A Mr. Arnold? Yes sir.

Q Have you bought automobiles from him?

A I started to say, I should be a good friend, I think I've bought 11 cars from him in 8 years.

Q Confining yourself to the visible external injuries, state whether or not the appearance of those external injuries in any way indicated any severity of internal damage?

A No sir, they did not indicate severe internal damage, no sir.

Q State whether or not from your experience you've seen many people with worse external conditions able to get up and walk around and have no after-effects whatsoever?

A I have seen quite a few.

Q Would you state that the external appearance of the injury was rather mild?

A Yes sir, I would.

Q You are officially employed or engaged by the City

of Dawson and the County of Terrell to attend prisoners in the jail, are you not?

A My associate, Dr. Walter Martin, and I work on a fee basis; and whichever one of us is available to see a prisoner, we see him.

Q You're called the County Medical Examiner, I believe?

A I am a County Medical Examiner, yes sir.

Q Appointed by whom?

A The County medical examiners, if I am not mistaken, are appointed by Dr. Jones in Atlanta. The County medical examiner's job is actually a state appointment. So far as the county physician is concerned, my associate, Dr. Walter Martin, has been appointed the county physician and, since we work together, they make no distinction between us. I'm not sure that the city has an appointed medical examiner.

Q Will you state whether or not at the time you first examined James Brazier at the jail on the Sunday afternoon or evening, you were of the opinion that the slurred speech and the reflexes and the unsteady gait were more than likely attributable to acute alcoholism?

A That's correct. I did at the time.

MR. BLOCH: I think the witness is with you.

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q Doctor, I believe you said that when you made the

examination of James Brazier, he was not already in the Sheriff's office but was brought to the office, is that not correct?

A He was brought to the office while I was there.

Q While you were there?

MR. BLOCH: Just a minute! Did he say Sheriff's office of office in the jail?

The Witness: The office in the jail. I don't know what --

Q Mr. Hollowell: The jail office?

A The office in the jail.

Q Let me show you PLAINTIFF'S EXHIBIT #2 and ask you is this the office to which you make reference, Doctor?

A That's part of it; looks like a view going from one door to another.

Q Now --

A However, that's only a small part of the office.

Q Yes, I understand, but you do recognize it as being the jail office?

A Yes, I do.

Q As being part of that particular office?

A Yes.

Q How large is that office, would you estimate?

A Oh, I would say probably 10x10, or 10x12.

Q Would you say, take it from the corner here, you

see where I'm standing here, Doctor; so, if we ran a partition right here and possibly right on over to the wall from where I am, that would be just about right, wouldn't it?

A Possibly, give or take a foot.

Q Yes. Where did they bring him from?

A I am not sure of that because he was brought into the office while I was there. I assume that he was brought from the west side of the jail but I don't know.

Q You don't know?

A No.

Q Doctor, let me show you your deposition and ask you, isn't it true that on the deposition, which was taken of you in November, you were asked the question -

MR. BLOCH: What page, please?

Q Mr. Hollowell: 12 - you were asked, "In the left wing, in the first one or two cells coming from the direction of the porch, is that right? Answer: That's right." And we were talking about the other side. "Now, as I understand it, he was in this group of cells over here when I went down to examine him and he was brought across to the office and since I was concerned about his welfare, I told them to be sure and put him in a cell by himself, and he was put over there." Then the next question was: "So, you're saying initially? Answer: Initially. Question: He was on the right wing looking from the courthouse to the jail?" And the answer:

"Correct." Is that not so, sir?

A I assumed that's where he was.

Q I mean, is this what you testified?

A That's right.

Q And when you were asked, "He was on the right wing looking from the courthouse to the jail", you said "correct", is that right?

A I am assuming that that's where he was.

Q Well, I'm not asking, Doctor, what your assumption is: I'm asking you, did you testify that he was in the right wing?

A Evidently I did; it's on there.

Q Now, at the time that you did examine him, Doctor, on that occasion, do you recollect about what time it was?

A Somewhere in the early evening.

Q Just after dark or something?

A Near sundown or dark, right in that general period of time.

Q Would you say it was after 7:00?

A Well, I couldn't say specifically what time it was but it was somewhere in that period, about that time of day.

Q Would you say between 7:00 and 9:00 was within the range?

A I would say about that time.

Q Did you have an occasion to make a visit to the

country that evening?

A I don't recall whether I did or not.

Q Sir?

A I don't recall whether I did or not. I make quite a few visits to the country.

Q Now, when Mr. Bloch asked you about the alcoholism, I believe you said you didn't have any tests made?

A That's correct.

Q And it isn't your testimony that the reason that he was incoherent in his speech was that it was because of alcoholism; you are not so testifying?

A I said I was not so testifying. I said that the odor of alcohol was present.

Q You're not saying now, nor have you said even on deposition -

A I did not state -

Q Excuse me, sir; excuse me and let me finish: I say you're not saying now, nor did you say before that the reason for the incoherence of his speech was due to alcoholism, acute alcoholism or due to this man being under the influence of alcohol, have you?

A I said at the time, if I remember, and I'll say it again, that the odor of alcohol was present quite strongly, and that my assumption was that it was probably due to alcoholism and possibly due to head injury.

Q But you are not saying that it was due to alcoholism?

A I'm not saying that it was due to either one.

Q Now, I believe you said also that you then told them, after he had been brought from the right side and you examined him, you told them to put him in a separate cell?

A That's correct.

Q You knew, as a matter of fact, that there weren't any separate cells over there where he had been, which are formed the same way as the cells are over there near where the jail office was, didn't you?

A There are separate cells over there.

Q But I said, not formed the same way; they're not enclosed in the same manner?

A Not enclosed in the same manner.

Q That is, they don't comprise little closed-in rooms?

A That's correct.

Q So that one doesn't have the same kind of privacy?

A That's correct.

Q Now, at the time that you came back, would you estimate about what time it was?

A Well, the best estimate I can give you, sometime between midnight and daylight. I would say probably 2:00 or 3 o'clock in the morning.

Q This is probably 2:00 or 3 o'clock; it could have

been- How long would you estimate that you slept that night?

A Well, I usually get to bed around midnight; so, I would say that I probably had been to sleep 2 to 3 hours when I was called.

Q You wouldn't say that definitively but possibly?

A Possibly.

Q Did you get any call? Did you get any call that caused you to come to the jail?

A I got a call to go to see the white alcoholic.

Q Who called you?

A I don't recall. Evidently it was one of the police but I don't remember.

Q Well, you remember the other call and it was in the daytime; now, you mean to say that you don't remember -

A I did not say that I remembered who called me.

Q I beg your pardon?

A I did not say that I remembered who called me to see Brazier.

Q You didn't say that?

A I said I thought it was quite probably Mr. Cherry.

Q You thought it was quite probably Mr. Cherry?

A That's correct.

Q As a matter of fact, you said you thought it was, isn't that correct?

A That's right.

Q But now as to a call which came in the middle of the night, you don't remember who called you?

A No, I don't.

Q Did you remember getting any other calls during the middle of the night after you went to bed on that occasion?

A No, I do not.

Q But you don't remember even that one call?

A I don't remember who called me. I remember who I went to see.

Q And when you went there, you roused Brazier?

A I did.

Q Did you have him stand up?

A As best I recall, I just had him sit on the side of the bed. I don't recall having him stand up.

Q And his reactions were about the same as they were before?

A The only thing that I can recall, was, I was trying to determine whether he could be roused or not, whether he was capable of rousing by normal means.

Q How did you rouse him?

A Just by shaking him and calling his name.

Q And he roused?

A That's correct.

Q And sat upon the bed?

A I don't recall. I think he did sit up on the bed,

on the side of the bunk.

Q Or just woke up, you don't know?

A I'm sure that I could wake him up. That's the thing I was trying to determine.

Q Which bed was he in?

A If he was in the cell that I think - he was on the bottom bunk. There are 2 bunks or 4 bunks - and if I recall, it was the first one as you go in. If I remember the cell correctly, it was the bunk on the right as you go in the door and it was the first one on the right. I think that's where he was, but he was on the bottom bunk anyway.

Q He was on the bottom bunk?

A Yes.

Q And you don't know whether he sat up or whether you just let him lay there, but, at any rate, you roused him?

A I roused him so I could see that he was not unconscious, not comatose.

Q Did you re-check the ear?

A Not at that time.

Q Did you ever re-check the ear?

A No, I didn't think there was any cause to.

Q You didn't check to see whether there had been any additional bleeding of the ear at that time?

A There was no blood in the external ear canal. Whatever blood was there was either in the middle ear space

or was in the tissue of the timpanic membrane, the ear-drum itself.

Q Well, this is one of the basic things that one looks for, is it not, in initially determining whether or not there has been a basal fracture?

A Usually, yes.

Q And this was present in this man?

A Except for one thing. You could not determine whether the blood was behind the eardrum, in the middle ear space or whether it was actually in the eardrum itself.

Q How would you normally determine that?

A By observation or by x-ray to see if the man did have a skull fracture or observation to see what his condition was.

Q But you did not recommend it at that time?

A No, I didn't because at the time I thought it was quite possible that the blood that I saw was in the tissue of the ear-drum itself.

Q Now, you saw him the next time, I believe you said, at the hospital?

A That's right.

Q And you are, did you say, the County physician?

A I'm the County Medical Examiner.

Q County Medical Examiner?

A That's right, one of them.

Q And they pay you; you're on a salary with them?

A On a fee basis.

Q Let me show you PLAINTIFF'S EXHIBIT 16 and ask you, do you recognize the person there? Who is that person, the male person?

A James Brazier.

Q Is that about the way he looked at the time of his death?

A Well, I didn't see him at the time of his death. That was 5 days later.

Q Well, I mean generally as of that time?

A Correct.

Q You knew him?

A I knew him.

Q You saw him from time to time?

A I saw him from time to time.

Q He serviced your car, didn't he?

A He did.

Q And you had seen him many times, as a matter of fact?

A Well, I wouldn't say many times but I had seen him quite a few.

Q Do you buy your gas at that filling station?

A No.

Q Q On occasions?

A Rarely.

Q But you've bought cars there?

A I've bought cars there but I rarely buy gasoline there.

Q Now, when you saw him around there, he was always working, wasn't he? Generally?

A Well, if I saw him there, he was working.

Q Otherwise, you wouldn't want to pay him, would you?

A Or he wouldn't be there.

Q Was his hair generally of the nature that you see it there; that is, not too long but kind-of a wooly texture?

A That's as best I remember it, about like it was then.

Q Considering that here he might be dressed a little better than what he might be normally at work, is that correct?

A I think he usually had on a cap when he was working or a hat.

Q Let me ask you this, Doctor: You saw him, you say, the next morning at the hospital?

A Correct.

Q And that his wife had brought him?

A I remember his wife being there. I don't know who brought him.

Q And, in your opinion, his condition as you observed it externally was about the same as it had been when you had seen him about midnight, is that correct?

A That's right.

Q Now, I will ask you, Doctor -

A I didn't say about midnight. It was somewhere -

Q Well, between midnight and daylight, whatever time, you say possibly between 2:00 and 3 o'clock?

A That's about right.

Q Now, during that time that you made this determination, you made an x-ray and then you told her to take him on to Columbus, and you made connection with the hospital for her to bring him down there, is that right?

A As best I recall, when they brought James Brazier to the hospital, I was in the operating room, and they said he was out there; and I told them to get some x-rays; and then when I came out of the operating room is when I saw. And when I saw that his state of consciousness had changed from the evening before and the early part of the morning before, that's when I told his wife that he should be in Columbus as quickly as possible; and she suggested taking him or somebody suggested taking him in their car.

Q And away they went?

A Right shortly.

Q He might have been x-rayed even before then, mightn't he?

A He could have been.

Q Let me ask you this: Did you have the occasion to

have him to comb his hair or to rub your hands through his hair, or to shine your light up in the top of his head, in order to determine whether or not there were any bruises and contusions in that area?

A I had no reason to. I did examine his head looking for abrasions or lacerations, and there was one. The one that was on his hair receded somewhat like mine does - and it was along this, along in this area; and there was one on the back of his head which was in his hair and I found it.

Q Whereabouts back here?

A If I remember correctly, it was on the left side in the back, right along here (pointing). . .

Q You didn't pay any particular attention to the top of the head as such?

A There wasn't any evidence of damage there. I was looking for any point of damage and I found none.

Q How would you account for there being multiple abrasions and contusions over the hair bearing surfaces of the man?

A I didn't see any abrasions, other than the two that I have described in the area above his left ear, which you could call a hair bearing area. There were contusions and just minor abrasions there. This would be classified as a laceration but not large enough to be sutured; and the one in the back of his head in the same manner.

Q Would you say that this whole area, general area here that I am pointing to, that is generally from the ears up, would be considered as the hair-bearing portions of one's head?

A In some people.

Q Well, I mean on one who has hair?

A Correct.

Q When you went to the hospital, I mean to the jail between 2:00 and 3 o'clock, that is A. M. on the 21st, whom did you go to see first, Mr. Hardaway or Hattaway?

A I went there to see him and, just as a matter of concern for a patient, I stopped by to see James Brazier and to see if he could be aroused. I was not called to see James Brazier.

Q So, you merely went by out of interest to see how your patient was thereafter, is that correct?

A That's correct.

Q Would you say that it would be possible to make the kind of injuries that you saw on Brazier with this, PLAINTIFF'S EXHIBIT No. 17?

A It's possible to make them with that.

Q Would it be likely that they could be made with an instrument of this general nature?

A Well, it's likely that it could be made with an instrument of that general nature, but there are a number

of other instruments that it could be made with though.

Q But it could be made with --

A -- with any blunt instrument.

Q With a black-jack?

A It could be made with a black-jack; it could be made with a Coca-Cola bottle.

Q With a Coca-Cola bottle?

A I don't know what made the injury there. All I know it was there.

Q All you know is that it was there?

A That's correct.

Q Is it possible that there could be bruises and contusions made by a blunt object, which would cause bruises and contusions all over the scalp surface and all of it be registered generally under the surface of the scalp, sir, as distinguished from on top of the surface?

A I don't quite follow you.

Q When one has the occasion to have bruises and contusions of the scalp, is it possible for there to be, for the bruise to be under the skin, so as to make the top surface of the skin unbulged, shall we say?

A I am contending and have contended from the beginning that the injuries presented were those on the front of his head, the back of his head and on the side of his head.

Q Now, Doctor, you're not answering my question, sir.

I wonder if the Clerk would read it please?

THE REPORTER: "When one has the occasion to have bruises and contusions of the scalp, is it possible for there to be, for the bruise to be under the skin so as to make the top surface of the skin unbulged, shall we say?"

____ Q Mr. Hollowell: -- so that, it would not register, sir; it is quite possible? Right, sir?

A I'm trying to give fair and honest testimony here.

Q I understand?

A There's one point that I'm trying to make: I am the man who examined him initially. So far as I know, I have told you exactly what I found: the laceration on the front of his head, the laceration on the back of his head, the contusion in the left temple area, and the hematoma there.

Now, so far as any other injury to the top of his head, I examined him and I found none. Now, I don't know who says they did, but that was his condition at the time I examined him at the jail that night.

Q You don't know what came about any time after that?

A I'll say that his external appearance, so far as I can discern, was the same the following morning as it was the night before.

Q You didn't examine -did you examine his head as of the time that he was brought to the hospital?

A I did not go over his head completely, as I did the right before, no.

MR. HOLLOWELL: No further questions.

THE COURT: Anything further?

MR. BLOCH: No sir.

THE COURT: You may go down. May the Doctor be excused now?

MR. BLOCH: If he doesn't mind, we'd like for him to remain.

The Witness: I'll wait.

MR. BLOCH: I would rather for him to wait because I don't know what might come up.

THE COURT: Allright. All right, who do you have next? Have them on the stand, whoever it is, whoever you have next, have them on the stand ready to testify after a 10-minute recess.

RECESS: 3:40 PM to 3:50 PM - FEB. 7, 1963

- - - - -

EUGENE MAGWOOD

witness called in behalf of Defendants,
being first duly sworn, testified on

DIRECT EXAMINATION

BY MR. BLOCH:

Q Was he sworn? Were you sworn the first day?

A Yes sir.

Q Your name is Eugene Magwood?

A That's right.

Q Where do you live?

A Dawson.

Q Talk loud now?

A Dawson, Georgia.

Q Where in Dawson do you live?

A 500 Cedar Street.

Q How long have you lived there?

A Well, this makes 8 years.

Q You're not married now?

A No sir.

Q You were in the chain-gang?

A 7 years.

Q About 7 years?

A That's right.

Q For killing somebody?

A I did.

Q Where did you begin - when did you begin serving
in the chain-gang?

A The 18th day of April in 1955.

Q Your trouble arose down in Fitzgerald?

A That's right.

Q Ben Hill County?

A Ben Hill County.

Q Where did you serve all of your time?

A I served in jail, in Terrell County; 3 months at the camp and the rest of it at the jail.

Q How old are you?

A 44.

Q How tall are you?

A 5 feet 6 inches - 11 inches.

Q How much do you weigh?

A About 170, I imagine.

Q What do you do now?

A Work at Dawson Oil Company.

Q Who is your boss-man?

A Mr. Johnny Waters.

Q What do you do?

A Well, do anything that come to hand, just no special job.

Q Sort of a handy man?

A That's right.

Q How long have you been working there?

A Ever since the middle of May.

Q Since the middle of May?

A That's right.

Q You got out on the 18th day of April?

A That's right.

Q And were you out of a job from the 18th of April

to the middle of May?

A I was not. I went to work the next week.

Q Now, during the time you were in jail there, in the Terrell County jail, you were a trusty, weren't you?

A That's right.

Q Were you a trusty the whole time?

A The whole time.

Q What was your job?

A Well, I see'd after the jail, chickens, dogs.

Q Did they call you the janitor?

A That's right.

Q Did you feed the prisoners?

A I did.

Q Did you have charge of the cleaning up of the jail?

A I did.

Q Who did you work under?

A Whol work under?

Q Yes, who did you work under?

A The Sheriff.

Q The Sheriff?

A Yes sir.

Q Sheriff Matthews there?

A That's right.

Q You worked under his supervision and you took instructions from the City policemen too?

A That's right.

Q Do you know Mr. Cherry here?

A I really does.

Q How long have you known Mr. Cherry?

A Ever since I come there.

Q Do you know Mr. McDonald there?

A I does.

Q You knew that during a part -- Mr. Cherry is Chief of Police now?

A That's right.

Q During part of the time he was not Chief ?

A No sir.

Q But he was on the police force?

A That's right.

Q And during a part of the time that you were there, Mr. McDonald was on the police force?

A That's right.

Q Did you carry the keys?

A I did.

Q When did you first start carrying the keys?

A The second day I was there.

Q Going back a little, Gene: Do you remember about four months ago being asked questions and giving answers about this matter?

A I does.

Q Right in there in that room?

A Yes sir.

Q Before this gentleman there (reporter)?

A Yes sir.

Q Do you remember the date, when it was?

A I doesn't; I don't remember.

Q Well, you never gave testimony here but once, did you?

A No sir, that's all.

Q How did you happen to come here that day?

A I was subpoenaed here.

Q By whom?

A Hattie B. Brazier.

Q By whom?

A Hattie B. Brazier, Albany.

Q And do you recall that was the 10th of October?

A I believe it was, somewhere like that; I believe it was.

Q Alright, now going back to where we stopped off: You first started carrying the keys when you went there as a trusty?

A That's right.

Q Where did you sleep?

A —At night?

Q At night, yes? Where?

A In the jail.

Q Which cell did you sleep in?

A I slept in the second cell from the back left.

Q Up toward the front?

A From the back, the left wing.

Q Toward the back?

A That's right.

Q On the east wing?

A That's right.

Q That is, as you came into the court-yard from the courthouse toward the back of the courthouse into the jail department, you slept on the left-hand side?

A That's right, the left-hand side.

Q The second cell from the office?

A That's right.

Q Could you see up and down the line of cells?

A Any time of the night. The light stayed on all the time.

Q Do you remember a Sunday when James Brazier's father, Odell Brazier, was brought in?

A Well, I remember the Sunday but I didn't see him when they brought him in.

Q You didn't see Odell?

A No sir, I didn't see him.

Q Did you see James when he was brought in?

A I didn't but I see'd him directly after.

Q You did not see him when he was brought in?

A No sir, I didn't see him when he was brought in.

Q You had charge of seeing that the prisoners there are fed, do you not?

A That's right, that's right.

Q You didn't feed them -

A Not that night I didn't; not 'til that morning.

Q You didn't feed anybody an evening meal on Sunday, did you?

A They gets two meals a day.

Q Only two meals on Sunday?

A That's right.

Q You had the key to the jail, to the whole jail?

A To the whole jail.

Q What else do you do or did you do when you were a trusty? Did you help the Sheriff in other ways besides being the janitor of the jail?

A Whatsoever he wanted me to do.

Q Now, on that night that James Brazier was in there, when was the first time that you knew he was there?

A When I went in about 7:30.

Q About 7:30 that night?

A About 7:30.

Q How did you know he was there?

A Well, I didn't know he was there 'til I went in; and as I go in, I just look in the cell there and see'd him and I knowed him.

Q Where was he then?

A Laying there on the bed.

Q In what cell?

A The first cell.

Q And did you all have any conversation?

A Well, I asked him how was he doing and he said all right.

Q Don't go into what you said; just did you have any conversation?

A Oh yes, yes, yes.

Q And that was around?

A It was about 7:30.

Q And when was the next time you saw him?

A That morning.

Q The next morning?

A The next morning.

Q After you saw James there in the cell when you came in, where did you go then?

A Well, I went on out and swept the yards that morning.

Q No, no, I mean the night when you saw him in the cell?

A Where did I go?

Q Yes?

A Oh, I went on back there to the room and came back and went back on the other side there where his daddy was.

Q What time did you go to sleep that night?

A Well, I go to sleep around about 10 o'clock.

Q Now, when you went to your cell to go to sleep, did you see James then?

A I see'd him.

Q Was he in his cell then?

A He was still in his cell.

Q Did you sleep soundly all night?

A No, I never slept sound.

Q What's that?

A I never did sleep sound there.

Q Well, were you up and down all night?

A Well, I wasn't up and down but, if I heard a noise, I would go to the door and see what it was.

Q Did you hear any noises?

A I ain't heard anything.

Q Now, you first saw James at 7:00, around 7 o'clock?

A That's right.

Q And you next saw him around 10 o'clock?

A That's right.

Q Did you see him any more between then and the next morning?

A I did not.

Q Did you hear anybody go into his cell?

A I ain't heard anything.

Q How far from his cell was your cell?

A About like from here to the door yonder.

Q From here to the door?

A That's right.

Q How did you come to see him the next morning?

A Well, I came in to ask who all wanted breakfast
and who wanted to eat.

Q He didn't eat anything?

A He didn't eat anything.

Q Did you know he was to be taken to court that
morning?

A That's right, I did.

Q To the Monday Morning Mayor's Court?

A That's right.

Q Was it your job to get the prisoners out?

A I did.

Q That were going to court?

A I did.

Q Was there anybody besides him going to court?

A They was.

Q Huh?

A They was.

Q Who?

A Well, it was him and his daddy. I ~~just~~ forget now but it was 2 or 3 more of them.

Q But you know he was?

A I know he was.

Q Did you see him going to the jail, I mean going to court?

A I was there when he got up and walked out and I looked at him when he got in the car.

Q Now, where do they have the court?

A Up there to the fire department.

Q Where? How far away from the jail is that?

A Oh, it's about 2 blocks, I imagine.

Q How far?

A About 2 blocks, I imagine.

Q About 2 blocks?

A Yes sir.

Q Well, when it came time to go to the Mayor's Court, did you go in there and say "Come on" or what happened?

A I did.

Q What did you say?

A I told him "We was ready for court and get up and let's go."

Q What did he say?

A He said "All right"; got up and slipped on his shoes

and come on out.

Q At the time you went in and told him it was time to go to court, did he have on any clothes?

A He did.

Q What did he have on?

A He had on - I don't know the color - but he had on pants and shirt.

Q Pants and -

A - and shirt.

Q And shirt?

A That's right.

Q Did he have on sox?

A He did.

Q Did he have on a tie?

A I don't think he did; I don't think he did.

Q Was it an undershirt or top shirt?

A Top shirt, top shirt and undershirt.

Q Top shirt and undershirt?

A That's right.

Q Did you see any blood on them?

A I ain't seen a speck nowhere.

Q When you went in to get him, was he lying down or sitting up or standing up?

A He was sitting up on the bed; sitting up on the side of his bunk.

Q Sitting up on the bed?

A That's right.

Q Is it a double bunk?

A Single bunk.

Q Single bunk?

A That's right.

Q Was he sitting on the side of it?

A Sitting on the side of it.

Q Well, when you said "Come on, let's" -- what did you say to him?

A I told him, I said "Come on, Bubber, and let's go; they're out here waiting to go to court." And he stretched down and slipped on his shoes and got up and come on out.

Q And which way did you all walk out?

A Come out the front, the back of the jail there.

Q And into that court?

A Come down the wing there right on out into the yard to the car. The car was parked right in front of the gate there.

Q You know that pen over there where they keep the quail?

A That's right, come right by it.

Q You came right by it?

A Right by it.

Q They're tame quail?

A They was.

Q The cars, the official cars, Sheriff's, policemen's and so forth, they're parked back of the jail?

A That's right.

Q But in front of that enclosure?

A That's right.

Q I mean back of the courthouse?

A That's right, back of the courthouse.

Q And in front of that enclosure where the quail are and the court-yard to the jail?

A That's right.

Q And then, did you come out the front door there from that porch?

A I come to the porch.

Q Were you holding him up?

A Not a soul; didn't nobody have hold to him. He was walking by himself.

Q Were you walking by his side?

A I didn't. Mr. Shi Chapman was.

Q What's that?

A Mr. Shi Chapman, policeman, was.

Q Well, Mr. Chapman is dead, isn't he?

A Yes sir.

Q Mr. Chapman was walking by his side?

A He was walking along behind him. He was ahead of him.

Q Did he have hold of him in any way?

A He did not.

Q Was he handcuffed?

A He was not.

Q Well, where were you walking?

A I was standing there to the door where they come out the door at.

Q You didn't go with them?

A No sir, I didn't go with them.

Q Did you see Odell on that occasion?

A I did.

Q Where was he?

A He was behind them.

Q Behind Mr. Chapman and James?

A That's right. They all just be in a line one behind another.

Q Sort of in a single file?

A That's right.

Q And did they walk on to the court, to the Mayor's Court?

A No sir, they walked -

Q Or did they go in a car?

A They walked out to the yard to the car and they all got in the car.

Q Whose car did they get in?

A Policemen's.

Q Mr. Chapman's?

A Yes sir.

Q You don't know where they went from there or where he was let out?

A He went from there to the court.

Q Huh?

A He went from there to the court.

Q Yes, but you didn't see him any more?

A I didn't see him no more.

Q Is that the last time you ever saw him?

A That's the last time I ever seen him.

Q Did you talk any to him that morning, except to say "Come on, let's go" or to tell him it was time to go to court?

A No sir, I did not.

Q You didn't hear him say anything else?

A I didn't hear him say nothing else.

Q Was he walking under his own power?

A His own power.

Q No blood or anything on him?

A I ain't seen none nowhere.

Q I think the witness is with you -- Just a second.

— You never have seen James any-more?

A No sir, I didn't see him no more.

Q He didn't come back to the jail after you saw him there?

A No sir.

Q Did you clean his cell out?

A I did.

Q Was there any evidence - Did you see any blood?

A I ain't seen none nowhere.

Q Or soiled clothes?

A I ain't seen none.

Q Or soiled bed clothing?

A He had on his clothes.

Q Or blankets?

A I ain't seen soiled nothing.

CROSS EXAMINATION

BY MR. KING:

Q Now, I believe you said on direct examination that you were made a trusty shortly after you came to the Terrell County jail, is that correct?

A I was.

Q Where were you convicted?

A Ben Hill County.

Q Where is that?

A Fitzgerald.

Q Down at Fitzgerald. After you were convicted what camp were you assigned to?

A Terrell County.

Q You were immediately after conviction assigned to Terrell County?

A I was assigned to Terrell County.

Q Now, you say that - Isn't it true that you spent several months in the camp before coming to Terrell County jail?

A Three months.

Q You spent three months, sir?

A A Three months, that's right.

Q Are you sure it was three months?

A It was right about 3 months. I wasn't there long.

Q You were not there long. Just a moment ago, you told Mr. Bloch that you spent 3 months?

A That's right.

Q Well, do you know whether that's right or not?

A Well, I wouldn't be positive it was 3 months but I said 3 months.

Q Now, which is correct?

A Well, I know I wasn't there long before he sent me to the jail.

Q Well, you said just a moment ago that you spent 3 months there?

A Well, I made 7 years and I stayed there, I figure it was about 3 months, and I came there the 18th day of April.

Q Well, I read you testimony that was taken on

deposition. You remember the deposition that Mr. Bloch has referred to, that you gave here in Americus, Georgia?

A I remember some of it.

Q What I'm saying is that you remember the occasion here, do you?

A Oh sure.

Q And do you remember when you were asked "Where" - let's start here: "And you stayed there in jail?" And your answer was, "I made my whole time there at the jail except 2 months" - Now, I want --

A I said about 3 months.

Q In other words, you're saying that this wrong, is that right?

A Well, I don't know how long I was out there to the camp, to specialize, but it was around 3 months.

Q Well, do you deny that this is what you said?

A No, I don't deny what I said.

Q Now, which one is true, what you said then or what you said to Mr. Bloch a moment ago?

A Well, whichever one you figure is true. I said around 3 months. It could have been 2.

Q Now, I believe that you indicated that you did the general chores around the jail, is that right?

A I did.

Q And among those chores were you ever or did you ever

have the occasion to go hunting with the Sheriff or his deputy?

A Well, I was under his authorize. Anything he asked me to do, I did it.

Q You didn't answer my question?

A Well, I'm just telling you. I was under his authorize and whatsoever -

Q Did you ever go hunting with the Sheriff or his deputy or policemen?

A No, I don't remember it.

Q You never did?

A (No answer) . . .

Q So, you say that you never went hunting with the Sheriff or any of his deputies or any of the policemen?

A I haven't been with any policemen.

Q Now, you remember again this deposition that was given here back in October, is that right, and I read to you an excerpt from it -

MR. BLOCH: What page?

MR. KING: This would be 127.

Q The question is, "Sometimes during the winter time?" The answer: "I was mostly there at the jail all the time. Question: But sometimes you did go out hunting with them when they went to pick up birds?" And the answer was: "No, I never did go with him. Question: Who did you go with? I went with the Deputy a time or two. With Mr.

"Mansfield. That's right." . . . Do you deny that you made that statement?

A I don't know what I said then. I'm testifying now to the truth and that's all I can do.

Q In other words, then you're saying what you testified to before was not the truth?

A I don't know what I said then. I'm testifying now.

Q I believe a moment ago on direct examination you made a statement that you had an occasion on April 20, 1958, at or about 7 o'clock, you checked the jail cell of James Brazier, is that correct?

A That's right.

Q Now, was that before or after 7:00?

A Before or after? It was 7:30.

Q Was it before 7:00?

A If it was 7:30, it would have to be after 7:00.

Q Then, you say it was 7:30?

A That's right.

Q And, of course, you said that that was the first time on which you checked it, is that right?

A That's right.

Q Then, what was the next time you said you checked it?

A I didn't check him. I was just there in the jail, up and down the hall from one side to the other.

Q As a matter of fact, you testified a moment ago that you also checked his cell at 10 o'clock?

A I went by and see'd him. I see'd him laying in there. I couldn't miss from seeing him, went right by him.

Q Will you answer the question?

A I will.

Q You did check him against at about 10 o'clock?

A I see'd him.

Q Well, what do you mean when you say you saw him?

A When you go in there, you can't miss from seeing him because when you go in, his cell is right to the right. I didn't specialize check him.

Q Calling your attention again to the deposition that you gave, I call your attention to the following excerpt: The question was asked, "Now, on this night that Brazier was arrested, you didn't spend the whole night in your cell? Answer: The whole night in my cell. Question? Yes. From the time I went in, I did. What time did you go in? Well, I don't know exactly what time but I was in before 10 o'clock. You were in before 10 o'clock? That's right. Now, what were you doing, say between 7:00 and 10 o'clock? Answer: I was sitting out there in the yard or down there in the basement, Down in the basemen where? In the courthouse. Down in the courthouse basement? That's right, I was down there looking at TV. I was right there in the courthouse

"looking at TV until 10 o'clock". . . Do you recognize this as your testimony?

A No, I don't.

Q Are you saying that you didn't make these statements?

A No, I don't; I don't remember it 'cause there's not no TV down there to look at.

Q Are you saying that this is not an accurate report of your testimony?

A As I knows of.

Q Now, which one of these is correct, this statement which you made back in October -

A The statement I made a while ago.

Q The statement you made a while ago?

A That's right.

Q Then, what you're saying is that you didn't tell the truth back in October, is that right?

A I told you what I knowed about it.

MR. KING: Well, if Your Honor pleases, I would respectfully request that the witness answer the last question.

THE COURT: Well, I don't know whether to tell him to answer it or not under the circumstances because I didn't see, as you read it there, I didn't detect any difference in what you were reading from what he testified a few moments ago. Maybe I'm confused. But I

The Court:

understood him to testify once as you read it there that he went to the cell about 10 o'clock.

MR. KING: If Your Honor pleases -

THE COURT: And I understood him to say the same thing earlier. I'm not sure. What is the difference?

MR. KING: If Your Honor pleases, I respectfully call the Court's attention to the fact that this witness stated that he went in about 7:30.

THE COURT: Oh, is that the difference, the difference between 7:00 and 7:30, that you're calling to his attention; is that the difference?

MR. KING: I'm simply trying to ascertain, Your Honor, which one is correct. I think it is pretty patent that there is a variance between such testimony as he gave in October and that which he's giving today.

THE COURT: I see, and you want him to say whether when he said 7 o'clock in October, whether he was telling the truth then, or whether he's telling the truth now, when he says 7:30, is that it?

MR. KING: No, Your Honor, that is not it.

THE COURT: Then, I don't know how to direct the witness to answer the question, unless we have an understanding about what it is you want him to answer. Now, state your question again to him.

MR. KING: Would you read the question again, Mr. Joiner, please, if you can find it?

THE REPORTER: "Then, what you're saying is that you didn't tell the truth back in October, is that right? Answer: I told you what I knowed about it."

THE COURT: All right, now the question, Witness, is whether you told the truth in October or whether you're telling the truth now. That's the substance, as I understand the question. That's the question? That's the question?

The Witness: Sir?

THE COURT: The question is that counsel propounded to you, whether you were telling the truth at the time you testified in October or whether you are telling the truth now?

A The Witness: I'm telling the truth as far as I know of now, because back in October I don't remember telling him 7:30. I don't remember telling him 7:30.

Q Mr. King: Then, are you denying what was taken on your deposition back there?

A I said I don't remember telling you no 7:30.

Q Well, are you denying that this is true?

A I told you, I don't remember telling you no 7:30, that I was in there at no 7:30. I mean at the courthouse at no 7:30, I don't remember telling you that.

Q Which one of the statements do you recognize as true?

A What I told you a while ago.

Q The one that you're making today?

A The one I'm making today is the truth.

Q I call your attention to another excerpt from your testimony given on deposition -

MR. BLOCH: What page?

____Q Mr. King: And this is 132. The question is asked, "And then you would come on over? Answer: I would come on and go to bed. Did you check the prisoners before you went to bed? Answer: No, I did not check them."

Now, is that a true statement or the one that you gave a moment ago?

A I don't check the prisoners when I go in and go to bed. I shut all the doors. But at that Brazier, I couldn't help but see him because he was there at the door.

Q Well, when Mr. Bloch asked you a moment ago, did you check the witnesses (prisoners), did you mean the same thing by check then that you mean now when you say check?

A I wouldn't call that a check. I just looked in there and see'd him. I don't specialize checking.

Q But it is your testimony that you saw --

____THE COURT: Counsel, suppose you question him from back there and he can hear you all right.

MR. KING: This, I submit Your Honor, is only for purposes of availing him the opportunity to see it, if he wants to.

THE COURT: Alright, if he expresses a desire to see it, he can then see it.

Q Mr. King: Then, it is your testimony that you did not check or you did check Brazier?

A I did not check him, just to check to see was he in there or was he not, I did not do that because I know when the door is locked, he's going to be there.

Q But you said in passing you did see him?

A I did see him passing the door.

Q I call your attention to the deposition again, which was given back in October, and refer specifically to page 133. The question was asked, "Did you know that Brazier was there?" The answer is, "I didn't know he was there 'til the next morning. Until the next morning?"

A That's what I told you in October?

Q "When they carried him to the City Hall, I mean to the Council." Now, which one of those statements is correct?

A I don't remember telling you it was no next morning when I see'd him.

Q Are you then saying that that particular I read is false?

A It must be. I ain't remember telling you that.

Q Would you categorically answer the question yes or no?

A No.

Q Are you saying that this statement is false?

A Yes, it's false. I don't remember telling you that.

Q I believe that on the morning of April 21, you said that you went into Brazier's cell, is that right?

A I went in there and got -

Q -- and got him ready to go to council, is that right?

A That's when I went in.

Q And he came on out with you, is that right?

A He came on out.

Q I call your attention to the deposition taken back in October again, and for benefit of counsel, I refer to page 134. The following question was asked with reference to this very matter: "Question: Who brought him out?" And the answer by you is, "Mr. Shi Chapman." Going back a bit, I call your attention again to the deposition on page 134; the question was asked: "Well, you saw him, didn't you? Sure I saw him. He was there to the courthouse and he come out the wing into the yard. Question: You were at the courthouse and you saw him when he came out? Answer: Why, sure. Who brought him out? Answer: Mr. Shi Chapman. Question: Who else? I didn't see nobody but him".

Now, is this statement true or the one that you've given today?

A I just before told you, I opened the door and him and Mr. Shi Chapman came there to the door. I unlocked the door for him, and they walked on out of the jail.

Q How could you do that when you were over in the court yard? You say here you were at the courthouse?

A I wasn't in no court yard. I was there at the jail. I wasn't in no court yard.

Q Then, what statement is true, this one or the one you gave back there?

A I can't be in the court yard and open the door for the man at the jail, can't do that.

MR. KING: If it please the Court, I would like to have the witness give a categorical yes or no to the question put and I respectfully request the Court to so direct the witness.

THE COURT: All right. Will the reporter read the last question there?

The REPORTER: "How could you do that when you were over in the court yard? You say you were at the courthouse. Answer: I wasn't in no court yard. I was there at the jail. I wasn't in no court yard."

Q Mr. King: Which one of the statements is true, the one that you've given on direct examination to Mr. Bloch

or the one that's represented on the deposition, which was taken back in October?

A Well, I'm sworn here today to tell the truth, ain't I? And that's all I can do is tell the truth.

THE COURT: Which statement is true? Counsel is asking you which statement?

The Witness: The one I just made, that I was to the courthouse, I mean to the jail. I was to the jail. I was to the jail.

____ Q Mr.King: Getting back to that statement that you just made that you said you were sworn today to tell the truth?

A That's right.

Q Well, don't you remember being sworn back in October to tell the truth too?

A I did. I don't remember.

Q But you're saying now that this statement that you've given under oath is the truth?

A I don't remember all of that back there. I don't remember.

Q Today?

A Yes.

Q And the one that you took under oath before is not true?

A I don't remember back there.

Q Now, you say that when Brazier came out of the jail - as a matter of fact, before that you said that he got up on the side of the bed and put his shoes and his pants and shirt on, is that right?

A I didn't speak that a while ago. I said he was sitting on the side of the bed.

Q Didn't you say you saw him put his shoes on?

A I said he put on his shoes. He already had his clothes on. I didn't say he put them on. I said he put on his shoes.

Q He already had his clothes on?

A His clothes was already on.

Q Now, what did he have on?

A He had on pants and shirt.

Q What kind of shirt?

A I don't know what color the shirt was back 5 years ago; I can't remember what color it was.

Q Well, was it a dress shirt?

A Seems like to me it was a dress shirt.

Q Well, you're certain that it was no undershirt?

A He didn't have on no undershirt. He had on a shirt.

Q He didn't have on any. I call your attention to the deposition - for the benefit of counsel, page 135 - the question was asked in this particular regard: "Who else went along? Answer: Well, I didn't see that because I went

"on back into the courthouse. I never did pay them no attention whenever they be carrying prisoners to council.

Question: Did he have on a shirt? Answer: No, he didn't have on no shirt, I don't think". . . Now, which one of these statements?

A Nary one of them. I don't remember telling you that, because the man had on a shirt.

Q You are saying that neither one of them?

THE COURT: Let him explain his answer.

MR. KING: I can't hear him so well, Your Honor.

THE COURT: He said neither one of them is correct. Now, you were going ahead and saying something. Go ahead.

A The Witness: I said he had on a shirt and pants but I don't remember telling you he did not have on no shirt back in October.

Q Mr. King: Then, are you saying that this statement is false, the one I read to you?

A I don't remember telling you that.

MR. KING: If Your Honor pleases, I would like to get a reponse from him, a response to the question posed.

THE COURT: If you did tell him that in October - you say you don't remember it - but if you did, was that a true statement or a false statement?

A The Witness: It's false. I don't remember telling him.

MR. KING: I didn't get the response.

THE COURT: He said it would be false. "I don't remember telling him that." Speak up so everybody can hear you.

Q Mr. King: Now, you described a scene in your testimony on direct examination that you saw Brazier, you saw Mr. Chapman and you saw Odell Brazier in single file, is that correct?

A They was together.

Q They were together, and you said one right behind the other, is that right?

A Yes, they was.

Q I call your attention again to the deposition, specifically to page 140, in which the following questions and answers were made: "Where was his father?" And your answer is, "I ain't seen him." Now, which one of these is correct, the testimony that you gave today under oath or the testimony you gave in October under oath?

A The testimony I give you today is the truth.

Q Which one of these are true, the testimony given today or that given in October?

A — The one I'm telling you today is the truth. —

Q Then, based on all of the testimony that I have

submitted to you from the deposition is a lie, is that right?

A If you say it is, I guess it is.

Q I'm asking you? Is it?

MR. BLOCH: I submit, Your Honor, that he could be mistaken on a minor detail like that, without it being characterized as a lie.

THE COURT: Yes, I think so too. He has already stated, Counsel, in various instances where you've asked him, that if the statement as made was not true, he has given you a categorical answer, "if that's what I said, it's false." He has admitted that. He has stated that.

Now, what you seek to do, is you seek to have him use the word "lie", which I don't think is necessary. He stated that if he said those things, they were false; and what you seek to do is to simply use the word "lie", which I think is unnecessary, and pressing the witness too far.

____ Q Mr. King: Regarding the time that you gave deposition back in October, was Mr. Bloch there?

A Sure he was; sho he was there.

Q Was Mr. Chapman there?

A In October?

Q Yes?

A I ain't seen Mr. Chapman there.

Q Was Mr. Cherry there?

A He was.

Q Was Officer McDonald there?

A In October? Yes, he was there.

Q Was Sheriff Matthews there?

A He was; he was here.

Q Nobody forced you to make those statements, did they?

A Nobody ain't forced me to make none.

Q No further questions.

THE COURT: Anything further? You may go down.
May this witness be excused? Allright, you're
excused. You may go.

MRS. MARY C. RADFORD

witness called in behalf of Defendants,
being first duly sworn, testified on

DIRECT EXAMINATION

BY MR. BLOCH:

Q Were you sworn this morning?

A Not this morning. I was Monday morning.

Q You've been sworn?

A Yes sir.

Q Your name is Mrs. Mary C. Radford?

A Yes sir.

Q Where do you live, Mrs. Radford?

A Dawson, Georgia.

Q Did you have occasion to know by sight a colored man named James Brazier during his lifetime?

A I did.

Q Do you recall an instance of seeing him going to the Mayor's Court one Monday Morning?

A I did, sir.

Q How do you happen to recall it?

A Well, it was customary on Monday Mornings and our place of business was just across the street from the Mayor's Court, from the Dawson Fire Department where they hold the Mayor's Court on Monday Morning.

Q Now, you say "our place of business"?

A At the time we were operating a service station. We operated it 17 years to the day, sir.

Q At that time you and your husband -

A Yes sir.

Q - operated the Standard Oil station?

A Yes sir.

Q On what street in Dawson?

A On the corner of Main and 7th Avenue.

Q Main and 7th Avenue?

A Yes.

Q What street is the courthouse on?

A Where they hold the Mayor's Court?

Q No ma'm, where the big courthouse is, the County courthouse?

A Onthe corner of Main and Lee.

Q The County courthouse is Main and 8th?

A Lee.

Q Lee and Main?

A Yes sir.

Q That's about a block east of Main, isn't it?

A Yes sir.

Q And your place of business then was about how many blocks from the courthouse?

A 1 - 2 - 3 (counting) -- I believe 3 blocks, and the Mayor's Court was in the 4th block. I believe that would be just about right.

Q And how far from the Mayor's Court was your place of business, was your and your husband's place of business?

A Just across the street.

Q Do you usually watch them bring the prisoners or see the prisoners come to the Mayor's Court on Monday Morning or did you just happen to see them that morning?

A Well, I never made a practice because, in with my business but if I was at leisure at the time and in and out of the place, there wasn't anything to do but see it.

Q Well, on that particular Monday morning, did you

see James Brazier?

A I did, sir.

Q About what time?

A I would say around 9 o'clock in the morning.

Q What did you see him do?

A Didn't see him do anything but get out of the police car.

Q Well, you saw him get out of the police car?

A Yes sir.

Q And after he got up out of the police car, did he get out under his own power?

A Yes sir.

Q Which way did he walk?

A Well, from where the police car was parked to the entrance of the building, it would be east - no, I beg your pardon - west. He would be going west up the street.

Q Walking on 7th Avenue?

A Yes.

Q How far did he walk?

A Well, I wouldn't know in distance but they parked back before they get, you know, to the intersection, which would be customary to park a vehicle.

Q How far did he walk before or rather how far did he walk while you were watching him?

A From the distance of the police ^{car} up on 7th Avenue and around on Main Street.

Q Well, about how far would you think that was?
Could you estimate it? Half a block or block?

A No sir, it wouldn't be that distance. It would be a short distance.

Q About how many yards?

A Well now, I just don't know on yardage and footage how far that would be, but I would say there would have been space for at least another car from the stop sign there back, would have been about two spaces of a car, and then turn right on Main Street in front of the Dawson Fire Department.

Q When you last saw him, he walked out of your sight on Main Street?

A Yes.

Q And you couldn't see him after he got on Main St.?

A Well, I could see him after he got on Main Street. Of course, when he entered the building, I could not see from where I was at.

Q Who was with him at the time you saw him?

A There was one other colored man with him.

Q Was there any police officer?

A Mr. Shirah Chapman.

Q He's dead, isn't he?

A Yes sir.

Q Was there a policeman or any one supporting him?

A No sir.

Q Was the other Negro man supporting him?

A No sir.

Q Do you recall how he was dressed?

A He was dressed in a pair of dark trousers and his shirt was of a light color. I would say something about like an off-gray. It wasn't a bleached white shirt. It was kind of an off shade.

Q Did he have on a necktie?

A Now that, I couldn't see.

Q Did he have on shoes?

A I believe that he did, sir. Now, I'm not sure on that but I believe. I mean I just couldn't answer about his feet.

Q From the time he got out of the police car, from the time James Brazier got out of the police car until he was out of your sight, was he all of that period of time walking under his own power?

A Yes sir, unassisted.

Q Ma'am?

A Unassisted, no one had hold to him at all. He was walking along just like you and I would walk.

MR. BLOCH: The witness is with you.

MR. HOLLOWELL: Mrs. Radford, we have no questions for you.

THE COURT: May this lady be excused?

MR. HOLLOWELL: We have no objections.

THE COURT: Allright, you're excused.

MR. BLOCH: Call Dr. Ward back.

DR. CHARLES M. WARD

(See p. 902
920)

witness called in behalf of Defendants,
recalled by Defendants, testified further

REDIRECT EXAMINATION

BY MR. BLOCH:

Q Doctor, you have testified this afternoon that the
only visible evidence of injury to James Brazier -

MR. HOLLOWELL: May it please the Court, I think
he can ask the witness what he testified to, but this
is still his witness and we don't want him to lead him.

THE COURT: Yes, don't lead him, Mr. Bloch.

Q Mr. Bloch: What have you testified as to the
visible evidence of injury to James Brazier?

A I testified that the only visible evidence of
injury was a laceration on the frontal area of his scalp,
a laceration on the back of his scalp and abrasion and con-
tusion or hematoma on the left side of his scalp.

Q Having so testified can you account for the question
asked on cross-examination or rather for the averment made
on cross-examination that there were other evidences of
hemorrhage or injury in the head and hair-bearing area?

MR. HOLLOWELL: May it please the Court -

THE COURT: Just a minute, Mr. Hollowell, let him finish the question.

MR. HOLLOWELL: Well, may it please the Court, I don't want him to prejudice our case, when he says 'can he account for that which was alluded to'; and I submit that this gets into the realm of a conclusion before it is ever asked. He could not account for that which was done by counsel.

THE COURT: Of course, I can't rule on a question until I hear the question. I don't know what he's going to ask. If he asks it, then I'll know what he's getting at; and, of course, with the general admonition, Mr. Bloch, I made the general admonition, do not lead the witness; he's your witness and don't reach any conclusions in the questions which you ask.

MR. BLOCH: Very well, sir; I'll try not to.

THE COURT: Allright.

Q Mr. Bloch: If James Brazier underwent extra-cranial surgery, is it your opinion as an expert that that extra-cranial surgery would in itself develop apparent evidences of injury, which were as a matter of fact the cause of the extra-cranial --

MR. HOLLOWELL: If it please the Court, I object on the ground that there has been no testimony that this

Mr. Hollowell:

witness is an expert in extra-cranial operations of any sort. As a matter of fact, I believe his testimony is that he's a general practitioner and he has not been qualified as an expert in neurology.

THE COURT: Read the question again, Mr. Bloch.

Q Mr. Bloch: Mr. Witness, if James Brazier underwent extra-cranial surgery between the time of your examination and the time of that surgery - and the time of his death - would that surgery be apt to develop lesions and so forth, which were not the result of any blow but were the result of the surgery?

MR. HOLLOWELL: Now, I would certainly have to object to that: No. 1, it is leading. He might ask him what would develop. And another reason is, there are many kinds of craniectomies and there has been no definitive statement in the question and the statement made does not classify the type of craniectomy that is involved. Therefore, the question is too general and too incomplete and would call for a conclusion which this witness has not qualified to answer.

THE COURT: Well, I don't know that his qualifications are that limited. He hasn't limited himself that way. I will ask the witness, are you prepared to give an answer to that question, if allowed to do so?

A The Witness: I'll make an honest effort.

THE COURT: All right.

MR. HOLLOWELL: May it please the Court, I would submit that, in order for it to be proper for him to make an answer or to make an effort at answering, it calls for a conclusion, it calls for an opinion; and I think it is elementary in the law of evidence that it would be necessary for the foundation to be laid to qualify this man as an expert in this field. And there has not been any such, nor was there at any time, when he was giving his qualifications, any reference to any training in neurosurgery. And he is being called upon to give an opinion as an expert in a field where there has been no foundation laid.

And I submit that it would be extremely improper and would be prejudicial and it would be a conclusion on this witness' part.

THE COURT: Now, just a minute, have you completely stated your objection?

MR. HOLLOWELL: I have, sir.

THE COURT: You have completely stated your objection?

MR. HOLLOWELL: As to this point, sir.

THE COURT: Allright, Mr. Bloch, I'll hear from you.

MR. BLOCH: I didn't understand what the witness said in answer to the question.

THE COURT: He hasn't answered it.

MR. BLOCH: He answered something to you.

THE COURT: He said he would attempt to answer the question.

Q Mr. Bloch: Well, will you answer it, please?

THE COURT: Just a minute, Mr. Bloch. I'm hearing from you now on your response to Mr. Hollowell's contention that the question is improper.

MR. BLOCH: Your Honor, the question of how far an expert medical man can go under his general qualifications is, I think, a matter for the Court to determine. If the Court does not think that the qualifications that the Doctor gave, when he was initially on the stand, are sufficient for him to answer this opinion, this categorical question, then I would like to develop his experiences more fully.

THE COURT: Suppose you do that.

Q Mr. Bloch: Doctor, what does the term 'extracranial surgery' mean?

A Well, any extracranial surgery would be cutting into the scalp area itself.

Q Are you a surgeon?

A I am licensed as a physician and surgeon and I do

surgery, yes sir.

Q Have you done operations of what you characterize as extra-cranial surgery?

A So far as - well, operations in the scalp area, you would have to say that any suturing of the scalp is surgical in nature and the removal of any lesion of any sort in the scalp would be extracranial surgery.

Q You have -

A Yes sir, I have performed such operations.

Q In performing extracranial surgery, "extracranial" what does that mean?

A Outside of the skull.

Q Outside of the skull?

A Correct.

Q In performing that sort of surgery, what is the first step?

A The first step at any time that you operate or do surgery on the scalp is to remove any hair from the area where you will be operating. That will be to shave the head in that area, an area around the site of the surgery.

Q In the performance of that operation, after you make that initial step, is there a step known as the raising of a flap?

A Well, any time a person, if they're going into - well, the neurosurgeons if they have to go into the skull,

they have to raise the flap in order to facilitate going into the skull.

Q What do you mean by "raising the flap?"

A Well, the making of the incision so they can lift the area of the scalp up, so they can get to the skull.

Q What is the flap composed of?

A It's all the tissue from the skull to the skin.

Q When that flap is raised in the extracranial surgery, state whether or not it produces symptoms -

MR. HOLLOWELL: If it please the Court -

MR. BLOCH: Let me finish the question.

MR. HOLLOWELL: Just a moment, sir -

Q Mr. Bloch: State whether or not --

THE COURT: Just a minute, just a minute. Let him complete the question and then I'll hear from you.

MR. HOLLOWELL: All right.

Q Mr. Bloch: State whether or not it produces symptoms which might be mistaken for pre-existing signs of injury?

THE COURT: Wait just a minute now, Mr. Witness. All right, Mr. Hollowell.

MR. HOLLOWELL: We object to it because it is leading. He could have asked what are the symptoms that it would produce. —Of course, now it is out. I submit that it is leading.

THE COURT: Well, I do think it is leading in nature, Mr. Bloch. In other words, you might ask him - well, I don't know how can keep it completely from being leading to some degree, and when we are in the area of experts testifying, of course, leading questions are frequently permitted, as they are not with lay witnesses. The question might be rephrased, Mr. Bloch, to make it less objectionable. See if you can rephrase the question to make it less objectionable.

MR. HOLLOWELL: If it please the Court, I think maybe we need to clear the air. Counsel was asking, as I understood it, and he was instructed by the Court to further qualify the witness and this is no question relating to qualification.

THE COURT: That's correct. And as soon as I have been made aware that counsel has concluded that part of the examination, I intend to give you an opportunity to examine him yourself on that feature. Now, Mr. Bloch, have you, I gather from the nature of this question that you have concluded qualifying the witness to answer the question?

MR. BLOCH: Yes sir.

THE COURT: Now, Mr. Hollowell, you may take the witness on cross-examination, if you wish, as to his qualifications to answer this question.

MR. HOLLOWELL: Frankly, I don't remember there being any additional qualifications given but I'll ask him some to maybe try to clear it, to clear the air a little bit.

RECROSS EXAMINATION

BY MR. HOLLOWELL:

Q Where did you interne, Doctor?

A U. S. Naval Hospital, Portsmouth, Virginia.

Q Doctor, when men who are seeking to become doctors, you know student doctors -

A May I say one thing?

Q Yes sir?

A When I interned at the U. S. Naval Hospital at Portsmouth, Virginia, I was a doctor of medicine.

Q Well, I have not suggested that you weren't. Where did you interne when you came out of school?

A When I finished medical school, I went to the U. S. Naval Hospital, Portsmouth, Virginia.

Q For your internship. Now, when a doctor is doing an internship, I mean all persons generally when they're doing an internship have already graduated from medical school, have they not?

A Yes.

Q — So, perhaps the word "student doctor" was technically incorrect. I say, when a medical school graduate is

doing his internship, does he or does he not work in the general area of medicine, or does he work in his specialty?

A When taking an internship, you can take the type that I did, which is known as a rotating internship and you spend a certain period of time throughout the year on each and every service available in that hospital, one of those services being neurosurgery. I spent a month on neurosurgery, I spent about 2 months on general surgery, I spent oh about a month on anaesthesia, anaesthesiology, split time with anaesthesiology and urology, half a day on anaesthesiology and half a day on urology, and on down the line, every service being covered.

Q Did you perform any neurological surgery during that month?

A So far as neurological surgery is concerned, I did not perform any myself but I assisted.

Q How many years above internship does a doctor normally have to go to school before he becomes qualified and accepted as a neurosurgeon?

A I don't think, so far as being a neurosurgeon is concerned, about 7 to 8 years; but I don't think that I have been asked to qualify as a neurosurgeon.

Q Your answer then, as I understand it is, that a person who is a neurosurgeon --

A Correct.

Q Goes to school -

A Not to school. He is training in a hospital.

Q - takes training above the basic medical level?

A That's correct.

Q Of 7 to 8 years?

A Right.

Q Is that not correct?

A That's right.

THE COURT: I think we could probably shorten this now. As I understand it, the witness doesn't hold himself out as a neurosurgeon.

The Witness: I am qualified to do general surgery and I do general surgery.

THE COURT: I understand. He holds himself out as an expert in the field of general surgery, but not in the restricted field of neurosurgery, as I understand it. I just thought maybe we might shorten it if we cleared that up. He holds himself out in the field of general surgery but not neurosurgery.

A The Witness: And the question asked referred to extracranial surgery and not to intra-cranial surgery.

Q Mr. Hollowell: I see. Well, was there extracranial surgery to be performed on James Brazier, to your knowledge?

A IN order for a neurosurgeon to enter his skull --

MR. HOLLOWELL: If it please the Court -

A The Witness: - extra-cranial surgery has to be done.

MR. HOLLOWELL: Just a moment, just a moment, sir! We would like to have the witness answer the question asked; and then, if he wants to explain it, we would have no objection.

A The Witness: There was ... reason for extra-cranial surgery.

MR. HOLLOWELL: We would respectfully request the court to inform the witness that when counsel is seeking to make an objection or to address the Court, that counsel has the privilege to address the Court without interruption of the witness.

THE COURT: Yes, that's true. Let's proceed this way now: Counsel has asked the question, which was - read the question, Mr. Reporter, please.

THE REPORTER: "Was there extra-cranial surgery to be performed on James Brazier to your knowledge?"

THE COURT: Now, that's the question, was there extra-cranial surgery to be performed on James Brazier to your knowledge. Now, you may answer that yes or no, depending upon what the correct answer is. After you have answered it, if you feel that your answer needs an explanation to go with it, then you may explain it in any way you wish to do so, having answered it.

A The Witness: All right, sir. I will say yes, that extra cranial surgery would be necessary. If he had to have intracranial surgery, you had to go through the extracranial tissue to get there.

____ Q Mr. Hollowell: I see, and what you have reference to would be the necessity to move the scalp back, in order to -

A A portion of it.

Q A portion of it, in order to drive the hole where you make the holes?

A Correct.

Q For the intracranial surgery?

A Yes.

Q And this is what you make reference to, is that correct?

A Correct.

Q Now, let me ask you one other question along that particular line: Is there a possibility that in the process of shaving one's head -

THE COURT: Now, we're still just on the question of qualification here.

MR. HOLLOWELL: Yes, on qualification.

____ Q Mr. Hollowell: Is that one month the only neuro-surgery training that you have had, subsequent to your coming out of medical school? —

A That is correct.

Q And when was that, Doctor?

A That was in 1953.

Q Have you been to any medical school since that time and, if so, what one, or have you had additional medical training since that time; and, if so, where and what was the extent?

A I had additional medical training at the School of Aviation Medicine at U. S. Navy School of Aviation Medicine in Pensacola.

Q When was that, sir?

A That was in - I said the neurosurgery was in '53 - that was either in '52 or '53; and then for the last six months of 1953, School of Aviation Medicine in Pensacola, Florida.

Q This was while you were a Lieutenant Junior Grade?

A Correct.

Q In the Navy or Air Force?

A In the Navy.

Q In the Navy. Now, having stated that, have you had any additional medical training since that time?

A No, but I've had 8 years practice.

Q Training?

A No training.

Q What seminars have you been to?

A None. Oh, I've been to some of the local seminars in Albany and some in Cuthbert and some in Augusta, but none so far as -

Q American Medical on the National level?

A I've been to the American Medical Association in Miami.

Q How many times?

A Oh, the American Medical Association once; the Medical Association of Georgia meetings once or twice and then the local seminars as often as possible.

Q Did you receive any neurological training at those seminars?

A No.

MR. HOLLOWELL: I think that's sufficient, Your Honor. It appears to me that it is very patent. I didn't want to have to get into this but counsel kept insisting on the kind of question he wanted to ask.

THE COURT: Yes. Have both counsel now completed all the questions that they want to ask the witness concerning qualifications of the witness to answer the question?

MR. BLOCH: I have.

MR. HOLLOWELL: I believe so, Your Honor.

THE COURT: All right. What the question relates to is not neurosurgery. The question doesn't relate to

The Court:

that. If it did, I think the witness himself would state that he would not attempt to answer it, because he's not an expert neurosurgeon.

The question relates to extra-cranial surgery, which is in the field of general surgery, not in the field of neurosurgery; and the question relates to that field and he is qualified as an expert in that field of general surgery and, I therefore, overrule the objection and you may propound the question.

MR. BLOCH: Now, I will state the question, Your Honor and I assume that the Doctor is not to answer it until you direct him.

THE COURT: You are now authorized to ask the question and the witness is authorized to answer it, if he is in position to answer it.

Q Mr. Bloch: Will you state whether or not, in your opinion, when the flap is raised to facilitate entering the skull, evidences of injury, of apparent injury are produced, which are not really antecedent injury but are a result of the raising of the flap?

A I say it is quite possible and quite probable.

Q That's all.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. HOLLOWELL:

Q Doctor, would you say from the raising of the flap by a skillful neurosurgeon, for the purpose of an intracranial operation or a craniectomy, that it would cause hematoma of the scalp and of the tissue between the scalp and the skull, and between the skull and what is the dura - isn't that the protection cover for the brain?

A I'm not qualified to answer your question from the skull down. I am from the skull up.

Q Well, out of your general knowledge of medicine and as a surgeon, have you ever heard of the brain being damaged by the removal of the scalp preparatory to an intracranial operation; have you ever heard of the brain being damaged with hematoma and giving evidence of hematoma in the area between the dura and the skull, just by the process of removing the scalp; have you ever anywhere at any time, before or since you became a doctor? Sir?

A Not by raising the flap on the outside, no.

THE COURT: All right, anything further for this witness? . . . You may go down. Now, may the Doctor be excused?

MR. BLOCH: Subject to call?

THE COURT: Well, you're not through yet, Doctor.

The Court:

All right, at this time we will take a recess until tomorrow morning at 9:30. Now, members of the jury, keep in mind the admonition which I have reminded you of every day; don't let anybody talk to you about this thing, and I particularly, I particularly caution you not to read about this case in the newspapers, because you might not recognize it, if you did. Do not read about this case, do not read about this case in any newspapers, nor should you listen to anything on the television or radio concerning it, because they may have the same sources that the press does. Do not let your verdict as you eventually reach it be influenced by anything that you read or that you hear or any contact made with you in any way outside of the evidence which is presented in this court room and is allowed by the Court as it is presented.

And with that admonition you are dismissed until tomorrow morning at 9:30 o'clock.

(JURY WITHDRAWN)

We stand in recess now until tomorrow morning. I want to request counsel, before doing so, to be prepared to hand to me in the morning at the time we convene any requests for charges that counsel have at that time; so, I will have the benefit of them for some

The Court:

time before I actually need them. We stand in recess now until 9:30 tomorrow morning.

5:15 PM, FEBRUARY 7, 1963: HEARING RECESSED.

9:30 A. M., FEBRUARY 8, 1963: HEARING RESUMED:

THE COURT: All right, Mr. Bloch, who do you have next?

MR. BLOCH: Mr. McDonald.

RANDOLPH E. McDONALD

party Defendant, recalled by Defendants,
testified further on

REDIRECT EXAMINATION

BY MR. BLOCH:

Q Mr. McDonald, I call your attention to page 34 of the jail log: You see in the column 1 the figures 10-15; that indicates October 15?

A Yes sir.

Q Does the preceding page indicate what year it was?

A '54, yes sir.

Q Along about the 4th, 5th or 6th line from the bottom in the second column, what is the name there?

A James Brazier.

Q And the charge?

A Disorderly.

Q And over in the last column, M & L?

A Yes sir.

Q What does that indicate?

A Mac and Lee.

Q Mac and Lee?

A That's right.

Q The Mac is you?

A That's right, yes sir.

Q Will you state whether or not that was the arrest that was made pursuant to the call from Vick Hammock's place?

A Yes sir.

MR. HOLLOWELL: May it please the Court, we object to that on the ground that it isn't shown that this man knows. As a matter of fact, he testified that it was an arrest made by other officers and that this would be a matter, insofar as this witness is concerned, a conclusion and an opinion; and, not only that, but the question itself was leading.

THE COURT: Well, either you or I one have misunderstood the witness' testimony. I understood him to say he did make the arrest.

MR. HOLLOWELL: He said Mac and Lee.

THE COURT: And he said Mac was him, McDonald.

MR. HOLLOWELL: Mac in this situation is this witness.

THE COURT: That's what he said.

MR. HOLLOWELL: Well, I did not so understand and I will withdraw my objection.

THE COURT: Isn't that what you said, Mr. Witness?

A The Witness: Yes sir, that is correct.

Q Mr. Bloch: Did you make that arrest?

A Yes sir.

Q Pursuant to a call from Vick Hammock's place?

A That is correct, yes sir.

Q Do you recall perfectly making it?

A Yes sir.

Q Will you state to the Court and jury please what happened on that occasion?

A Well, I received the call to come to Vick Hammock's place, that there was a fight going on out there. So, when I drove up, James Brazier was being his wife, had drug her down the street, beaten her, he had torn her clothes, tore her wrist watch off and had lost that and the contents of a purse were scattered up and down the street on that occasion there.

And when I drove up, he still had her down in the edge of the road, you might say, in the ditch, beating her at that time, when I arrived on the scene and arrested him and taken him to jail.

Q That's all.

THE COURT: Any questions.

RE CROSS EXAMINATION

BY MR. HOLLOWELL:

Q At the time that you say that you got that call, do you know who made the call?

A I don't know who made the call. I couldn't say.

Q Where were you when you received the call?

A Up town.

Q Where?

A I don't remember exactly where.

Q Well, you remembered --

A I could have been in the police car or the phone rang on the street or I could have got the message from the radio, from the 2-way radio. Mr. Lee could have answered the phone or somebody else and relayed the message to me by radio. I do not remember whether I answered the phone myself or whether I got the message through the radio.

Q Who went with you?

A By myself.

Q What time of night was it?

A I don't remember. It was after dark but I don't remember what time of night.

Q Was it after midnight?

A No.

Q What day of the week was it on?

A I don't remember what day of the week.

Q What date was it on?

A It was on the 15th.

Q Of what?

A October in '54.

Q 1954?

A That is correct.

Q And at the time that you arrived, were there other people around?

A Were there other people around?

Q Yes?

A There wasn't anybody around them, no.

Q Nobody around them. You mean, here are two people in front of a public place, fighting according to you, a man has a woman down beating her, under your testimony?

A That is correct.

Q And there was nobody around?

A There wasn't anybody around them, no.

Q Where was the dress torn?

A Do what?

Q Where was the dress torn?

A I don't remember exactly where it was torn, but her dress was torn. I know one sleeve was torn and it was torn on the front; but where all else I don't know. And it was dirty from being wallowed in the dirt.

Q You don't know how the tears got on the dress, do you?

A I don't know how they got on there.

Q You don't know but what it was necessary for the deceased to disengage his wife from an argument or a fight with another person, do you?

A She wasn't fighting with another person. He had her down.

Q That is not what I asked you. I say, you don't know?

A I know that she wasn't fighting with another person at the time.

MR. HOLLOWELL: May it please the Court, I would like to ask the witness to answer the question asked.

THE COURT: Well, he says he knows she was not fighting with anybody else at the time he got there.

MR. HOLLOWELL: That does not answer the question.

THE COURT: Re-state the question.

MR. HOLLOWELL: Will you read the question, sir?

THE REPORTER: "You don't know but what it was necessary for the deceased to disengage his wife from an argument or a fight with another person, do you?"

THE COURT: Allright, answer the question.

A The Witness: I don't know if he did or not with another person. All I know him and her was fighting when I got there.

Q You don't know what any such argument was about?

A I don't know what the argument was about.

Q Did you go to court?

A Did I go to court?

Q Yes?

A I don't remember, I don't think I did. I think he pled guilty.

Q But you don't know?

A I don't remember.

Q You only think he pled guilty?

A Well, I couldn't say. I don't remember whether I went to court on it or not.

Q Well, you remember everything else, Mr. McDonald, why can't you remember that?

A Well, a lot of times when I work at night, I didn't have to go to court, without a man - if he pleaded guilty, I didn't have to go to court; but if he said he was not guilty, then they would call my home and get me up to come to court.

Q That's what I say, you don't remember whether or not you did go to court?

A I don't remember whether I did or not.

Q And you don't remember - let me rephrase that - Now, you say that they were fighting?

A Correct.

Q And that he had her down on the ground?

A He did.

Q Her eyes weren't blackened, were they?

A Do what?

Q I say her eyes weren't blackened, were they?

A I don't know whether they were blackened or not.

Q You don't know whether they were blackened or not?

A No.

Q You didn't see any blood, did you?

A I didn't see any blood.

Q Brazier was a man?

A Was a man?

Q Yes?

A So called to be.

Q And you say his wife was on the ground?

A She was on the ground.

Q And if he was beating her, I suppose that you mean that he was hitting her with his fist, is that what you're saying?

A He was.

Q And yet, you saw no blood and no bruises and no contusions, did you?

A I didn't look for them. I just stopped him from beating her and put him in the car and carried him and locked him up.

Q You could have - if a person spat on the sidewalk and you saw them, you could arrest them for disorderly conduct?

A Say what?

Q I say, if a person spat on the sidewalk and you arrested them, you could put them in jail for disorderly conduct, couldn't you? Is that not true?

A Well, it could be.

Q If a person was standing on the street hollering at the top of his voice for no apparent reason at all, you could put him in jail for disorderly conduct and disturbing the peace, isn't that right?

A Could do it if I wanted to.

Q And there are many other varied and sundry matters as inconsequential as that that an arrest could be made for on disorderly conduct, isn't that correct?

A There's a lot of cases could be made for disorderly conduct.

Q Now, is there anybody else who knows about this, besides you and this man that you brought in here - what's his name?

A Vick Hammock.

Q Yes, this liquor seller?

A I don't know nothing about the liquor seller.

All I know is Vick Hammock.

Q Well, you heard him testify?

A Oh, that's his testimony, not mine.

Q Well, you don't deny that he was telling the truth, do you, when he said he sold moonshine?

A If he sold moonshine liquor, I don't know anything about it.

Q Well, of course, you don't make arrests when people have half pints of whiskey, have half pint bottles of moonshine on their person, with maybe an inch to inch and a half in, do you?

A Well, if a man has just got a little, had a little, say just a small drink, I wouldn't make a case against him for having untaxpaid whiskey; no, I wouldn't.

Q When is the first time that you contacted Herrington about coming to the trial?

A When I done what? =

Q When is the first time that you contacted Herrington about coming to this trial?

A Herrington?

Q Not Herrington, but Hammock, is that it?

A I haven't contacted Hammock.

A Q You haven't contacted him at all; did you tell your lawyer to contact him?

A I did not.

Q You did not?

A I did not.

Q Did you tell your lawyer about this arrest?

A Which arrest?

Q The one about which you have just been testifying?

A Did I tell him about it?

Q Yes?

A I didn't have to tell him about it; the record showed it in the book.

Q That isn't the question?

A No, I didn't tell him about it.

Q Do you know how it came to his attention?

A I don't know. I guess he saw it in the log.

Q Do you have any other record of any other arrests other than those that have been testified to?

A All I know are in the log.

Q So that, all you know about is one in '54, in which you say he was beating his wife?

A There could be more. I'm satisfied there is more.

Q Now, do you have any other arrests in which - just a moment - in which James Brazier is alleged to have been fighting with anybody, anyone?

A I imagine if you'd check the log, you'd find quite a few.

Q That isn't the question, sir. Do you know of any?

A Not off-hand, no.

Q Do you know of any on hand?

A No, I don't.

MR. HOLLOWELL: May I see that log?

MR. BLOCH: Give him the log.

MR. KING: Page 34.

Q Mr. Hollowell: What did you say that date was?

A October 15, 1954.

Q Do you know a man by the name of Tommie Lee Smith?

A Tommie Lee who?

Q Smith?

A I don't know. I imagine I did know him at the time.

Q Well, I'm asking you, do you know a man by the name of Tommie Lee Smith now?

A No, I don't know him.

Q Do you know a man by the name of Manse McBride?

A Who?

Q Manse McBride?

A I think so.

Q What does he look like?

A I don't remember what he looks like.

Q Where does he live?

A He did live in Dawson.

Q I mean, whereabouts in Dawson?

A I don't know exactly what place in Dawson.

Q Do you know Georgia Clark?

A Who?

Q Georgia Clark?

A Georgia who?

Q Clark?

A Yes.

Q You know Georgia Clark?

A Yes. I did know her. She's dead now.

Q Do you know Jack Green?

A Jack Green?

Q Yes?

A I did know him at one time.

Q What did you know about him?

A When I was on the police force in Dawson, I knew practically everybody around there.

Q Where did he live?

A I don't remember. He lived in Dawson somewhere.

Q You don't remember?

A I don't remember where he lived.

Q Did you ever have the occasion to arrest him?

A I imagine I did.

Q I mean, do you know whether or not you did?

A I don't remember whether I did not.

Q You don't remember whether you ever arrested him or not?

A I don't.

Q If the letters "L & M" show over in the right-hand column of the log, does that "M" stand for you?

A That is correct.

Q Do you know a man by the name of Kendrick Lewis?

A Who?

Q Kendrick Lewis?

A I might have.

Q Do you know such a man?

A I don't know him now, no.

Q You don't know such a person?

A I don't know him now.

Q Do you remember ever making an arrest of him?

A I imagine I have.

Q That is not the question?

A I don't remember.

Q— You don't remember?

A I can't remember every man I arrested in the years that I've been an officer, not only me but no other officer can.

Q Well, you don't know what somebody else may remember, do you?

A I know they can't remember that.

MR. BLOCH: Your Honor, I hate to interrupt but I cannot hear them when they're talking right there together.

THE COURT: Yes, suppose you move back, Mr. Hollowell, over here in this area here will be all right, away from the witness.

Q Do you know LeRoy Zachary?

A I know LeRoy Zachary.

Q Have you ever arrested him?

A Quite a few times.

Q When is the last time you arrested him?

A It's been years ago; I don't know how long but I've been away from there at least four years.

Q Do you know whether or not you arrested him in 1954?

A If the record shows I did, I did.

Q That isn't the question; do you know whether or not you did?

A I don't remember whether I did or not.

Q Well, if the record shows that you did, would you remember the circumstances surrounding it?

A If the record shows I arrested him, I arrested him.

Q All right; well, the record shows that you arrested LeRoy Zachary on the 17th of October, 1954: do you remember what the circumstances were?

A I don't remember exactly what it was. It could have been drunk or disorderly, or both.

Q Do you remember at all?

A No, I don't remember.

Q Well, the record says he was drunk?

A Well, if that's what the record says, that's what he was arrested for.

Q Do you remember Tommie Lee Smith?

A I told you I don't remember.

Q If the record shows that Tommie Lee Smith was arrested on the 16th of October, which was the day before, do you remember what he was arrested for?

A I don't remember.

Q Do you remember whether he was driving under the influence of liquor?

A Could have been.

Q Do you remember?

A No.

Q You said you know Jack Green?

A I know - did know him at the time.

Q Do you remember whether you had the occasion to arrest him in the fall, in September, in the fall of 1954?

A I imagine I did.

Q If the record shows that he was arrested on the 11th of September, 1954, I ask you do you remember what he did?

A I don't remember.

Q Well, the record shows he was drunk. Where was he drunk?

A I don't remember exactly where he was at.

Q Well, how is it that you can remember so much of this particular occasion when you don't remember anything

else about any other arrest that you made during that time?

A I especially remember that incident, when Hattie, she remembers it too, when he tore her wrist watch off, because I did, after I put him in the car, try to help her find the wrist watch.

Q Where was Hammock at that time?

A Hammock? He was in his place of business.

Q He was at all times?

A I guess so; I didn't see him.

Q You didn't see him at all?

A He was in his place of business.

Q Didn't you hear him yesterday when he testified that he came out and tried to help her find the watch?

A I didn't see him. I don't remember seeing him. If he was there, he was there, but I don't remember seeing Hammock out there. He might have come out after I left and helped her hunt it.

Q Under your testimony you didn't see anybody out there, is that right?

A It was just her and Brazier.

Q Just one moment, Your Honor. . . . Do you know a man by the name of Ulysses Jones?

A Ulysses Jones?

Q Yes?

A I did know him at one time.

Q Where did he live?

A He lived in Dawson.

Q What did he do?

A I don't remember. I think he worked at the oil mill.

Q When did you arrest him?

A I don't remember.

Q Did you ever make an arrest of him, to your knowledge?

A I couldn't say I did or didn't.

Q If I told you that the record shows that he was arrested on the 2nd of August, 1958, would you remember that?

A I don't know whether I would or not.

Q Do you or don't you?

A I don't recall it.

Q If I told you they had him charged with driving without a license and it has "H & Mc" by it, who would that be?

A H & Mc?

Q Right, would that be Hancock?

A It could be Holloway and McDonald. According to what year it was in.

Q I said in August, 1958?

A 1958, it could be McDonald and Hancock.

Q — But you wouldn't know whether or not you arrested him at that time?

A I might have been with the other man that arrested him.

Q That isn't the question; I say, would you know whether or not?

A I don't remember it.

Q You don't remember?

A No, I don't remember.

Q Do you know a man by the name of Addie M. Jones?

A Who?

Q Addie M. Jones?

A I did know some Jones but I don't remember.

Q Do you know a woman by the name of Addie M. Jones?

A No, I don't know her.

Q Do you ever remember making an arrest of a woman by the name of Addie M. Jones?

A I don't remember.

Q You don't remember?

A No.

Q If the record shows that on the 3rd of August, 1961, Addie M. Jones was arrested for DUI - M&J, who is that?

A 1961?

Q 1961?

A Wait a minute!

Q Were you on the police force at that time?

A That must be somebody else.

Q Did they have an "M" there at that time, or you don't know?

A I don't know.

Q When did you come back on the police force?

A When did I come back on the police force?

Q Or have you been on the police force since you left there?

A I have been on the police force of Edison, not in Dawson.

Q Of Edison - when did you leave?

A Dawson?

Q Dawson?

A '59.

Q '59, that was the last time that you have been on the police force there, is that correct?

A That is correct.

Q When did you leave there?

A The first part of '59. I don't remember exactly what month.

Q The early part of '59?

A That's right.

Q Was it in the month of January?

A No, I don't think so.

Q February?

A I think it was along about February or March.

Q February or March?

A Somewhere in there.

Q Do you remember the last man that you arrested before you left?

A I told you a while ago I couldn't remember the last man or the first man, nor how many I arrested.

Q Do you know a man by the name of Quentin Whaley?

A Who?

Q Quentin Whaley?

A I don't remember him.

Q You don't remember him at all?

A No.

THE COURT: Counsel, will you move back over here so Mr. Bloch can see the witness too?

MR. HOLLOWELL: Yes.

____Q If the record shows that Quentin Whaley was arrested for being drunk in March of 1959 and the name or the initials Mc&D appear, who are they?

A Mc & D?

Q Yes?

A That could be myself and Dunaway.

Q But you don't remember any circumstances surrounding it?

A No, I told you a while ago I couldn't remember every man I arrested.

Q The only thing you can remember, it appears, is that you arrested James Brazier on this occasion?

A I arrested James Brazier on quite a few occasions.

Q Well, name them? Name every one?

A I can't, I can't.

Q Name every one? Are they in this book?

A I don't know whether all of them is in that book.

I went to work on the police force in 1950.

Q Well, are they in this book?

A I don't know whether they're all in that book or not.

Q Do you have any other book?

A There was at the time.

Q Where is it?

A I couldn't tell you because I've been away from there. I don't know where the other records are. They could have been done away with and a new book started, or whatever.

Q Well, you would have been trying to find any arrests that you could find with this trial coming up, wouldn't you?

A No.

Q Oh, you wouldn't?

A I ain't tried to find any of them.

Q Well, can you show me anywhere in this book any other arrests than the ones that you've testified about?

A You've got the book; you can see it.

Q And to the best of your knowledge, the only time

that even under your testimony that James Brazier was ever arrested for being involved in a fight was the time that you say that he was, and that was 1954, isn't that right?

A Well, there was one other time, I remember.

Q Show it to me?

A I don't remember exactly whether it's in that book or not.

Q Is it supposed to be in this book? Excuse me, were you finished? Is it supposed to be in this book?

A It's in a book somewhere.

Q Can you produce such a book?

A I cannot. If it's not in that one, I don't know where it's at.

Q Well, this book begins in 1953?

A Well, I went to work in Dawson with the police force in 1950.

Q January, 1953, and this was 1958; that was a period of five years?

A I couldn't say whether it was in that book or what book it was in.

Q You know of no book in which there is any such thing?

A There was one.

Q You don't know of any?

A I don't know whether - I don't know where it's at now.

There was a log like that in 1950.

Q Was Dunaway a police officer prior to the time that he became a deputy sheriff?

A He was.

Q I don't believe there are any further questions.

REDIRECT EXAMINATION

BY MR. BLOCH:

Q Look at this card, "Dawson Police Department, name, James Brazier" on the third line, confine yourself to the third line now: The first column says 10-15-54?

A 8-28-55.

Q The third line?

A Oh, the third line, that's October 15 in '54.

Q Over on the third line under the column remarks, what does it say?

A "Disorderly".

Q No, the column "remarks"?

A Oh, over here, \$18 CB, cash bond.

Q What does that mean?

A Cash bond.

Q Put up a cash bond and was discharged, released?

A Yes sir.

Q That's all.

THE COURT: Anything further?

MR. HOLLOWELL: I think not as to this witness.

party Defendant, called in behalf
of Defendants, testified on

DIRECT EXAMINATION

BY MR. BLOCH:

Q Mr. Matthews, since you were on the stand, or Sheriff Matthews I should say, for cross-examination by counsel earlier in the week - you were on the stand earlier in the week?

A I was.

Q You have been in the courtroom all of the time?

A I have.

Q Did you hear the testimony of the Plaintiff in this case to the effect or stating that on the evening, late afternoon or evening of April 20, 1958, she saw you standing at the corner by the jail in Dawson?

A Yes.

Q Is that true? Were you anywhere around -

A It couldn't have been in the early afternoon, no sir.

Q Were you anywhere around the jail that Sunday afternoon?

A No sir, it isn't true.

Q Since you testified the other day also, there has been an amendment filed in this case, which alleges that you, along with Mr. Cherry, Mr. McDonald, Mr. Chapman and Mr. Lee, caused or permitted James C. Brazier during the night of April

20, 1958 or the early hours of April 21, 1958, to be severely beaten about the head to the point of unconsciousness:

Is that the truth?

A I know not anything about it at all. Rephrase the question, please sir?

Q Did you ever on any occasion cause or permit James Brazier to be beaten in any manner?

A I did not.

Q At any place, at any time?

A I did not at any place or any time.

MR. BLOCH: That's all.

THE COURT: Any questions?

MR. HOLLOWELL: I don't believe we have any questions, Sheriff.

THE COURT: All right, you may go down, Sheriff.

MR. BLOCH: Your Honor, we tender the book that has been testified about, the jail log, which was identified as Plaintiff's #2 in the depositions of October 10, 1962; and offer it in evidence. I think it's been tendered. We offer it in evidence.

THE COURT: Any objection?

MR. HOLLOWELL: I think that we would have no objection, if it were properly qualified; that is, if the proper restrictions were made by the Court as to the

Mr. Hollowell:

particular pages thereof. I think the book itself would certainly not be admissible.

THE COURT: Can you identify the pages, Mr. Bloch?

MR. BLOCH: Sir?

THE COURT: Can you identify the pages?

MR. BLOCH: Yes sir, I can identify the pages.

THE COURT: All right.

MR. HOLLOWELL: May it please the Court, on second thought, if you'll excuse me, I think I'll let it go on in without the identification.

THE COURT: All right. Did you hear counsel, Mr. Bloch?

MR. BLOCH: No sir, I was trying to find an authority.

THE COURT: Counsel states that he believes he will withdraw his objection, and if you want to tender the whole book, he will allow the whole thing to go in; is that correct?

MR. HOLLOWELL: Yes sir.

THE COURT: All right, it is admitted without objection.

MR. BLOCH: Now Your Honor, one afternoon, day before yesterday afternoon, counsel

Mr. Bloch:

for the Plaintiff offered copy of a report, pathological report - you know the report I'm talking about?

THE COURT: Yes sir.

MR. BLOCH: And it was not received in evidence. Now, if it is offered, I assume if it is reoffered, it will be reoffered as a part of the Plaintiff's main case, so that we would have the opportunity to rebut it?

THE COURT: Yes, if it comes up again, of course, you would have an opportunity to protect yourself with respect to it.

MR. BLOCH: We rest.

DEFENDANTS REST

MR. HOLLOWELL: We would at this time, since Mr. Bloch has referred to it, re-submit -- we would like to tender it.

MR. BLOCH: Your Honor, I object to it on the ground -

THE COURT: Well, I don't know what's been tendered yet. Nothing has been tendered.

MR. HOLLOWELL: I'm sorry, it's a certified copy of the autopsy report, which is certified as true by C. F. Davis, Coroner, whose name is shown and signed, shown as being the one who requested the

Mr. Hollowell:

particular autopsy to be performed. It would become PLAINTIFF'S EXHIBITS 18 and 25. Those were the original papers which were identified. I believe that's correct, is it not?

THE CLERK: That's right, 18 and 25.

MR. HOLLOWELL: We further ask the Court to take judicial notice of the fact that C. F. Davis is listed in the Georgia Official Directory of State and County Officers, prepared by Mr. Ben F. Fortson, Jr., Secretary of State; and is so listed on page 37 of said report, item 106, as being the Coroner of Muscogee County.

MR. BLOCH: Are you through?

MR. HOLLOWELL: Yes.

MR. BLOCH: I object to the admission of this document in evidence, because it's not certified, as required by Rule 34 of the Federal Rules of Civil Procedure. I grant you, in that connection I grant you that you can take judicial cognizance of the fact that the gentleman there is Ordinary of Muscogee County.

MR. HOLLOWELL: Coroner.

MR. BLOCH: Coroner. I have no objection to that. Your Honor knows that of your own knowledge, but even assuming that and recognizing that, it is not properly certified.

MR. HOLLOWELL: We say further, Your Honor, that it reads the same as does the original Plaintiff's Exhibits 18 and 25 for identification, which were identified by Dr. Webber, and contains the exact precise same information.

THE COURT: Give me the Rule referred to.

MR. HOLLOWELL: Perhaps while he's getting that, Your Honor, in the interest of time, I can submit the other.

(Court reading Rule referred to)

THE COURT: I sustain the objection and the document is not admitted.

MR. HOLLOWELL: Very well, Your Honor. It was sent to us by the Coroner and, of course, we did not execute the certificate ourselves.

I submit PLAINTIFF'S EXHIBIT #31, which purports to be copy of the official bond of Sheriff Z. T. Matthews.

MR. BLOCH: That was stipulated.

THE COURT: All right, it is admitted.

MR. HOLLOWELL: At this time we would like to renew our objections relative to the admission into evidence of the incidents of arrest of James Brazier: (1) on the same grounds that we have already submitted to the Court; and on the additional ground

Mr. Hollowell:

that it has no relevance in this particular case, in that the proof which they have sought to make is not proof of the character that is admissible in order to show the tendency toward violence on the part of the decedent. I think Your Honor indicated further that he would rule later and determine whether or not there had been sufficient connecting up of that which was sought to be established by the Defendants; and we would respectfully request that the Court make the ruling now.

THE COURT: It's the Court's view that the matters have been sufficiently connected up, in keeping with the representation made by counsel for the Defendant at the time that this matter was under discussion and the evidence is allowed to remain in the record as presented.

MR. HOLLOWELL: I believe there is pending before the Court the matter of the allowance of an amendment, which the Court indicated that he would rule on.

THE COURT: Yes, that's true. The Court is aware of the objection made by counsel for the Defendants to the allowance of the amendment tendered by counsel for Plaintiff, and the Court is aware of

The Court:

some difficulty which should confront counsel for the Defendant because of the amendment which has been tendered. The amendment which has been tendered has been under consideration and, although it does place counsel for the Defendant, at some disadvantage in the trial, still under the liberal rules of the Federal Rules of Civil Procedure under which we operate, the Court is of the opinion that the amendment should be allowed, and the amendment is allowed.

MR. HOLLOWELL: I am glad to hear the Court make that statement because certainly in the 20 or 25 minutes that Mr. Bloch took in making his objection, he read right over the particular rule provision which makes it possible for, and would almost make incumbent upon one, to amend so as to make the petition conform to the proof introduced; and this is why the rule gives one 5 days after the rendition of a judgment to make it conform.

May it please the Court, we would like to call Mrs. Hattie Brazier on rebuttal.

THE COURT: All right.

the Plaintiff, recalled in
rebuttal, testified further

REDIRECT EXAMINATION

BY MR. HOLLOWELL:

Q Now ma'm, you have heard the testimony of
a man by the name of Hammock and of the Defendant just
a moment ago who preceded you: I'll ask you to indicate
whether or not there is one shred of truth in it? Just
answer yes or no on that. Is there any shred of truth in
it at all?

A No sir.

Q I will ask you where you were during the middle
of October, 1954, and when you went there and when you
returned?

A On October 12 of '54 I was in Newark, New Jersey,
and I returned November 17 in '54.

Q You were in Newark, N. J.?

A That's right.

Q Did you know anything even about the arrest of
your husband on October 15, 1954?

A No sir, unless'n they arrested him while I was
gone. I don't know anything about that.

Q I have no further questions.

THE COURT: You may go down.

MR. HOLLOWELL: I was trying to think, Your
Honor, whether there are any loose ends or whether
there is anything to be submitted in motions or anything
but I don't believe so.

THE COURT: I believe all exhibits of every nature, documentary and so on, my recollection is, were ruled on at the time they were presented. I don't recall reserving any ruling with respect to any of them.

MR. HOLLOWELL: If I might, Your Honor, may I see this log? This is the Sheriff's log and I would like to look at it and check it, just a second. It won't take but just a minute. . .

There is one question that I just want to clarify with this witness as to the matter of indicating what the age of her husband was at the time of his death; and if she would be permitted to answer right here, unless Mr. Bloch wants to cross-examine, I will do so; otherwise, I had better let her return to the stand.

THE COURT: All right, just ask her where she is.

Q Mr. Hollowell: What was the age of your husband at the time of his death?

A 31 years old.

MR. BLOCH: That was stipulated.

MR. HOLLOWELL: I don't recollect that it was and I just wanted to be sure.

MR. BLOCH: Well, it is now.

Q Mr. Hollowell: And he died on what date?

A April 26.

Q Of what year?

A 1958.

MR. HOLLOWELL: All right; I don't think there's anything else, Your Honor. We rest.

EVIDENCE CLOSED

THE COURT: During the course of the trial, counsel for Plaintiff requested the Court to take judicial notice with regard to certain matters, and I rule on such requests at this time.

First, we were requested to take judicial notice that April 20, 1958 was a Sunday; and the Court does take judicial notice, as requested by counsel for the Plaintiff, that April 20, 1958, was a Sunday.

The Court was also requested by counsel for the Plaintiff to take judicial notice of the Carlyle Mortality Tables on page 458 of Book 32, and that age 31 reflects a life expectancy of 33.68 years; and the Court, as requested by counsel, does take judicial notice of the fact that the life expectancy of the deceased, James Brazier, at the time of his death was 33.68 years.

Counsel for the Plaintiff also requested the Court to take judicial notice of the duties of the Sheriff, of the county Sheriff, of such officers in

The Court:

the State of Georgia as recited in Code Section 77-110, and the Court does take judicial notice that Georgia Code Section 77-110 provides, as follows:

"It shall be the duty of the Sheriff to take from the preceding sheriff custody of the jail and the bodies of such prisoners as are confined therein with the precept, writ or cause of detention, to furnish prisoners with medical aid, heat and blankets, to be reimbursed, if necessary, from the county treasury, and to suffer a penalty for neglect as prescribed in this Code; to take all persons arrested or in execution under any criminal or civil process to the jail of an adjoining county or to the jail of some other county when more accessible, if the jail of the county shall be in an unsafe condition under such rules as are prescribed in this Code."

Counsel for the Plaintiff also requested the Court to take judicial notice of the provisions of Georgia Code Section 24-2813 which relate to certain duties of Sheriffs in the State of Georgia. And the Court does take judicial notice of the provisions of said section, which are, as follows:

"It is the duty of the Sheriff to execute and return processes and orders of the court and of

The Court:

"officers of competent authority, if not void, with due diligence, when delivered to them for that purpose, according to the provisions of this Code.

"To attend, by themselves or deputies, upon all sessions of the superior court of the county, and the court of ordinary whenever required by the ordinary, and never to leave said courts while in session without the presence of one or both of said officers, if required,

and to attend in like manner at the place of holding an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under their charge all under-officers present, as police to preserve order.

"To publish sales, citations and other proceedings as required by law and to keep a file of all newspapers in which their official advertisements appear, in the manner required of clerks of the superior courts.

"To keep an execution docket, wherein they must enter a full description of all executions delivered to them, the dates of their delivery, together with all their acts and doings thereon, and have the same ready for use in any court of their counties.

"To keep a book in which shall be entered a record of all sales made by process of court, or by agreement of parties under the sanction of court, describing accurately

The Court:

"the property and process under which sold, the date of the levy and sale, the purchaser and price.

To receive from the preceding sheriff all unexecuted writs and processes, and proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his sales, when not done by him.

"To have, keep and maintain, at the expense of the county, not less than two not more than four well-trained track hounds or other dogs suitable for the purpose, to track and catch criminals; and said blood-hounds shall be purchased by the sheriff or the county authorities and shall be paid for out of the county treasury: Provided, however, that this paragraph shall not apply to counties having a population of less than 10,000 inhabitants, unless recommended by the grand juries of such counties;

"To perform such other duties as are or may be imposed by law, or which necessarily appertain to his office."

Reference was also made by counsel during the course of his requests for the taking of judicial notice to the request that we take judicial notice of

The Court:

whether an officer must possess a legal warrant to make an arrest under certain circumstances. The Court does not take judicial notice of the matter as stated by counsel but will consider, if counsel submit proper request to charge, making an appropriate charge to the jury with respect to that matter.

In other words, the Court is saying that the statement made by counsel, the Court is not saying that that statement is incorrect or correct. I'm just suggesting that it could more properly be dealt with in a request to charge.

The same thing is true with respect to what constitutes a legal arrest by a police officer of a person charged with certain offenses. I think that is a matter that could be better dealt with by charge to the jury and, if counsel will prepare a proper request to charge to the jury on the point that he wishes covered, the Court will give it.

Then next, counsel for the Plaintiff requested that the Court take judicial notice of what counsel urges as a rule, which provides that in the execution of his duties an officer is restricted to using only that force which is reasonably necessary to effect a legal arrest. Well, there again, in the Court's view

The Court:

that is a matter which can be more adequately dealt with in the charge to the jury, rather than in taking judicial notice of some statement made by counsel ; and, if counsel will prepare an appropriate charge and request it, the Court will consider giving the principle as enunciated by counsel in the request.

The same is true with respect to the request by counsel that the Court take judicial knowledge of the fact that the actions of a police officer, acting under the color of law, is state action. If that is applicable in this case, if counsel feels that that principle is applicable in this case, if counsel will prepare and submit an appropriate request to charge, the Court will consider so charging the jury. But the Court does not wish to take judicial knowledge or notice of the matter in the form as stated by counsel.

The same is true with respect to counsel's request to take judicial notice of his contention that a person may be a deputy sheriff, without having been officially appointed and sworn in as such by the sheriff according to law. If counsel will prepare an appropriate request to charge and support it with authority, I will consider whether that will or will not be given in charge. I observe that there is some disagreement among counsel

The Court:

with regard to some of these matters.

In other words, those are questions, these things that we're talking about now, are questions of law, which can be more effectively dealt with in the charge to the jury, than by the Court simply taking judicial notice, as I see it.

Then, counsel requested the Court to take judicial notice of certain things which counsel stated with respect to treatment received by patients in hospitals, whether they normally receive injuries of certain types, or whether they do not receive injuries of certain types in hospitals. And without reading all of these exact requests as stated by counsel, the Court feels that that is an appropriate sphere in which the Court should take judicial notice. The Court feels that that is a matter outside of what is normally contemplated as a matter or fit subject for judicial notice, and the Court declines to take such judicial notice.

And by making that statement the Court does not express any opinion one way or another on the matter, by declining to give the request to charge, I mean by declining to take judicial notice, the Court is not expressing the opinion that patients do receive injuries or that they do not. The Court is simply stating that

The Court:

it does not consider it proper matter for judicial notice.

MR. HOLLOWELL: May it please the Court, might I address the Court on that matter: Would the Court be willing to take judicial notice of the fact that hospitals are for the healing of patients?

THE COURT: Well, there again, that's a --

MR. HOLLOWELL: I will say healing and recuperation and rehabilitation of patients generally.

THE COURT: Well, there again, I think that is a sphere that is not an appropriate sphere for judicial notice. I think that's a matter which you could very well argue to the jury at the time you argue the case to the jury; but when it comes to taking judicial notice of such a matter, I don't think it's within the sphere that is contemplated by judicial notice.

MR. HOLLOWELL: Very well.

THE COURT: Then, finally, counsel for the Plaintiff asked the Court to take judicial knowledge that in the southwest area of the State of Georgia generally and in the County of Terrell specifically, it has been common for Negro prisoners to be brutalized over the past 10 years. And counsel further asked the Court to take judicial notice that during the period of

The Court:

1958 there was existing there, that is in the southwestern part of the State of Georgia, and in the County of Terrell in the State of Georgia, what counsel described as a "reign of terror".

Now, I inquire of counsel at this point, before ruling on that request, whether counsel still insists that the Court rule on such a request? Does counsel still urge upon the Court that the Court rule on such a request?

MR. HOLLOWELL: May it please the Court, No. 1, I think insofar as the last conclusion of the language, the reign of terror referred to Terrell County and not to the Southwest area; at least, it was the intent. I think, however, in re-evaluating the language that probably it would be beyond the scope of the Court to actually take judicial knowledge of it as such, and I do not insist upon it.

THE COURT: Well, in that event the Court will not make any comment about it, except to say that I am sure that at the time counsel made that request that he did not expect, as certainly the Court was surprised at the wide publicity which was given to counsel's request.

— All right, anything further? —

MR. HOLLOWELL: I think not for the Plaintiff.

MR. BLOCH: I take it ~~that~~ we're closed?

THE COURT: Yes, that's my presumption. The Plaintiff has closed?

MR. HOLLOWELL: Yes sir.

MR. BLOCH: I would like to get Rule 50. . . Your Honor, in the light of certain peculiar language in Rule 50 of the Rules of Civil Procedure, I want to make a motion under it.

THE COURT: All right, Mr. Marshal, will you take the jury to the jury-room, please.

(JURY WITHDRAWN FROM COURTROOM)

THE COURT: All right, Mr. Bloch.

MR. BLOCH: Your Honor, I state frankly to the Court that I make this motion most particularly because, as I under the law and the decisions under it, that if the Defendant does not make a motion for a directed verdict, there are many rights that he waives as to the effect of the evidence. So that, it is most particularly in the light of those rulings that I make this motion for the record; and, of course, I make it in good faith and think that it ought to be granted.

Rule 50 provides, "A motion for a directed verdict shall state the specific grounds thereof".

I move Your Honor to direct the jury to find a

Mr. Bloch:

verdict in favor of each and every one of the Defendants who survive, they being Sheriff Matthews, Chief Cherry and Officer McDonald.

Necessarily, the motion divides itself because in the amended complaint, as presently amended, there are averments made of alleged wrongs committed by W. B. Cherry and Randolph McDonald in paragraph 1 of the amendment, as to which Sheriff Matthews is not named as a participant.

The only charge against Sheriff Matthews is contained in paragraph 2 of the amendment, and is that "During the night of April 20, 1958 or the early morning hours of April 21, 1958, the defendants, W. B. Cherry, Randolph McDonald, Zachry T. Mathews, Shirah Chatman and Howard Lee, acting under color of state and local laws, and acting individually and in concert, with evil design, and in derogation of their duties and responsibilities as provided by state and federal laws, caused or permitted the said James C. Brazier, to be severely beaten about the head to the point of unconsciousness; that said beating was illegally administered by said defendants individually and collectively, or in concert with others best known to themselves, or by others with the acquiescence of said defendants, while the said

Mr. Bloch:

James Brazier was within or without the said jail; that at all times during said period, the said James Brazier and the said jail were under the custody, control and supervision of the said defendants individually and collectively. That all of said alleged illegal acts attributed to the said defendants deprived the said James C. Brazier of rights, privileges and immunities as well as due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and enforcing statutes. "

Now, with respect to that averment, which is the only allegation of any supposed or alleged wrong-doing on the part of the Sheriff, and is the only allegation of any supposed wrong-doing on the part of any of the Defendants, that during the night of April 20, 1958, after the arrest had been made and the man put into the jail, there isn't the slightest scintilla of evidence which would sustain the truth of that allegation.

Therefore, the result is, the legal result is that, while these gentlemen have sat here together at the table throughout this case, and it's been brought out they have been present at depositions, the charges made against the Sheriff are separate and distinct against those made against the officers.

I make the motion primarily because it's my duty to

Mr. Bloch:

make it, in order to protect the rights of all of them; and respectfully I move the Court, first, to direct a verdict for all of the Defendants, direct the jury to find a verdict in favor of all of the Defendants, Mr. Cherry, Mr. McDonald and the Sheriff, the surviving Defendants; or, in the alternative, or separately, I move the Court to direct a verdict in favor - to direct the jury to find a verdict, when they come in with the other verdict, in favor of the Sheriff, which could be taken care of by request to charge, if necessary, and that is what I will try and write out.

I might say in that connection, sir, while I'm on my feet if I may - that's the end of the motion - but while I'm on my feet, yesterday afternoon at the conclusion, as the Court was about to adjourn, I took my hearing glasses off before the Judge removed from the bench and the Judge said something that I didn't understand, which counsel told me, that the requests to charge were expected to be submitted this morning?

THE COURT: Yes sir.

MR. BLOCH: I had prepared requests to charge in the light of the original amended complaint, without the new amendment before I left home and had them ready; but in the light of the amendment, there are certain

Mr. Bloch:

adjustments that I have to make to them, and I would like permission to submit those to the Court later in the morning or upon the taking in of court this afternoon. I bring that up at this time because those requests will contain a request that the Court direct the jury to find a verdict in favor of the Sheriff and which will, of course, take with it his official surety bondsman. That's it, Your Honor.

THE COURT: Do you have the rules there?

. . . With respect to the motions just made by counsel for the Defendants, the Court is impressed at this time that there probably is substantial merit in the motion made with respect to Sheriff Matthews and to possibly certain of the others.

But the Court, under the provisions of Rule 50(b) of the Federal Rules of Civil Procedure, reserves a decision on counsel's motion at this time for later determination.

All right, while the jury is still out, how much time do counsel desire to argue your case to the jury?

MR. HOLLOWELL: I should think, Your Honor - let's see, we've been here a week - I would say about two hours; that is, I think we ought to have that much time and I would hope that we would be able to do it

Mr. Hollowell:

in less time. I would say a maximum of two and not less than one and a half.

THE COURT: You mean for each side?

MR. HOLLOWELL: For each side.

THE COURT: What is your feeling about it, Mr. Bloch?

MR. BLOCH: I suggest it would be about a half an hour.

THE COURT= Well, the case has been thoroughly presented by both sides; much of it has been gone over 2 or 3 times. I think probably somewhere between what you gentlemen have suggested is probably best in the light of everything. I suggest that you take an hour to the side and divide your time as you may wish.

MR. BLOCH: You don't have to use it.

THE COURT: Of course, you don't have to take the hour, Mr. Bloch; but I'm saying that I will allow each side a maximum of an hour and you can advise the Marshal before we begin the arguments about how you may wish to divide your time and whether you wish him to notify you. Of course, as you argue, you will have a clock right there in front of you and you may not wish him to notify you but we do that when counsel wish.

Suppose we take a recess at this time of about 10

The Court:

minutes and then it will be my intention that we complete the arguments before we take the noon recess; and then, after we take the noon recess, I will charge the jury at that time. Take a recess now of about 10 minutes.

RECESS: 10:55 AM to 11:05 AM - FEBRUARY 8, 1963

THE COURT: All right, if you gentlemen want to argue your case, the Plaintiff has the opening and conclusion.

SUMMATION - PLAINTIFF OPENING

MR.KING: May it please the Court and gentlemen of the jury, this is an action which has been brought by the Plaintiff in this particular case under the laws of the State of Georgia and under the laws of the United States, which afford to any citizen redress of certain wrongs which have been perpetrated against that citizen. Specifically, in this case it happens that the person whom we contend that the wrong was perpetrated against is now deceased. Under the law, however, the Plaintiff, the widow of the decedent, is given a right of redress for these wrongs which in life were perpetrated against the decedent.

In our petition we allege the defendants, Mr. Cherry and Officer McDonald, perpetrated wrongs in contravention of, perpetrated wrongs in violation of the rights of the

Mr. King:

decedent and, therefore, of the Plaintiff in this case. We contend that these wrongs proximately caused an injury to the Plaintiff and that, therefore, she is entitled to redress under the laws which so provide.

WE TAKE THE position, gentlemen of the jury, that under the evidence, under the testimony which has been presented in this trial, that we have made out our case by that amount of evidence required by law to entitle this Plaintiff to the relief which she is seeking; and in this particular regard I would address your attention to some of the evidence and a very summary in a panoramic way.

Your attention is called to the evidence regarding the first thing in this particular situation, and that is the matter of church. The testimony clearly indicates that James Brazier on the day of April 20, 1958, along with his family, attended church at the I HOPE Baptist Church, and subsequently he went on to another church; and there are witnesses to quite clearly and unequivocally indicate what this man's activities were; and certainly, in the true American tradition, it was quite consistent with keeping the Sabbath holy.

But I call your attention in the sequence of events to the transactions surrounding and regarding Odell Brazier.

Mr. King:

You recall the very contradictory testimony in the statements of Officer McDonald and the statements of Mr. Herrington.

I submit to you, and the Court, I am sure, will charge you that you may be authorized, where there is such contradictory testimony, to ignore all of it.

I call your attention further to the evidence regarding this matter of threatening language. I submit, gentlemen of the jury, that after the expiration of three days trial, the most we heard was an utterance attributed to James Brazier, being "I'll get you even if it's after dark", or something to that effect. But mind you, three days after trial and only after this period of time do we get a qualified feature, which makes reference to "you're going to get hurt".

Let us go on, gentlemen of the jury: I call your attention to the course of events that take place at the home of James Brazier at the site wherein this human tragedy is made evident. James Brazier, the evidence conclusively shows, was doing what every sober American citizen would be doing on the Sabbath. He was in his yard with his family about him, his children there, his wife there. There is not one shred of evidence to suggest that there was any impropriety in what he was doing at

Mr. King:

the time he was arrested. The only suggestion that there is in this total situation that James Brazier did anything is of a defensive nature and that was to fend off the bludgeons of an officer who was attacking him by grabbing his head.

Your attention is also called, gentlemen of the jury, to this matter of control and custody. Certainly it is undeniable that the Defendants, all of them, were in the custody or had in their custody and control the decedent.

It is further called to your attention the general operations of the jail. Here we had a jail in which the City Police Department of Dawson, the Terrell County authorities are all acting and using and directing under the headship of the Sheriff. The jail is under the custody and control of the Sheriff.

We go on further, gentlemen of the jury, and we call your attention to the efforts on the part of the family after there had been this arrest, and James C. Brazier had been placed in jail; and we talk about the efforts, the uncontroverted evidence of efforts on the part of the family to secure medical assistance and protection for James C. Brazier. Every bit of testimony that has been given in this regard tends conclusively to

Mr. King:

show that Brazier at all times was in the custody and control of the Defendants named in this suit.

The only conflict that we have here, and I would certainly call your attention to it, is as regards the testimony tending to put James Brazier at one place, with the overriding weight of authority, the overriding evidence in this situation showing clearly that he was another place, still in the custody and control of these Defendants.

In furtherance of showing how completely this custody and control was on the part of the Defendants in this situation, there is evidence to show, there has been evidence that has been admitted by the Defendants themselves that all during the course of the night there were visitations that were made.

On Monday Morning we find the decedent, James C. Brazier, in this situation going to council, going before the Mayor of the City of Dawson. Of course, notwithstanding all of the testimony to the contrary, the Mayor still says that James Brazier on that particular morning did not stand trial because there was a request for a continuance of his case, but because of his grotesque appearance, grotesque here in terms of physical appearance about his face.

Mr.King:

We talk about the trip to Columbus. We talk about the operation and you heard the testimony of those physicians, indicating what the situation was, and the extent of damage and injury that was occasioned.

We talk about the evidence of this man's physical condition prior to this tragedy. Certainly the evidence indicates that James C. Brazier was a healthy man, a man who had enjoyed good health; he was gainfully employed, a good provider. As a matter of fact, gentlemen of the jury, this man had a life expectancy in excess of 33 years.

I say, in conclusion, gentlemen of the jury, in the light of all the cumulative evidence which has been presented to you, we think that a case has been made out in this instance by a preponderance of the evidence, that amount of evidence which is required to establish liability; and, in consequence of this, gentlemen of the jury, we respectfully request, we respectfully ask for a judgment as prayed. Thank you.

SUMMATION - DEFENDANTS

MR. BLOCH: If the Court please and gentlemen of the jury, Of course, I'm assuming that all of you gentlemen have served on juries before. It's probably useless for me to say to you that you take the law from

Mr. Bloch:

the Court and not from me. So, if I should during the course of my remarks say anything about the law, it's just because I'm so used to talking about the law that perhaps I overlook the fact that His Honor is the one charged with the duty, responsibility and privilege of telling you what the law is.

And in talking to you, we've been allotted an hour to the side but I'm going to try to limit my remarks so as to divide time with Mr. James Collier here, my new-found friend, who has been of such tremendous assistance to me in the 3 or 4 rather gruelling days that have preceded my standing here now.

M — My experience in the courts of this area goes back a long, long ways. I can recall that here in Americus the Honorable and revered Littlejohn, Judge of the Superior Court of this circuit, and my appearance before him for the first time, when I wasn't much older, if as old as some of my associates here. And I can remember before Senator George was elevated to the Court of Appeals and the Supreme Court, and finally to the United States Senate of his being presiding judge of some counties in this area, the Cordele Circuit, which embraces Crisp and Dooly, Ben Hill and Wilcox. And I can recall even the elder Judge Worrill, who was Judge of the

Mr. Bloch: .

Pataula Circuit back in those days, more than a generation ago, and whose circuit embraced Terrell County.

Now, I state that, just that brief historical statement. It might tend to show how old I am and how long my professional career does go back. I state it, not just to be talking, but I state it because my appearance here before you and His Honor these past few days has been a unique one in many respects. But it's one in which in one respect particularly, in the twilight of a career that I cherish, the opportunity to do what I can in a case of this sort for what I think is the proper administration of justice in this land of ours.

What stands between the United States of America and the influences of those which would destroy us externally, what stands between we of the United States of America of all races and creeds and those who would overturn and assail us and destroy us, is the courage of those who have in their hands the defense of the United States of America.

And what stands between us - I mean by that the Army, Navy and the Air Force - and what stands between us, you and me, our families and all other law-abiding citizens, what stands between those of us who are law-

Mr. Bloch:

abiding citizens or try to be and domestic lawlessness, domestic lawlessness on the part of those who are not inclined to behave themselves in a legal manner, is a courageous law force, a law force composed of sheriffs and their deputies, elected by the people of their respective communities, by state troopers; and finally at the lower level in the hierarchy of the administration of the police force perhaps but just as important as any of the others, the chief of police of towns and cities, large and small, and their patrol, the members of the police force, who night and day, nights when you and I and our families are sleeping, so that we may sleep in peace, undisturbed by the thought of lawlessness, we rely on those men to do their duty, to do nothing more than their duty, not to be brutal, unnecessarily, but to protect every man, woman and child and baby who rely upon them for their protection, so that they may peacefully sleep or peacefully in the daytime go about their respective livelihoods.

Now, gentlemen, viewing the case from that standpoint, upon which I could elaborate to a great extent but which for many reasons I don't care to elaborate on, let's just take in a capsule just what happened on this Sunday, April 20, 1958:

Mr. Bloch:

You've got a whole lot of soup stuff here. We've got soup meat, a lot of vegetables and a lot of water, which comes in the form of testimony from the stand; but if we could just take it and cook it down to a broth and put it almost into a capsule, if the capsule is big enough, and try to resolve the conflicting statements, let's just see in capsule form just what this case is now:

The case originated in the act of Odell Brazier, the father of the deceased, James Brazier. If it hadn't been for Odell Brazier, who I suppose - who was on the witness-stand before you, if it hadn't been for Odell Brazier, we wouldn't be here today trying anything because Odell Brazier started it all. He was the man, I believe, who was one of the very first witnesses for the Plaintiff here.

Counsel who opened talked about going to church. Well, he may have gone to church, I don't know. They had rather long church services that day, from 12:00 to 3:00 and then from 3:00 to 4:00 or 5:00 or 6 o'clock in the afternoon, rather long for mere church services. But be that as it may, Odell said he was there and I have no reason to believe that he wasn't there; but I have reason to doubt very seriously that he was praying all of that

Mr. Bloch:

time or worshipping all of that time, because the first word of his activities on that day which comes from an outside witness is that of the man who drank a little liquor with him that afternoon. Oh, it may have been that after he was through with worshipping that he felt the need of liquid sustenance, I don't know; but at any rate he indulged in it. I can't remember the names of all of these people. I believe that particular man, colored man, was named Nixon. He testified that he and Odell drank rather copiously in his place of business and that when Odell left his place of business he went out on the streets of Dawson in a Chevrolet automobile, whether it was a '56 or '57 or '58 model doesn't make any difference. They are all pretty dangerous, even these little bitty ones, when the man that's driving them is indulging in Georgia shine. And that's what Odell was doing on that occasion.

And he got out on the streets of Dawson on a Sunday afternoon propelling that high-powered automobile through the streets; and there comes to your assistance and ours in the determination of what's right and wrong in a case of this sort, there comes to our assistance a gentleman, Mr. Ellington. He has no relationship with the Sheriff, with the Chief or Mr. McDonald. He's

Mr. Bloch:

a law-abiding American citizen, one of those, one of that class who needs the protection of the Sheriff and the Chief of Police and, yes gentlemen, and the protection of the courts, in supporting the administration of justice by the police officers, as long as that justice is administered according to law. And the Court will tell you what the law is. That's why I leave the law angle to him. The Court will tell you what the law is with reference to the amount of force necessary to make an arrest under any given circumstance.

But on that occasion, on that Sunday afternoon, Odell had been to church maybe, having come out and imbibed rather freely, having gotten into that automobile, and then appears on the scene this Mr. Ellington, who has been connected with the same company, Southern Cotton Oil Company I believe, for a mighty long period of time, 15 to 18 to 20 years in Dawson and now in McRae. He was out riding that Sunday afternoon with his wife and his daughter, whom I believe he said at that time was 12 years old.

Now, he tells you what happened. Is there any reason for Gene Ellington to get up before His Honor and you gentlemen of the jury and perjure himself? What is he to gain by violating, not only the law, but one of

Mr. Bloch:

the Ten Commandments? What reason would Gene Ellington have to bear false witness against his neighbor, to perjure himself in a court of law, in a court of the United States? None whatsoever. Sworn to tell the truth, the whole truth and nothing but the truth, he raises the curtain of this little drama by driving down that street with his wife and little girl and, seeing Odell Brazier driving that high-powered automobile in such a reckless and dangerous manner that he drove clean off of the road up into a parking lot to avoid him.

And I assume that it's possible for me to infer from the evidence that, if his wife and little girl hadn't been with him - he owed the first duty of protection to them - that perhaps he would have turned around and gone back and done something about it himself; but luckily, luckily about that time there turned up one of these gentlemen, to whom I take off my hat, who endanger themselves day and night for the protection of you and me and our loved ones. It was his job, whatever compensation he got from the City of Dawson, whatever it may have been, was paid to him to protect the people of Dawson from insolence of that kind. And he did just exactly what the law demanded of him and required of him under his oath of office as a policeman.

Mr. Bloch:

He went after him. And as he went to arrest him, as he went to arrest him, he found two pints of liquor on him, a half-pint perhaps, and he took them off of him and he took a pocket knife off of him; and he told him to get out of the car.

Luckily about that time, I say luckily, it was certainly lucky, I believe, for Mr. McDonald, because I think his heart and his courage in being a policeman are bigger and more to be admired than perhaps his physical physique, because he's a little man, a little man in size I mean but a big man in courage and bravery to have been making a living for himself and family in that line of work; weighed 135 pounds, I believe, 46 years old, 5 feet 6 or 7 inches tall; without any help at all on that Sunday afternoon, seeing that man performing his dangerous stunt, he went after him and he caught him. And I say luckily for him, Mr. Herrington happened along, because if Mr. Herrington hadn't happened along, there isn't any telling what sort of case might have been tried down there in Terrell County, because there isn't any telling what Odell Brazier, with the assistance of James Brazier, who turned up about that time, might have done.

But with the assistance of Mr. Herrington, he was

Mr. Bloch: .

put under arrest and taken to the jail and put in the bullpen which you've heard described.

Now, I accept, for the sake of the argument without quibbling on words, I accept for the sake of the argument the threats in the language and in the words which counsel in his opening argument here before you has stated to have been made. The general tenor of them was, "I'll get you." They were threats against an officer doing his duty for your protection and mine and folks like us who try to live under the law.

So, when the officer, Officer McDonald, had completed his duty in putting Odell under arrest, he could have ignored James. He could have let James go around and drink some more whiskey and do no telling what, perhaps beat his wife up or beat somebody else up. But that wasn't what he conceived to be his duty there that Sunday afternoon. He conceived it to be his duty, not merely for his protection -- all he would have had to have done for his protection was to forget it and leave James alone, but he wasn't thinking about himself. He was thinking about whose whom he was sworn to protect and whose duty it was to protect. He was thinking about what the law required, the oath he had taken.

Mr. Bloch:

So, I suppose - and I think I'm entitled to this from the evidence - that knowing of his comparative, not physical weakness because he doesn't look like he's weak - but comparative physical strength with what he might have gone up against if he had gone down there in that neighborhood by himself. I reckon as we grow older in years, gentlemen of the jury, you sometimes wonder why we lawyers ask so many questions, and particularly why I asked Hattie Brazier, when she was on the stand, to name all of the people that were down there in the neighborhood at the time when Mr. McDonald and Mr. Cherry came down there to arrest James; and did you hear the list of names that she read out, some 10 or 12 of them, all gathered down there in that neighborhood?

Now, I might interpolate to say that it's rather strange that just 2 or 3 of them took the stand, but we did see Bill Roberts and we did see Hattie B. Williams and one or two others. But be that as it may, wouldn't Mr. McDonald have been rather fool-hardy, after that threat had been made, and after he saw it and not only observed by him but observed by Mr. Herrington too, another gentleman who I say had no reason to perjure himself; wouldn't he have been rather foolish to have gone there on that Sunday evening about dark and stuck

Mr. Bloch:

his head into a noose, without having some help. Why, he would have committed suicide by going down there like that.

But anyhow, he did it and I'm glad he did. He told Mr. Cherry about it and he and Mr. Cherry did what the law required of them or certainly what they should have done under the circumstances existing, whether the law required it or whether it didn't. They went before a judicial officer, a Justice of the Peace, and got a warrant and, armed with that warrant, they went down there in that community. And I have no doubt that when Mr. McDonald asked the Chief to go with him - he wasn't Chief then - asked Mr. Cherry to go with him, that Mr. McDonald and Mr. Cherry too had in mind the previous experiences which they had had with James Brazier; and they were taking more chances going down there in the dusk among - at least one of the persons whom they knew to have been drinking whiskey on that Sunday Afternoon.

But they went down there and evidently James knew what they were coming for, because he came out; and when he came out, he started, not immediately but when he got down toward the car, he started resisting and fighting.

Now, right there at that time the question is, under

Mr. Bloch:

all of the circumstances of this case, law and fact, taking into consideration the character and reputation of the man, a man whom Mr. McDonald had seen and arrested for beating his wife, a man who had made a threat against him just a few hours before - started to take him down to the car, and when he went to get into the car, when Brazier started to fighting and swinging at him, it wasn't until Brazier swung at McDonald 2 or 3 times that Mr. Cherry hit him.

Hit him with a pistol? Why, no - not the slightest evidence that he hit him with any pistol. He hit him with a slap-jack, which in some respects, I believe it's said, resembles that or a black-jack, just with sufficient force to compel and to perfect the arrest, which is the language of the law. And when he did, they drove on off, they drove on off and when he got him to the jail, Mr. Cherry called the county physician to come down there on account of these slight wounds that appeared on his forehead.

Now comes the county physician and his testimony is very important in your determination as to whether or not more force was used than ought to have been used. Counsel who preceded me representing the Plaintiff says they've made out a case here before you. This paper that

Mr. Bloch:

was filed here, what we lawyers call an amendment, was filed here just yesterday I believe, or the day before, the Plaintiff in it alleges that James Brazier was illegally arrested, illegally arrested by Mr. Cherry and Mr. Randolph. Is there the slightest proof, the slightest iota of evidence of any illegal arrest, when he was arrested under a judicial warrant, issued by the proper judicial officer on that Sunday Afternoon.

And they go further and say that pursuant to said illegal arrest that he was incarcerated in jail. Now, the truth of the case as it appears from the evidence is this, that he was incarcerated in the jail by reason of a legal arrest, and he was arrested at a time when he was under the influence of whiskey, Sunday, Saturday, Tuesday or Monday, been to church or hadn't been to church; whether he had eaten or whether he hadn't eaten.

The Plaintiff here said he had no dinner that day. I don't know whether he had or not but the preacher said he ate. Now, take your choice. It doesn't make very much difference whether he had eaten or not, but it's undisputed almost that he had drunk and that he was drunk, or certainly under the influence, because who says that, besides Cherry and McDonald right there? The County Physician says it.

Mr. Bloch:

Now, it was brought out in the evidence that Dr. Ward was the county physician, was summoned here for what we lawyers call taking depositions on the 10th of last October. I happen to remember that date vividly because I was wishing all day I was home. It was the day I was beginning my 70th year. It was my 69th birthday and I wanted to be home, but I was down here taking depositions all day long right there in that room. And among those who - No, I believe I have the wrong date, that wasn't the date, October 10 when Dr. Ward's testimony was taken - it was taken on November 24, a football Saturday afternoon over in Albany; and it was taken at the instance of counsel for the Plaintiff.

Dr. Ward swore before you, and I guess it's to be assumed that he swore the same thing then, that when Cherry called him or when somebody called him, he came down to the jail, he examined Brazier and he described to you the superficial wounds that he found at that time, and he was under the influence of alcohol at that time; said that his speech was incoherent; he examined his eyes, ears, nose and throat and he could very well determine that he was under the influence. I started to say drunk. I don't know whether he was drunk or not

Mr. Bloch:

but he was under the influence of whiskey.

Now, what reason did Dr. Ward have to testify falsely? If you doubt him, if he needs verification, I think the strongest verification of all is this, that his wife busied herself there and it is to her credit that she busied herself there. She came down there and found Mr. Ragan Arnold, his boss man and Mr. Arnold at his first opportunity came down there. If he hadn't been drunk, if she just didn't want him around the house in the condition that she knew he was in, wouldn't she have bailed him out? She had his boss there, his boss, and his earnings have been shown to you. Wouldn't she have bailed him out there? She preferred for him to be where he was, in that jail, because she didn't want any repetition of incidents that had gone before when he was in that condition.

Now, there is this, in the face of that, gentlemen, and I'm going to take it this far and I'm going to stop because I don't want to take up all of my young brother's time, in the face of that, they come before you and allege in this amendment just filed that in the early morning hours of April -- either on the night of April 20 or the early morning hours of April 21, 1958, the defendants, W. B. Cherry, Randolph McDonald, Zachary T. Matthews,

Mr. Bloch:

Zhirah Chapman and Howard Lee' - Mr. Chapman and Mr. Lee are dead, as I stated to you Monday Morning. - "with evil design and in derogation of their duties and responsibilities as provided by state and federal laws, caused or permitted the said James C. Brazier to be severely beaten about the head to the point of unconsciousness, and said beating was illegally administered by the defendants individually and collectively, or in concert with others best known to themselves, while the said James Brazier was within or without the said jail; that at all times during the period Brazier and the said jail were under the custody and control of the Sheriff, who they try to bring into this case.

Now, where is the slightest scintilla, iota, dot of evidence that any beating was administered or any wounds inflicted on James Bfazier after he was put in the cell block around 7 o'clock that evening? On the contrary, we did our best to bring to you every person who saw him between the time he was put into that jail and the time that he went up to the police court, and Mayor Singletary testified that there - and counsel for the Plaintiff overlooked the fact that Mayor Singletary said, that when he was therein court he appeared to him to be drunk. I guess it was one of these hang-over drunks.

Mr. Bloch:

But at any rate, where was the slightest evidence of any beating being administered to him that night. The Sheriff wasn't anywhere around. The Sheriff has sworn 2 or 3 times that he knew nothing about it, about James Brazier being in jail until he saw him let out for court the next morning.

Eugene Magwood was one who testified down here on October 10, my birthday. They brought him here. We brought him here before you. They brought him here to testify on depositions; we brought him here before you. Even Odell says he saw him that night. I don't rely on what Odell says because I don't think Odell ever saw him that night. Odell was over there in the bullpen, where James was on the other side in cell No.2. But taking his statement as being true, which we would assume not to be true, what were they doing? Was he beaten into unconsciousness? Was he suffering very much ill effect from the blow that Chief Cherry had struck him?

You remember my questioning of him, what did they do? They just sat there and talked about Zion Church, so he said; and they talked about 1 or 2 other things; and finally they got sleepy and the last thing he saw before he went to sleep was James Brazier smoking a cigarette.

Mr. Bloch:

Magwood, oh they call him all sorts of things now, Magwood testified, and he's not a trusty for the Sheriff any more. He's not under the Sheriff's control; he's working there for a company. He says he saw him during the night and he cleaned up his cell and there was no evidence of blood or soiled clothing or anything of that sort.

Finally, as far as I'm concerned, finally, if he had been beaten into unconsciousness there that night, or if the blow that the policeman hit him had had the effect that these people contend that it had, could he have walked out of that jail under his own power? That's when the Sheriff said he saw him walking out of there under his own power going to court, nobody helping him. Magwood also saw him.

But perhaps, above all, the good lady, Mrs. Radford, whom we sort of hated to bring into a case of this sort, but she was the last person that saw him before he went into the Mayor's Court; and he got out of the car walking along with his father and with the policeman under his own power, dressed normally, walking along the street to the Mayor's Court. Beaten into unconsciousness they say?

Now, gentlemen, I've taken all the time that we

Mr. Bloch:

alloted to me, and I conclude where I started, that in some respects my appearance here is an occasion that I cherish though not in all respects, because it gives me the opportunity to say what I think, within the bounds of the law and within the confines of my privileges here in this case, to testify to and to commend and to thank men like Mr. Cherry, Mr. McDonald, and Sheriff Matthews, who in endangering their own lives, are withstanding threats like the one that was made against one or two of them down there that day, and constantly day and night are striving to protect you, me, but above all, our children and our grandchildren against what might be lawlessness; officers of the law who did their duty on this occasion, and I commend them for it, and I hope that when you come in with your verdict for the Defendants, all of them, that you will too, telling them and others in positions like them to keep on doing their duty, protecting the good people of this state, white, colored, red or yellow, against the onslaughts of domestic lawlessness.

I thank you.

MR. COLLIER: If I may, Mr. Bloch, I will stand on this side. Mr. Bloch commented in his introductory remarks that he had found a new friend in me. It is

Mr. Collier:

true that he didn't know me before he came to Terrell County, but I knew you, sir. Mr. Bloch has had a distinguished career before the Bar of this State and the Bar of the United States, as we say in Terrell County, for nigh on to 50 years. He is not only known to me but he is generally known throughout this Nation as an authority on constitutional law. It is my pleasure and my privilege to be associated with him. It's a rare privilege in my locality to get such an opportunity.

It may be interesting to the jury to know that now I'm the Mayor of Dawson, Georgia. Mr. Cherry is still the Chief of Police in Dawson, Georgia. He has been the Chief of Police in Dawson, Georgia, continuously since his first appointment to that office. I say of him and I will repeat what has been said of him by writers in the Atlanta newspapers, that he has one of the levellest heads, some of the soundest discretion and some of the best qualitles of any law officer in this State; and, gentlemen, I stand up here and tell you today he has them, and I hope we have shown them to you. I know he has them.

Mr. Cherry told you something the other day, not when I was questioning him on the stand, not when I had him in my office on many, many occasions, preparing

Mr. Collier:

for this trial, or taking notes or working on testimony. He just made this statement to me off-hand the other morning riding up here.

MR. HOLLOWELL: Now, I submit, may it please the Court, I think that is going to be a bit improper. I really apologize to counsel for interrupting his argument; but for him to testify or seek to relate to the jury something that Mr. Cherry said to him outside of the court, which is not a part of the evidence, I think would be improper.

MR. COLLIER: That will be all right, Your Honor. I'm through arguing; I don't want to ever get into another argument; that's the way I feel right now.

I'll tell you something that I think, I think that if Mr. Cherry had to make this same arrest again, I think he would make it in the same manner and in the same way that he made it before.

I'm not going to enter into the many inconsistencies that have been presented by the testimony of their witnesses and our witnesses, our cross-examination and their cross-examination.

As Mr. Bloch pointed out, Odell Brazier took the stand, the father of the deceased; he testified to everything in the world except he didn't say that the

Mr. Collier:

deceased had any injuries other than those testified to by Mr. Cherry; and, as able counsel pointed, out, when he last saw his son that night, if he saw him, that he was smoking a cigarette.

Now, we had 1, 2, 3, 4, 5 witnesses, James Reynolds, Jacob Minter, James Latimer, Grace Gibson and several others, who testified that the character of the deceased was exemplary, that he was a model citizen; and yet, you have his police record introduced into evidence.

They had the audacity to put Mary Carolyn Clyde on the stand, and you remember what she said on cross examination. She made none of the statements they were attempting to solicit from her. I believe she said, "That's what you said, not what I said." She referred to the Sheriff one time, and what did she say about the Sheriff? She said that if they didn't leave her alone and get out of her house, she was going to call the Sheriff. That was the only reference that I know of that was ever made of the Sheriff by Mary Carolyn Clyde.

I do believe that, if there were any reign of terror, ~~that~~ they would be in a better position to testify to what it is. There may be a reign of terror but I say to you it's more likely that they know more about it than we do.

Mr. Collier:

I'm not going to take all the time allotted to me, Mr. Bloch. I do want to close in saying this: It's been my practice since we've been here to write you notes. When we would hear a witness testify to something that we knew wasn't the truth, I would try to write a note and explain or tell what witness I had interviewed to controvert that fact. But of all the spots that I've been on this week trying to build our case, I have never been on a spot such as I'm on now, trying to follow this counsel in argument.

MR. HOLLOWELL: Mr. Bloch, do you mind if I use this corner here sometimes; I want to be able to show some things to the jury?

MR. BLOCH: Oh no.

PLAINTIFF'S CLOSING SUMMATION

MR. HOLLOWELL: May it please the Court and gentlemen of the jury: It's been a long, long week and in many respects I sympathize with you, because this has been a difficult case, fraught with many complexities, many niceties of law, many negations, many contradictions. I realize, of course, that you gentlemen, after you have sat in those hard chairs - I know that they are hard because I didn't see any cushions - and I know how hard mine gets, and I get to get on my feet sometimes;

Mr. Hollowell:

and then have to go and do your chores in the evening and attend to your business and get back here in the morning, that this is tough. And it's tough on the lawyers; and I don't know about you but I'm tired. But I have a job to do as a lawyer and that is all that I have ever tried to do here is to do my job as a lawyer.

I know that you have sat here for the last 40 or 50 minutes and listened to the distinguished counsel and his associate. He is distinguished counsel. We have had the occasion to be on the table before on opposite sides, but we have always had the good fortune of having a gentlemanly and a lawyer's relationship. This is what the profession demands. This is what it has always been. I think, however, I do have one up on him; I have had the occasion to cross-examine him one time and I don't think he has had that of me yet, but that is not to say that he will not have. He has a duty to do as a lawyer, to try to take what he has and make the best appearance with it that he can. This is his job and it has been, and I am sure you will agree, a most difficult job. It has been more difficult than that from the comparative to the progressive to the superlative in difficulty, in trying to weave a defense that would get that water that he talks about into gravy

Mr. Hollowell:

or broth. It has been a difficult job.

I would like to feel confident that you realize that it is still the same water that it was, boiled and re-boiled, but still water. He would have you believe almost that rice was wheat; he would have you believe perhaps that pink was blue; and he would have you believe and draw inferences from facts which did not exist; he would have you believe that the bald untruth is lilly pure and verily true. But it isn't.

And when you think through all of the evidence you will realize that. For instance, he had the audacity to say that Dr. Ward said that James Brazier was drunk, that he was under the influence of alcohol. Dr. Ward was on the stand at least three times and you remember when I asked him, "Doctor, you say that you smelled alcohol, are you saying that the condition in which James Brazier was came from the drinking of alcohol?" Do you remember me asking him that? He said, "I cannot say that." The only thing he could say was that he smelled, he said, the odor of alcohol; that's all. That's all. This could have come from many sources.

As I run through, I want you to think with me, gentlemen, and try to bring back into focus the actual uncontradicted facts, as distinguished from the half-

Mr. Hollowell:

truths, the finesses, the denials, the contradictions, that have been made in this case. There have been so many. I know that sometimes it became boring perhaps to you to see counsel time and time and time and time and time again come up there with the record, which the Defendants stipulated was an accurate record of the depositions which had been taken of those particular witnesses. They stipulated that it was and yet, time and time again.

Briefly, yes, in this case there is evidence that these folk had been to church, a country church. You know this is spring, this was spring. This was almost May, and in this section we know that by this time it's getting most comfortable, it's pleasant, it's a Sunday evening, it was a nice Sunday evening; people were up and down the street, we can presume. If you go to church out in the country, it's a long afternoon affair. I mean this is not anything uncommon. These people had been to one church and then they had been to another.

It appears that Odell Brazier was stopped by this officer over here, Officer McDonald; and he says that even before he opened the door, he could smell alcohol. This is what he said. But, of course, Mr. McDonald said many things and Mr. McDonald was contradicted many times.

Mr. Hollowell:

I want you to remember. Remember what my associate counsel told you when he made his opening argument, that when you find there have been these contradictions in testimony, you are at liberty and are authorized to even disregard all of their testimony. How do you know what to believe? How do you know what to believe?

Mr. Ellington says - he was called - that he passed by there and that this man almost ran him off of the road. There was no testimony that Mr. Ellington ever came back to the scene. There was no testimony that Mr. McDonald saw this. And Mr. Herrington, who was allegedly there, and I say allegedly, didn't see Mr. Ellington; and yet, he says he ran right down and followed right down behind the man and then drove past the caf and stopped. Of course, Mr. Herrington said many things, he said many things.

This is Mr. Herrington, the officer's alternate, who cannot estimate any kind of distance, whose eyes, if you watched them, were shifting back and forth over in this direction, and it was with difficulty that he answered the questions. This is the man who voluntarily said, "They will tell you that I go and help them."

I want you gentlemen to think back through these witnesses that have been put on to corroborate statements

Mr. Hollowell:

made by these officers. I call your attention to the fact, gentlemen, that certainly the officers of the law should have respect; certainly they have a responsibility to protect you and me and every other citizen; but, you know as men of the world that it's not always done. That is the very reason for the Federal statutes which exist and state statutes which exist, to contain those who become so obsessed with their authority that they deprive citizens of their rights; that they take instruments likw this and bludgeon people.

I want you to take this out with you, feel it, just let it touch your knuckle, not your head, gentlemen; let it just touch your knuckle. Feel the weight of this thing.

You have to earn the kind of respect that the good counselor here would you to have for these men; you have to earn it.

Mr. Herrington said he helped put the man in the car. Even Mr. McDonald, with all of his contradictions, didn't say that. You remember this, Mr. McDonald said he was standing up toward the front of the car. He didn't ever say that Herrington put his hands on him. No. Mr. Herrington says "I helped put him in the car; I went around and got the handcuffs and put them on him." Mr.

Mr. Hollowell:

McDonald didn't ever testify that there were any handcuffs put on the man. You never did hear that coming from Mr. McDonald. Where did he get all of this?

And then he testified away late, you remember we were almost through, and he finally decided, "Yes, they told me to say this", that he was kicked, that Odell Brazier kicked him. But he didn't remember that Mr. Cherry hit Odell Brazier over the eye, he didn't remember that. Mr. McDonald says it happened virtually simultaneously, that Odell kicked him and that he took his black-jack and just kind-of did that (demonstrating) to him. I mean, how are you going to believe this kind of person; how are you going to believe this kind of story?

He said, yes on the end, he said when young Brazier came up, he said "I'll get you even if it's in the dark." And then, he decides that he said "You're going to get hurt, I'll get you even if it's in the dark." And then he decides that he said both things. You saw the man; you have to appraise him.

You heard me cross-examine Mr. McDonald. Here 4 years 9 months and 17 days after this happened, he now for the first time, after depositions, after being on the stand on direct testimony, after being on the stand on cross-examination, and after the amendment, he

Mr. Hollowell;

then decides that he had better put the word "hurt" in there some place, because there wasn't anything that James Brazier had said, which would give him any fear or any apprehension. There wasn't anything that James Brazier did. Brazier didn't touch him; Brazier didn't touch his father. Mr. McDonald even said that, that Brazier didn't touch him, that Brazier didn't touch his father, Brazier didn't try to get in the way; Brazier didn't even try to help get his father into the car -- James Brazier, I'm talking about. There was nothing that James Brazier did on that occasion to justify these officers seeking a warrant or ever coming down to his house. This is the most asinine and ridiculous thing in the world.

But what did they do? They ran down and got a warrant. And then, in their zeal of passion and hate, in their effort to demonstrate just how much power they had, they rushed and got the warrant, they said. And I want you to look at that so-called warrant when it comes; I want you to look at the difference in the ink on the warrant; I want you to remember that McDonald, Officer McDonald recognized, he said, his signature and that he signed it. And I want you to see that they have the signature of a Justice of the Peace on there;

Mr. Hollowell:

but the Justice of the Peace never did come here. There was plenty of time to bring him. Where was he? Where was he? Where was he? He wasn't going to let himself become involved in this thing; too much integrity to let himself become involved in this thing, in this effort to deceive; in this effort to show a face, which on the surface, the scheme which is behind it is corrupt. That the evidence is pretty clear on.

In the Odell Brazier situation out there, only Mr. McDonald talks about two bottles, half empty bottles of Moonshine liquor he took off of the man. Herrington didn't see that; nobody but Mr. McDonald saw it. And then, Mr. McDonald had the audacity to sit in the witness chair in a court of law and talk about being an officer of the law and having the responsibility to carry out the orders and the duties of the law, and say that he didn't do anything with that; that he didn't see any reason to arrest the man. Moonshine liquor, which he knows is illegal. I mean, we forget sometimes what they say, the little particulars.

But let's hurry on over to the house. That's what Mr. Cherry and them did; they hurried on out, they say, and got a warrant; and then everybody testified that the car came in a hurry, they wondered what was happening.

Mr. Hollowell:

They come there. He says he got his warrant and he goes in and he tells Brazier that "You're under arrest." This is Mr. Cherry talking. I don't know why he should be talking. Mr. McDonald is the one who made out the warrant, or not made out the warrant but who took out the warrant, who signed the affidavit.

But he goes back there and here's Brazier, in his house, in his own yard, hadn't done anything, been to church, been to church, had on his Sunday suit, not bothering anybody. And here, they have to come down to his house. They hadn't been hurt, still haven't been hurt, still haven't been hit.

I know you wondered as you listened to this. "You're under arrest for threatening an officer." And they say they took him out and when they got him out to the car, he said he didn't want to go and then he swung at one of them. Mr. Cherry said he was swing with both hands. Well, one was on one side of him and one was on the other side and he was swinging around. They don't say that he ever hit them. Now, this is - this is -- knocked the officer's cap off. Here he is up there, Mr. Cherry, with a weapon which he says himself looks about like this; and he, when I cross-examined him, said the only difference was that the loop was in the end and that the

Mr. Hollowell:

little metal spring in here was not there. You recall that; but otherwise, that it was just about the same. And I want you to just feel that. And there he says he hit him 2 times, Mr. McDonald says 1 or 2 times; other witnesses say that he hit at him several times but maybe hit him not over 3 times, because Brazier's arms were up. He was trying to keep - well, one of them was being caught or being held by Mr. McDonald, and the other was trying to keep that thing off of his head. And if Mr. Cherry, or rather Mr. McDonald was trying to catch his arm, and if he had on a hat of the type that they wear, I mean isn't it just ridiculous that he knocked his hat off. He took out the gun, Mr. Cherry did and pointed it at him, "I ought to blow your brains out". You know the language that was testified to. Put handcuffs on him, pushed him in the car, closed the door on his leg, and then either kicked his feet in or pulled them in, and took off. "We've got our boy, we'll teach him." This is the evidence, seen by the man next door, even pushed down, he said, the man's little boy who objected to what they were doing. The mother-in-law, you saw her up there. She said I had to turn my head, I didn't want to see it - took that gun and pointed it at his head.

Mr. Hollowell:

What had he done? Even then he had not done anything. Even then, gentlemen. They took him on to jail and later on some of his family came up there, his wife and a man by the name of Latimer, his mother-in-law, they went up there to try to get in touch with Mr. Arnold. They knew he hadn't done anything; they knew it; Brazier knew it. And that's the reason why Brazier said, "What are you doing this to me for, I ain't done nothing." And he hadn't, and he knew he hadn't, and he knows he hadn't. He hadn't.

They went up there after the arrest, these people that I mentioned, and they tried to find his bossman, and his bossman came and he remembered - he didn't remember whether he had seen the doctor or not; he felt that Mr. Cherry was the one who had called - no, I'm sorry, this is Mr. Arnold. Mr. Arnold came at the instance of the widow and her mother. They had been out to his father's house, that is the father of Mr. Arnold, and they had been to his home trying to find Mr. Arnold who was away but he came later, but he finally came on down. And Mr. Arnold says that he believes that he saw the Sheriff and he believes that he saw Mr. Mansfield; that he knows he saw Mr. Cherry, two or more officers, vacillating; and I showed him the book and I showed him

Mr. Hollowell:

what he had said. And so then he answered "Well, this is, well I don't really remember right now." And you heard this all during the trial. I mean this is understandable. This man didn't want to be involved, he didn't even want to have to come over here. He wanted to do the right thing. But it has been a long time and it is convenient not to remember.

But he did remember coming; he did remember interceding, interceding he remembered this. He says that he believed that he saw the Sheriff and Sheriff Mansfield; and the widow and the other said "Yes, he went in the same office where the Sheriff had been standing and stayed there for quite some time."

The Sheriff knew about this thing, the Sheriff who is the custodian of the jail; he knew about it. They saw him there. It was convenient for the Sheriff, since these were City officers, to shugh off. The Sheriff had a responsibility. This was the same jail that they used jointly, gentlemen, remember; this was the same jail that they used jointly, they used the equipment jointly, the radio jointly, the jail jointly, the keys jointly, the telephone jointly. That made them deputies of the Sheriff. They were agents of the Sheriff because they themselves had to help supervise this jail.

Mr. Hollowell:

Even Magwood, the jailer; he carried the keys, he fed the prisoners, he brought them in and out at the instance of the police officers and of the Sheriff. Magwood, who had an 8 year sentence and who served all but two months of it, that is a trusty. What would you think he 's going to say when they brought him here? This was their boy. He would say whatever they wanted him to say; he would say whatever they wanted him.

That's what he did but Mr. King yesterday, you remember how it was just ridiculous, each time when he was trapped in his own statement, he said "Well, I'm testifying". Well, "What is the truth?" "Well, I'm testifying." "Well, answer the question." Time and Time again. This is the caliber, this is the water that they were bring up here.

Mary Carolyn Clyde: yes, we had her come up here. She was the one who had been inthat jail. I know that if you've ever had any pity for anybody, you had pity for that woman, who, when confronted with her own statements, wanted to say what was the truth but because of the fear that she had, because of what had been drummed into her, because she was under parole, because she's got to live downthere, said what she had been instructed to say, and what they wanted her to say. She denied everything that

Mr. Hollowell:

she had said 10 minutes before and 3 months before and 3 years before. She testified to you that I saw that woman in Milledgeville, gentlemen, and she was scared to death. You saw her, she was trembling. I tried to handle her easily; I tried to handle her easily.

MR. BLOCH: Your Honor, I understood counsel to object to Mr. Collier's telling about conversations with Mr. Cherry outside of the presence of the jury, and now he's telling about conversations with Mary Clyde in Milledgeville.

MR. HOLLOWELL: She testified to it, Mr. Bloch.

MR. BLOCH: I'm talking about you said, you said.

MR. HOLLOWELL: She testified to it. I'm not talking about something that hasn't been testified to here in court. She testified that I had come to see her in Milledgeville; that's what I mean.

THE COURT: All right, let's abide by the rules.

MR. HOLLOWELL: Three years ago and 10 minutes before she came into this courtroom, I had talked with her. You saw her; she grimaced; you saw her, she was a pitiful sight, she was pitiful; she was pitiful.

Let's look for a moment at some of these other witnesses while we're talking about them. Nixon, the

Mr. Hollowell:

liquor man. This is what they have brought before you to corroborate their statement; the man that lives in the alley; you remember him? This is what they brought up here, somebody that they had their hands on. You know how these things work; you are men of the world: A liquor man, Nixon.

Who did they bring up here to tell this tale about some beating that Brazier is supposed to have given his wife, called from his place? You saw him when he got in trouble, he begins to out with the truth. Another liquor man. "Yeah, I bought it, I would have bought some from you." You remember him, gentlemen. He said he would have bought some from me. I said, "You would have also bought it from the police, wouldn't you?" You will remember that the Plaintiff had testified that he had tried to get her to even call this officer, who was dealing in the liquor traffic; and they ask you to believe him.

This was the testimony, and it was unrefuted. They could have put Mr. Cherry on this stand and had him to deny. I mean Mr. Bloch was smart. He's sometimes referred to as the "Old Fox". He's a good lawyer, he's able. And so, he had to weigh whether or not to let the jury just say "Well, this is kind of ridiculous

Mr. Hollowell:

was no need to cross-examine.

Mr. Singletary had testified that he had passed up the case. Now, he said the man looked like he was drunk. Now, let's say this, in the condition that he was, this is certainly a reasonable statement. And the other thing is, if he had been intoxicated, he had been in jail then for over 12 hours and if he had been intoxicated, it would have been worn out by then.

And then, the next thing is, you have to remember that he was taken, that James Brazier was taken immediately from the City Hall to the hospital in Terrell County; and so, let's give them 15 minutes to get there. Dr. Ward said at the time that he re-examined the man at the hospital he was comatose; he was unconscious. So, was there any need? There was no need to cross-examine Mrs. Radford. She was telling the truth, I believe. I think she saw him but not that morning. And Mr. Bloch was smart enough not to have her say when she saw him. I believe that if he would have asked her, she would have told the truth and the truth would have been that it was not on the 20th of April, 1958.

Now, I'll rush on and within a few minutes we will conclude. Brazier was put in jail, James Brazier. Mr. Cherry, Mr. McDonald, will tell you that he was put in

Mr. Hollowell:

But, gentlemen, there's one thing that is sure in this total situation and that is that Brazier didn't get into himself, that Brazier didn't get into the condition that he was by himself. He just didn't, he just didn't.

If I might, gentlemen, for just a few minutes, just a few minutes more, let me address myself for just a second, if I might, to the matter of the City Court situation and the matter involving Mrs. Radford. I didn't cross-examine Mrs. Radford. There was no need. I don't say that Mrs. Radford hadn't seen Brazier but, if you will remember, think back, gentlemen, and remember the questions that were asked Mrs. Radford; and all that she said was that she saw him on a Monday Morning. That's all. Mr. Bloch knew what he was doing. He never did tell her to say what Monday Morning and in what year. Think back, gentlemen; she never did say when. All she said is that she saw James Brazier, that he was walking, that he got out of the car and so forth; that he had on a pair of dark pants and a white shirt; and the evidence is here that Brazier on that occasion had on a pair of light pants and all he had on was a T-shirt; and he didn't even have on his shoes, because his shoes and hat had been left up over the cell when he went in. And so, there

Mr. Hollowell:

"that an officer would be involved in this"; in other words, stand behind the badge; or, whether to open it up to scrutiny. And so, he decided to let him stand behind the badge. But he never did deny it; he didn't deny it. Doesn't that say something to you, gentlemen?

Then, they brought in Magwood, as I said, their boy, that would do anything and was used to doing anything that they wanted him to do.

Mr. Hunter was in a difficult situation. I did the best I could, I did the best I could. I only wish that there are ways, that there ways to get information and make it be said here what has come out before.

But this is difficult and especially when it's police officers. This is the most difficult kind of case, the most difficult kind of case, police officers. This is what you're fighting against. It's difficult, I don't care who it is, it's difficult. And then, when you think of the disparities, it's doubly difficult. He even wanted to deny knowing Hattie Williams. He was on the spot. It was a difficult situation. He saw that woman for years going back and forth and they talked as they went back and forth. She told you about it. She said they did discuss two days later this situation and I can't go beyond this because I wasn't permitted to put the evidence in.

Mr. Hollowell:

the second cell on the east wing, gentlemen. But even Mary Carolyn Clyde, she knew that wouldn't be hurting anything, she thought, said he was put on the other side where his father said he was put - on the right side, the men's side. This is the usual routine. Odell Brazier said he was put there, that he talked to him, and when he went to sleep, when Odell went to sleep, James was sitting there smoking a cigarette - on the right side.

Dr. Ward said - now, remember these gentlemen here, this officer and this officer, said they kept him in the office until the doctor came. The doctor said that "I went into the office and I waited for them to bring him to me from the right side." You remember the doctor was about to get off on that and I showed him his deposition. I said, "Now, Doctor, isn't it true that you said he was on the right side?" He said, "If that's what it says, that's what it was". He was on the right side.

Now, why would they want to tell that? I'll tell you why. Because sometime during the course of that night he was put, he was damaged, he was injured, he was beaten, he was bludgeoned, he was brought over there. Exactly when it was, I don't know. I wasn't in the jail.

Mr. Hollowell:

I say to you this, the evidence was such that I could have gotten it, if I could have gotten it in.

But, gentlemen, from approximately 7 o'clock on the evening of the 20th of April, 1958, James Brazier, was put in that jail. Now, did the blows that were inflicted by Officer Cherry cause this fracture? I don't know. Dr. Ward said that he examined the man and said he had a spot up here (pointing) and one here and one back here. You remember, gentlemen?

Now, there were those who said there wasn't any bleeding but I show you these exhibits and show you the man's coat and you see where the bleeding was coming; you see, where the bleeding was coming, down the back of his neck. But he said that, looking over his scalp, he said he didn't notice these fractures or these lacerations, contusions and abrasions in the top of his head. He said he didn't notice them. He said he didn't notice that.

THE MARSHAL: You have 5 minutes.

MR. HOLLOWELL: Thank you. And he said he examined him. And he said that there was blood in his ears, and you heard him testify and you heard Dr. Webber testify that this is one of the bases, one of the basic things that you look for; that this is the trigger - not the

Mr. Hollowell:

trigger, but this is the harbinger, this is the thing that causes you to recognize when a man may have a basal fracture. But they left this man there, which might have been the truth; I don't know. They didn't do anything to him until they took him to court Monday morning and then they said "You take him on, take him on, and bring him back next Monday morning" - no bond or anything, just take him on. This is the way and even the Sheriff said that his records weren't 100 per cent. correct all the time. So, they took him out then .

Now, there's one thing I asked you to remember here again, gentlemen: Dr. Ward testified that he came to the jail during the night, maybe 2:00 to 3 o'clock, and the man was in the same general condition; that when he saw him the next morning, later that morning, some 3 or 4 hours later, he was unconscious; and all of them then, all of them - there was no question about the fact that this man had a basal fracture. But he said this time, and remember this , they put the doctor back on the stand to his embarrassment, and for this I'm sorry but I couldn't help it, they pushed him into that kind of position - he said he didn't examine the head, the hair-bearing portion of the body in the same way that he had when he was in jail.

Mr. Hollowell:

So, what does this mean, gentlemen? That sometime in the night between 2:00 and 3 o'clock and the time that this man was taken out there to the hospital, something happened to him. Where the truth is, I don't know but one thing is true. He was in the custody, control and under the supervision of these officers, these police officers. There is no doubt about that, and they had a duty to protect him; they had a duty not to damage or injure him; they had a duty not to acquiesce in anybody else doing this. And yet, this doctor, who says he has performed over 3,000 autopsies, Dr. Webber, the man who performed the autopsy, said that the whole hair-bearing surface was covered with abrasions and contusions, so much so that they were beneath the scalp, between the scalp and the skull; they were between the skull and the dura. That's the plastic looking substance in which the brain is encouched; and on the brain itself. How did it get there?

The man was in good health, it was said. How did it get there? He was under their control, and the Court is going to inform you as to the inferences that can be drawn from the fact that he was in their control; and this was the condition that he was in. There was necrosis,

Mr. Hollowell:

the man died from necrosis caused from trauma. The brain had become so limber that you couldn't even pick it up, it ran through your hand.

And in these final few minutes, gentlemen, may I call your attention to the fact that this man was a working man, he had a family, he had four children; he had two jobs, making about \$75 a week, \$3600 a year; and he had a life expectancy of 33.68 years - 33.68 years. He was a working man, and he was in good physical condition. His widow has to raise these children, these four young children. She didn't kill him. They know about it and either did it or had it done or let somebody do it.

You cannot give back this deceased man. You cannot give these children a father. But you can bring back a verdict that will enable them to be supported, so that they might have a decent place to live and have an education and be able to make something out of themselves.

Yes, there is a capsule, Mr. Bloch referred to a capsule, and it's a small capsule. Brazier was killed. He was killed by the Defendants or at their instance, or with their acquiescence. Brazier was in their custody, under their custody and control and their supervision, in a place that they had the custody, control and super-

Mr. Hollowell:

vision of. And the last in the capsule is that they must be made liable, and this is what we ask you to do, gentlemen.

We certainly appreciate your indulgence and ask you to look at these exhibits when you take them out, and bring back a just verdict for this widow.

THE COURT: Members of the jury, we will take our noon recess before we proceed further to the conclusion of this trial. I suggest that you return at 2:45 - 2:45. That's an hour and 45 minutes from now - at 2:45; remembering, of course, the admonition that I have previously given you not to discuss this case with anyone and the general admonition as previously repeated.

And you may withdraw at this time and return at 2:45.

THE MARSHAL: Every one remain seated until the jury has retired.

(JURY WITHDRAWN)

LUNCH RECESS: 1:00 PM to 2:45 PM - FEBRUARY 8, 1963

ELLIOTT, DISTRICT JUDGE:

Now, members of the jury, you have heard the evidence and the argument of counsel in this case and the time has now come for me to instruct you as to the law governing the case. Unfortunately, because of the fact that there are multiple parties involved and because of the nature of the matter, it will not be possible for me to do that in just a few moments. The charge will have to be somewhat lengthy and I will simply have to ask you to bear with the Court while we perform the function which is necessary.

In the beginning, I wish to state to you that, although you as the jurors are the sole judges of the facts in this case, you are duty bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them to be from the evidence which is before you. And you are not to single out any one instruction alone as stating the law but you are to consider the instructions as a whole; and neither are you to be concerned with the wisdom of any rule of law; regardless of any opinion which you might have as to what the law ought to be, it would be a violation of your duty for you to base a verdict upon any other view of the law than that given in the instructions of the Court.

Now, in this case, there is more than one defendant; there are several defendants, and, unless otherwise indicated

each instruction given you should be considered by you as referring separately and individually to each defendant.

You have been chosen and sworn as jurors in this case to try the issues of fact which are presented by the allegations of the complaint, which you will have out with you in the jury room, - We sometimes call it the petition; we also refer to it as the complaint - and the answer thereto which has been filed by the various Defendants in the case. And you will have the answers which have been filed by the Defendants in the case also out with you, to which you can make reference as often as you choose to do so.

Now, in trying the issues made by these pleadings, as we call them, you are to perform that duty without bias or prejudice as to any party. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth and holding the same or similar stations in life, because the law is no respecter of persons and all persons stand equal before the law and are to be dealt with as equals in this Court.

The burden of proof in a civil action, which is what this is, as distinguished from a criminal action, the burden of proof is on the Plaintiff in this case to prove every essential element of her case by a preponderance of the evidence, and if the proof fails to establish any

essential element of the Plaintiff's case by a preponderance of the evidence, then you should find for the Defendants in this case.

Now, to establish by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that evidence which is opposed to it, has more convincing force and produces in your mind belief that what is sought to be proved is more likely true than not true. That's what preponderance of the evidence means.

There are generally speaking two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as the testimony of an eye-witness. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts. And, as a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all of the evidence in the case, both direct and circumstantial.

Now, I caution you that statements and arguments of counsel during the course of the trial of a case are not evidence in the case, unless they are made as an admission

or a stipulation of fact; and when the attorneys on both sides of a case stipulate or agree as to the existence of a fact, the jury must accept the stipulation as evidence and regard that fact as proved; and that has occurred during the course of this trial.

And further, the Court itself may take judicial notice of facts or events which the Court deems to be a proper basis for judicial notice; and when the Court declares that it will take judicial notice of some such element in the case, the jury must accept the Court's declaration as evidence and regard as conclusively proved the fact which the Court has judicially noted.

Now, in this case you have heard during the course of the trial the Court state that it would take judicial notice of certain things. I will not attempt to repeat those things here because you heard them at the time and you will recall them just like you recall the evidence. The Court also refused to take judicial notice of certain other things, and the things concerning which the Court did not take judicial notice, you will not regard them as being proved or as being evidence in the case.

The evidence in this case, in other words, consists of the sworn testimony of the witnesses, all of the exhibits and documents which have been admitted by the Court into evidence, all facts which have been admitted or stipulated

by counsel , and all matters which have been judicially noted by the Court, and all applicable presumptions which I may state during the course of these instructions.

Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken by the Court must be entirely disregarded by you. In other words, you are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the bald statements of witnesses. On the contrary, you as jurors are permitted to draw from the facts which you find have been proven such reasonable inferences as seem justified in the light of your own experience.

Now, the rules of evidence do not ordinarily permit a witness to testify as to his opinion or his conclusion. A so-called expert witness is an exception to this rule. During the course of this trial the Court has allowed certain witnesses to testify, who the Court has regarded as being qualified as experts in certain fields.

A witness who, by education and experience, has become expert in any art, science, profession or calling, may be permitted to state his opinion as to a matter in which he is versed and which is material to the case, and may also state the reasons for such an opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves; and you may reject it

entirely, if you conclude the reasons given in support of the opinion are unsound.

Now, you are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses which does not produce in your mind belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence which does produce such belief in your mind. In other words, the test is not which side brings the greater number of witnesses or presents the greater quantity of evidence, whether it be in the form of oral testimony or exhibits or documents or any other way; in other words, the test is not which side produces the greater quantity of evidence, but which witness or witnesses, and which evidence appeals to your mind as being most accurate and otherwise trustworthy.

The testimony of a single witness, which produces in your mind belief in the likelihood of truth, is sufficient for the proof of any fact in the case and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary, if after fully considering all of the evidence in the case you hold greater belief in the accuracy and honesty of that one witness.

Now, you as the jurors in this case are the sole judges of the credibility of the witnesses and the weight their

testimony deserves. A witness is always presumed to speak the truth; all witnesses are presumed to speak the truth, but this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to indicate whether the witness is worthy of belief; consider each witness' intelligence, his motive and his state of mind, and demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case, and the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Now, during the course of this trial there have been many instances in which counsel for both sides in this case, counsel for the Plaintiff and counsel for the Defendants, have pointed out during the course of the examination of various witnesses some discrepancies or inconsistencies in testimony given during the course of this trial and statements or testimony given by witnesses at some other time, in some other place, in some other circumstances. I am not saying that there has been any showing of any such inconsistencies. I'm not expressing any opinion concerning that,

but I do want to comment briefly upon that feature for your consideration in passing upon the credibility of witnesses.

I charge you that inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see it or hear it differently. And I also charge you that innocent misrecollection, like failure of recollection, is not an uncommon experience for human beings.

I charge you that, in weighing the effect of a discrepancy, consider whether the discrepancy, the difference, pertains to a matter of importance or simply an unimportant detail, and whether the discrepancy results from innocent error or from wilful falsehood; and, if you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you think it deserves.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you think it deserves, once again cautioning

you that the mere fact that the witness may have recited some detail differently at one time than he does at another does not necessarily impeach the witness. You are to judge that in the light of the charge that I have already given you. But, if a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars, and you may reject all of the testimony of that witness or give it such credibility as you may think it deserves.

Now, in this Court the rule is somewhat different from what it is in the State courts with which I presume most of you are familiar. The law of the United States which applies in this Court permits the Judge who presides over the trial of the case to comment to the jury on the evidence in the case, if he desires to do so. I do not desire to do so. It is my belief that a jury of 12 men or women from this community are far more capable than am I to judge the facts in this or any other case.

If the Court does make comment, they are only expressions of the Judge's opinion as to the facts and the jury may disregard them entirely, since the jurors are the sole judges of the facts; and, if I have at any time during the course of this trial made any comment or statement which has been interpreted by you as being a comment or an observation by the Court with regard to the weight which should

be given the testimony of any witness, or any other type of evidence which has been admitted in the case, it was not done intentionally by the Court, and I now call on you as jurors to put out of your mind any impression you might have received, if you have received any, along that line, because I do not desire to comment on the evidence and have not knowingly done so.

Also, during the course of a trial I occasionally ask questions of witnesses, in order to bring out facts which I consider have not^{been}/fully covered in the testimony and when it appears that they may not be covered unless I ask the question. Now, when I have done that, it has not been my intention that you should assume that I hold any opinion on the matter to which my questions were related. Remember at all times that you as the jurors are at liberty to disregard all comments of the Court and, of course, by even greater measure, to disregard the simple fact that the Court may have asked some question of a witness concerning some particular matter. You are the ones to make the findings of fact in the case.

Also, it is the duty of the Court during the course of the trial of a case to admonish an attorney, who, out of ✓ zeal for his side of the case, does something which is not in keeping with the rules of evidence or the rules of procedure. I charge you that you are to draw no inference

against the side to whom an admonition of the Court may have been addressed during the course of the trial of this case.

It is also the duty of attorneys on each side of a case to object when the other side offers testimony or other evidence which counsel believes is not properly admissible, and when the Court has sustained an objection to a question, the jury is to disregard the question and may draw no inference from the wording of it or speculate as to what the witness would have said if he had been permitted to answer. Upon allowing testimony or other evidence to be introduced over the objection of counsel, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, you as the jurors are the sole judges of the credibility of all witnesses and the weight and the effect of all evidence.

If I have not already covered this adequately, I wish to do so: that although there is more than one Defendant in this case, in this suit, it does not follow from that fact alone that if one Defendant is liable, that all others or any others are liable. Each defendant is entitled to a fair consideration of his own defense and is not to be prejudiced by the fact, if it should become a fact, that you find against some other defendant. Of course, a conspiracy is charged in this case and the Court will instruct you

concerning that feature a little later during the course of the charge. Except as indicated, all instructions given you govern the case as to each defendant.

Now, in this case a suit has been brought by Hattie Brazier, who identifies herself as the widow of James Brazier, deceased, and the suit was brought against W. B. Cherry, Randolph McDonald, Zachary T. Matthews, Sheriff, Shirah Chapman, Howard Lee and The Fidelity Casualty Company of New York.

Now, in this complaint - I intend now to state to you the substance of the complaint. I do not intend to read you every word of it, and once again, I call to your attention that you will have it out in the jury-room with you and you may refer to it as often as you wish and, if I inadvertently omit anything of any materiality, it will come to your attention when you read it. I intend to read parts of it and possibly just summarize other parts of it.

The complaint alleges that this Court has jurisdiction under certain pertinent statutes, and this Court does have jurisdiction. And the complaint alleges that this action is authorized by law, being Title 42 of the United States Code, Sections 1981 and 1983, the action being brought to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Constitution and laws of the

United States; the rights, privileges and immunities sought to be secured by this action - I'm reading to you now from the complaint - are rights, privileges and immunities secured by the Due Process and Equal Protection clauses of the 14th Amendment to the Constitution of the United States, and by Title 42 United States Code Sections 1981 and 1983, as hereinafter more fully appears.

Now, the 14th Amendment to the Constitution, that is those portions of the 14th Amendment to the United States Constitution which have pertinence in this matter, are, as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Further, "Nor shall any state deprive any person of life, liberty or property without due process of law."

That is the pertinent portion of the 14th Amendment which applies here.

Now, Section 1981 of Chapter 42 of the United States Code, to which I have referred, is as follows:

"All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens and shall be subject to like punishment, pain, penalty, taxes, licenses and exactions of every kind, and to no other."

Section 1983 of Chapter 42 is, as follows:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

Title 28 of the United States Code, Section 1391(c) is also invoked by the complaint, but I do not deem it necessary to read you that section in full, that referring to the fact that a corporation is also a party to this suit, and that section authorizes a proceeding with regard to a corporation.

Now, the complaint also alleges, as follows:

"The following provisions of the Georgia Code are also"

"invoked." And the first reference is made to Georgia Code Section 24-2805; and that section is, as follows:
This refers to Sheriffs in the State of Georgia:

"They shall also give a bond, with at least two sureties, in the sum of \$10,000 (unless changed to a less or greater amount by local Acts), conditioned for the faithful performance of their duties as sheriffs, by themselves, their deputies, and their jailers, and upon the terms required by law."

The next section referred to in the complaint is Georgia Code Section 24-2812, which is, as follows:

"Sheriffs are liable for the misconduct of the jailers, as they are liable for their deputies; and persons injured by the jailer have the same option in suing on the jailer's bond that they have in suing on the deputy's bond."

The next section referred to is Georgia Code Section 24-2813, and I read that section in your presence earlier today, at which time I took judicial notice of that section, which relates to the general duties of Sheriffs in the State of Georgia, and I will not read it again at this time.

The next section referred to by the complaint is Georgia Code Section 77-110, which refers to the duties of Sheriffs, and I read you that section, I read in your presence that section this morning, at which time I took

judicial notice of its existence, and I do not deem it necessary to read that section again at this time.

And the next section referred to is Georgia Code Section 77-104, which is, as follows:

"No jailer shall by too great a duress of imprisonment or other cruel treatment make or induce a prisoner to become an approver, or accuse and give evidence against another, or be guilty of wilful inhumanity or oppression to any prisoner under his care and custody."

Then, after invoking those various code sections, the complaint continues by invoking Section 1985, sub-section (3) of Title 42 of the United States Code, the complaint stating that this section being invoked, this being an action for redress pursuant to an injury to a citizen of the United States by virtue of a conspiracy, whereby a person is injured in his person and deprived of having and exercising rights and privileges as a citizen, for which damages in this suit are sought against one or more conspirators. You understand, I am reading the allegations of the complaint and I am expressing no opinion as to whether any of these matters have been proven. I am simply following the complaint so you will have the matter in controversy before you.

Now, Section 1985 of Title 42, sub-paragraph (3), is as follows:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

The petition then further proceeds that it invokes - actually, the petition says Section 1981 - the petition then proceeds to invoke Section 1988 of Title 22 of the United States Code, and since Title 22 of the United States Code relates to international relations, I presume that that is a typographical error and that the intent of counsel was to refer to Title 42 of the United States Code, I'm sure that that was the intent, and I will proceed on that assumption. And Section 1988 of Title 42 is, as follows:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty."

That is Section 1988. And in connection with that, since that section refers to the fact that state law may be called upon to aid the cause of the plaintiff, the Plaintiff invokes Georgia Code Section, which is Section 105-1302 of the Georgia Code, this being an action wherein the Plaintiff as a widow seeks to recover the full value of the life of her deceased husband because of his homicide, that being the allegation of the complaint.

And Section 105-1302 of the Georgia Code is, as follows:

"A widow, or if no widow, a child or children, minor or sui juris, may recover for the homicide of the husband or parent the full value of the life of the decedent as shown by the evidence."

Now, that is the basic statutory law which the Plaintiff relies upon in bringing this action, and the sections of the Georgia Code which I have read you are the Georgia law and the sections of the Federal Code, the United States Code, which I have read you, are the Federal law, the United States law.

Now, the next contention of the Plaintiff is, she alleges that she is a resident of the City of Albany, County of Dougherty, State of Georgia, and that at all times and places in this complaint that she was the widow of James C. Brazier, who departed this life on April 25, 1958. She shows that this action is brought against the

individuals whose names I have already called earlier; she also identifies who they are in the complaint. And she also brings it against a surety company, the name of which I have already called in your presence.

She contends that she has been damaged in a sum of money stated in the complaint; she contends that at all times and places recited in the complaint that the Defendants, W. B. Cherry, Zachary T. Matthews, Randolph McDonald, Howard Lee and Shirah Chapman, were acting under color of state and local laws, by virtue of their respective offices as hereinabove recited.

And I might as well at this point charge you, members of the jury, with regard to that, so that I will not overlook it later; that whenever a police officer, a sheriff of the state, of the city, the city being, of course, a creature of the state, and the county being a creature of the state, whenever such an officer acts as such an officer, in other words, when he acts as such an officer, he may be deemed and he is deemed to be acting under color of state law; or, if it is local law that is applicable, for instance city ordinance, and if it is a city officer, then such a person may, if the act which he is performing is being performed by him in his capacity as such an officer, he is deemed to be acting under the authority of and under color of state and local laws.

Now, paragraph 5 of the Plaintiff's complaint is one which was subsequently amended during the course of this trial by the Plaintiff. I think that, to get the matter clearly before you because there was a good bit of evidence which was introduced in this case before the amendment was filed, to get the matter clearly before you, it is my intention to read to you, and I am going to read to you, the paragraph as originally contained in the complaint and then read you the paragraph as amended, in order that you will have it clearly before you. Of course, the issue that you will eventually decide is the issue as created by the amended complaint, but I think that you should have the thing fully before you, especially since you will have all of these pleadings out, the original as well as the amendment. I am going to read both of them to you, just so that you can see what difference there is, if any.

The original paragraph 5 of the complaint was, as follows:

"Plaintiff shows that on ' = again, I repeat, I'm simply reading allegations now; and I'm expressing, by doing this I'm expressing no indication of the Court's view with regard to whether anything has been proven, disproved or what; this is the allegation of the complaint - "Plaintiff shows that on April 20, 1958, about 5:00 P. M., James Brazier, deceased, was illegally arrested by W. B. Cherry and Randolph McDonald, defendants herein, in that he, the deceased, had

"done no act justifying said arrest; that while in the custody of said two defendants and without just cause, the said two defendants wilfully, wantonly, brutally, savagely, and without justification, struck the said James Brazier violently upon his head and body with heavy metal instruments thereby causing bruises, lacerations and contusions of the head and scalp as well as other parts of the body; that pursuant to said arrest, the deceased was illegally incarcerated in the Terrell County jail, Dawson, Georgia; that said action on the part of the two said defendants, namely, W. B. Cherry and Randolph McDonald, was done wilfully and intentionally, and was calculated to deprive the said James Brazier of his rights and privileges to be secure in his person, and further to deprive the deceased of due process and equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution and enforcing statutes."

Now, as I say, that is the paragraph in the original complaint. During the course of this trial the Plaintiff has amended her complaint by striking that paragraph and substituting the following paragraph which I now read to you; and this is the basis of the issue now formed, and I am now quoting the amendment:

"Plaintiff shows that at about 5:00 P. M. on April 20, 1958, James Brazier, deceased, was illegally arrested by

"W. B. Cherry and Randolph McDonald, defendants herein, in that he, the said deceased, James Brazier, had done no act justifying said arrest; that while in the custody of the said two defendants, and while in his own front yard where the said arrest had been made, the said two defendants, W. B. Cherry and Randolph McDonald, wilfully, wantonly, brutally, savagely and without justification, struck the said James Brazier several times upon his head with a heavy blunt instrument or instruments thereby causing bruises, lacerations and contusions of the head generally, and the scalp, skull and brain specifically; that pursuant to said illegal arrest, the deceased was illegally incarcerated in the Terrell County jail which was used jointly by the County of Terrell and the City of Dawson, Georgia; that said action on the part of the said two Defendants deprived the said James Brazier of his rights, privileges and immunities, as well as deprived the deceased of due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution and enforcing statutes."

Now, you will observe in the body of those allegations the use of certain language, which should be defined to you; it being alleged that the two defendants, W. B. Cherry and Randolph McDonald "wilfully, wantonly, brutally, savagely and without justification" did certain things.

You will note that the word "wilfully" is used; that it is charged that the Defendants acted "wilfully". I charge you that an act is done wilfully if it is done voluntarily and purposely and with the intent to do that which the law forbids; that is to say, with bad purpose, either to disobey or to disregard the law.

I charge you that the word "wanton" means, or if a thing is done "wantonly", Webster's dictionary defines the word "wanton" as follows: Marked by or manifesting arrogant recklessness of justice of the rights or feelings of others, brutally insolent, merciless, inhuman. So, if a thing is done wantonly, it would be done in that fashion, or in the substance of that fashion.

I charge you that the word "brutal" is defined by Webster's Dictionary - and I don't believe that I can improve on that - as follows: "Brutal: Of or pertaining to a brute, of brutish nature, brute-like in want of reason or in sensuality." So, if a thing is done brutally, it would be done in a manner which would be defined in that fashion.

With regard to the word "savagely", Webster's Dictionary defines the word "savage" as being wild, untamed, characterized by cruelty, fierce, ferocious, inhuman; so, if a thing were done savagely, it would be done in a fashion indicating those characteristics.

In the next paragraph of the original complaint, and this is the original complaint, it is alleged that "during the night of April 20, 1958, and the early morning hours of April 21, 1958, the defendants, W. B. Cherry, Randolph McDonald, Zachry T. Matthews, Shirah Chatman and Howard Lee, acting under color of state and local law, and acting individually and in concert, wilfully, wantonly, with evil design, and in derogation of their duties and responsibilities as provided by law, caused or permitted the deceased, James Brazier, to be illegally taken from the said Terrell County jail, which jail was also used by the City of Dawson; that while said James C. Brazier was outside of the jail and under the custody and control of the defendants, he was severely beaten about his head and body to the point of unconsciousness, after which he was returned to said jail by said defendants or their agents. Said injuries proximately caused the death of the said James C. Brazier without him ever regaining consciousness, though he lived until April 25, 1958. That all of the said above alleged acts which are attributed to the defendants were calculated to deprive the said James C. Brazier of equal protection and due process of laws as guaranteed by the Constitution and laws of the United States."

Now, during the course of the trial the Plaintiff amended her complaint by inserting a new paragraph 6, in lieu of the

one which I have just read, and the new paragraph will now be read to you, and it is this paragraph which makes the issue which you are to determine:

"During the night of April 20, 1958" -- or rather, one of the issues which you are to determine -- "During the night of April 20, 1958 or the early morning hours of April 21, 1958, the defendants, W. B. Cherry, Randolph McDonald, Zachry T. Matthews, Shirah Chatman and Howard Lee, acting under color of state and local laws, and acting individually and in concert, with evil design and in derogation of their duties and responsibilities as provided by state and federal laws, caused or permitted the said James C. Brazier to be severely beaten about the head to the point of unconsciousness; that said beating was illegally administered by said defendants individually and collectively, or in concert with others best known to themselves, or by others with the acquiescence of said defendants, while the said James Brazier was within or without the said jail; that at all times during said period, the said James Brazier and the said jail were under the custody, control and supervision of the said defendants individually and collectively. That all of said alleged illegal acts attributed to the said defendants deprived the said James C. Brazier of rights, privileges and immunities as well as due process and equal protection of the laws as guaranteed by the Fourteenth

Amendment to the United States Constitution and enforcing statutes."

At that point the Plaintiff, by amendment, also added another paragraph; this is not in lieu of any paragraph that was in the original complaint, but is an additional paragraph, identified as paragraph 6-a, which reads as follows

"That the said alleged illegal acts on the part of the defendants, individually and collectively, proximately caused the injuries hereinabove alleged, which produced the death of the said James Brazier on or about April 25, 1958."

And at that point I deem it wise to instruct you with regard to the meaning of the term "proximate cause", in order that I may be sure and not overlook doing so later, that term being used in that allegation in the amended complaint.

I charge you that an injury is proximately caused by an act or omission when it appears: (1) that the act or omission played a substantial part in bringing about or actually causing the injury, and it further appears (2) that the injury was either a direct result or a reasonably probable consequence of the act or omission.

Further, the complaint alleges in paragraph 7 that the deceased at the time of his death was 31 years of age and had a life expectancy of 33.68 years; and during the course of the trial it was stipulated by counsel, I believe, that

the deceased was 31 years of age at the time of his death and that the life expectancy of the deceased at the time of his death was 33.68 years. If I am incorrect in that, I would appreciate having my attention called to it, but that is my recollection of the figure, 33.68?

MR. BLOCH: That's correct.

THE COURT: She further alleges that the deceased enjoyed good health and was gainfully employed at a salary of \$300 per month.

It is further alleged in paragraph 8 that the said James Brazier at the time of his death lived in Dawson, Georgia with the Plaintiff and her children, all of whom were in the household there; and that Sheriff Matthews is under an authorized bond and that the surety on the bond is a certain named company, and that the benefits claimed here are those covered by such a bond, a copy of the bond being attached, and I believe a copy of the bond was introduced in evidence this morning. You will have it out, if you wish to refer to it.

Now, in paragraph 10 of the original complaint, the Plaintiff contends that she is entitled to recover expenses of the last illness and funeral expenses and attorney's fees. I charge you that in no event would the Plaintiff be entitled to recover such items, that paragraph of the petition having been stricken by the Court on motion earlier.

in these proceedings.

Also in paragraph 12 of the complaint - the reason I mention this is because if you have it out with you, you may wonder about these things, since they are set out in the complaint. She also contends in paragraph 12 that she's entitled to recover punitive damages, punitive damages over and above the value of the life of the deceased, punitive damages in a certain amount; and I charge you that she is not entitled to recover any punitive damages. If she is entitled to recover anything, it is the full value of the life of the deceased, whatever that is, that and nothing else.

And, of course, the complaint asks for judgment in a certain amount of money.

Now, I have recited to you the substantial allegations, substantially the allegations of the complaint. I am not going to read to you the entire answer of the various defendants, or answers of the various defendants. Suffice it to say that you will have these answers out with you, and what the answers do, in substance, is the answers deny that any of the defendants or all of the defendants, and/or all of the defendants, either individually or collectively, they deny that they are indebted to the Plaintiff in any amount whatever; they deny any improper conduct on their part, either individually or collectively. And that is the substance of the answer made by the defendants; and, of

course, they conclude their answers by a prayer that they may be discharged, it appearing that or rather they contending that they are not indebted to the Plaintiff in any amount and they ask for a verdict at your hands for the Defendants, the Plaintiff on her part asking for a verdict in favor of the Plaintiff.

Now, as I say, you will have the complaint, you will have the answers out with you in the jury=room and you may refer to them as often as you wish to get any details which I may have overlooked or omitted. And the mere fact that I have not taken the time to read the answers completely does not mean that I am belittling the answers at all. It simply means that I think that by making the general statement that I have made to you, that you understand the issue which is made by the pleadings.

Now, I mentioned as I was going through the Plaintiff's complaint at some point that the Plaintiff alleges a conspiracy, a concerted action between all of the defendants, to deprive the deceased of his constitutional rights, and that these things which were done were done to him, if you find that anything was done to him, as a result of such a conspiracy between the named defendants.

Now, it has been said that there is no legal term of which it is more difficult to give an exact definition than the term "conspiracy". And yet, it's essentials are

very easily enumerated. The elements of a conspiracy are, first, the confederating, the combining together, of two or more persons; that is, the agreement to do something, an agreement which is either express or implied.

The intent is the second thing. First is the confederating; second, the intent; that is, for the purpose of doing something; and, third, is the object for doing something unlawful or oppressive as a means or an end or an object of the agreement.

Now, the law of civil conspiracy is only an extension of the law of criminal conspiracy and, as far as the rights and remedies are concerned, all criminal conspiracies are embraced within civil conspiracies. In a criminal conspiracy the conspiring together is the essence of the charge. It must either to do an unlawful act or to do an unlawful act by criminal or unlawful means; but proof of the conspiracy to do either of those things will authorize a conviction in a criminal case.

Now, of course, this is not a criminal case. This is a civil case, and I mention this rule of law which applies to criminal cases simply to separate it and distinguish it from the law which applies in civil cases. Now, where civil liability for a conspiracy is sought to be imposed, as it is in this case, the conspiracy of itself, if you find that there is one, furnishes no cause of action. The gist

of the action is the damage which may have flowed from the conspiracy and not the conspiracy itself.

The averment of a conspiracy in a complaint does not ordinarily change the nature of the action nor add to its legal effect or its force. The gist of the action is, not the conspiracy which is alleged but, the tort allegedly committed against the deceased and the damage allegedly thereby wrongfully done.

Now, I used the term "tort". That's a lawyer's word. A tort is the unlawful violation of a private legal right, or it may be the violation of a public duty by reason of which some special damage occurs to an individual. Now, where damage results from an act, which, if it is done by one person alone, would not afford any ground of action, the same act would not be rendered actionable because it is done by several people in pursuance of a conspiracy. On the other hand, when the tort which is committed, if you find one was committed and the damage resulting therefrom proceeds from a series of connected acts, the averment that they were done by several people in pursuance of a conspiracy does not so change the nature of the action that if the wrongful acts are shown to have been done by one only, it cannot be maintained against him alone and the other defendants exonerated.

Whether a conspiracy be civil or criminal, if the

person who is the object of such conspiracy is damaged, he has his remedy in an action like this. If an unlawful conspiracy exists and if, by reason thereof, a man is unlawfully damaged, then he, or in this event his survivor, his widow, has a cause of action.

Now, the statement which I made that the conspiracy is not itself the cause of action has two meanings; first, that the conspiracy must be executed to the injury of another person; and, second, that the conspiracy will not render an act unlawful, which is lawful when it is committed by one person. But all parties to a conspiracy are jointly and severally liable for damages occasioned by the unlawful condemnation and acts done by any one of the conspirators in furtherance of a common object, because these become the acts of all, and an averment that the acts alleged were done in pursuance of the conspiracy does not change the action.

The allegation and the proof of a conspiracy will enable the Plaintiff to recover damages against such of the defendants, as many of the defendants as may be shown to be guilty of the wrong, even should the Plaintiff fail to prove a conspiracy or a concerted design; and a conspiracy may be pleaded and proved as aggravating the wrong of which the plaintiff complains; and to enable the plaintiff to recover against all of the defendants as joint actors in the commission of the tort.

If the conspiracy can be proven, then the party wronged or his survivor, if that be the case, may look beyond the actual participants committing the actual injury and join with them as defendants those others who conspired, if there are those who conspired, to accomplish it.

An action will not lie for the greatest conspiracy imaginable if nothing is done to put the conspiracy into operation; but, if it is put in operation and the party is damaged, then an action can be brought for conspiracy.

Now, this cause of action which is brought here is based upon what is claimed by the Plaintiff to be an illegal assault and battery, which the Plaintiff claims resulted in serious injuries and eventual death of her deceased husband; and she alleges that the persons named in the complaint conspired together to commit these acts of which she complains. ✓

Under the law, as I have stated it, if the Plaintiff has shown to you by a preponderance of the evidence, as I have already defined that term to you, that these defendants did unlawfully conspire to commit a wrong as alleged by her, and then if one of these defendants in pursuance of that unlawful conspiracy did commit an unlawful assault and battery upon the deceased, ~~then that assault and battery~~ would be chargeable to each one of the persons who conspired with that individual.

But, of course, if there was no conspiracy, then no cause of action is proven insofar as the conspiracy is concerned, except in the event you decide that any one of the defendants, or more of them, did actually commit an illegal assault and battery, and then only the person or persons so actually committing the assault and battery would be responsible in damages to the Plaintiff. And, of course, if no illegal assault and battery was committed by any one of them, then no one of them, then no one of the defendants would be liable in any sum at all to the Plaintiff in this case.

Now, members of the jury, I charge you that an assault is an attempt to commit a violent injury on the person of another, and a battery is the unlawful beating of another. ✓ The law says that to beat is not merely to whip, to wound or to hurt, but includes any unlawful imposition of the hands or the arms or such upon another person; in other words, the slightest touching of another person in anger in the eyes of the law is a battery.

Now, that brings me to discuss this feature of the case with you. Not all assaults and not all batteries give rise to a right to recover damages. In this case there may have been an assault and battery committed by one or more of these defendants in this case, but it could be, you could find under the evidence in this case that the assault and

battery was justified, and that brings me to a discussion of that point.

Sometimes it is appropriate legally and proper for an arresting officer, in making a legal arrest, to commit an assault and battery upon the person being arrested. That depends upon the circumstances.

I charge you that when an officer has a prisoner in his custody, he is authorized to use all of the force necessary to make the arrest effectual; and, if the prisoner resists the arrest, the officer is justified in using such force as is necessary to compel submission.

Now, in this case the Plaintiff contends that the force used by the officers, who made the arrest of the deceased, James Brazier, was greater than was necessary, greater than was reasonably required to make the arrest effectual, and was greater than was reasonably necessary to compel submission to the arrest.

The Defendants contend that the things which were done in committing the assault and battery on the deceased was only such an assault and battery as was reasonably necessary to make the arrest effectual and to compel the submission of the person being arrested. Those are the contentions of the parties, the Plaintiff and the Defendants.

Now, you have heard, as I said, if the Defendants used no more force than was reasonably necessary as I have

described it, it comes within the classification of a justified assault and battery. If they used more force than was reasonably necessary, it comes within the classification of an unjustified assault and battery. That is one of the cardinal questions which you as the jury in this case are to decide.

Now, in connection with your consideration of that feature of the case, you will recall that during the course of this trial testimony was presented and evidence was introduced, and allowed by the Court to be introduced, with regard to the reputation of the deceased, James Brazier, for violence. Evidence was also allowed to be admitted with regard to specific occasions on which arrests had previously been made by officers of the Dawson, Georgia, police department, some of the arrests, as I recall it, being made by some of the officers who are defendants, some one or more of the officers who are defendants in this case.

I charge you that the only purpose for which that evidence was admitted by the Court was to help you in arriving at the conclusion, whatever it is, which you must eventually arrive at, as to whether the degree of force, which was used on this particular occasion, was reasonably required in the light of the circumstances then existing at the time of the arrest, and in the light of such knowledge as the arresting officers may have then had concerning the

reputation of the person being arrested for violence. That is the only purpose for which that evidence was admitted.

The mere fact that the person being arrested may have had some criminal record of some kind would not justify, that alone, would not justify the use of any excessive force in making the arrest which was made at the time the arrest was made. In other words, the mere fact that he may have had a criminal record would not of itself authorize the officers to subject him to any cruel or unusual punishment or inflict any unnecessary injury upon him. That evidence was allowed only for the purpose which I have already stated, and I do not deem it necessary to re-state it further.

So, members of the jury, you will address yourselves to the inquiry whether or not any conspiracy existed as is alleged in the complaint; then, whether or not any one or more of the persons who are alleged to have conspired committed an assault and battery upon the deceased; and, then further, whether such assault and battery was justified in the light of the circumstances, as I have already given you in charge with respect to that matter.

If any assault and battery was committed, which was not justified, then you would look to the further question as to whether that person alone, who committed the assault and battery, would be liable, or whether the conspiracy, as alleged, has been proved, so as to make all persons alleged

to be parties of the conspiracy liable; because, as I have already charged you, if you find that it has been proven by a preponderance of the evidence that a conspiracy did exist to do these things, then the act of any one of the defendants in furtherance of that conspiracy would be chargeable to all of the defendants who participated in it. And there again, whether or not there was a conspiracy, even if you find that an illegal assault and battery was committed, if you find that it was committed under circumstances -- well, to rephrase the charge there; we will strike that and you will disregard that portion of the sentence, and I begin again:

Whether or not there was a conspiracy is a matter for you alone to determine and, even if you find that a conspiracy existed, if the assault and battery was justified under the circumstances, then the mere fact that the assault and battery was committed would give no substance to the conspiracy, and you would end your investigation at that point, because you would not be entitled to return any verdict against any of the defendants on any theory, unless you found that the assault and battery committed on the person of the deceased was not justified, in order to effect the arrest and to retain custody of the person being arrested. So much for the conspiracy feature.

Now, I charge you that one who is actually acting as a deputy sheriff under color of right is such an officer de facto, as a matter of fact, although the statutory requisites of appointment have not been complied with, or he is ineligible or has failed to take the requisite oath or to give the requisite bond.

I charge you that the sheriff of a county is liable for the illegal acts of his deputies, committed in the course of and in connection with the discharge of their official function, as provided by Georgia Code Section 24-201.

I charge you that, if upon consideration of all the credible evidence in this case, the jury finds that the striking of James C. Brazier by Officer W. B. Cherry was more than such force as was necessary to compel submission and to make the arrest effectual, then you could find or rather than you should find, if you find that that's true, that an illegal assault and battery was committed. ✓

On the contrary, and also, if upon consideration of all the credible evidence, you find that the officers arresting James Brazier used more force than was necessary to overcome his resistance, if you find that he resisted, and to make his arrest effectual, then, of course, that would lead you to the conclusion that there was an illegal assault and battery, and it would be your duty to so find.

Further, if upon consideration of all the credible evidence before you, you as members of the jury find that the deceased, James Brazier, was arrested without a warrant, ✓ or that the warrant upon which he was arrested was illegal, ✓ and that James Brazier was not committing any crime in the presence of the arresting officers, then you should find that the arrest itself was illegal, if you find all of those things are true.

On the other hand, if you find that those things are not true, that the force which was used was reasonably necessary, that the arrest was made under a warrant, ✓ that the warrant was a proper one, ✓ legally sufficient, ✓ and that James Brazier did not come within these exemptions which I have otherwise outlined to you, it would likewise be your duty to find that there was not any improper conduct on the part of the arresting officers.

If upon consideration of all the credible evidence you find that the deceased, James Brazier, was arrested without a legal warrant and that he was not attempting to escape, or that under the circumstances, as prevailed at the time of his arrest, there existed no likelihood of a failure of justice for want of an officer to issue a legal warrant, then you should find that the arrest was illegal. ✓

If you, the jury, find that the Terrell County jail was jointly used by Terrell County through its duly elected

sheriff and his deputies and jailer, as well as by the police officers of the City of Dawson, Georgia, generally, and by officers Randolph McDonald and W. B. Cherry, specifically, between the hours of 5:00 P. M., April 20, 1958, and 5:00 A. M. April 21, 1958; and that on such dates and during said period said jail was under the custody, supervision and control of said persons, and that the persons in said jail on said date and during said period were in their custody and control and under their supervision; and if you find that James C. Brazier, while a prisoner in said jail within the periods set out, was severely injured in the manner described in the complaint, which injuries resulted in his death, in such a manner and under such circumstances as would not generally occur if persons in the positions of the defendants, McDonald, Cherry and Mathews, exercised ordinary care, then you would be authorized to find that the defendants did not use proper care and would, therefore, be liable to the Plaintiff for James Brazier's death.

Having used the term "ordinary care", it becomes necessary for me to define that term. I charge you that ordinary care is that care which persons of ordinary prudence exercise in the management of their own affairs in order to avoid injury to themselves or others. Ordinary care is not an absolute term but a relative one; that is to say, in deciding whether ordinary care was exercised in a

given case, the conduct in question must be considered in the light of all the surrounding circumstances as shown by the evidence.

I charge you that, if you find that James C. Brazier made no actionable threat upon officer McDonald, and if you find that James C. Brazier did not interfere with Officer McDonald in the process of his arresting Odell Brazier on April 20, 1958, then you should find that there was no provocation for the subsequent forceful arrest of the said James C. Brazier by Officers McDonald and Cherry on that date. And if you find that he didn't attempt to interfere with Officer McDonald and that he did not use threatening, provocative language to him on that occasion in connection therewith, then it would be your duty to find that the subsequent arrest of James C. Brazier was illegal.

On the contrary, if you find that he did use such language and did attempt to interfere with the Officer, then that would be an action on his part which could be legitimately the substance and basis for a subsequent arrest, legal arrest, by the officers of the deceased, James Brazier. ✓

If upon consideration of all the credible evidence you find that the death of James C. Brazier was proximately caused by the use of unreasonable force in making the arrest of the said James C. Brazier on April 20, 1958, and injuries to him after being incarcerated in the Terrell County jail

on that date and before he was officially released therefrom, and that said jail during such period was under the custody, control and supervision of the defendants, Z. T. Mathews and/or W. B. Cherry and Randolph McDonald; and further, that the said James C. Brazier was, as a prisoner, under their individual or collective custody, control and supervision, and that said latter injuries occurred in such a manner and under such circumstances as would not generally occur if persons in the positions of the said defendants had exercised ordinary care, then you would be authorized to find for the Plaintiff in this case.

I have already defined the term "ordinary care" to you.

I further charge you - I have already made reference during the course of this charge to impeachment of witnesses, how they may be impeached and so forth - I charge you further that, in order to impeach a witness, by showing that he has made contradictory statements, it is not necessary that he absolutely deny the declarations imputed to him. It may be done when he says he does not recollect, if the subject-matter of those conversations be relative to the issue.

I also charge you that proof of prior inconsistent statements as to one matter testified to during a trial by a witness may authorize the jury to disbelieve that witness' other testimony, if they see fit, even though the witness' statement may not have been wilfully false.

I have already charged you to some extent with regard to that matter, but I charge you specifically the principle which I have just charged.

I further charge you, gentlemen of the jury, that in no event can you find any verdict in any amount in favor of the Plaintiff and against the defendants, Mr. Cherry and Mr. McDonald, solely by reason of their arrest of James Brazier on April 20, 1958, at about 5:00 P. M., unless it has been proven to you by a preponderance of the evidence that the actions of the defendants, Cherry and McDonald, in arresting Brazier and incarcerating him in the Terrell County jail, were done in an illegal fashion, as I have already described to you; and that that action on their part deprived Brazier of his rights and privileges to be sedure in his person, and further deprived him of due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States and statutes enacted by Congress pursuant thereto.

Now, members of the jury, if you find that the Plaintiff is not entitled to recover under the evidence which you have before you and under the charge which I have given, that the Plaintiff is not entitled to recover, then, of course, you would end your deliberations at that point and simply return a verdict, which would read, "We, the jury, find for the Defendants." You would simply terminate your consideration

at that point.

But if you find that the Plaintiff is entitled to recover, then, of course, you would proceed to consider the damages which you would award to the Plaintiff in that event. Now, I have already read to you and the fact now that I charge you with regard to how you determine, how you would go about determining the damages, is no indication on the Court's part and you are not to take that as any indication on the Court's part that the Court feels that you should award any amount of damages to the Plaintiff. It is simply the duty of the Court under the law to charge you about the measure of damages in the event you find for the Plaintiff.

I have already read to you previously during the course of this charge the Georgia Code Section which applies, which provides, the effect of it is to provide that, if the Plaintiff is entitled to recover in this case, she is entitled to recover the full value of the life of her deceased husband as shown by the evidence. That's the measure of the damages that you could award to her, the full value of the life of the deceased as shown by the evidence.

Now, you have heard the evidence with regard to the deceased, you've heard the evidence with regard to what his status was, his income status; I do not recall everything

that was said concerning him, about his health and habits and so on, but you will recall all of those things, and all of that is, of course, matter for proper consideration by you in arriving at the fair value of his life, if you find that damages are to be awarded to the Plaintiff.

And in that connection, there were certain mortality tables introduced in evidence or redognized by the Court as a matter of judicial notice, and you will have that information out with you --

Am I correct, were the tables introduced?

MR. COLLIER: Yes sir.

THE COURT: They were introduced?

MR. HOLLOWELL: The Court took judicial notice of them. I could make them available, sir.

THE COURT: Well, I can probably simply adjust the charge in the light of the circumstance. I was in error. The mortality tables have not been introduced but it has been stipulated by counsel that the life expectancy of the deceased was a certain figure, which I have already mentioned, that figure being 33.68 years. I've already taken judicial notice of that fact, based on the stipulations of counsel. And the life expectancy of the deceased may be considered by you as evidence in arriving at the amount of damages, if any, to be awarded to the Plaintiff, in the event you find that the Plaintiff is entitled to a verdict.

Now, the life expectancy of an individual, as shown by a mortality table and as stipulated in this instance, is merely an estimate of the probable average remaining length of life of all persons in our country of a given age, and that estimate is based on, not a complete but, only a limited record of experience.. So, the inference which may be drawn from the life expectancy shown by that mortality table applies only to one who has the average health and exposure to danger of people of that age.

In considering the life expectancy of the deceased, you should consider, in addition to what is shown by the table of mortality, or in this instance in addition to considering the specific life expectancy which has been stipulated to, you should consider all other facts and circumstances in evidence, bearing on the life expectancy of the deceased, including his occupation, habits and his state of health.

Finally, gentlemen, as previously indicated, depending upon how you find the facts to be in this case, any one of a number of different verdicts or variety of verdicts might be returned by you.

In the first place, if, after consideration of all of the evidence in the case, in the light of the Court's charge, you find that the Plaintiff is not entitled to recover any amount from any of the defendants, the form of your verdict

would be, "We the jury find for the Defendants", have your foreman date it, sign it and return it into court.

If you find that the Plaintiff is entitled to recover from all of the defendants, that is the three of them who are still in life - it would not be proper for you to return a verdict against the two deceased officers; that's Mr. Shirah Chapman and Mr. Lee, I believe, because they are deceased and it would not be appropriate for you to return a verdict against either of them - but, as I was saying, if you find that the Plaintiff is entitled to recover from Mr. Cherry, Mr. McDonald, Mr. Mathews and the surety company involved, then the form of your verdict would be, "We the jury find for the Plaintiff against the Defendants", the Defendants. - That would indicate all of them -- such and such an amount of money, stated in dollars and cents or dollars, or whatever it is, and preferably in words and figures, so there, could be no misunderstanding, have your foreman date it, sign it and return it into court.

If you find that the Plaintiff is entitled to recover against one or more of the defendants, but is not entitled to recover against all of them, then the form of your verdict would be, "We the jury find for the Plaintiff against the defendant", naming him, or "the defendants", naming them specifically, "in the amount of so and so" stating the figure in figures and words, have your foreman date it, sign

it and return it into court, making your verdict speak what you find the truth to be, whatever it is, conforming your verdict to the circumstances of your finding.

Whatever your verdict is, it should be entered on the reverse of this paper here, which is called "amended complaint." In order that there can be no misunderstanding, I will put an "X" in pencil mark in the corner. Whatever your verdict is, write it on the reverse of this paper and return it into court.

Now, members of the jury, we have what we regard as a good practice in this court, which is that, after the Court has completed his charge to the jury, the jury is allowed to withdraw for a moment or two, at which time we give counsel for both sides an opportunity to point out to the Court any errors, omissions or deficiencies which they may have observed in connection with the Court's charge; and, if we find that anything further is needed, we will call you back and instruct you further. If we find that nothing further is needed, the Marshal will bring to you all of the evidence and the pleadings, all of the documentary evidence and pleadings, and you can begin your deliberation.

Now, I forget the name of the 13th juror?

THE JUROR: Ivey.

THE COURT: Mr. Ivey, you may withdraw from participation at this time. We appreciate your service

The Court:

just as if you were actually a member of the 12 and am glad we didn't have to use you. You may withdraw at this time.

And Mr. Marshal, you may take the 12 jurors to the jury room.

(JURY TAKEN TO JURY ROOM)

EXCEPTIONS TO CHARGE

THE COURT: All right, I will hear from counsel for the Plaintiff first. Mr. Hollowell?

MR. HOLLOWELL: Yes, Your Honor, only two, as I see it now: One was, as I recollect, Your Honor, you indicated that the jury was to ignore all of the statements of attorneys and made certain qualifications. I'm wondering if, in light of the fact that there was an attorney who actually gave testimony, that perhaps there needs to be a little further clarification on that. This is one observation.

The other is that right near the end, Your Honor alluded to attempt to interfere, and there was no charge nor any warrant issued on that basis, on an attempt to interfere. The alleged warrant was that he was being charged with interfering with. And I think perhaps a distinction there needs to be made because, in my opinion,

Mr. Hollowell:

that would be prejudicial to the situation. If you remember, it was right near the end.

THE COURT: I'm not sure I'm getting your point.

MR. HOLLOWELL: When you were relating right near the end, right after you disoussed ordinary care, just after ordinary care, you were discussing the matter of whether or not the arresting officers used proper force, and whether or not the defendant - not the defendant but the deceased - interfered with the arresting officers; and you used the language, "if he attempted to interfere". And then, this was repeated a second time, "attempted to interfere", whereas there was no charge against the man at all by any one relating to an "attempt to interfere", but rather that he was allegedly charged with interfering with an officer in the execution of his duties. I think that would be prejudicial if left in that form.

I believe, sir, that otherwise it was a very broad and inclusive charge and I have no further exceptions.

THE COURT: All right, Mr. Bloch, I'll hear from you.

MR. BLOCH: Your Honor, I have no exceptions. I do call attention to this, that the amendment was allowed by Your Honor in the forenoon and I have not had a chance to prepare a typewritten answer to it.

Mr. Bloch:

I don't know if any answer is required, but to be on the safe side, I have prepared an answer and hand counsel a copy and file it, with the hope that I can withdraw it and have it typewritten. But I thought it should be filed during the trial of the case. I think you have 10 days really.

THE COURT: All right sir, it is allowed filed and the Clerk will indicate that it has been filed.

MR. BLOCH: That's all I have.

THE COURT: Brick the jury back in for a moment, please, Mr. Marshal.

(JURY RETURNED TO JURY BOX)

THE COURT: Members of the jury, at one point during the course of my charge I charged you substantially to this effect, as I recall it:

I charged you that, if you should find that James C. Brazier made no actionable threats upon Officer Randolph McDonald and did not interfere with him in the process of his arresting Odell Brazier on April 20, 1958, then you should find - if you find that he did not do those things, then you should find that there was no provocation for the subsequent arrest of James Brazier by Officers McDonald and Cherry on that date.

Then, I turned around and charged you the converse

The Court:

of that and it may be that I inadvertently used a word which I did not intend to use, but I want to charge the converse of that by stating to you: On the contrary, if you find that James C. Brazier did make an actionable threat upon Officer Randolph McDonald and did interfere with him in the process of his arrest of Odell Brazier on April 20, 1958, then you would be authorized to find that a subsequent forceful arrest, if based upon a legal warrant incorporating such charges, would be a basis for the authorized arrest by Officers McDonald and Cherry of the deceased, James Brazier, later on that day.

That is what I intended to say and it has been called to my attention that I may have said, "If you find that he attempted to interfere" instead of saying "if you find that he interfered." The charge that I have just given you is the way I intended it and that is the correct charge.

The only other thing is that in charging you in the early stages of the charge, some two hours ago, I made a statement to the effect that statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact.

It has been called to my attention that a member of counsel for the Plaintiff in this case took the

The Court:

witness-stand and testified as a witness. Of course, that statement, that portion of my charge which I just read to you, was not intended to imply that you should not consider the testimony of counsel which he gave as a witness, when he was on the witness-stand, as evidence in the case. You will consider that as evidence along with all the other.

All right, with that supplement, you may retire and the Marshal will bring you all of the exhibits.

(JURY WITHDRAWN TO JURY ROOM)

THE COURT: We will now stand in recess awaiting the verdict of the jury.

MR. HOLLOWELL: May it please the Court, I don't think all of the evidence has gone out.

THE MARSHAL: Oh, I beg your pardon. (Marshal now taking clothing of deceased, James Brazier, to jury room). . .

THE COURT: Is that all that counsel knows about?

MR. HOLLOWELL: Yes.

THE COURT: We will stand in recess awaiting the verdict of the jury.

RECESSED: 4:50 PM, FEBRUARY 8, 1963.

V E R D I C T

RETURNED: 6:10 PM, FEBRUARY 8, 1963:

THE COURT: Mr. Marshal, will you make an announcement that will be appropriate at this time?

THE MARSHAL: The jury is fixing to return their verdict, and we request every one in the courtroom to have no outburst or applause or any emotion whatsoever; and then, after the jury has returned the verdict, we request that every one remain in the courtroom until they are told they can be dismissed. Thank you very much.

THE COURT: Mr. Foreman, has the jury reached a verdict?

THE FOREMAN: Yes sir, Your Honor, we have.

THE COURT: Will you hand it to the Marshal, please, and Mr. Marshal, will you hand it to the Clerk?

(Verdict so delivered)

THE COURT: Mr. Clerk, is the verdict in proper form?

THE CLERK: The verdict is in proper form.

THE COURT: Let me see it please sir. (The Court examining verdict) . . . All right, publish the verdict, Mr. Clerk.

THE CLERK: "We the jury find for the Defendants, H. P. Jones, Foreman, 2-8-63".

THE COURT: Of course, the "2-8-63", for the record, is interpreted by the Court as February 8, 1963. That is the interpretation the Court places upon that entry "2-8-63", as being February 8, 1963. Is that interpretation agreeable to all parties? It is so indicated.

THE COURT: All right, members of the jury, that completes the trial of this matter.

(JURY EXCUSED BY THE COURT)

Now, Mr. Marshal, we are going to sit here until the jury clears the Clerk's office and until they are out of the building.

THE MARSHAL:q Just one moment, Your Honor, did I understand you to say until they clear the building?

THE COURT: Until they clear the building; until the members of the jury clear the building, no one will be allowed to leave the courtroom.

. (5 minutes later)

THE COURT: All right, we stand in recess now until Tuesday morning at 10 o'clock.

COURT RECESSED: 6:20 PM, FEBRUARY 8, 1963